

March 24, 2008

Senator Thomas Colapietro
Representative Chris Stone
Co-Chairs of the General Law Committee
Connecticut General Assembly
Legislative Office Building
Hartford, CT 06106

Re: Senate Bill 534 -- An Act Concerning Cash Advance Contracts and Plaintiffs in Personal Injury and Wrongful Death Case

Dear Senator Colapietro and Representative Stone:

We are law professors who teach and write in the areas of consumer protection, torts, civil procedure, and related areas of legal reform. We write to urge your support of Senate Bill 534 “An Act Concerning Cash Advance Contracts and Plaintiffs in Personal Injury and Wrongful Death Case.”¹

We believe SB 534 “An Act Concerning Cash Advance Contracts and Plaintiffs in Personal Injury and Wrongful Death Case” is a helpful pro-consumer measure that should be enacted because it 1) helps create a well regulated market for litigation finance to assist consumers and alleviate hardship while their cases are still being resolved and 2) addresses inherent disadvantages in the litigation process faced by consumers as plaintiffs because of the length and uncertainty of litigation. We oppose proposals that would impose caps on fees for litigation finance tied to current state usury law limits because 1) litigation finance arrangements covered by the act are fundamentally different from loans and 2) because a fee cap at this time would likely prevent the development of any market for litigation finance arrangements and injure the very consumers with litigation claims that the Act seeks to assist.

SB 534 would expressly permit cash advance contracts in which a litigation finance company would advance funds to a consumer with a pending personal injury or wrongful death case. Only in the event the consumer won or settled their case, would the litigation funding company receive the specified amount of the settlement or verdict. In the event the consumer

¹ We have received no compensation in preparing this letter, write in our individual capacities, and provide our institutional affiliations only for purposes of identification.

lost their case, the litigation finance company would receive nothing.

An increasing number of states are expressly permitting such arrangements by case law, statute, or through agreements between firms in the industry and the appropriate regulatory bodies. SB 534 is consistent with other recent bills and regulatory initiatives in requiring:

- Full disclosure of terms and fees in large bold type
- Requirement of attorney review and explanation of all terms to the consumer
- Right of cancellation within five business days

We believe these requirements are appropriate and should protect consumers from being taken advantage of in times of need, particularly since no cash advance contract can be signed without the review of the attorney representing the consumer in the underlying litigation. Plaintiffs currently have no means to obtain financing of worthy legal claims since contingent fee arrangements with their lawyers do not (and cannot lawfully) provide for living or medical expenses during the often lengthy litigation process. Under the current system, only defendants have the real world ability to finance litigation, which can create the ability to delay or offer unreasonable settlements in certain cases. SB 534 would permit plaintiffs to finance their living expenses and work toward resolving law suits closer to the expected outcome based on the law and the facts of the case. We view this as a positive pro-consumer development.

We do not support certain proposals that would cap fees in connection with litigation finance contracts at current state usury levels. First, such caps are premised on the mistaken notion that such contracts are loans. A loan typically is defined as an unconditional promise to repay a sum certain at a future time. Litigation finance agreements of the type contemplated by SB 534 lack this fundamental characteristic of loans. They are expressly conditional on the consumer prevailing in their lawsuit by way of settlement or verdict. If the consumer does not prevail, they do not repay the funds they have previously received any more than they would owe their attorney anything under a contingent fee agreement. Given that all litigation is uncertain, and not all plaintiffs prevail or settle their cases, this is an important difference from a traditional loan.

More fundamentally, a fee cap at this time will interfere with the development of a market for litigation finance and its potential for serving the interests of consumers in leveling the playing field between plaintiffs and defendants in the conduct of litigation. Nor is it necessary, since the growth of a well regulated litigation finance industry with full disclosure of terms and attorney review, plus the likely increased competition over time, will best ensure consumers having access to affordable litigation funding as needed. A fee cap simply would prevent this from coming about anytime in the near future.

We therefore urge your continued support of SB 534 which will establish appropriate regulation for this emerging industry. We would be happy to provide any additional information that would be of assistance. Please feel free to contact me at 312-915-7137 or swalle1@luc.edu

should you need additional information or wish to contact any of the other law professors who have indicated their support below.

Sincerely,

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