Responsive Law
The Consumer's Voice in the Legal System

Testimony on: Connecticut House Bill 6479

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Testimony to the

Connecticut Joint Committee on Judiciary

February 27, 2013

Consumers for a Responsive Legal System ("Responsive Law") thanks the Committee for the opportunity to present its testimony on House Bill 6479. Responsive Law is a national nonprofit organization working to make the civil legal system more affordable, accessible and accountable to the people.

We urge the passage of the bill, increasing the dollar limit for small claims court from $5,000 to $10,000. Raising the small claims dollar limit to $10,000 will benefit thousands of ordinary residents of Connecticut and the administration of justice as a whole. The small claims court system gives ordinary people a genuine opportunity to resolve lower dollar-value disputes without the expense of a lawyer. Since it is neither practically nor economically feasible to bring such claims in Superior Court, increasing the small claims dollar limit to $10,000 will significantly expand the number of litigants realistically able to resolve their disputes.

The Average Low-Dollar Dispute Cannot Be Feasibly Resolved In Superior Court.

Bringing any kind of suit in Superior Court requires a lawyer. The average pro se plaintiff does not have the procedural knowledge necessary to even bring a civil suit, let alone to successfully litigate one. Without a lawyer, the ordinary Connecticuter is likely to see even his meritorious case dismissed on the pleadings. If his complaint survives, he must then navigate the unfamiliar intricacies of motions practice, discovery, and evidence rules. In the end, he is almost certain to be out of court before he even sees the inside of a courtroom.

Retaining a lawyer, however, is often neither simple nor cost-effective. Potential litigants with claims valued at less than $20,000 often have difficulty even finding a lawyer willing to take their case. Those who do retain one are quickly confronted with the economic reality that even if they ultimately prevail in court, they are unlikely to see anything but a fraction of their recovery, and may well find themselves in even greater debt.

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The average take-home pay in Connecticut is $48,873.[1] The average person must therefore work an entire week in order to pay for only three hours of a lawyer's time, assuming an hourly billing rate of $300. In cases that involve less than $20,000, it is unlikely that this expense can be recouped, even if the claim ultimately prevails. A plaintiff who recovered $10,000 in court would owe the *entire* $10,000 in attorney's fees after only 33 ½ billed hours. In other words, if a lawyer worked on the case for only two weeks, and billed only 3 ½ hours a day, Monday to Friday, a complete victory in court would result in the plaintiff entitled to $0 *and owing his lawyer $500*. Absent a complete victory, of course, he would owe even more. A non-prevailing plaintiff, or a plaintiff who obtains only a partial recovery, must pay the same $10,500 lawyer's bill, only with fewer resources with which to do so. Defendants face an even more dire situation. Assuming the same two-week $10,000 claim litigation, and a lawyer who works no more than 3 ½ hour days, a victorious defendant's *best outcome* is to emerge from litigation owing his lawyer $10,500. Of course, if the defendant is found at all liable he will owe even more.

Small- or medium-value litigants are rarely able to take advantage of alternative billing arrangements, such as contingency fees. The same cases that, with hourly billing, are economically unfeasible for the client are, with a contingency fee arrangement, economically unfeasible for the lawyer. Under a 30% contingency arrangement, a lawyer who spends more than *10 hours* on a $10,000 claim is working at a loss, even if completely victorious.[2] No lawyer, no matter how confident in the merits of a case, can be certain at the outset that only 10 hours will be required. Finally, the average low- to medium-value claimant is not sufficiently indigent to qualify for legal services assistance,[3] nor is his claim sufficiently exceptional to displace the default American rule that each party pays his own

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[1] U.S. Bureau of Economic Analysis, "Table SA51-53, Disposable personal income summary," http://www.bea.gov/iTable/iTable.cfm?reqid=70&isuri=1&acrdn=4, accessed February 20, 2013.

[2] Assuming a standard $300 hourly billing rate.

[3] In Connecticut, civil legal assistance is available through the consolidated Connecticut Network for Legal Aid, and generally requires an income level at or below 125% of the federal poverty limit. Connecticut Network for Legal Aid, "How to Get Help from Legal Aid," http://ctlawhelp.org/get-help, accessed February 20, 2013.

lawyer. Although, fee-shifting provisions are applicable in certain limited cases, these provisions generally require specific factors that cannot be guaranteed at the outset of litigation.[4]

The Current Small Claims Limit Is Below the National Average, and Leaves Many Litigants Without Any Legal Forum

In contrast to Superior Court, small claims courts are quick, efficient, and use simplified procedures that do not require specialized legal training to understand.[5] Claimants can litigate and obtain relief without incurring the expense of hiring a lawyer. Opponents may contend that small claims court deprives litigants of full due process protections. Litigants with claims too small to afford a lawyer, however, currently enjoy no due process whatsoever as they are economically prohibited from litigating their claims at all. The procedural protections afforded small claims litigants are, in any case, far more expansive than those reasonably available to pro se litigants in Superior Court.[6] Accordingly, for individuals and small businesses with lower-value claims, small claims courts are often the only practically and economically feasible legal forum.

