SUPREME COURT
STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203

On Certiorari to the Colorado Court of Appeals
Hon. John D. Dailey, Steven L. Bernard, and Richard L. Gabriel, Judges, Case No. 2012CA1130

District Court, City and County of Denver
Hon. Brian Whitney and Edward D. Bronfin, Judges, Case No. 2010CV8380

OASIS LEGAL FINANCE GROUP, LLC; OASIS LEGAL FINANCE, LLC; OASIS LEGAL FINANCE OPERATING COMPANY, LLC; and PLAINTIFF FUNDING HOLDING, INC., d/b/a LAWCASH,

Petitioners,

v.

JOHN W. SUTHERS, in his capacity as Attorney General of the State of Colorado; and JULIE ANN MEADE, in her capacity as the Administrator, Uniform Consumer Credit Code,

Respondents.

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Case No. 2013SC0497

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ATTORNEY FOR *AMICI CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND DENVER METRO CHAMBER OF COMMERCE

ADDENDUM TO *AMICI CURIAE* BRIEF OF CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE DENVER METRO CHAMBER OF COMMERCE IN SUPPORT OF RESPONDENTS

ADDENDUM
EXHIBIT 1

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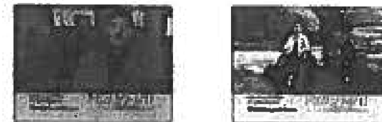

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California: Oasis Legal Finance, LLC is licensed in the state of California in compliance with the California Finance Lenders Law.

Missouri: Oasis Legal Finance, LLC is licensed to make loans by the State of Missouri Division of Finance

ADDENDUM
EXHIBIT 2

IN THE MATTER OF:	*	BEFORE THE MARYLAND
OASIS LEGAL FINANCE, LLC	*	COMMISSIONER OF
Respondent	*	FINANCIAL REGULATION
	*	
	*	DFR-EU-2008-241

* * * * * * * * * * * *

SUMMARY ORDER TO CEASE AND DESIST

WHEREAS the Maryland Department of Labor, Licensing and Regulation, Office of the Commissioner of Financial Regulation (the "Division"), undertook an investigation into the business activities of Oasis Legal Finance, LLC ("Oasis" or "Respondent"); and

WHEREAS, as a result of that investigation, the Commissioner of Financial Regulation (the "Commissioner") finds grounds to allege that Respondent has violated Commercial Law Article ("CL"), Title 12, Subtitle 3, Annotated Code of Maryland, and Financial Institutions Article ("FI"), Title 11, Subtitle 2, Annotated Code of Maryland (collectively the "Maryland Consumer Loan Law," or "MCLL"); and the Commissioner finds that action under FI §§ 2-115(a) and 11-215(b) is appropriate.

NOW, THEREFORE, the Commissioner has determined, for the reasons set forth below, that Respondent's business activities constitute usurious and unlicensed consumer lending in violation of Maryland law, and that it is in the public interest that Respondent immediately Cease and Desist from making consumer loans to Maryland consumers:

1. Pursuant to FI § 11-204, "[u]nless a person is licensed by the Commissioner, the person may not: (1) [m]ake a loan . . . ."

EXHIBIT 2

2. Pursuant to CL § 12-302, a "person may not engage in the business of making loans under this subtitle unless the person is licensed under or is exempt from the licensing requirements of Title 11, Subtitle 2 of the Financial Institutions Article, Annotated Code of Maryland, known as the Maryland Consumer Loan Law – Licensing Provisions."

3. Pursuant to CL § 12-301(c), a "lender" "means a person who makes a loan under [Title 12, Subtitle 3 of the Commercial Law Article]."

4. Pursuant to CL § 12-301(e), a "loan" "means any loan or advance of money or credit made under [Title 12, Subtitle 3 of the Commercial Law Article]."

5. CL § 12-306 specifies the maximum interest rates which a lender is permitted to charge on a loan under Title 12, Subtitle 3 of the Commercial Law Article. Section 12-306(a)(6)(i) provides as follows: "For any loan with an original principal balance of $2,000 or less, 2.75 percent interest per month on that part of the unpaid balance not more than $1,000 and 2 percent interest per month on that part of the unpaid principal balance that is more than $1,000." This section, therefore, permits a lender to charge a maximum Annual Percentage Rate ("APR") of 33 percent interest on unpaid principal balances up to $1,000, and 24 percent on unpaid principal balances over $1,000. Section 12-306(a)(6)(ii) provides: "For any loan with an original principal balance of more than $2,000, the maximum rate of interest is 2 percent per month on the unpaid principal balance of the loan." This section only permits a lender to charge a maximum APR of 24 percent on the unpaid principal balance of the loan.

6. Pursuant to CL § 12-313(a)(1), a lender may not "[d]irectly or indirectly contract for, charge, or receive any interest, discount, fee, fine, commission, charge, brokerage, or other consideration in excess of that permitted by this subtitle."

7. Pursuant to CL § 12-314(a), a person is prohibited from lending $6,000 or less "if the person directly or indirectly contracts for, charges, or receives a greater rate of interest, charge, discount, or other consideration than that authorized by the laws of this State." Furthermore, CL §§ 12-314(b)(1) and (2) provide as follows:

> (1) A loan made in the amount of $6,000 or less, whether or not the loan is or purports to be made under this subtitle, is unenforceable if a rate of interest, charge, discount or other consideration greater than that authorized by the laws of this State is contracted for by any person unless the excess rate contracted for is the result of a clerical error or mistake and the person corrects the error or mistake before any payment is received under the loan.
>
> (2) The person who is neither a licensee nor exempt from licensing may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under this subsection.

8. Pursuant to CL § 12-315, the provisions of Title 12, Subtitle 3 "shall be interpreted and construed to effectuate its general remedial purpose."

9. On or about December 8, 2008, the Division received a complaint related to litigation funding "Purchase Agreements" which Oasis had entered into with Maryland residents.

10. Pursuant to its agreement with Consumer A, which was entered into on or about October 11, 2006, Oasis provided a $2,000 advance to Consumer A in exchange for Consumer A's agreement to repay Oasis from any settlement or other recovery from Consumer A's then-pending tort claim, with the amount of repayment dependent upon the date when Oasis received its money: the repayment amount was stated to be $2,800

if Oasis was repaid within 6 months from the date of the advance (i.e. from October 11, 2006); $3,200 if Oasis was repaid 6-12 months after the advance; $4,000 if repaid 12-18 months after the advance; $5,000 if repaid 18-24 months after the advance; $6,000 if repaid 24-36 months (2-3 years) after the advance; $7,000 if repaid 36-42 months (3-3.5 years) after the advance; and $8,000 if Oasis was repaid 42 months (3.5 years) or more after the date of the advance.

11. Pursuant to its agreement with Consumer B, which was entered into on or about December 10, 2007, Oasis provided a $2,500 advance to Consumer B in exchange for Consumer B's agreement to repay Oasis from any settlement or other recovery from Consumer B's then-pending tort claim, with the amount of repayment dependent upon the date when Oasis received its money: the repayment amount was stated to be $3,750 if Oasis was repaid within 6 months after the date of the advance (i.e. from December 10, 2007); $4,125 if Oasis was repaid 6-12 months after the advance; $5,625 if repaid 12-15 months after the advance; $6,250 if repaid 15-18 months after the advance; $6,875 if repaid 18-24 months after the advance; $8,125 if repaid 24-30 months (2-2.5 years) after the advance; and $8,750 if Oasis was repaid 30 months (2.5 years) or more after the date of the advance.

12. The advances by Oasis under the respective "Purchase Agreements" of $2,000 to Consumer A and $2,500 to Consumer B constitute "loans" under CL § 12-301(e) (a statute which, as indicated above, includes an "advance of money" under the definition of "loan"), and thus Oasis and its "Purchase Agreements" are subject to the MCLL.

13. Respondent Oasis is not licensed by the State of Maryland to make consumer loans.

14. The terms of the consumer loans made to Consumer A and Consumer B, including, but not limited to, APRs in excess of those permitted under Maryland law, violate the aforementioned sections of the consumer loan laws which the Commissioner is charged with enforcing.

15. Following resolution of Consumer A's tort claim, Oasis threatened legal action against both Consumer A and Consumer A's litigation attorney if Oasis was not repaid pursuant to the Agreement. Consumer A's litigation attorney negotiated a settlement with Oasis whereby Oasis was paid $3,100 from the settlement proceeds of Consumer A's underlying suit as satisfaction of Consumer A's obligations under the Agreement. Consumer B's tort claim has not yet been resolved.

16. Based on the foregoing facts, it has been determined that Respondent Oasis engaged in the business of making consumer loans to Maryland residents without being licensed as required by Maryland law, and that Respondent has charged and received interest on the aforementioned loans in excess of the amount permitted by Maryland law.

WHEREFORE, it is HEREBY

ORDERED that Respondent shall immediately CEASE AND DESIST from making unlicensed consumer loans to Maryland consumers; and it is further

ORDERED that Respondent shall immediately CEASE AND DESIST from violating the aforementioned statutory provisions of Maryland law, and that Respondent should be assessed statutory monetary penalties for its violations. Such statutory penalties may include, but are not limited to, a final order declaring that all consumer

loans made by Respondent to Maryland residents are unenforceable pursuant to CL § 12-314(b), and as such Respondent "may not receive or retain any principal, interest, or other compensation with respect to [these] loan[s] that [are] unenforceable;" and it is further

ORDERED that, within 15 days of the receipt of this Summary Order to Cease and Desist, Respondent shall provide to the Office of the Commissioner a detailed list of all litigation, purchase, or like agreements that Oasis has entered into with Maryland consumers since January 1, 2006, including the following information for each consumer: the name of the consumer; the consumer's phone number and home address; the date that the agreement with Oasis was formed; the original amount of the advance; the names and contact information for the consumer's litigation attorney; whether the advance was repaid by the consumer, and if so, how much was repaid and the date repaid. Furthermore,

RESPONDENT IS HEREBY NOTIFIED that, pursuant to FI §§ 2-115(a) and 11-215(b), Respondent is entitled to a hearing before the Commissioner to determine whether this Summary Order to Cease and Desist should be vacated, modified, or entered as a final Order of the Commissioner; and further,

RESPONDENT IS HEREBY NOTIFIED that, pursuant to FI §§ 2-115(a) and 11-215(b), this Summary Order to Cease and Desist will be entered as a final Order of the Commissioner if Respondent does not request a hearing within 15 days of the receipt of this Summary Order to Cease and Desist.

As a result of a hearing, or of Respondent's failure to request a hearing, the Commissioner may, in the Commissioner's discretion and in addition to taking any other

action authorized by law, enter an Order making this Cease and Desist Order final, issue a penalty order against Respondent imposing a civil penalty up to $1,000 for a first violation and up to $5,000 for each subsequent violation, or may take any combination of the aforementioned actions against Respondent. The Commissioner may also enter an Order requiring that the Respondents refund to Maryland consumers any principal, interest or other compensation related to impermissible loans, including the advances made by Respondent under litigation "Purchase Agreements."

