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REPORT ON LEGISLATION BY THE
COMMITTEE ON STATE COURTS OF SUPERIOR JURISDICTION

A.624 **M. of A. Weinstein**
S.3762 **Sen. DeFrancisco**

AN ACT to amend the civil practice law and rules, in relation to assertable defenses of a third-party defendant.

THIS BILL IS APPROVED

The New York City Bar Association Committee on State Courts of Superior Jurisdiction agrees with the proposed amendment to CPLR 1008 as set forth in A.624/S.3762. Forcing defendants to litigate service defenses that will have no practical impact on a case solely to avoid the possibility of having third-party complaints dismissed serves little purpose, if any, and would create needless litigation. The legislation appears sufficiently narrow in scope to solve these problems without creating any new ones in the process.

Allowing third-party defendants to raise service objections relating to complaints in the underlying action long after commencement of the action is wholly inconsistent with the 1996 amendments to CPLR 3211(c), which provide that objections to service of the initiating pleadings must be resolved in a pre-answer motion or within sixty days after the pleading containing the service defense. While the purpose of those 1996 amendments is to ensure an early resolution of the service issue, the rule enunciated in Charles v. Long Island College Hospital, 47 A.D.3d 665, 850 N.Y.S.2d 173 (2nd Dept. 2008) would produce the opposite effect, i.e., significantly extending the period during which an objection to service of the underlying complaint can be made. Moreover, under Charles v. Long Island College Hospital, a plaintiff would be proceeding without knowing whether it had validly affected service and the timing of the original service being deemed defective could depend solely on the arbitrary fact of when the third-party plaintiff chooses to assert and serve its third-party claim.

For these reasons the Committee supports the passage of A.624/S.3762.

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