Unfortunately, in Connecticut, small claims courts are limited to claims of $5,000 or less. Because many potential claims that exceed this value are still too small to be economically feasible in Superior Court, many potential claimants are trapped in a legal no-man's land, with no opportunity to have their claims adjudicated. HB 6479 frees those with claims of $10,000 or less from this no-man's land, empowering them to fairly and efficiently litigate and resolve their claims. HB 6479 will also have broad systemic benefits. Allowing more cases to be adjudicated in small claims court will reduce the burden placed on Superior Courts by pro se litigants unfamiliar with legal procedures. It will also reduce the need for donated legal

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[4] A small-value tort or contract claimant who relies on fee-shifting not only runs an enormous risk, but in the run-of-the-mill case, is likely to be disappointed and left with a multi-thousand-dollar lawyer's bill.

[5] Hearings are conducted "in such order and form and with such methods of proof . . . best suited to discover the facts and to determine the justice of the case in accordance with substantive law." 1 Conn. Prac., Super. Ct. Civ. R. § 24-23.

[6] *See, e.g., id.* at §§ 24-9 & 24-16 (describing the "untechnical" pleading requirements); § 24-20A (describing the simple discovery rules).

services, allowing more pro bono services to be directed to low-income litigants with more complex claims in Superior Court.[7]

Connecticut's current $5,000 limit is not only below the national average, but contrary to the growing trend of other states. In just the last two years, Wisconsin, Oregon, California, and Minnesota increased their limits to $10,000, and effective August of next year, Minnesota's limit will increase again to $15,000. Today, fully half of the states have limits higher than $5,000; fifteen have limits of $10,000 or more, including Pennsylvania ($12,000), Delaware ($15,000), and Tennessee ($25,000).

Increasing the Small Claims Dollar Limit Will Not Disadvantage Consumer Debtors

Opponents may charge that purchasers of consumer debt routinely exploit expedited small claims procedures to obtain illegitimate default judgments. Unscrupulous debt collectors have indeed taken advantage of some states' lax service of process requirements and inadequate procedural and evidentiary protections.[8] Connecticut, however, requires that small claims plaintiffs affirmatively verify the defendant's address,[9] as well as that service of process be made by priority, certified, or courier delivery.[10] A small claims complaint cannot be docketed, and the defendant has no obligation to answer, until a sworn verification statement, statement of service, and delivery confirmation or return receipt are filed with the court.[11] Furthermore, a default judgment cannot enter if the defendant's

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[7] *See* Testimony of Norman Janes, Vice President, Connecticut Bar Association (CBA), and Chair, CBA Pro Bono Committee, Connecticut Joint Favorable Committee Report, S.B. 1121, 4/4/2005.

[8] *See generally* Peter A. Holland, "The One Hundred Billion Dollar Problem in Small Claims Court: Robo-Signing and Lack of Proof in Debt Buyer Cases," 6 J. Bus. & Tech. L. 259 (2011); National Consumer Law Center, "The Debt Machine: How the collection industry hounds consumers and overwhelms the courts," at 12–16 (2010).

[9] This verification must be made within six months of filing suit, must confirm the accuracy of the address, and must be based on: municipal or DMV records; correspondence from the defendant with a return address; verification from the defendant himself; or the mailing of a letter to the defendant at given address, which the postal service does not return within four weeks. 1 Conn. Prac., Super. Ct. Civ. R. § 24-9.

[10] 1 Conn. Prac., Super. Ct. Civ. R. § 24-10(a).

[11] *Id.* at § 24-10(c).

address is not properly verified, or if it later becomes apparent that the defendant does not reside at the address.[12] Additional procedural protections also exist to prevent debt collectors from wrongfully engineering a default. In order to collect on a debt instrument, the plaintiff must file a sworn affidavit not only describing the instrument and attesting to ownership, but must also outline all prior owners of the debt and dates of sale.[13] Plaintiffs seeking to collect consumer debt are additionally required to file a sworn statement providing the grounds for the claim, as well as the basis upon which the plaintiff claims the statute of limitations has not expired.[14] Finally, judicial review is available for defendants who suffer an illegitimate default judgment.[15]

The Superior Court has statutory authority to expand these protections and to further specifically target unfair debt collection, should it become a problem in Connecticut small claims court.[16] A targeted debt collection statute could also address these concerns without restricting the availability of an essential legal forum. Unfair and deceptive debt collection is undoubtedly a problem, but holding down the small claims limit will do very little to address it.

In an economic climate in which four out of five people cannot afford a lawyer, additional barriers should not be placed between people and the legal system that is intended to adjudicate their disputes. Providing a lawyer to all who have legal problems may be beyond our means, but we can at least expand the availability of a forum for those who cannot afford a lawyer to fairly resolve their disputes. **On behalf of the users of the legal system, we urge the Committee to support this legislation.**

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[12] *Id.* at § 24-9.

[13] *Id.* at § 24-24(b)(1)(A).

[14] *Id.*

[15] *Cannavo Enterprises, Inc. v. Burns*, 194 Conn. 43, 47, 478 A.2d 601, 603 (1984); *see* Conn. Gen. Stat. § 52-264.

[16] Conn. Gen. Stat. § 51-15(b)(4).