

# Why it is good to gamble on justice

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The Financial Times

Published: August 8 2007

Subprime is a dirty word these days, but charging poor people a high price for cash is not always a bad thing.

Under the right circumstances, advancing money at a ruinously high rate of return can even be philanthropic - such as when a poor victim is suing a rich insurance company and needs money to pay medical bills.

So low-income plaintiffs are increasingly tapping an obscure new source of expensive cash. Litigation funding companies provide small sums to victims of car accidents or workplace injuries, in exchange for a big chunk of any proceeds from the lawsuit.

Claire Poulin says she would have lost her flat and possibly her daughter without \$2,900 from Oasis Legal Finance, one of the leading providers of litigation funding to consumers. She may end up paying back double that amount, when and if her lawsuit settles - but she does not mind.

Ms Poulin suffered soft tissue injuries to her neck and back when her vehicle was hit broadside two years ago. The injuries are of a kind that is hard to prove in a lawsuit. She lost her car and her job after the accident, had no money for doctors' bills (she could not afford America's ruinously high medical insurance premiums). And she risked losing custody of her child when she was nearly evicted from her flat.

But once she had her first settlement offer from the insurance company, she became a good risk for a litigation funding company and Oasis stepped in with cash. Ms Poulin got enough to pay her bills, keep her flat and buy time to arrange medical coverage, food stamps and welfare payments from the state of Maine, where she lives.

And, most of all, the money allowed her to fight for a higher offer from the insurance company.

Oasis is in essence gambling on the outcome of Ms Poulin's lawsuit: if she wins, it gets a return of 40 to 60 per cent a year on its money. But if she loses, Oasis gets nothing.

Unlike a subprime mortgage loan, litigation will not ruin Ms Poulin's credit: she will end up with only as much debt as she can afford to repay, because repayments will come directly from the insurance settlement. She is hoping to settle her suit for \$30,000; of that \$5,000 will go to Oasis and \$10,000 to the lawyer, but she hopes to keep most of the rest.

"I don't intend on getting rich off this settlement," she says. "All I want is enough to get back on my feet."

Gambling on justice may sound dodgy - but it is how we do things in America. Risk drives the US civil justice system. Lawyers who work for a "contingency fee" gamble their capital on lawsuits they think

they can win - in exchange for 30 to 40 per cent of the verdict or settlement. Justice is meant to be a virtuous byproduct of a process driven fundamentally by profit.

But lawyers risk only their own costs: they do not feed and clothe the plaintiff. For some victims, the cash flow crisis prompted by a road or work accident can mean financial ruin.

"Litigation is measured in months and years and that's not a comfortable time period for people living from pay cheque to pay cheque," says Gary Chodes, Oasis chief executive. Litigation funding helps level the playing field between poor plaintiffs and rich defendants, he says.

Ron Kramer, a personal injury attorney in Utah, says insurance companies sometimes drag their feet to put pressure on cash- strapped plaintiffs to accept a low offer. "Sometimes the client will just take the first offer from the insurance company because they are so desperate for cash," he says. Litigation funding helps them hang on - and, of course, helps Mr Kramer get a higher fee.

Many such plaintiffs are financially and legally unsophisticated and vulnerable to a Robin Hood pitch from a litigation funder. But as long as litigation funders clearly disclose how much they charge - and give the consumer a few days to back out if they rethink - this could turn out to be a virtuous bargain, however high the cost.

Accident victims have often turned to grandmothers or second mortgages to survive until they win a settlement. Now the market has a solution for those who don't have generous relatives or lucrative assets. Litigation funding is just another way to put profit at the service of justice.