MARYLAND COMMISSIONER OF
FINANCIAL REGULATION

3/9/09
Date

By: Mark Kaufman
Deputy Commissioner

ADDENDUM
EXHIBIT 3

IN THE MATTER OF:	*	BEFORE THE MARYLAND
	*	COMMISSIONER OF
OASIS LEGAL FINANCE, LLC	*	FINANCIAL REGULATION
Respondent	*	
	*	DFR-EU-2008-241

* * * * * * * * * * * * *

SETTLEMENT AGREEMENT AND CONSENT ORDER

This Settlement Agreement and Consent Order ("Agreement") is entered into this **6th** day of **August, 2009**, by and between the Maryland Commissioner of Financial Regulation (the "Commissioner") and Oasis Legal Finance, LLC ("Oasis"), 40 North Skokie Boulevard, Suite 500, Northbrook, Illinois 60062.

WHEREAS, the Commissioner is charged under the Maryland Consumer Loan Law, Commercial Law Article ("CL"), Title 12, Subtitle 3, Annotated Code of Maryland, and Financial Institutions Article ("FI"), Title 11, Subtitle 2, Annotated Code of Maryland, with the responsibility of licensing and regulating consumer loans and advances in this State; and

WHEREAS, as a result of two complaints and an investigation by the Office of the Commissioner, it was alleged that Oasis engaged in the business of making loans or advances to Maryland consumers without the proper licenses under Maryland law; and

EXHIBIT 3

WHEREAS, in connection with these allegations, the Commissioner of Financial Regulation issued a Summary Order to Cease and Desist to Oasis on March 9, 2009, in which Oasis was ordered to cease and desist from engaging in the business of making advances to Maryland residents; and

WHEREAS, the Commissioner desires to ensure that Oasis will comply with all applicable licensing requirements and other provisions of Maryland law and regulations applicable to the making of advances in this State, and desires to avoid the cost to the taxpayers of lengthy hearings, court proceedings and appeals resulting from a litigated disposition of these allegations; and

WHEREAS, Oasis denies the allegations in the Summary Order to Cease and Desist issued to Oasis on March 9, 2009, and denies any liability under the Maryland Consumer Loan Law, or any other State laws or regulations applicable to lending in Maryland, and continues to assert that these transactions are non-recourse civil litigation funding transactions, that these are not "loans or advances" under the Commissioner's jurisdiction under current Maryland law, but has voluntarily entered into this Settlement Agreement and also desires to avoid the cost of a hearing and potential court proceedings resulting from a litigated disposition of these allegations; and

WHEREAS, Oasis acknowledges that it has voluntarily entered into this Agreement with full knowledge of its right to a hearing on the allegations set forth herein, pursuant to FI §§ 2-115(a) and 11-215(b), and the Maryland Administrative

Procedures Act (Md. Code Ann., State Gov't Article § 10-201 *et seq.*), and hereby waives its right to a hearing, and Oasis further acknowledges that it had an opportunity to consult with independent counsel in connection with its waiver of rights and negotiation and execution of this Agreement and has, in fact, consulted with its own counsel; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, it is by the Maryland Commissioner of Financial Regulation, on the day and year first above written, hereby ORDERED that:

1. The Recitals set forth above are and shall form a part of this Agreement.

2. The Commissioner hereby vacates the Summary Cease and Desist Order issued to Oasis on March 9, 2009, and will withdraw the currently scheduled hearing from the Office of Administrative Hearings docket.

3. The Commissioner agrees that she will not bring an enforcement action of any kind, civil or administrative, against Oasis or against its officers, Board of Managers, employees, or investors, for any conduct related to the investigation referred to in the Summary Order to Cease and Desist issued to Oasis on March 9, 2009.

4. Oasis acknowledges that, as of the date it received the Summary Order to Cease and Desist, it has not engaged in any new transactions of the type described in the Summary Order to Cease and Desist, and it agrees that it will not

do business in Maryland as long as the current law is in effect in Maryland (or unless it chooses to get licensed as the Commissioner currently alleges that it must do).

5. Oasis will pay a settlement amount of $105,000.00 in full and complete satisfaction of all penalties that could have been assessed in connection with the facts and circumstances that were the subject of the investigation and Summary Order to Cease and Desist.

6. Oasis acknowledges that, in the event it violates any provision of this Agreement, the Maryland Consumer Loan Law, or any other State laws or regulations applicable to lending in Maryland, the Commissioner may, at the Commissioner's discretion, take such enforcement actions as are permitted by, and are in accordance with, applicable law.

7. The Commissioner will permit Oasis to conclude all pending transactions with Maryland consumers [which Oasis characterizes as non-recourse civil litigation funding transactions], including those currently in escrow, by collecting the funded amount plus a rate of return not to exceed the rates set forth in CL §12-306. As defined herein, "Maryland consumers" and "do business in Maryland" shall refer to transactions involving Maryland residents only.

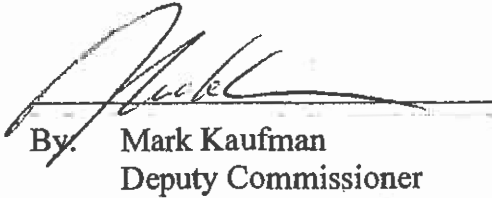
8. This Agreement constitutes the complete resolution of a disputed matter and does not constitute nor shall it be deemed an admission by Oasis, or by its officers, Board of Managers, employees, or investors, of liability or a violation,

willful or otherwise, of Maryland law.

9. Oasis acknowledges that this Agreement is considered a Final Order of the Commissioner for the purposes of any future action by the Commissioner under the appropriate regulatory laws of the State of Maryland.

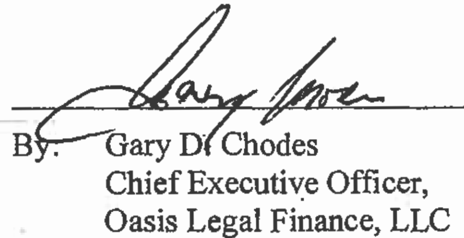
IN WITNESS WHEREOF, this Agreement is executed on the day and year first above written.

COMMISSIONER OF FINANCIAL REGULATION



By: Mark Kaufman
Deputy Commissioner

OASIS LEGAL FINANCE, LLC



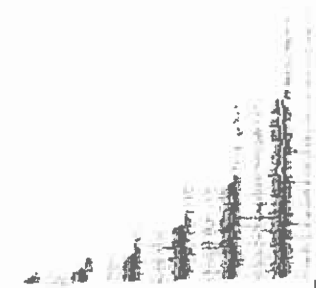
By: Gary D. Chodes
Chief Executive Officer,
Oasis Legal Finance, LLC

ADDENDUM
EXHIBIT 4

Personal Injury Lawsuits in the U.S.: A Brief Look

by The Legal Finance Journal • August 26, 2011 • 32 Comments

By Staci A. Terry
Published: 26 August 2011

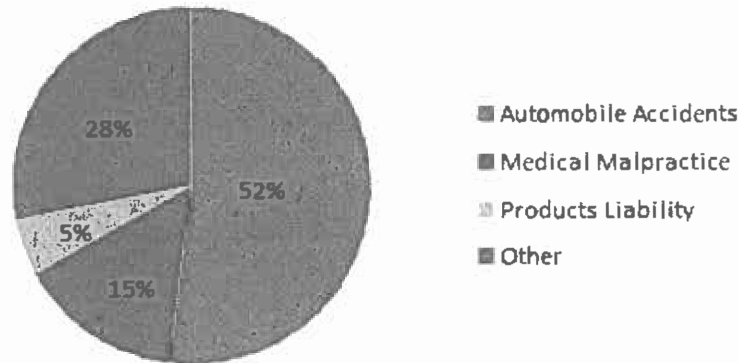


In the United States, personal injury lawsuits make up a large portion of the civil litigation that occurs in state court systems. Tort claims, or personal injury claims, involve some injury to person and/or property as a result of the wrongful actions of another person or entity. Personal injury lawsuits might occur due to a traffic accident, a dog bite, a construction accident, medical malpractice, or a defective product. Unfortunately, these incidents are all too commonplace in American society.

According to the National Center for Health Statistics, over 31 million injuries occur to people throughout the U.S. each year that necessitate a doctor's care, almost two million people sustain injuries that require some degree of hospitalization, and 162,000 people die from their injuries. The National Highway Traffic Safety Administration reports that over three million injuries and 40,000 deaths occur just from the 5.5 million car accidents in the U.S. annually, with another 60,000 personal injuries and 5,000 deaths resulting each year from truck accidents. Construction accidents caused another 300,000 personal injuries and 1,000 deaths, and medical mistakes take the lives of up to 98,000 people each year. Given the high number of injuries and accidental deaths in the U.S. each year, liability for these incidents is often disputed, which leads directly to personal injury claims and litigation.

The most recent comprehensive study from the U.S Department of Justice, Bureau of Justice Statistics, found that personal injury or tort trials comprised nearly 60 percent of a total of 26,948 tort, contract and real property trials nationwide in 2005. In the 75 most populous counties in the U.S., lawyers tried over 7,000 personal injury lawsuits in state courts. The report estimates that attorneys tried 16,397 tort cases in a national sample of American state courts. As only about 4% of personal injury lawsuits ever go to trial, the sheer number of annual personal injury claims occurring in America is truly staggering.

Breakdown of Personal Injury Lawsuits -- 2005



Source: U.S. Department of Justice, Bureau of Justice Statistics

The nature of American personal injury lawsuits is also quite clear. Over half of the tort trials in the United States resulted from automobile accidents. Another 15% of tort trials involved allegations of medical malpractice. An additional 5% of tort trials related to products liability.

When personal injury lawsuits proceeded to trial, plaintiffs won roughly half the time. With respect to tort trials stemming from automobile accidents, plaintiffs won 61% of the time, as compared with 50% of intentional tort trials, 38% of product liability trials, 39% of premises liability trials, and only 19% of medical malpractice trials. Judges ruled in favor of plaintiffs in 56% of tort trials, and juries ruled in favor of plaintiffs in 51% of tort trials.

The prospect of winning a tort trial is relative, however. At least half of plaintiffs who won tort trials in 2005 received $24,000 or less in damages, with the median award overall being $31,000. Automobile accident trials resulted in a median damage award of $16,000; plaintiffs reaped much larger median damages awards in other types of tort trials, such as an average of $90,000 for premises liability cases, $100,000 for intentional tort cases, $679,000 for medical malpractice cases and $748,000 for products liability cases. Of course, higher damage awards tended to correspond with less frequently litigated types of cases.

