

Business group funding plaintiffs for profit

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CHICAGO - In the ongoing battle between businesses and personal injury attorneys, at least one group of companies is pulling for the other side -- because business is better that way.

The 18 members of the American Legal Funding Association make their livings supplying pre-settlement advances to personal injury plaintiffs in need of some cash, usually as the result of a car accident or Workers' Compensation claim.

When the plaintiff recovers for his or her damages, the company is paid back the advance plus interest -- usually 1.3-2.5 times the amount of the advance.

It's a contingency agreement ruled not a loan but a non-recourse advance by former New York Attorney General and current Gov. Eliot Spitzer, who in 2005 helped cultivate the rules by which the companies abide.

"It's an emerging financial service that is becoming much more widely used," said Gary Chodes, founder and CEO of Chicago-based Oasis Legal Finance and a founding member of the ALFA. "The industry has only been around seven or eight years, and our industry's association came together at the end of the Spitzer arrangement.

"It's grown quite rapidly, as we can see from the sheer number of our transactions."

Oasis, thought to be the largest of the companies, receives 15,000 inquiries and 5,000 applications for advances per month. Chodes said the market is full of personal injury plaintiffs in need of a new car, money for medical bills or reimbursement for lost wages while they wait on their cases to be settled.

Having that money helps the plaintiff hold out for a better settlement, he said.

"When they have an injury or accident of this kind, they would often go into a financial downward spiral," Chodes said. "Many times, these individuals are living paycheck-to-paycheck, and to add an additional variable impacts their ability to work.

"The situation can often escalate by adding the problems of having a lawsuit to someone with a limited cushion financially."

So in steps Oasis, or one of its competitors, and offers an advance. Chodes says the typical advance is between \$2,000-\$5,000.

The company requires the plaintiff already have an attorney when it inspects the claim, then contacts the attorney to make sure when the recovery happens, part of it is set aside for the company. The longer the claim is outstanding, the higher the payout.

Spitzer was the first to look into the industry because most of the first companies were located in New York. When he and the other companies reached an agreement on how to regulate the industry, the most important aspect was his decision the advance did not constitute a loan.

Other basic agreements were reached -- like requiring contracts written in Spanish to customers who only speak that language -- but nothing as important as the loan decision, which has held up so far because of Spitzer's reputation in the regulatory community, Chodes said.

"(Spitzer) took an interest in it and agreed that it wasn't a loan," Chodes said. "He agreed, as we did, there should be a set of practices and rules on how this is to be done.

"Where it ended up is ALFA, itself, agreed that if anyone who was a member or wanted to become a member must agree to abide by the Spitzer rules."

Maine recently became the second state to attempt to regulate the industry, passing measures that mirror Spitzer's. They will take effect at the start of 2008.

And other states may soon start paying attention while the industry continues to grow. Chodes says most of the consumers who reach his company do so because of its large advertising campaign. More attorneys around the country are starting to refer clients to these companies, too.

This does not present a conflict of interest, Chodes said, because attorneys will not make more money if they have an agreement to refer to certain companies. Spitzer did not seem concerned with that possibility either, despite his long-running war on bid-rigging and business-steering in the insurance industry.

"Unlike the insurance brokers, where their entire livelihood is in the exchange of commissions between them and insurance companies, attorneys earn their living earning fees for litigating successfully," Chodes said. "That's not changing at all. There is no financial benefit."

The financial benefit for everyone involved remains in generating recovery. In the absence of that, Chodes said the plaintiff's debt is wiped clean.

"They keep our money and don't have to pay us back," he said.

"Our interests are aligned with consumers. When things go well, we get a nice return and the attorney gets a nice fee. Also, we're making sure the consumer is not in worse shape because they are now in debt."