

## Memorandum Urging Approval

### TORTS, INSURANCE AND COMPENSATION LAW SECTION

TICL #1 GOV

September 15, 2014

S. 5077

By: Senator Bonacic

A. 9077

By: M. of A. Weinstein

Senate Committee: Judiciary

Assembly Committee: Codes

Effective Date: Immediately

**AN ACT** to amend the civil practice law and rules, in relation to conduct of the examination before trial

**LAW & SECTION REFERRED TO:** CPLR § 3113(c)

### THE TORTS, INSURANCE AND COMPENSATION LAW SECTION URGES APPROVAL OF THIS LEGISLATION

This proposed amendment to subdivision (c) of § 3113 of the CPLR would supersede case law out of the Fourth Department Appellate Division [*Thompson v. Mather*, 70 AD3d 1436 (4<sup>th</sup> Dept 2010)] which holds that an attorney for a nonparty witness may attend the deposition of his or her client but has no right to participate in or object to questions posed to his or her client. The proposed amendment would give the non-party deponent's counsel the right to make objections on behalf of his or her client in the same manner as counsel for a party.

Under current case law, an attorney for a nonparty deposition witness is not able to raise objection to improper questioning such as the use of compound, argumentative, or leading questions asked of his or her client even if counsel for the parties fails to raise objection. If the nonparty is later made a party, then his or her earlier testimony is preserved without objection from his or her attorney. This amendment would eliminate this problem.

Based on the foregoing, the Torts, Insurance and Compensation Law Section urges the Governor to **APPROVE** this legislation.

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