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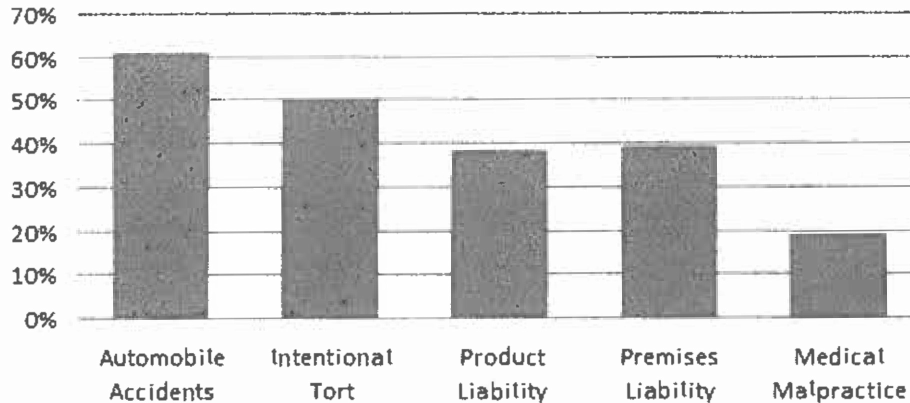
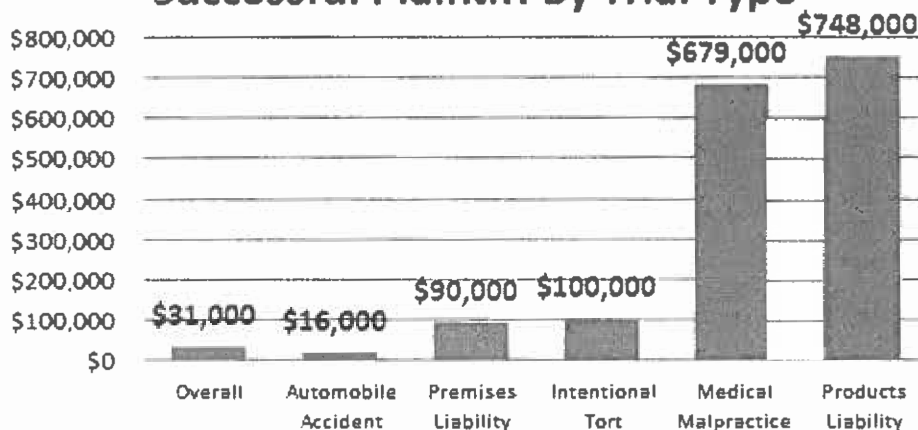


Furthermore, the study showed that when personal injury lawsuits resulted in trials, the parties went through a very lengthy court process. The average length of time for tort lawsuits was 23 months, with 20 months on the average for automobile accident cases, and 31 months on the average for medical malpractice cases. Premises liability cases and intentional tort cases had a median length of 24 months and 25 months, respectively.

Not only were the lawsuits lengthy in general, but the torts trials themselves were quite lengthy as well. An average medical malpractice trial lasted six days, and typical products liability cases lasted seven days. Trials involving asbestos, which are necessarily more complex, however, lasted an average of 13 days.



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ADDENDUM
EXHIBIT 5

LexisNexis

As pre-settlement financing takes hold in Massachusetts, lawyers spar over pros and cons.

Massachusetts Lawyers Weekly
July 28, 2008

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Body

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Companies that advance money to plaintiffs before their personal-injury and medical-malpractice cases are decided are becoming increasingly popular in Massachusetts -- a phenomenon that has some tort lawyers concerned.

Firms that make up the nascent legal-finance industry -- such as New York-based LawCash and PS Finance, Chicago's ***Oasis Legal*** Finance and Peachtree Settlement Funding of Florida -- offer cash advances to plaintiffs awaiting a settlement or a verdict in a lawsuit.

When the case is resolved, the plaintiff must pay back the advanceas well as steep fees that the companies charge. Because the companies describe these fees with non-traditional language, it is difficultto calculate exactly how much money a plaintiff would owe on an advance.

LawCash Chief Executive Officer Harvey R. Hirschfeld said that hiscompany charges an accruing monthly fee of 2 to 4 percent of the advance. At PS Finance, rates range from 2.5 to 3.9 percent per month, according to CEO Carmine DeSantis. Depending on how those rates are calculated, a litigant could owe up to an additional $600 per year on an advance of $1,000.

Oasis, meanwhile, typically recovers between 1.4 and 1.8 times theamount of money it advances, according to its president, Gary Chodes. And Peachtree Settlement Funding charges 10 percent every six months, said Dori Erann, its marketing communications manager.

Though the fees can be tantamount to annual interest rates of 50 percent or more, the industry is not regulated by Massachusetts usury laws, which limit interest rates in the state to 20 percent, because the advances are technically not loans. Instead, they are considered non-recourse advances, meaning that if the case is dropped or lost attrial, the plaintiff owes the financing company nothing.

PI attorney Eric J. Parker of Parker Scheer in Boston, who has represented clients who have availed themselves of pre-settlement financing, is calling for legislation to regulate the industry.

These funding schemes promote needless litigation, he wrote recently on his blog. [P]laintiffs ... may insist that their case, which could otherwise be settled for fair value, proceed to trial on the off

What you have is a few trial attorneys who are questioning it or finding it new and different. But this is a miracle for people. The positive impact on people's lives is tremendous, and yet it doesn't create any cycle of debt because you don't pay it back if you lose, he said.

Because the funding companies lose their investment if a plaintiff's case is abandoned, lost at trial or settled for a smaller amount than was expected, Chodes said, legal financing is risky business. Addto that the unpredictable length of a case and the comparable contingency-fee rates of attorneys, he said, and the high accruing fees thecompanies charge are justified.

It's the contingent nature of the business, he said. Any lawyer out there who's ever tried a case knows the risk of trial and knows therisk of these cases. Nobody is suggesting that the lawyers are overpaid, but the reason they get 40 percent of the settlement is because of the tremendous risk involved. We think it's certainly a slippery slope -- saying that you have to start to examine [our] rates, which are clearly not as high as the high fees for [attorneys in] contingency cases.

He added: It's not commodifying the legal system; it's allowing the consumer to have a tool to keep them in the game so they can best pursue their legal rights, just like hiring a good attorney. Could youargue that it's commodifying the legal system to give someone a choice of lawyer?

'Level playing field'

This is not the first time concerns over pre-settlement financing companies have surfaced in Massachusetts.

In 2003, Jerry Cohen of Burns & Levinson, then the co-chair of theBoston Bar Association's Ethics Committee, told The Boston Globe that his group would study the ethical issues surrounding such companies. The BBA committee did look into the matter, he told Lawyers Weekly,but never issued an opinion because the phenomenon seemed to fade.

It looked like a growth industry at the time we first became awareof it, he said, and then we did not see a rise. If anything, from the information we had, it seemed to be shrinking.

The current co-chair of the committee, Robert M. Buchanan Jr. of Choate, Hall & Stewart in Boston, said that the BBA group has not considered the issue during his tenure.

But plaintiffs' lawyers report that the legal-financing industry in Massachusetts seems to be taking off again, perhaps because of the downturn in the economy.

And Hirschfeld, Chodes and DeSantis acknowledged that they have advanced funds to numerous Massachusetts plaimtiffs and are working to approach regulators and attorneys in the state.

The industry recently found an advocate in former Attorney GeneralL. Scott Harshbarger, who first encountered the trade association several years ago when he spoke at one of its events. Harshbarger, now a lawyer at Proskauer Rose in Boston who does not represent any of the companies, believes that there is a place for the legal financing industry in Massachusetts.

How do people who are vulnerable or of limited economic means actually sustain themselves as potential plaintiffs? he said. If the viewis that it's just terrible to allow anybody to find a way to do that, then that's a little bit draconian.

In response to fears that pre-settlement advances prey on consumers by charging exorbitant interest rates, Harshbarger said: I could say the same thing about American Express, Visa, MasterCard, Countrywide, Fannie Mae or Freddie Mac. Why hasn't there been equivalent focus and at-

chance that [they] could receive a surprise verdict, beyond the valueof the outstanding obligation to the legal funding company.

Such a situation puts plaintiffs' lawyers in the difficult position of arguing against going to trial in such cases, Parker noted, knowing that their clients will receive little if no additional funds after repayment of their 'advance.'

Even more troubling, Parker said in an interview with Lawyers Weekly, is the precedent set by an industry that puts liens on lawsuits.

We can't turn litigation into something that's leverage-able, he said. The bottom line is that this is a slippery slope, and the next thing you'll see is a move to allow the plaintiffs to sell their cases. You begin to see how it becomes a commodity, a speculative commodity. We should not be turning legitimate, valuable personal-injury claims into commodities. That's a major mistake -- for the commonwealth, for the lawyers, for the victims, for everybody.

Personal-injury lawyer Marc L. Breakstone of Breakstone, White & Gluck in Boston said he receives solicitations from pre-settlement financing companies regularly, but does not advise his clients to take advantage of them.

I think they should be an absolute last resort, he said. I would discourage any client from considering it.

'A miracle for people'

The financing companies say they are addressing the concerns attorneys have over their industry and argue that their services provide vital funds to cash-strapped plaintiffs who are struggling to make ends meet while their cases are litigated.

What we offer is the ability to offer a small advance, just enoughto cover life needs, said LawCash's Hirschfeld, who is also president of the American Legal Finance Association, the industry's trade group.

Sixty-two percent of what my company does is stop foreclosures andevictions, he said. We never have control of a case, and we never give a large enough advance so that it disincentivizes a client from taking a settlement. We've only given him enough money to cover his needs then and there -- not enough to say, 'Let's go to trial.'

Reputable legal-finance companies will not offer a litigant more than 10 percent of the prospective settlement value, Hirschfeld added,which is too small an amount to tempt that person to gamble with hiscase.

It would make no sense for companies like ours to advance someone so much money that there's no incentive to stay with the case, he said. We're in business. How are we going to get our money back? All we've done is just give him the staying power to wait out a just settlement. They are incentivized to continue because this is where the larger dollars are going to be.

Chodes, president of Oasis, agreed. Going to trial is a disaster for the funding company, he said. It creates tremendous risk. We always want these [cases] to settle.

Chodes added that there is no data suggesting that companies such as his are having an adverse impact on the settlement process by either lengthening the process or increasing the likelihood of a case going to trial.

RACHEL PARKER

tention on the big guys who finance the defenses of most of these lawsuits? The critique here is a critique of the credit industry at large. You could argue that this is just one small example of the larger problem.

The solution, Harshbarger said, is not prohibition, but regulation.

I think this is where it's appropriate to look at regulatory oversight, particularly in Massachusetts, where there's a history of rulesthat work, he said.

One could argue in the right circumstances, with appropriate checks and balances, this is an opportunity for a legitimately injured person to sustain a claim in a court of law, he said. One could argue that [it] makes a more level playing field.

RACHEL PARKER

ADDENDUM
EXHIBIT 6

March 9, 2011

Lawsuit Lenders Try to Limit Exposure to Consumer Rules

By BINYAMIN APPELBAUM

WASHINGTON — Companies that advance money to plaintiffs involved in personal injury lawsuits are campaigning in state capitals for legislation making clear that their growing industry is not subject to usury limits on interest rates or other state laws that protect borrowers.

Instead, the lawsuit lending companies want to adopt a separate and less rigorous set of protections. Since February, they have persuaded legislators in at least five states, including New York, to introduce bills based on the industry's own proposals.

The campaign is drawing strong opposition from chambers of commerce, insurance companies and others who worry that lawsuit loans encourage litigation by emboldening plaintiffs. These critics also argue that the bills would strip protections from borrowers.

"They are coming in under the guise of accepting regulation when in fact what they are trying to do is to legalize lawsuit lending and to explicitly exempt themselves for consumer lending requirements," said Lisa A. Rickard, president of the Institute for Legal Reform, an arm of the United States Chamber of Commerce.

These clashes reflect both the uncertain legal status of lawsuit lending and the growing debate over its social value: Should third-party investment in lawsuits be encouraged, tightly restricted or banned altogether?

