



NEW YORK STATE SENATOR

Martin J. Golden

Expert Witness Reform Bill Introduced to End “Trial by Ambush”

MARTIN J. GOLDEN May 10, 2012

FOR IMMEDIATE RELEASE Albany, NY – The practice of “trial by ambush”, or loading a trial with experts and then revealing them the day before the trial begins has long been a problem in New York courts. Now, there may be some relief.

On Tuesday, May 1st, Assemblywoman Sandra Galef (D, Ossining) introduced legislation which would balance disclosure requirements for expert witnesses in lawsuits. Senator Martin Golden (R, Brooklyn) introduced the legislation in the Senate on April 13th.

The legislation would require plaintiffs - those bringing the lawsuit - to disclose their expert witnesses before a trial date can be set for the lawsuit. Defendants - those being sued - would be required to disclose their experts no later than 60 days after the trial date is set, which gives them time to prepare a reasonable defense. Currently, New York’s civil law requires all parties in a lawsuit to disclose their experts, but incredibly, sets no time frame for the disclosure. This has given rise to the practice of “trial by ambush,” where plaintiffs’ attorneys wait until the eve of trial to disclose their expert witnesses, preventing defendants from preparing an adequate defense. This tactic is unfair and hampers the fair and efficient resolution of claims.

The new legislation would improve fairness, reduce frivolous lawsuits, and lower costs to the court system. Early disclosure of witnesses allows both parties to engage in meaningful settlement negotiations long before the case goes to court, rather than allowing one side to game the system to their advantage. Because all parties understand the relative merits of the case against them, frivolous lawsuits are far less likely to be settled. Tom Stebbins, Executive Director of the Lawsuit Reform Alliance of New York noted, “Nothing prevents frivolous lawsuits like having to show you have a case. With the current situation, the advantage is always on the side of the plaintiff, which encourages frivolous cases and leads to defendants to settle cases that do not have merit.” Most importantly, legislation would allow those with legitimate claims to get justice more quickly.

Legal scholars have long called for a timeframe for disclosure of expert witnesses. David Siegel, a pre-eminent New York legal scholar, noted “The statute cries out for some type of amendment to impose some kind of time period on the disclosure...” In fact, the basic elements of the legislation are already in place in the Third Judicial District of the New York State Supreme Court in the form of a judicial rule. The proposed bill would simply apply this rule statewide.

The Lawsuit Reform Alliance of New York applauds Senator Golden and Assemblywoman Galef for their leadership and commitment to a fairer, more balanced civil justice system.

For more information, please contact Tom Stebbins, Executive Director at tstebbins@lrany.org or 518-512-5265.