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March 13, 2008

MEMBERS OF THE COMMITTEE ON JUDICIARY

My name is Frank Santoro. I am from Deep River. I am testifying on my own behalf in favor of Raised Bill No. 640 which would allow liability to be apportioned in cases of voluntary withdrawals.

This bill would fill a gap in the existing statutes and is necessary to give effect to the legislative goal of proportional liability which has been an important part of the tort law of Connecticut since the Tort Reform legislation of 1986.

This issue was addressed by the Connecticut Supreme Court in Viera v. Cohen, 283 Conn. 412 (2007) - a case in which I was the attorney for the defendant. The Court in a 3-2 opinion held that apportionment was *not* permitted under current law because a voluntary withdrawal did not fit within the existing statutory language which was limited to a "release, settlement, or similar agreement". In the course of rendering this opinion, however, the majority on the Court recognized what it referred to as a "legislative gap" which imposed a "hardship" on defendants similarly situated and expressed a hope that the legislature would "find a place on its busy agenda for inquiry into the consequences and the desirability of today's decision". The dissenting opinion stated that not permitting apportionment in the case of voluntary withdrawals

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was a result that was “both manifestly unfair to [the defendant] McNamee and fundamentally at odds with the purpose of Tort Reform” and that the legislature “reasonably could not have intended the result that the majority reaches”. I commend the Viera opinion to this Committee and respectfully submit that when the majority and dissenting opinions are read together, a reasonable interpretation is that the existing statutory language contains a hole which would be plugged by this legislation.

I have one minor technical comment. The proposed bill contains changes to Section 52-102b of the General Statutes. The legislative goal of proportional recovery is actually accomplished by the interplay of *two* statutes: section 51-102b and section 52-572h. It was primarily the latter section which was the subject of the Court’s ruling in Viera. As part of its amendment of 52-102b, this Committee may *also* wish to consider clarifying language to section 52-572h(n) to make clear that apportionment is permitted in cases of voluntary withdrawals.

To conclude, the proposed bill is necessary to correct a flaw in the existing statutory language. It is unfair to allow a plaintiff to prevent a defendant from seeking apportionment by last minute withdrawals against another defendant whom the plaintiff originally sued. Stated more broadly, it has been the policy of this state for over 20 years that defendants should be liable only in proportion to their degree of culpability. The proposed bill is needed to further that legislative goal.

Respectfully Submitted,



Frank H. Santoro