Lending to plaintiffs is part of a broader trend in recent decades in which banks, hedge funds and private investors have been pumping money into other people's lawsuits. About a dozen large companies, and many smaller ones, lend plaintiffs about $100 million a year, generally a few thousand dollars at a time, to cover housing, medical care and other expenses. The loans are repaid from winnings, with costs that can exceed 100 percent a year. People who lose their cases owe nothing.

In making their case, the companies argue that they should not be subject to existing consumer protections because the transactions are investments, not loans. They say they must charge high prices to compensate for the risk that plaintiffs will lose.

"Our approach is much more sensible and consumer friendly than curtailing the industry," said Gary Chodes, chief executive of Oasis Legal Finance in Illinois, one of the largest lawsuit lenders and a driving force behind the legislative campaign.

EXHIBIT 6

The legal status of lawsuit lending has been hotly contested in recent years. Authorities in some states, including Colorado and Maryland, have ruled that the companies must comply with lending laws, which severely restrict the kind of interest rates that can be charged. Authorities in other states, including New York, have ruled that the companies are not subject to those laws, accepting the industry's argument that the transactions are conditional investments.

In 2008, the industry began an effort orchestrated through its trade group, the American Legal Finance Association, to settle the issue through legislation. Ohio, Maine and Nebraska have since passed laws establishing customized regulations for lawsuit lenders. Efforts in other states, including Illinois, fell short.

This year, the industry is greatly expanding the number of battlegrounds.

Since February, the industry's allies have filed bills in New York and in at least four other states: Alabama, Kentucky, Indiana and Maryland. Legislators in Tennessee and Maryland have also introduced similar bills, but with somewhat stronger consumer protections. Mr. Chodes said that Oasis is focusing on Arkansas, Illinois and Nevada.

"We are seeking regulation in these states because, unlike the insurance industry, we want strong consumer protections in place," he said.

The State Senate in Indiana handed the industry its first victory of the year on February 17. The sponsor, Senator Randy Head, said that Oasis brought the issue to his attention and helped shape the legislation that he introduced.

"Most of what they proposed is contained in the bill," he said.

Indiana has not tried to regulate lawsuit lending under existing consumer protection laws, and Mr. Head said the bill would establish relevant protections, for example barring lenders from any involvement in cases beyond providing money. It also makes clear, however, that lawsuit loans are not subject to the state's 36 percent cap on interest rates.

A similar bill passed the House in Kentucky one day later. But it has become bogged down in the Senate after opponents, including the Kentucky Chamber of Commerce, "raised a red flag" with Republican leaders, said Dave Adkisson, the chamber's chief executive.

"It's being raised as a consumer protection issue," he said, "but in reality they want an exemption to the laws that govern other loans."

Lenders have been forced to give ground in some states. Oasis has not made loans in Maryland since 2009, when it paid a fine of $105,000 after state regulators threatened to sue the company for violating state usury laws. It did not concede wrongdoing.

Seeking a way back into the state, the industry now is supporting a bill that would impose some restrictions on pricing for the first time. The bill, pending before the House in Maryland, would allow charges of up to 80 percent of the loan amount in the first year and up to 200 percent of the loan amount in total.

Oasis now charges customers up to 250 percent of the loan amount, but Mr. Chodes said the company was willing to accept "appropriate limitations."

The industry is also scrambling to respond to a bill in Arkansas that would ban lawsuit lending completely, and to a bill in Rhode Island that makes clear that lawsuit lending is subject to the same state regulations as other kinds of lending.

The sponsor of the Rhode Island measure, Senator Michael McCaffrey, said that he only recently learned about the industry from a constituent, a lawyer, who was shocked by the price a client was charged for a loan. Mr. McCaffrey said he was surprised to learn that such loans were not clearly subject to consumer protections.

Mr. McCaffrey said that he had been contacted by Oasis since filing the bill, but that he was not convinced by the company's argument that it needed to charge high rates.

"Consumers obviously need to be protected as best they can be," he said.

ADDENDUM
EXHIBIT 7

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January 16, 2011

Lawsuit Loans Add New Risk for the Injured

By BINYAMIN APPELBAUM

Larry Long, debilitated by a stroke while using the pain medicine Vioxx, was facing eviction from his Georgia home in 2008. He could not wait for the impending settlement of a class-action lawsuit against the drug's maker, so he borrowed $9,150 from Oasis Legal Finance, pledging to repay the Illinois company from his winnings.

By the time Mr. Long received an initial settlement payment of $27,000, just 18 months later, he owed Oasis almost the entire sum: $23,588.

Ernesto Kho had pressing needs of his own. Medical bills had piled up after he was injured in a 2004 car accident. So he borrowed $10,500 from Cambridge Management Group, another company that lends money to plaintiffs in personal-injury lawsuits. Two years later, Mr. Kho, a New Jersey resident, got a $75,000 settlement — and a bill from Cambridge for $35,939.

The business of lending to plaintiffs arose over the last decade, part of a trend in which banks, hedge funds and private investors are putting money into other people's lawsuits. But the industry, which now lends plaintiffs more than $100 million a year, remains unregulated in most states, free to ignore laws that protect people who borrow from most other kinds of lenders.

Unrestrained by laws that cap interest rates, the rates charged by lawsuit lenders often exceed 100 percent a year, according to a review by The New York Times and the Center for Public Integrity. Furthermore, companies are not required to provide clear and complete pricing information — and the details they do give are often misleading.

EXHIBIT 7

A growing number of lawyers, judges and regulators say that the regulatory vacuum is allowing lawsuit lenders to siphon away too much of the money won by plaintiffs.

"It takes advantage of the meek, the weak and the ignorant," said Robert J. Genis, a personal-injury lawyer in the Bronx who said that he had warned clients against borrowing. "It is legal loan-sharking."

Colorado filed suit in December against Oasis and LawCash, two of the largest companies, charging them with violating the state's lending laws.

"It looks like a loan and smells like a loan and we believe that these are, in fact, high-cost loans," John W. Suthers, the state's attorney general, said in a recent interview. "I can see a legitimate role for it, but that doesn't mean that they shouldn't be subject to regulation."

The companies, however, say that they are not lenders because plaintiffs are not required to repay the money if they lose their cases. The industry refers to the transactions as investments, advances, financing or funding. The argument has persuaded regulators in many states, including New York, that lawsuit lenders are not subject to existing lending laws. Oasis and LawCash have now filed suit against Colorado, asking the court to prevent the state from using lending laws to regulate the industry.

Companies also say that they must charge high prices because betting on lawsuits is very risky. Borrowers can lose, or win less than expected, or cases can simply drag on, delaying repayment until the profit is drained from the investment.

To fortify its position, the industry has started volunteering to be regulated — but on its own terms. The companies, and lawyers who support the industry, have lobbied state legislatures to establish rules like licensing and disclosure requirements, but also to make clear that some rules, like price caps, do not apply.

Maine and Ohio passed the first such laws in 2008, followed by Nebraska last year. Sympathetic legislators introduced bills in six other states last year; the measures passed the state Senates in New York and Illinois.

Harvey Hirschfeld, a founder of LawCash who keeps binders filled with thank-you notes from

borrowers on a shelf in his Brooklyn office, said lawmakers had responded to plaintiffs' needs.

"Sometimes people are in the wrong place at the wrong time, they get in an accident, they're out of work, they don't have cash sitting in the bank, their friends can't help, and they're faced with a terrible situation," said Mr. Hirschfeld, who also is chairman of the industry's trade group. "It's not for everyone, but it's there when you need it."

High Rates, Low Risk

There was little risk in lending money to Larry Long. The maker of Vioxx, Merck, had already agreed to settle the Vioxx class action. The projected payouts were relatively easy to calculate: Mr. Long's lawyer estimated that he would eventually get a total of about $80,000.

Oasis still imposed its standard pricing: 50 percent of the loan amount if repayment was made within six months, with regular increases thereafter.

Mr. Long and his wife resented the high cost, but they had run through their savings. Mr. Long was legally blind and needed regular dialysis. His wife, Deborah, had left work to care for him. They borrowed $3,000 in February 2008, $3,000 in March and $3,150 in July. "We were having a crisis, and they knew we were having a crisis," Mrs. Long said. "They take advantage of people that are in need."

Oasis made loans on similar terms to 43 Vioxx plaintiffs, totaling about $224,000.

Orran L. Brown, the Virginia lawyer appointed to disburse the settlement, described the cost of the loans as "unconscionable."

"There was very little risk of nonrecovery, but they were charging full freight," he said.

But Gary Chodes, the company's chief, said the performance of the Vioxx loans showed why Oasis must charge high rates. Eight of the 43 borrowers failed to qualify for the settlement, he said, and an additional seven did not win enough to pay the full amount that they owed.

The company waived its claim against the Longs after the couple complained to the federal judge overseeing the Vioxx case. Mr. Chodes said that Oasis acted out of compassion for the

couple's personal difficulties, but that the company had done nothing wrong. The Longs asked for money and Oasis clearly explained its terms, Mr. Chodes said. He provided copies of documents on which Mr. Long had recorded his thanks for the loans.

"We were there when he needed help with his house note and his car note and his medical bills. And he was plenty grateful at the time," Mr. Chodes said.

Lenders more often invest in cases even earlier in the process, before a settlement is on the table.

James N. Giordano, chief executive of Cambridge Management Group, a New Jersey lender, compared the deals to venture capital. "It's as if your buddy came up to you and said, 'I'm starting a business, I need $25,000 — and, by the way, you may never get your money back,' " he said.

Lawsuit lenders, however, are much better than venture firms at picking winners. Lenders pay lawyers to screen cases, looking for slam-dunks like Vioxx. Three of the largest companies each estimated that they rejected about 70 percent of applications. Oasis said it had approved about 80,000 of 250,000 applications in recent years. To further limit losses, companies say they generally lend no more than 10 or 20 percent of the amount they expect the borrower to win.

Companies say they still lose money in a significant share of cases, from 5 to 20 percent, although there is no way to verify those numbers.

But courts in several states — including Michigan, New York and North Carolina — have ruled in recent years that individual borrowers did not need to repay lawsuit loans, finding that the apparent risks did not justify the outsize prices. The rulings have encouraged lenders to avoid judicial scrutiny. Dimitri Mishiev, who runs Alliance Claim Funding, another Brooklyn lender, said that while his prices were fair, he tried to invest only in cases he expected to be settled before trial.

"Everything that might have to go before a judge, you stay away because you don't want the judge to be in the position of saying, 'I don't want that level of payment. I think it's unreasonable,' " Mr. Mishiev said. "We don't want judges to shine a light on us."

Truth in Lending

Lawsuit lenders do not advertise prices; they advertise convenience. They send letters to people who file suits, and run ads on daytime and late-night television, emphasizing that money is available quickly and easily.

When David Kert, a personal-injury lawyer, took a job in 2007 screening applicants for the lender Whitehaven Plaintiff Funding in New York City, he said he was told not to mention the cost of the loans unless asked directly.

Mr. Kert spent the next year answering 50 to 60 calls each workday from plaintiffs and their lawyers. He said many of those people ended up taking loans from Whitehaven without ever asking the price — as high as 99 percent of the loan amount in the first year.

