



Lawsuit Reform Alliance of New York

19 Dove St. • Suite 201 • Albany, NY 12210 • 518-512-5265 • www.LRANY.org

OPPOSE

BILL:	A.9031 (Dinowitz)
SUBJECT:	Recovery from a third party defendant
DATE:	April 17, 2018
CONTACT:	Adam Morey

Summary:

This legislation permits a plaintiff to recover directly against a third party defendant when the judgment against the original defendant has not been satisfied after thirty days.

Why we oppose this legislation:

Unjustly Shifts Liability

- Most troublingly, this legislation would allow plaintiffs to bypass defendants and **collect directly from a party which they had no legal standing to sue**. This radical change in policy would overturn centuries of well-established legal procedure (see figures 1-3 on reverse).
- The proposed changes would allow plaintiffs to collect directly from a third-party defendant after the statute of limitations has expired, exposing third party defendants to open-ended liability.

Creates a Disincentive to Satisfy Judgments

- Because of New York's doctrine of joint and several liability, the original defendant is incentivized to *not* satisfy a judgment in order to pass the judgment to a third party defendant, which could then be held liable for the entire amount of the judgment.

Makes an Existing Problem Worse

- By virtually every measure, New York's tort liability climate is among the worst in the nation and "the resulting liability costs have been estimated at \$20 billion a year—or more than \$2,700 per household."¹ Consistently ranked a "Judicial Hellhole" by the American Tort Reform Foundation, New York is "a plaintiffs' lawyer's dream come true." New York is already among the most litigious states in the most litigious country in the world. This legislation would only worsen that reputation by further enhancing plaintiffs' ability to extract settlements from third parties.

¹ Behrens, M. and Silverman, C. (2017). "New York's Costly Tort Laws and How to Fix Them." *Empire Center for Public Policy*.

The Lawsuit Reform Alliance of New York is a not-for-profit association of businesses, healthcare providers, membership organizations, and concerned citizens dedicated to reform of the legal system in order to foster a better business climate, promote job growth and address the growing cost of lawsuit abuse.

Figure 1. Recoveries against third parties : current law with solvent defendant

1. Plaintiff sues defendant for damages.



2. Defendant is found liable and a judgment is entered. Defendant satisfies the judgment in full. Defendant asserts that third party is partly or entirely liable and impleads the third party to recover some or all of the damages, acting as a third-party plaintiff.



3. Third-party defendant is found partly liable and pays the third-party plaintiff for its portion of the judgment.



Figure 2. Recoveries against third parties : current law with insolvent defendant

1. Plaintiff sues defendant for damages.



2. Defendant is found liable and a judgment is entered. Defendant cannot satisfy judgment. Third party bears no liability because defendant has suffered no reimbursable damages. **Plaintiff may not recover directly from the third party because they have no legal standing to do so.**



Figure 3. Recoveries against third parties : proposed law with insolvent defendant

1. Plaintiff sues defendant for damages.



2. Defendant is found liable and a judgment is entered. Defendant cannot satisfy judgment.



3. Defendant is now permitted to recover directly from the third party defendant **without ever having the legal standing to sue them.**

