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NEW YORK COUNTY LAWYERS' ASSOCIATION
REPORT ON COURT OF CLAIMS PROPOSAL

his Report was approved by the Executive Committee of the New York County awyers' Association at its regular meeting on March 31, 2003.

In the 2003 Budget Bill (Assembly 2106 and Senate 1406), the Governor has tached a provision that provides for the exclusive jurisdiction in the Court of Claims for :tions involving New York City public hospitals, public schools, the Metropolitan ransportation Authority, the New York City Housing Authority, and CUNY colleges.

All such cases under this proposal would be heard by politically appointed Court Claims judges, sitting without a jury, instead of the existing civil justice system with a jury of one's peers.

The New York County Lawyers' Association strongly opposes this constitutionally dubious action, which will deprive a great and unequal segment of our population of a trial by jury.

The Committee on the Supreme Court of the New York County Lawyer's Association undertook to examine the consequences of this act.

The right to trial by jury is a cornerstone of American and New York citizenship, protected equally in both constitutions. Depriving citizens of trial by jury entails the loss of a very substantial right. If this right is taken away for any cause of action that is now triable to a jury, it should only be for the most compelling reasons. We trust our population to select our leaders, decide the innocence or guilt of criminals, and determine if the death penalty is appropriate in certain cases. How can we not trust them to determine civil responsibility and compensation for victims who have been injured?

We find current public criticism of the jury system unfounded. The present system has carefully built-in safeguards to protect all litigants from abuse or excessive

sympathy-driven verdicts. Included in these safeguards are review by the trial judge, the Appellate Divisions and the Court of Appeals, where necessary. Furthermore, the cry that trial lawyers unduly influence results simply ignores the fact that in the existing system, competent counsel represent both sides. Claims that the Corporation Counsel is not up to the task are simply wrong. No plaintiffs' firm has an investigation staff with the capabilities of the City of New York, including its Police Department.

The effect of the bill would be to create a dual system of justice, depriving the less affluent members of society of equal rights and protections. Those who avail themselves of private or proprietary hospitals would be entitled to a trial by jury in the Supreme Court for any malpractice claims, while those who have been treated in any of the municipal hospitals would be channeled to the non-jury Court of Claims. Children of the wealthy who are assaulted or molested in a private school setting would get a trial by jury, while those in the public school system would be forced into accepting the judgment of a single judge, appointed by the Governor. If you can afford a taxi or limo, you would get a trial by jury but if involved in an accident as a "straphanger" or bus passenger, you would be relegated to the Court of Claims. If you live in a doorman building in a wealthy neighborhood, you could sue in Supreme Court and get a trial by jury, but if you live in one of the many municipal projects, you would lose that right. The bill's impact thus falls on the most disadvantaged segments of society. It is significant that the elected representatives from minority or economically deprived parts of the City have united in their opposition to this bill.

We also believe that it is inappropriate to have such a significant legal and policy issue raised by including it as a rider to a budget bill. We are cognizant that as of April 1, 2003, the State had no budget yet, but must adopt one at some point. We also know that there are substantial "tort reform" discussions going on at a state and national level. However, we believe it is inappropriate to try to achieve "reform" through the backdoor effort of attaching a rider to a general budgetary bill. If there is to be "tort reform," it should be after a full and frank public discussion, including public hearings on the merits. That is not likely to happen if these provisions remain attached to the budget bill.

The budget bill rider is also inappropriate because it differentiates some public entities from others, singling out some for favorable treatment. Why does the City's Health and Hospitals Corporation or its schools and colleges get to have cases against them moved to the Court of Claims, but the City itself does not? This illogical element of the bill is indicative of a piecemeal approach to "tort reform," and if passed, the bill will no doubt be used as a precedent or an example for further "tort reform" efforts. Again,

such a substantial change to the civil justice system should only be undertaken, if at all, following a fuller public discussion than is likely to be given to a rider to a budget bill.

We are also cognizant of the State's and the City's current budget problems. However, there is little empirical evidence that tort verdicts against the particular public entities affected by the bill rider are up dramatically since the State's and the City's current budget problems began. The New York Public Interest Research Group has found that the evidence does not support the oft-heard cry of "run-away" jury verdicts. Statistics show that personal injury claims against the City have remained relatively stable over most of the last decade, and average payouts have markedly decreased since the early 1990s. New York remains a relatively conservative jurisdiction when it comes to jury awards, and our judges quite consistently reduce verdicts that they believe to be excessive. It is inappropriate to hide a substantial public policy matter in a budget bill without a thorough public discussion of these substantial issues.

The logistics of expanding the Court of Claims also makes the idea impractical. The Court of Claims will be unable to handle the deluge of new cases. In addition, it is not clear that litigation in the Supreme Court will decrease commensurately. Now, if an action is brought against the State for improper road design, as well as a claim against the drivers, the law requires two separate actions, one in the Court of Claims against the State, and a second action in the appropriate Supreme Court for the actions of the drivers. This problem would be compounded as many City Health and Hospital Corporation cases include separate causes of action against private, independent attending physicians. Other examples of claim-splitting, which will result in duplicative litigation if the bill rider is passed, could be cited.

These considerations point to larger issues of judicial administration. If the Court of Claims is given broad new authority, it will require commensurately greater resources. Yet no provision for that is made in the bill. Chief Judge Judith Kaye has tried for several years now to get the State Legislature to act on her court reform proposals, without success. The budget rider gives no effect to any of her concerns, or to the inevitable resulting administrative problems. Again, this is indicative of inadequate consideration given to difficult issues.

Additionally, the idea that any independent public corporation can be brought under the Court of Claims jurisdiction is not without possible constitutional challenge. Sovereign immunity belongs to the State, not to municipalities, and it is not clear into which category a public authority falls. Since public authorities in New York have been

given the ability to sue and be sued in Supreme Court, the issue did not have to be addressed. If the bill rider were adopted, the issue will inevitably be litigated.

In *Easley v. New York State* Thruway *Authority*, 1 N.Y.2d 374, 135 N.E.2d 572, 153 N.Y.S.2d 28 (1956), the Court of Appeals held: "Regardless of whatever power the Legislature may have to waive governmental immunity on condition that tort claims be prosecuted in the Court of Claims, unless the claims are against the State, payable from its funds, section 23 Article VI of the Constitution would be violated by granting jurisdiction to the Court of Claims over causes of action that are not against the State but are against these limited public corporations… . The exigencies of government have caused public authorities performing a wide variety of functions to increase and multiply in recent years. They might as well not be created if their separate corporate existences are to be overridden whenever it is convenient to do so. We think that it was not the intention of the Legislature or of the constitution to establish public authorities in name only, having the powers but lacking the status and responsibilities of independent corporate entities. In that event, their standing would be undermined and their usefulness impaired."

For the foregoing reasons, the New York County Lawyers' Association supports the preservation of trial by jury and opposes these provisions of the 2003 budget bill.