"I'm sorry I spent any time there," Mr. Kert said recently.

Whitehaven did not return calls for comment, but other industry executives are quick to note that borrowers are consenting adults. Furthermore, under the terms of a 2005 agreement between the largest lenders and the New York attorney general's office, borrowers must be given a table showing what they will owe at six-month intervals. The agreement also requires lenders to obtain the signed consent of the borrower's lawyer.

"I don't know any other industry that is as clear as that. Everything is written on the contract and the attorney is reviewing it for you," Mr. Hirschfeld said.

But these safeguards are significantly less strict than the requirements that state and federal laws impose on other consumer lenders. They do not dictate how interest rates should be calculated, for example, making it difficult for borrowers to compare prices.

Moreover, outside of New York and the few states that regulate the industry, lenders are not required to follow those procedures — and in several cases examined by The Times and the Center for Public Integrity, they did not do so.

Carolyn Williams borrowed $5,000 in 2007 from USClaims, a Delaware lender, while pursuing a disability lawsuit against her former employer, an Alabama nursing home. Three years later,

her case is unresolved. Her debt stands at $18,976.

Ms. Williams, who left her nursing job after experiencing a debilitating asthma attack, contacted USClaims after seeing an ad on late-night television. She was struggling to pay her bills and her case, which argues that the asthma had been caused by exposure to floor cleaning chemicals, was moving slowly. Two days after she called USClaims, the company wired $5,000 to her bank account.

Ms. Williams said she did not ask about the cost of the loan and she was not told. Her lawyer, Timothy Hughes, said he was not contacted by USClaims until after the loan was made. The contract Ms. Williams signed quoted an annual interest rate of 39 percent, compounded monthly. In fact, she was charged interest and fees equaling 76 percent of the loan amount in the first year.

"I was definitely misled," Ms. Williams said recently. "I never expected that high of a rate."

Darryl Levine, the president of Delaware-based USClaims, said Ms. Williams's complaint was groundless because the contract clearly showed how much she would owe.

"In over 14 years in this business, I have never had any complaint about the rate-of-return disclosure," Mr. Levine said.

Seeking State Approval

The industry's pursuit of regulation on its own terms began in Maine in 2007.

Sharon Anglin Treat, a lawyer and state legislator, had proposed a bill making clear that lawsuit lenders were subject to state consumer protection laws. She said she could not understand why the industry should be allowed to charge higher rates than other lenders.

Oasis, LawCash and other companies persuaded other legislators to reverse the intent of the bill, instead making clear that the rules did not apply to lawsuit loans. Both Ms. Treat and Mr. Hirschfeld said the debate turned on the testimony of three Maine residents who had benefited from the loans. "These are powerful companies that have lots of money, and they brought in people with these sob stories," Ms. Treat said.

Supporters of lawsuit lending next turned its attention to Ohio, where the state's Supreme Court had declared lawsuit lending illegal in 2003. This time, Mr. Hirschfeld said that the industry asked lawyers throughout the state for examples of clients who had suffered because they were not able to borrow money. Both chambers of the legislature voted unanimously in 2008 to legalize the loans.

Last year, Nebraska followed suit, passing a bill sponsored by State Senator Steve Lathrop, a trial lawyer.

"My own personal view of these groups is that I discourage clients from using them," Mr. Lathrop said during the final debate. "I tell them, go borrow from anybody you can before you have to use them."

"But," he concluded, "the reality is, sometimes there's no other place to turn."

This project was initiated by the Center for Public Integrity, a nonprofit investigative journalism organization in Washington. It is based on reporting by Ben Hallman and Caitlin Ginley of the center and Binyamin Appelbaum of The Times, and was written by Mr. Appelbaum.

ADDENDUM
EXHIBIT 8

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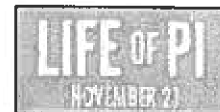

November 14, 2010

Investors Put Money on Lawsuits to Get Payouts

By BINYAMIN APPELBAUM

Large banks, hedge funds and private investors hungry for new and lucrative opportunities are bankrolling other people's lawsuits, pumping hundreds of millions of dollars into medical malpractice claims, divorce battles and class actions against corporations — all in the hope of sharing in the potential winnings.

The loans are propelling large and prominent cases. Lenders including Counsel Financial, a Buffalo company financed by Citigroup, provided $35 million for the lawsuits brought by ground zero workers that were settled tentatively in June for $712.5 million. The lenders earned about $11 million.

Most investments are in the smaller cases that fill court dockets. Ardec Funding, a New York lender backed by a hedge fund, lent $45,000 in June to a Manhattan lawyer hired by the parents of a baby brain-damaged at birth. The lawyer hired two doctors, a physical therapist and an economist to testify at a July trial. The jury ordered the delivering doctor and hospital to pay the baby $510,000. Ardec is collecting interest at an annual rate of 24 percent, or $900 a month, until the award is paid.

Total investments in lawsuits at any given time now exceed $1 billion, several industry participants estimated. Although no figures are available on the number of lawsuits supported by lenders, public records from one state, New York, show that over the last decade, more than 250 law firms borrowed on pending cases, often repeatedly.

The rise of lending to plaintiffs and their lawyers is a result of the high cost of litigation. Pursuing a civil action in federal court costs an average of $15,000, the Federal Judicial Center reported last year. Cases involving scientific evidence, like medical malpractice claims, often cost more than $100,000. Some people cannot afford to pursue claims; others are overwhelmed by corporate defendants with deeper pockets.

A review by The New York Times and the Center for Public Integrity shows that the inflow of money is giving more people a day in court and arming them with well-paid experts and elaborate evidence. It is helping to ensure that cases are decided by merit rather than resources, echoing and expanding a shift a century ago when lawyers started fronting money for clients' lawsuits.

But the review shows that borrowed money also is fueling abuses, including cases initiated and

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controlled by investors. A Florida judge in December ordered an investment banker who orchestrated a shareholder lawsuit against Fresh Del Monte Produce to repay the company's legal expenses, ruling that the case should not have reached trial.

Such financing also drains money from plaintiffs. Interest rates on lawsuit loans generally exceed 15 percent a year, and most states allow lawyers that borrow to bill clients for the interest payments. The cost can exceed the benefits of winning. A woman injured in a 1995 car accident outside Philadelphia borrowed money for a suit, as did her lawyer. By the time she won $169,125 in 2003, the lenders were owed $221,000.

Lawyers are not required to tell clients that they have borrowed money, so the client may be unaware that there is financial pressure to resolve cases quickly. Lenders also seek detailed information about cases, which can jeopardize client confidentiality. A federal judge in Delaware ruled in June that a company suing Facebook for patent infringement had to show Facebook documents that its lawyer had shared with a lender.

Citing these issues, critics of lending for lawsuits say the practice should be banned.

"It sends shivers down the spines of general counsels all across the globe," said Lisa A. Rickard of the Institute for Legal Reform, an arm of the United States Chamber of Commerce.

But proponents, who argue that people often need help to fight corporations, have won a series of victories in state courts and legislatures in recent years, overturning old laws that prohibited investments in lawsuits.

"If you want to use the civil justice system, you have to have money," said Alan Zimmerman, who founded one of the first litigation finance companies in 1994, in San Francisco, now called the LawFinance Group. "If there's less money, you'd have less litigation. But then you'd also have less justice."

A Case in Point

A legal battle between residents of a faded Texas factory town and the BNSF Railway, the nation's second-largest railroad company, highlights what some see as the benefits and others see as the excesses of lawsuits driven by borrowed money.

Somerville, Tex., 80 miles northwest of Houston, has hosted the noxious work of treating wood to make railroad ties for more than a century. The railroad runs through the town, dividing a small grid of residential streets from the lumber yard and treatment plant where stacks of wood are soaked in preservatives.

Dennis L. Krueger crossed the tracks to begin work at the factory the week after he graduated from the local high school, in 1974. Three decades later, he was found to have a malignant skin cancer that his doctor said was most likely caused by prolonged exposure to creosote, the tar oil in which the ties are soaked.

Mr. Krueger, who is 54 but looks much older, reduced by manual labor and medical treatment, is suing the railroad for damages, claiming that BNSF failed to provide basic safety equipment or to warn workers that the federal government had linked creosote with skin cancer. He recalled cleaning the inside of the treatment tanks wearing no safety gear except steel-toed boots and mule-skin gloves.

"I got so high off that stuff I'd be laughing one minute and crying the next minute," said Mr. Krueger, sitting at the local Dairy Queen beneath old photographs of factory workers. "I've got a 2-year-old grandson. My goal was to live to 101. What I'd like is a fair shake from the railroad for missing out."

Mr. Krueger's lawsuit is financed by investors he has never met. His lawyer from Houston, Jared R. Woodfill, has borrowed more than $3.5 million from a New York hedge fund run by Stillwater Capital Partners, in a deal arranged by the litigation finance specialist Oxbridge Financial Group, also based in New York.

Mr. Woodfill first drove to Somerville in 2000 to meet with a former factory worker who has since died of skin cancer. He said that his work on that worker's case, which BNSF agreed to settle in 2003, convinced him that toxic emissions from the factory had poisoned the town's air, water and land.

Mr. Woodfill, who is 42 and the chairman of the Republican Party in Harris County, is empathetic and well-spoken. He found a ready audience in Somerville, which has declined with the railroad industry. The population peaked in the 1930s. About 1,700 people still live in the timeworn residential section, but automation has further reduced employment at the factory, and a quarter of the households now live in poverty. Residents with a wide range of health problems embraced the idea that the factory was responsible.

Mr. Woodfill signed up workers with skin cancer, like Mr. Krueger, and those with gastrointestinal cancers that he says can be caused by the chemicals used at the factory. He also signed up Somerville residents who never worked at the factory but had developed cancers. And he signed up property owners with no health problems, arguing that the value of their property had suffered.

About 400 people sued the railroad — almost a quarter of the town's residents.

Oxbridge spent several months reviewing the cases before agreeing to arrange the financing, sending lawyers to Texas to look at documents and to question Mr. Woodfill and his partners. Stillwater Capital is charging about 16 percent annual interest.

"But for a hedge fund, I couldn't afford to take on a railroad," Mr. Woodfill said.

BNSF's general counsel, Charles Shewmake, said the company had carefully reviewed claims brought by its former workers and decided they had no merit. He said the claims by Somerville residents who did not work at the factory were "physically impossible and without any scientific

basis."

Company executives were outraged when they learned that a hedge fund was backing the lawsuits, Mr. Shewmake said. He said that BNSF had been forced to spend millions of dollars mounting its courtroom defense and defending its reputation.

"They're stirring up cases that don't need to be in the courthouses," he said.

An Opportunity for Lenders

Lawsuit lending is a child of the subprime revolution, the mainstream embrace of high-risk lending at high interest rates that began in the early 1990s.

Mr. Zimmerman, the founder of the LawFinance Group, practiced law for more than two decades before moving into finance in California in 1992. A lawyer friend called to ask if he would lend to a client who had won a sexual harassment lawsuit. The woman's former employer had appealed, and she needed money for living expenses or she would be forced to take a smaller settlement.

Mr. Zimmerman invested $30,000 in the case; the former employer almost immediately dropped the appeal and paid out the verdict. Mr. Zimmerman made $20,000.

