Suburban Hospital ALLIANCE OF NEW YORK STATE, LLC

Representing the advocacy interests of hospitals and health systems on Long Island and in the Hudson Valley

OPPOSITION

MEMORANDUM

March 2, 2018

TO: Members, Long Island Delegation of the New York State Assembly
Members, Hudson Valley Delegation of the New York State Assembly

FROM: Kevin W. Dahill, President and CEO

RE: A.9028 (Dinowitz) — Advanced to Third Reading

A.9028 would amend the General Obligations Law in relation to settlements in tort actions. **The Suburban Hospital Alliance of NYS, LLC strongly opposes this legislation.**

Under current law, plaintiffs are not entitled to receive more than what a jury awards them. In computing awards, juries make two determinations: the total amount of the award and the percentage of fault attributable to each defendant.

If one or more co-defendants in a case settle with the plaintiff, awards made by the jury are reduced by either: (1) the amount paid by the co-defendant(s) who settled before; or (2) by the share of fault allocated to the settling defendant(s) by the jury. This bill would require those defendants who do not settle to choose—before the case goes to trial—between one of the two methods by which awards would be reduced.

A.1415 could result in situations in which a plaintiff receives more than the total damages awarded by the jury. For example, there are two defendants in a case and one settles for $250,000. At the conclusion of the trial, the jury awards the plaintiff $500,000 and finds the non-settling defendant 75 percent at fault.

Under current law, the total amount received by the plaintiff cannot exceed the $500,000 awarded by the jury. Therefore, the non-settling defendant's liability would be partially reduced by the pre-trial settlement of $250,000 and the non-settling defendant would be responsible for no more than the remaining balance of $250,000. The total received by the plaintiff is the total amount of compensation the jury determines is warranted.

Under this proposal, however, the non-settling defendant would have to elect how his/her liability is determined before going to trial. If the non-settling defendant chose to have the total award reduced

1383 Veterans Memorial Highway, Suite 26, Hauppauge, NY 11788
631-963-4151 (phone) / 631-435-2343 (fax)
www.suburbanhospitalalliance.org

on a percentage of fault basis rather than a dollar settlement basis, then (s)he would be required to pay his/her proportion of the final award amount, regardless of how much was paid to the plaintiff in pre-trial settlements. Therefore, under this scenario, if the jury awarded the plaintiff $500,000, the plaintiff would receive $250,000 from the settling defendant and $375,000 from the non-settling defendant (75 percent of the total $500,000 award), for a total of $625,000.

While we believe that injured persons should receive fair and adequate compensation for their injuries, we do not believe that this bill contributes toward that result. This bill will increase liability costs, which are extremely problematic in the current environment, and would further the unpredictability of both the tort system and of the medical malpractice insurance system. The Legislature should not approve any action that would raise the cost of premiums and add unnecessary strain to a system that is no longer financially sustainable.

For the reasons cited above, the Suburban Hospital Alliance strongly opposes A.9028 and urges you to vote against it.