Update from CAOC
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Insurance industry tort-reform provisions on litigation funding defeated by CAOC

LITIGATION FUNDING PLAYS AN IMPORTANT ROLE FOR PI PLAINTIFFS AND IS OFTEN A LAST-CHOICE RESORT FOR INJURED VICTIMS

Senate Bill 581 (Caballero) would have made all information about your clients' private third-party litigation funding disclosable, discoverable, and admissible. SB 581 was backed by the American Pacific Casualty Insurance Association as part of a nationwide effort to hide anti-plaintiff tort reform under the guise of regulation of the "non-recourse" plaintiff advance industry, i.e., pre-settlement cash advances that come directly out of anticipated future settlements. While CAOC supports regulation of consumer lending, we fought hard to defeat the proposals that would have harmed your clients. We are happy to report that these provisions have been removed from the legislation.

One provision of SB 581 required a consumer or their legal representative to provide the litigation funding contract to all parties in the litigation and stated that those agreements are subject to discovery. We opposed these provisions, as their sole aim was to harm your negotiating ability for your clients. In a nutshell:

1. Funding companies have no say in settlement agreements or discussions, and therefore any argument that the defendants need to know "who is at the table" is false. CAOC supports statutorily codifying that the companies that provide non-recourse advances to consumers have no right to intervene, make decisions, or otherwise impact the consumer's case, but disclosing the contracts will affect bargaining leverage at the settlement stage with the defense and the mediator and will undervalue settlements, harming plaintiffs' ability to obtain fair compensation.
2. Clients (like all Californians) have a right to privacy under the California constitution. The contracts are private financial agreements. Requiring disclosure of a person's private financial information would likely violate these protections and would move California backward in the protection of crucial privacy rights. (See California Financial Information Privacy Act, California Financial Code §§ 4050-4060.)
3. Disclosure of these contracts is discriminatory. Only low- or no-income clients access non-recourse advances, as they have no other sources of income (i.e., they don't qualify for a traditional loan, and no family members are able to lend them money). Why should they also have to divulge their private financial information, only to have it lead to a lower settlement, while a wealthier plaintiff doesn't have to?
4. Even though insurance limits are disclosed in litigation, it is an apples-to-oranges comparison because policy limits disclosure in litigation was enacted to protect the insured defendants from any judgment that exceeded their coverage and protect them from excess judgment/bankruptcy. Plaintiffs can obtain policy limits post-filing as it helps the attorney evaluate the litigation. Plaintiffs have the burden of proof and if, for example, it is a low-limit case, that is important for the plaintiff to know so as to not waste court resources. This proposed disclosure in SB 581 has no protection for anyone and is harmful.

Consumer groups agree. For example, the Center for Justice and Democracy recently released a report titled "Backgrounder: Forced Invasions of Privacy; The Attack on Third-Party Litigation Financing." It states:

> Corporate defendants would like access to [third-party litigation funding] information to give them a strategic advantage during litigation. Disclosure of sensitive details like "the funder's investment commitment, investment to date, and investment budget" would allow a defendant to "employ tactics designed to exhaust that budget and leverage an uneven playing field through litigation and settlement strategy." By extension, corporate lawyers can clearly "draw an adverse inference about the value of a case from the absence of external financing.

Litigation funding plays an important role to individual plaintiffs and is often a last-choice resort for people injured through another's acts, who need some funding in order to pay rent, medical bills and life's necessities. However, there are abuses within this particular industry that should be addressed, and CAOC supports the bill's provisions of installing basic consumer protections in this area so the consumer knows exactly what they are signing and agreeing to. For example, we also agree that: (1) the terms be in a written contract, (2) there be robust disclosures to the consumer about the terms of the advance, compounded interest, etc., (3) there be a right to cancel, and (4) there be a cap on the amount of interest that can be charged.

CAOC is fighting for you and your clients every day in Sacramento. Thank you for your support of our legislative program.