"I said: 'That's an interesting way to make money. Is there a way to turn that into a business?' " he recalled. The company he created has since invested more than $350 million in litigation.

Others in the lending business saw the same opportunity at about the same time, including a mortgage salesman in Buffalo; a subprime auto lender from Nashville; and a Las Vegas man who had been convicted of threatening borrowers who failed to repay his previous business, Wild West Funding.

By the late 1990s, several of those companies were also making loans to lawyers. Plaintiffs needed small sums for living expenses; their lawyers needed much larger sums to mount cases, and they had few other options. Banks make loans against assets, and law firms generally have little property to pledge as collateral.

The new lenders jumped into the void. LawFinance's slogan is "We do what banks won't."

The industry's great innovation, and still its defining trait, is the willingness to lend based on the potential value of unresolved cases.

The roughly one dozen major lenders tend to cultivate an image of conservative prudence. Counsel Financial, which bills itself as the largest, with more than $200 million in outstanding loans to law firms, shares a suburban office building outside Buffalo with an insurance firm.

But the work sits somewhere between banking and gambling. Lenders employ experienced lawyers to judge the strength of cases. They consult databases showing the results of similar lawsuits, just as appraisers value homes based on recent sales. A corporate defendant may have

a history of battling personal injury claims; or juries in a specific county may have a history of siding with local employers. Then they place their bets. Counsel will invest up to $10 million in a law firm.

The returns can be lucrative. Counsel Financial charges 18 percent annual interest. "If firms have access to lower-cost financing, our first comment back to them is that you really shouldn't be talking to us," said Paul R. Cody, president of Counsel Financial. "We're not going to be competitive" with the interest rates charged by banks.

Law firms are generally obligated to repay loans even if they lose. In reality, however, firms that make less than expected often struggle to make the required payments, and a number of firms that borrowed from Counsel Financial have filed for bankruptcy protection.

Increasingly, banks are making lawsuit loans, too. During the lending boom of the last decade, companies including Citigroup, Commerce Bank of New Jersey and Credit Suisse provided financing for lawsuit lenders. More recently, some banks have started cutting out the middlemen. Deutsche Bank recently refinanced one of Counsel's largest clients, the New York firm Napoli Bern Ripka. TD Bank, which absorbed Commerce, lends to lawyers and plaintiffs.

The founders of LawCash, a Brooklyn lender, won a charter from New York in 2006 to establish Esquire Bank, the first American bank to specialize in the business of financing lawyers and lawsuits.

Defendants on the Defensive

A recent Nevada case illustrates one reason many companies are troubled by the rise of financing: They fear that investors will move from supporting to producing lawsuits.

Steven and Roz Flans left Los Angeles in 2004 for Sun City Anthem, a sprawling retirement community of 7,000 one-story homes, from ranches to mansions, at the edge of the Las Vegas basin. When the gas fireplace stopped working during their third winter in the desert, the couple contacted their home builder, Del Webb.

"We called and said, 'We have a minor problem,' " Mr. Flans recalled. "And they said: 'We can't talk to you. You're suing us!' "

It emerged that the Flanses had accepted a free home inspection the previous year from a company, MC Mojave Construction, that had papered their neighborhood with brochures. They said they did not realize that the forms they signed authorized MC Mojave to sue Del Webb on their behalf for the money to correct any problems.

By 2008, MC Mojave had initiated more than 500 lawsuits against Del Webb. The company acted as an investor, providing inspection reports to the Las Vegas law firm that handled the cases in exchange for a share of any winnings.

Del Webb sued MC Mojave, arguing that Nevada law prohibited fomenting and investing in

lawsuits. Jacque Petroulakis, a company spokeswoman, said that Del Webb would have fixed legitimate problems under its warranty policy, and that the lawsuits served solely to make money for MC Mojave and the law firm.

"They were throwing people into litigation that many of them never anticipated or wanted," Ms. Petroulakis said.

MC Mojave did not return calls for comment, but in court filings, it called the Nevada law "medieval" and said it should not be enforced. The company said it was providing a service at the request of the homeowners.

This year, a federal judge barred MC Mojave from initiating further lawsuits, ruling that Nevada law indeed prohibits such investments.

But a growing number of states have eliminated similar laws.

The Massachusetts Supreme Judicial Court started the trend in 1997, citing a "fundamental change in society's view of litigation — from a social ill, which, like other disputes and quarrels, should be minimized, to a socially useful way to resolve disputes."

South Carolina, Texas and Ohio are among the states that have followed.

Stephen C. Yeazell, a law professor at the University of California, Los Angeles, and a leading historian of the civil justice system, said the trend was likely to continue. He said there was little legal justification for allowing lawyers to pay for cases but barring third parties from doing so. "This is another step in leveling the playing field between plaintiffs and defendants," Mr. Yeazell said.

Gathering Plaintiffs

Anthony Flammia, a former New York City police officer who spent three months working in the wreckage of the World Trade Center, did not learn that his lawyers had borrowed money to pursue his claim of compensation for health problems until he received a bill for $828.93 in interest charges.

Mr. Flammia left ground zero at the end of 2001 for a job with a suburban police department. A few years later, a passer-by found him asleep in his patrol car. His health had been deteriorating, and the episode prompted him to visit a free clinic established to treat ground zero workers for the consequences of inhaling dust. He was found to have sleep apnea and scarring in his lungs. In 2007, he passed out after inhaling smoke at a house fire and was forced to retire.

Lawyers led by Napoli Bern Ripka sued the City of New York and a host of agencies and companies on behalf of more than 9,000 ground zero workers. When Mr. Flammia signed up as a client, the paperwork included a general notice that the lawyers might borrow money to pursue the case, and that they might bill clients for the interest.

Mr. Flammia said he did not see the general warning, and there was no further notice as the lawyers borrowed more than $35 million.

In June, the city and other defendants agreed to settle the case for up to $712.5 million. The workers have until Tuesday to approve the settlement. Workers received letters detailing how much they would receive, and how much the lawyers would keep to cover the costs of pursuing the case.

Among the costs billed to clients was $6.1 million of the $11 million in total interest payments, which the law firms said reflected the share of the borrowed money covering the workers' expenses.

Lawsuit lenders, including Counsel Financial, encourage lawyers to bill clients. They advertise in trade magazines that lawyers can borrow money free if the client is paying the interest. Bar associations in most states, including New York, condone the practice.

Paul J. Napoli, one of the lead lawyers representing the ground zero workers, said that the firm needed money to pursue the case, that the loans were taken at the lowest available interest rates and that clients were properly notified.

"We followed the rules. Do people want to have it sky-written over their house every day?" Mr. Napoli asked. "They didn't read it. Or maybe they didn't care at the time. At what point do people have a self-responsibility to read something and be bound by it?"

But Mr. Flammia and other workers said they had not agreed that the law firm could pay for its work by borrowing money at their expense.

"If I'm ever involved in a lawsuit again, I'm going to be very careful and read every document line by line," Mr. Flammia said. "I'm also going to find a lawyer who is acting on my behalf and not to line their own pockets."

The judge overseeing the case, Alvin K. Hellerstein of the Federal District Court of Manhattan, ordered the lawyers to swallow the cost.

Judge Hellerstein acknowledged that the charges were legal, but said that the lawyers already were earning enough from the case. He said that it was not clear that clients had understood or approved the decision to borrow, and that it was clear that clients had no control over how the money was spent.

The workers, Judge Hellerstein said, "want to have the fruits of this settlement not diminished by an effort of lawyers to finance much of the way that they work this case."

A War of Attrition

The residents of Somerville, Tex., have yet to win a trial.

The case of Linda Faust, who never worked at the railroad plant, was the first to reach court, in

2008. She had stomach cancer.

The jury deliberated three days before deciding that BNSF was not responsible.

The following year, a jury ruled against Dennis Davis, a former worker at the factory with pancreatic cancer.

Mr. Woodfill's nine-lawyer firm, Woodfill & Pressler, has spent more on the Somerville cases than any of its previous litigation. Win or lose, it must repay Stillwater, the hedge fund that is bankrolling the cases. Mr. Woodfill said he remained confident that the cases could be won. He is appealing the two losses and preparing for a third trial next year.

He drove through Somerville recently on his way to meet with clients, rolling down the windows so the smell of the factory came into the car. "They're hoping to spend us into the ground and make us go away, but we're not giving up," he said.

Mr. Shewmake of BNSF said the company was braced to continue fighting the cases until Stillwater ran out of patience.

"Right now," he said, "I'd say it's starting to look like a bad investment decision."

This project was initiated by the Center for Public Integrity, a nonprofit investigative news organization in Washington. It is based on reporting by Ben Hallman of the center and Binyamin Appelbaum of The Times, and was written by Mr. Appelbaum.

ADDENDUM EXHIBIT 9

Business-killing cuts to state court systems

By Heather Rogers
Remapping Debate

Across the United States, "business uses the courts far more than anyone else," explained Frank B. Cross, a professor of business law at the University of Texas at Austin. And among those cases, "the vast majority is business-to-business." Most common among these, Cross said, are breach of contract and fraud cases that involve any product or service — office equipment, software, the work of an accountant — that doesn't live up to the contract's promise. Another frequent problem comes when one company misses one or more payments to another. If the unpaid firm doesn't have ready access to courts, Cross said, that firm's financial stability is put at risk. "A working court system is absolutely essential to business," he concluded.

"A working court system is absolutely essential to business." -- Frank B. Cross, business law professor at the University of Texas at Austin

Due to increasingly severe budget cuts, more and more state court systems have become dysfunctional in the last few years. According to data from the National Center for State Courts (NCSC), a nonprofit research, consulting, and advocacy group, 42 state legislatures reduced their state court budgets between 2008 and 2011. A variety of cutbacks ensued -- including staff layoffs, reductions in courthouse hours, and pay cuts for courthouse personnel -- and many state judicial systems have consequently slowed down (see visualization on next page). The NCSC's data show that since 2008, 29 states have seen an increase in case backlogs, and 15 states have experienced an increase in the time it takes for cases to go from filing through resolution.

"Let's say I'm in a business-to-business dispute over intellectual property," Joseph Dunn, former California senator and current executive director of the State Bar of California, explained. If the case drags on for years as opposed to months, even if the aggrieved business is otherwise healthy and eventually wins, "No investor is willing to put money down." The pendancy of litigation can make a company seem like an unwise bet. "Banks and investors looking for a good return will avoid this kind of risk," Dunn said. He explained that in California, before the cuts, a typical intellectual property dispute would have taken 12 months to resolve. "Now it's three to five years," he said. These longer wait times "have become deadly to the business community."

Cutting muscle, not fat

"In any system if you're a legislator and you say we're going to cut 5 percent from the budget, the fact is that doesn't affect everyone in the same way," explained Gregory Hurley, an analyst at the NCSC. "If you're [the Fish and Game Department], you can cut the amount of fuel, you can drive less for the next year. If you're a court system, you don't have that equipment. What you have are staff, and if your budget gets cut, you have to start letting people go."

Roy Weinstein, managing director of Micronomics Inc., an economic research and consulting firm that has produced two reports (see here and here) on the effects of underfunding state courts, explained that the direct victims of judicial system budget cuts are "the people who service those courtrooms...the court reporter who used to work there, the bailiff or two who used to work there, the court clerk who used to work there — they're gone."

