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Testimony of Jan Chiaretto
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In OPPOSITION to

HB6479, AAC THE MAXIMUM AMOUNT OF MONEY DAMAGES IN A SMALL CLAIMS ACTION.

Judiciary Committee
March 13, 2013

Senator Coleman, Representative Fox and Members of the Judiciary Committee.

I am honored and privileged to have the opportunity to address the Committee on this very important topic. I come before you not only as a member of the CT Bar Association's Pro Bono Committee, but also as the Executive Director of Statewide Legal Services of Connecticut, Inc. and as a career legal aid attorney. I am testifying in opposition to this bill.

Small Claims Court can be an important feature of our judicial system. At its best, Small Claims Court manifests the egalitarian ideal that people can and will be able to handle their own cases in a simple setting. Entry fees are low, the trappings of the more sophisticated and complex litigation are typically dispensed with; the rules of evidence are relaxed, practice techniques like discovery and motion practice are rarely if ever employed. Settlement is encouraged through mediation. Throughout it all the need for counsel is generally obviated. Moreover, this forum assumes that people will enjoy a favorable cost-benefit analysis. Litigants will not have to experience disproportional costs to bring or defend their cases. With a level playing field, everyone gets their fair shake and then it's over. There are no appeals.

For many, Small Claims Court brings to mind landlord- tenant disputes for back rent and security deposit returns. There are those cases to be sure. You may indeed see consumers seeking redress from a home improvement contract or used car deal gone badly. But in recent years these are not the vast majority of cases. Judicial Branch statistics tell us that for the calendar years 2011 and 2012 the number of collection cases brought in Small Claims Court were 31, 237 and 36,494 respectively. Collection cases comprise approximately 71% of all small claims filings for these two years.

We who support the rights of low and moderate income people are in fear that by raising the claim limitation from five thousand dollars to ten thousand dollars, the egalitarian ideal of the Small Claims Court will be soundly turned on its head – if that hasn't happened already. Increasingly, Small Claims Court seems to be transforming from a "people's court" to a "creditor's court" where low and moderate income people *en masse* are sued by credit card companies and third party collection agencies for delinquencies stemming from credit card debt, hospital bills, utility bills and the like.

These companies, powerful, large, and well represented by professional debt collection law firms, bring lawsuits against those who can least afford to hire a lawyer to defend their rights. They bring to the Small Claims session literally stacks of case files not subject to the scrutiny of discovery, evidentiary hearings, and a questioning debtor or even a judge. These debt collection companies further benefit from the relative low costs and informality of the court. That leaves us with a terrible irony: The emphasis on inexpensive, informal, rapid dispute resolution can work against the interests of the unrepresented debtor facing corporate lawyers who must, on behalf of their clients, get results.

Indigent debtors wind up signing agreements they need not sign, involving pay-back arrangements they cannot honor, or just don't show up, believing they already lost. The default rate in collection cases for the last two years hovers at about 66%, compared to a 30% default rate for housing, and 4% for all other non-housing/non-collection cases. Every default in a collection case is a judgment against a debtor. There is no other way to interpret that figure, unlike default dispositions for other types of cases where for instance, the consumer, or a tenant may be the victorious plaintiff.

Legal aid programs feel this impact on low income debtors every day. Statewide Legal Services of Connecticut is a legal aid hotline that opens close to 13,000 cases year, and 10% of those cases fall into the category of consumer. Of those, the majority are debt collections, many in the post-judgment default stage. Given our very low income eligibility thresholds – 125% to 150% of the federal poverty guidelines – our callers rarely have assets or income that can be attached by these debt collectors. Some of our callers speak little or no English, or cannot read or write English or have cognitive impairments. Some of them are our senior citizens too ashamed or intimidated to question the proceedings before them.

And yet, none of these things prevents the debt collectors from hailing these people into court, prosecuting what is essentially a worthless debt. These unsophisticated debtors find themselves entering into payment plans they are not, by virtue of their financial limitations, legally obligated to do. Any failure to live up to these "agreements" exposes them to further actions of contempt, attachment and bank account seizures similar to a default judgment. Some of our callers who related their experiences after court tell us they thought that they were talking to a judge, not counsel for the other side, or that they were confused about their rights, perhaps afraid they would be sent to jail. Even when we have the opportunity to counsel people before a hearing, once in court the pressure from professional debt collectors can prove more than they can bear.

One could argue that the average person might also benefit from having the claim ceiling raised, but statistics make it clear that these plaintiffs are not thronging into Small Claims Court as it stands now. It is equally unlikely that said individuals are a clamoring constituency to see the limitation go even higher. Raising the maximum claim will only open the floodgates, overburdening the Small Claims Court with even greater numbers of debt collection cases against low income and moderate income people who have neither the funds nor the understanding to adequately defend or satisfy the debt. To put it another way, it's not so much the lower maximum in Small Claims Court, but the relatively higher costs of litigation and the guarantees of due process in the Superior Courts that make the debt collection companies stop and think twice before they incur the costs of collection against an insolvent unrepresented debtor. We believe this is as it should be.

Therefore we strongly advocate for preventing a raise in the maximum claim ceiling in Small Claims Court to ten thousand dollars. We urge you not to report favorably on this bill.