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TESTIMONY OF ROBERT M. LANGER

CONCERNING RAISED BILL NO. 5561

“AN ACT CONCERNING FAIRNESS IN CONSUMER CONTRACTS”

BANKING COMMITTEE PUBLIC HEARING

MARCH 8, 2016

My name is Robert M. Langer. I am a partner in the Hartford office of the law firm, Wiggin and Dana LLP. I appear here today on my own behalf to raise concerns regarding portions of Raised Bill No. 5561.

By way of brief background, before I entered private practice in 1994, I served as an Assistant Attorney General for the Connecticut Attorney General’s Office (“AGO”) beginning in 1973. From 1980 to 1994 I was the Connecticut Assistant Attorney General in charge of the then combined Antitrust and Consumer Protection Department. I helped draft many of the amendments to the Connecticut Unfair Trade Practices Act (“CUTPA”) during my tenure with the AGO, and have litigated several of the seminal cases that define the scope of CUTPA during my career in government and in private practice. I have also taught consumer protection law for almost 40 years, and have written extensively on the subject, including a 1700 page CUTPA treatise that I co-author, which is updated on a yearly basis.

Section 3(a) of the bill deems certain provisions in consumer contracts to be “substantively” unconscionable. Section 3(b) addresses whether the contract provision will be considered enforceable by courts. Section 3(c) addresses whether the contract provision that is suspect is severable from the remainder of the contract. Importantly, Section 3(d) then states that

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any of the identified provisions in Section 3(a) will be deemed a CUTPA violation, with all the remedies private litigants are entitled to seek. CUTPA remedies include compensatory and punitive damages, attorney's fees and injunctive relief. Additionally, the Commissioner of Consumer Protection possesses administrative authority to issue cease and desist orders as well as orders of restitution of up to \$10,000. The Attorney General, at the request of the Commissioner, may institute proceedings in Superior Court, and seek injunctive relief, unlimited restitution and civil penalties of up to \$5000 per willful violation.

Here is a major concern that I see with the bill. The bill seeks to **redefine** the meaning and the scope of "unconscionability." Under current Connecticut law, unconscionability requires that the contract be **both substantively** unconscionable, i.e., the content of the contract is unreasonably favorable to one side; **and procedurally** unconscionable, i.e., one of the parties to the contract did not practically have a meaningful choice during the formation of the agreement. *See, e.g., Bender v. Bender*, 292 Conn. 696, 732 (2009).

I respectfully suggest that if the General Assembly wishes to eliminate a plaintiff's need to prove the elements of procedural unconscionability in order to invalidate a contract, this very important change in the law should be studied in great detail to fully understand the impact such a change in the law may have both on businesses that deal in consumer contracts, as well as consumers' access to goods and services in our state.

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My concern about Raised Bill No. 5561 is further elevated because the bill, in addition to altering current Connecticut unconscionability law in such a dramatic manner, will also provide that the contract provisions listed in Section (a)(1) to (a)(6) will subject the commercial party to the full array of CUTPA remedies as outlined above.

The Connecticut General Assembly has already expressly provided that eighty (80) Connecticut statutes, if violated, automatically violate CUTPA. Perhaps, at some point in the future, some of the provisions of Raised Bill No. 5561 should be added to the list. That time is not now. Further study is needed before taking such a step. Thank you.