It is a simple formula that has been repeated in state after state: fewer judicial clerks and other support staff equal less administrative work and case management getting done. With fewer people literally moving things through the system, the system becomes sclerotic. And judges -- lacking the clerks they need to help with research and associated tasks -- become overburdened. Those judges take longer to decide motions and to schedule trials.

Data show that since 2008, 29 states have seen an increase in case backlogs, and 15 states have experienced an increase in the time it takes for cases to go from filing through resolution.

Businesses paying more of the bill

In many court systems that have had their budgets cut, courts are passing more of their costs onto litigants. In Superior Court in San Francisco, court reporters used to be provided for free in civil cases — important because, among other things, a transcript is needed if a party wishes to appeal. Last year, the court shifted that cost to the litigants themselves in most civil cases. The daily court reporter's bill can easily exceed $1,000.

A particularly common stratagem to compensate for reduced state funding is to increase filing fees. Since 2008, according to the NCSC, 26 states have increased their filing fees.

For example, in California, among the hardest hit state courts in the country, basic filing fees for a civil case have climbed from $335 in 2008 to $435 in 2012. For more complex cases, which are frequently business-against-business disputes, the filing fees have almost doubled, surging from $550 in 2008 to $1,000 today. On top of the basic filing charge, there are other fees assessed at various phases of a case, such as for filing motions.

In 2009, Florida raised its filing fees for disputes involving less than $50,000 by over 30 percent. Fees for disputes involving between $50,000 and $250,000 increased from $295 to $900, and disputes involving higher sums have had their fee surge from $295 to $1,900. One Democratic senator from the state, Maria Sachs, told Remapping Debate that she thinks the courts should be almost entirely funded through fees.

Last May, Alabama's state lawmakers approved a significant increase to civil case filing fees. For disputes involving more than $50,000, the fee increased 15 percent; in cases involving smaller amounts, the fee has jumped by 25 percent. The measure was supported by wide majorities in both the house and senate. Democratic State Senator William Beasley was among them. "The fee system is a good mechanism to fund the court system because, that way, the people who are using the court system are paying the fees," he told Remapping Debate.

But some question the wisdom of this strategy. "The higher the filing fees are, the more costs that are shifted from the judicial branch to the actual litigants almost to the point of it becoming a 'you-use-it, you-pay-for-it' scenario," said Dunn, the head of the California Bar Association. "As states have moved away from

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taxpayer support of the judiciary to fee-based revenue support, you are pricing the judicial system out of reach of many startup companies and smaller companies."

So how much additional delay is there?

California has seen the country's steepest cuts in its state court funding, in dollar terms: over $300 million in fiscal year 2011-2012 alone. If planned cuts for the upcoming fiscal year go through, another $544 million would be stripped from the state judiciary. The effects of these cuts are being felt throughout the state.

According to Michael Burke, a defendent-side civil litigator in San Francisco, "It used to be you could get [a motion hearing] within the normal notice period, usually 21 days. You could just call up and get a date," Burke said. But now, "It could be two or three months."

John Kithas, a San Francisco attorney, who has been in civil practice for almost 40 years, currently has a case that's stuck in the earliest phases, even though it was filed nine months ago. While charging that some delays are due to stalling by his adversaries, Kithas was certain that budget reductions were part of the problem. "It's been almost a year and we haven't learned anything" he said incredulously. In the past, he asserted, he would be at this same phase in litigation after only a month or two. "In this case we're out there for [nearly] a year, we have almost no discovery turned over to us," he said. "We're probably looking at another year before trial."

"As states have moved away from taxpeyer support of the judiciary to fee-based revenue support, you are pricing the judicial system out of reach of many startup companies and smaller companies." – Joseph Dunn, executive director of the State Bar of California

Burke said there are many steps along the way where a case can get held up thanks to fewer courthouse resources. "There are all sorts of things throughout litigation that the court has to sign off on. It could be a ruling on a motion. It could be approving a settlement," he explained. "There's no end to what the court needs to approve by way of order or ruling during the process of litigation," he said. And the delay caused by the cuts "just bogs everything down."

In fiscal year 2011-2012, Alabama's legislature shrunk its court funds by almost 9 percent, the largest percentage cut of any state that year.

In that year, Sue Bell Cobb, the state's chief justice, who acts as the administrative head of the judiciary, ordered courthouses to close on Fridays. And needing to cut still more, she reduced by half the number of weeks that jury trials ("jury weeks") were available to civil litigants. By mid-2012, budget cuts had led to clerk staff being thinned in the majority of Alabama's courthouses.

"In the civil setting they did away with most law clerks and courtroom deputies," recounted Lee Benton, a business attorney in Birmingham. "That means a judge gets a brief from both sides but he's having to do all his research personally. It dumps a much heavier caseload on a judge, and that delays him in issuing a decision."

According to G. Bartley Loftin III, a Madison County, Alabama, lawyer, who focuses primarily on commercial litigation, "When you have a client come in and say, 'We have this situation how long is it going to take?' and when you say, '18 to 24 months,'" he explained, "a lot of them are shocked at the time it may take." Loftin has observed this slowdown increasing as court budgets shrink. "There's a direct link to underfunding," he said.

"Businesses are already in a fragile position these days," Benton said. "If you're already on the banana peel, [litigation delay] just pushes you over the edge."

Short-term and long-term losses in productivity

All the time and energy that a business owner has to devote to a legal case is time and energy not spent on running that business. And the increased delays have made the problem worse.

Daniel Bean, a business litigator in Jacksonville, Florida, who has been practicing for almost 20 years, sees this a lot. "When we tell people what the value of a case is or how much you're going to spend on us, I say, 'Well you also have to figure out how much time loss you're going to have for your clients,'" he explained. "And so the longer the case takes, the more of a distraction it is," he said.

Roy Weinstein, the managing director of Micronomics, said that the economic impact of court delays on businesses is substantial. According to his analysis, lawsuits in Los Angeles that used to take twelve months can now take over five years. "Doesn't it cost you something over that extra five-and-a-half years if you don't have use of that [contested] money?" Weinstein asked. "You couldn't expand your business, you couldn't pay your bills, you couldn't hire new employees, you couldn't do your marketing, your advertising."

When a business is caught up in a lawsuit, it may well be harder for it to secure a line of credit or additional capital investment, Weinstein said.

The degree to which such losses are material to a particular business, of course, depends on the depth of a firm's resources and the size of the dispute in relation to those resources. Large corporations typically have ample cash reserves, in-house counsel, and the ability to hire and deploy large numbers of outside lawyers. Smaller companies, on the other hand, are more at risk of suffering financial distress as a lawsuit stretches out, especially if the matter at issue is central to the company's revenues.

Michael Freed, a commercial litigation attorney in Florida, had a client victimized by this very problem. His client won the case — but not before going out of business. "They became insolvent," Freed explained. "The length of time it took to get [to trial] was too much." Once the trial was finally held, it took the judge nine months to issue the ruling. "You never can point to just one thing," Freed said about the causes of the company's demise. But, he said, "The consequences of delays in a business case are severe."

State Senator Tom Harman (R-Ca.) did see functioning courts as vital to business. "It does rank pretty high when a business is thinking about either relocating to California or leaving California."

Jose Rojas, another Florida business lawyer, said business people themselves are often shortsighted. "It's an irony," he said. "I think most business owners tend to be conservative fiscally and are in favor of the concept of 'cut-don't-spend, less taxes,' that it's good for business because you don't spend money. On one level, there's certainly appeal to that. But on the other level, where those cuts affect some of the very mechanisms that help facilitate business, then those cuts are really *not* helpful to business. They're really counterproductive to the whole business process."

Increased attorneys' fees

As a case drags on longer because of a slower-functioning judicial system, attorneys' fees go up, too. "The longer a lawsuit goes on, the more expensive it becomes. There's no question of that," said Bean, the Jacksonville, Florida, attorney.

This is primarily because too many hearings and trials are now often scheduled at the same time. These overbooked dockets invariably result in some litigants making a court appearance only to have their matters put off ("continued") to a later date. The hurry-up-and-wait problem can repeat itself multiple times, and is an increasingly common phenomenon according to all the judges and lawyers with whom Remapping Debate spoke.

John Whitcombe, the managing partner of a Los Angeles law firm in practice for almost 15 years, frequently sees the effects of these forces on his clients. He told Remapping Debate about a case he'd just concluded. "It should have been a one-day trial with seven hours of testimony. Instead it stretched out over two weeks," he said. "We have a business client that's in the court every single day for those two weeks, out of his business. We've got lawyers there billing for ten-hour days when they have really only effectively done anything for three or four hours a day, but their presence has been required for ten hours a day. So the whole system runs up costs at a rate of 200 to 300 percent over what they ought to be," he explained.

"It should have been a one-day trial with seven hours of testimony. Instead it stretched out over two weeks," said John Whitcombe, the managing partner of a Los Angeles law firm. "The whole system [now] runs up costs at a rate of 200 to 300 percent over what they ought to be."

Meritorious cases not getting filed

To what extent do businesses that have genuine grievances throw up their hands and accept their losses because of the prospect of increased delays and higher costs?

Dunn, the California State Bar Association executive director, said this chilling effect is real, but difficult to quantify. "It occurs more than we [in the legal system] care to admit," he said.

This phenomenon stays relatively hidden save for anecdotal accounts. As Dunn pointed out, companies that avoid litigation because it's too expensive don't like to draw attention to that fact. Using an intellectual property case as an example, Dunn said, "If you can't afford to defend the intellectual property that you've built your startup company around, as an investor I'm not so sure I have a comfort level that you've got the ability to operate at all. It just sends a signal to the investor community that you are very, very weak."

Frank P. Cross, the business law professor from Texas, said he sees how these barriers to the courts could make businesses think twice about seeking litigation, even for cases that have clear merit. If budget cuts continue, Cross said, this chilling effect will become more widespread, adding, "I don't think it's that bad — yet."

But perhaps it already is in Birmingham, Alabama. Presiding Judge J. Scott Vowell of Jefferson County said that this year he has observed a sharp drop in civil cases filed. The number is down by about 30 percent from last year, and he attributes it to the delays and higher costs. "Normally in hard times economically we would expect an increase in new case filings — you have more mortgage foreclosures and collections on credit cards and increased collection on debts. But we're not seeing these cases," he said. Judge Vowell thinks such disputes are as common as ever, but that people are avoiding court. And this worries him. "I don't think it's a good thing to not have a jury of their peers to decide their disputes," he explained. "That's central to a democratic government."

No help from "business-friendly" state legislators

Michael Bennett, a Republican state senator in Florida who sits on the state's budget committee, and serves on its subcommittee on criminal and civil justice appropriations, holds himself out as pro-business. On his website, he explains that this was a motivation for his seeking office: "I saw the government putting up roadblocks to business and felt I could make a difference."

But, despite Florida's courts experiencing reduced operating hours, increased fines and backlogs, and staff layoffs, Sen. Bennett doesn't think the courts are underfunded. Neither does he believe that court delays in resolving business disputes present an obstacle to attracting business to the state. Bennett said that he has experienced court delays in connection with his own businesses, but insisted that those delays were due to poor docket management and judges' lenient granting of extensions to lawyers, not lack of funding.

In Alabama, State Senator Paul Sanford, who represents Madison County, is another pro-business advocate. Sanford's most recent campaign website stated that Alabama must "aggressively [compete] with other states to bring new industry to our state through tax incentives and other perks so that Alabama will remain a breeding ground for business opportunity and job growth."

Sen. Sanford, who chairs the Job Creation and Economic Development Committee, insisted that court delays don't impede the state's economy. He didn't deny that delays exist and that they could create difficulties for companies, but said he was not personally aware of particular businesses suffering from the problem.

Sen. Sanford acknowledged that courts serve a vital government function, and said he believes that his state's courts need more funding. But he also said the courts need to cope with budget cuts via belt-tightening and seeking even greater efficiencies.

A "cut-don't-spend" approach garners instinctive support from many business people, said Jose Rojas, a Florida business lawyer, but, "when those cuts affect some of the very mechanisms that

Judge Vowell was less sanguine, describing a sense of desperation his colleagues have had about the imposed cuts. The resistance of lawmakers to increased taxes to fund the courts, he said, "is a reflection of this attitude that government is bad and taxes are bad, that we can get needed government services without paying for them."

help facilitate business," they are "really counterproductive to the whole business process."

Judge Vowell said he couldn't imagine what additional belt-tightening Sen. Sanford was referring to. "I've told people if they can find any waste I'd sure like to know about it," he said.

Tom Harman, a Republican state senator representing Orange County, California, who received a "Legislator of the Year" award in June, 2012 from the California Business Properties Association, took a more nuanced view than his legislative counterparts in Florida and Alabama. Harman did see functioning courts as vital to business. "It does rank pretty high when a business is thinking about either relocating to California or leaving California," Sen. Harman said.

The resistance of lawmakers to increased taxes to fund the courts "is a reflection of this attitude that government is bad and taxes are bad, that we can get needed government services without paying for them." -- Presiding Judge J. Scott Vowell, Jefferson County, Alabama

In Harman's view, the state bears responsibility for adequately funding the courts. He also acknowledged that California state courts need more money, and that the legislature currently isn't providing enough.

But, he said, that money should be diverted from other programs and agencies rather than from increased revenues. "I'm opposed to raising taxes," he said. "I think there's a good argument that other departments, other agencies could cut back their spending substantially."

A different view comes from California State Senator Loni Hancock, a Democrat who chairs the budget subcommittee on corrections, public safety and the judiciary. "I look at the state budget, which has steadily decreased during my entire 10 years in the state legislature, and I say there's nothing left to cut," she said.

Sen. Hancock said she believes the courts should be fully funded, and taxes should be raised to fulfill that goal. "I have seen people stand up on the floor of our legislature and say, 'You can spend your money better than government can.' Well, yes, maybe so -- if you don't need a court system. Or you don't need a great university. Or you don't need a good public school for your kids," she said. "But if you do need all those things that's why we pool our money together to buy those things, and that's called paying taxes."

Additional reporting: Samantha Cook

Editor's note: This story was reprinted with permission from Remapping Debate, a not-for-profit online news publication dedicated to posing the "why" and "why not" questions of domestic public policy. Original article: http://www.remappingdebate.org/article/business-killing-cuts-state-court-systems

COSCA Budget Survey Responses November 30, 2011

Alabama

Alabama trial courts are funded primarily by the state. Its appropriation was reduced from $152 million in FY11 to $138.9 million in FY12. Its FY11 appropriation had been reduced during the fiscal year. As a result, even though they will be able to maintain the same number of judges, they will need to reduce the number of staff positions and will need to reduce the amount spent on operating costs.

To respond to budget reductions, Alabama has had to lay off staff, delay filling judicial support positions and reduce the use of retired judges.

As of October 1, 2011, the Circuit Clerk's offices will be staffed at around the 45% level and AOC will be staffed at approximately the number as in1996. There have been no merit increases in 3 years; insurance coverage and employee percentage of retirement have increased; the salary of some positions has been reduced. This has caused low morale and a feeling of being overwhelmed among officials and staff. As a result, clerk's staff will take longer to process cases and paperwork; information will not be timely entered into their case management system. The public will have a longer wait for cases to be heard and/or processed. The collection of court costs and fines going to the state general fund and to non-profit agencies as well as individuals will be delayed or reduced.

Alabama may have to close some annex court sites. After October 1, 2011, they may need to reduce operating hours in order to provide administrative time for officials and staff. The reduction in judicial education will reduce information sharing and discussion. Alabama has for years been operating an e-filing and an electronic document management system in the civil jurisdiction. They also have implemented e-citation, e-payment of fees and fines, and videoconferencing of hearings. They have now developed the e-filing and electronic document management system for statewide application in criminal cases and will soon have juvenile jurisdiction completed.

It is only because of technology that their offices have been able to manage with the reduced staffing levels. Also, Alabama receives revenue from the sale of data and the use of e-filing and court records by attorneys. They fear that the drastic reductions in their budget will make it difficult to continue to provide updated equipment and program applications and enhancements.

In attempts to increase efficiency in the courts, Alabama has implemented enhanced caseflow management programs: they have worked to develop training and on-site assistance on good case management models including the performance of on-site evaluation and written recommendations. They have also continued to implement enhancements and new development of technology and provided on-site training in the use of these programs (which includes training to attorneys).

Alabama now has drug courts in 66 of our 67 counties and have encouraged the use of drug courts, mental health courts, veterans' courts, community corrections and court referral programs to reduce prison overcrowding and to create community alternatives. They have done training with all judges who sentence felons to help with more consistency in sentencing practices.

Alabama has formed a committee to examine legislation that would provide additional flexibility to the Supreme Court in moving judgeships from one area to another and to make their

suspension of deployment activities for the California Court Case Management System, a new statewide case management system designed to replace over 70 outdated and incompatible systems currently in use.

To reduce spending, the courts have reduced hours of operation, imposed staff layoffs, and delayed filling vacancies in the clerks' offices and in judicial support positions. They anticipate reducing court clerk office hours and reducing the number of civil courtrooms open. Some Branch locations will be closed. Some mediation services will be impacted and other impacts are expected.

Technology initiatives include e-filing, and electronic document management system, e-citations, e-payment of fees and fines and conducting some hearings with the use of videoconferencing equipment. Plans are in place to develop and implement a new case management system, but it is expected that implementation will be put on hold due to the budget reduction.

Colorado

Colorado's courts are funded by the state and include district and county courts and the state's probation function. Colorado's total state appropriation increased from $352 million in FY11 to $374 million in FY12. The Judiciary will be increasing the number of judges, the number of staff persons and the amount spent on operating costs.

Six million dollars was transferred from the Department of Corrections to the Judiciary to treat probation offenders and keep them out of prison. This transfer accounts for over $12 millio of the increase from FY2011 to FY2012.

To reduce spending, the Colorado courts have reduced hours of operations, delayed filling judicial and staff vacancies and vacancies in judicial support positions. They have had to lay off staff and to reduce the use of retired judges.

The above cuts have resulted in overall diminished public access to the courts. Primarily, staff cuts have reduced the Branch's ability to respond to pro se litigants and phone access to the courts has become limited.

Colorado has frozen the salaries of judges and staff. The lack of salary increases has impacted staff morale and just recently, the Branch has started to see high quality and experienced staff leaving the Branch for higher paying jobs.

Technology initiatives include e-filing, an electronic document management system, e-payment of fees and fines and videoconferencing of hearings. The majority of these initiatives were implemented prior to staff reductions so they have helped limit the overall negative impact of the staff layoffs and shorter hours at court locations.

Colorado has worked to identify and implement best practices in two areas, in particular. Colorado has had a high focus on establishing local delinquency and neglect best practice teams within each local district. In addition, the implementation of Drug Courts in almost every district has resulted in better outcomes such as lower recidivism and lower costs to the State of Colorado through decreased incarceration rates.

Colorado courts took large permanent budget reductions in FY2010. There has been limited court funding increases since then. Most of the budget increase has been on the probation side of the Colorado Judicial Branch as the State has pursued sentencing reform to reduce DOC commitments. The courts over the past two years have incurred staff reductions and operating budget cuts that have resulted in a decreased ability to respond proactively to the needs of Colorado's citizens.

ADDENDUM
EXHIBIT 10

LexisNexis

Personal injury lawyers face issues with loans.

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Body

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Patience is a virtue, and that is especially true in personal injury cases, notes veteran attorney D. Michael Guerin.

But as the recession drags on, cash-strapped victims are increasingly turning toward companies that offer advances to pay bills while their cases are pending.

I'm seeing this more and more with clients, and I dread it, said personal injury attorney Victor C. Harding.

Companies like Illinois-based ***Oasis Legal*** Finance, LLC, allow plaintiffs in personal injury cases to receive between $500 and $500,000 in as little as 24 hours. CEO Gary Chodes said the quick cash provides financial flexibility that allows people to wait for potentially more lucrative settlements.

We allow consumers the ability to maintain their case for a reasonable period of time and if there is no money for the plaintiff, they don't have to pay us back, he said.

According to Chodes, about 2 percent of the company's business comes from ***Wisconsin***. Oasis is one of several national companies that offer legal lending; other providers include Global Financial Credit LLC in New York and AnyLawsuits.com.

But Guerin, of Gimbel, Reilly, Guerin & Brown, said that while theidea may sound good on the surface, in his experience, legal servicelenders are a bad bargain for most clients because if a case does settle, the legal service lender gets its money first.

And Harding claims that because some legal service lenders charge interest rates as high as 50 percent, clients are tempted to prolong the litigation process in the hope of obtaining a bigger settlement.

Harding, of Warshafsky, Rotter, Tarnoff & Bloch SC, said he settled a case in June for a client who was approved for $13,500 in fundingfrom Oasis last year and ended up paying more than $32,000 back.

That case settled for $320,000, so the client will receive a portion of the proceeds. But Harding anticipates that some clients may elect to take their chances in court rather than settle if their loans outgrow the estimated value of a case.

Suddenly the risk-benefit analysis changes, he said. There might be money on the table and none will go to the client, so they say, 'IfI'm not getting anything, why not go forward and try and hit the jackpot?'

Weak Cases to Trial?

Guerin added that legal service advances create problems for personal injury attorneys too, forcing them to potentially take weak casesto trial.

It can put a lawyer in a position where the client has borrowed and owes more money that can be reasonably obtained in a mediation process, short of litigation, he said. It ends up that crummy cases are the ones going to trial.

But Chodes said that Oasis does an evaluation of each case prior to approving a consumer's loan application and that a client's attorney must sign-off on the contract and apprise the party of the benefitsand risks associated with the agreement.

Some attorneys say they will go along with a client's desire to take an advance in rare cases.

Personal injury attorney Jonathan P. Groth said that while he generally discourages the practice, sometimes the money can help a case.

He currently has five or six active cases with clients who have taken out cash advances with legal service lenders.

I don't feel as guilty if someone is uninsured and needs a medicalprocedure, like an MRI because it may give them a fighting chance, Groth said. But I recommend they ask for as little as possible.

Guerin conceded that there may be rare occasions where an advance can help an injured party out of work pay bills or a mortgage. But hehas yet to encounter one.

I have not seen a situation where I think taking advance fees at an exorbitant interest rate would be a benefit to my client, he said.