

# Department of Financial Regulation

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## CONSUMER LITIGATION FUNDING UPDATE

## HOUSE COMMERCE & ECONOMIC DEVELOPMENT

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# Background



- A consumer litigation funding company provides money to people who have an existing legal claim and are represented by an attorney.
- The companies do this by purchasing the right to receive a portion of the injured person's settlement or judgement proceeds.
- Form of Asset Purchase
- The funding does not have to be repaid if the plaintiff's lawsuit is unsuccessful.



# Background

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- Underwriting:
  - NO Payments
  - NO Credit Check
  - NO Debt Created
  - NO Reporting on Consumer's Credit
  - NO Collections if the Consumer Loses the Case
  - NO Defined maturity date
  
- Litigation Funding Company Evaluate Probability that Claim will be Successful.



# How do consumers find out about litigation funding option?

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- Attorney Recommendation
- Internet
- Direct TV



§ 2251. (10)(A) “Net proceeds” means the amount recovered by a consumer as a result of a legal claim less costs associated with the legal claim or the underlying events giving rise to the legal claim, including:

- (i) attorney’s fees, attorneys liens, litigation costs;
- (ii) Claims or liens for related medical services....
- (iii) Claims or liens for reimbursement arising from third parties who have paid legal expenses....
- (iv) Liens for workers’ compensation benefits paid to the consumer.

*Litigation company is paid from “net proceeds” after above has been paid. If no proceeds or net proceeds are inadequate after above is paid, the consumer is not required to repay the litigation company the funded amount or charges.*

## 2016 Resulting Vermont Legislation

# How Consumer Legal Funding Works

## 1. Consumer Contact

The consumer contacts a consumer legal funding company to seek funding on a pending claim.



## 2. Verification

The company verifies that the consumer is represented by an attorney and the pending legal claim is legitimate.



## 3. Case Review

With the consumer's permission, the company reviews the potential value of the claim with the consumer's attorney. The consumer legal funding company then makes an independent funding determination. A funding is typically 5%-10% of the expected value of a claim.



## 4. Purchase Agreement

The consumer legal funding company sends a Purchase Agreement, with required Vermont disclosure, to the consumer and his/her attorney for review and approval. Both the consumer and the attorney must sign off on the Purchase Agreement.



## 5. Funding

After providing final approval, the company disperses the funds directly to the consumer for personal use.

# Settlement Outcome A

Legal Funding Company determines claim should settle for \$20,000

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Company funds consumer 10% of the value of the projected settlement amount, \$2,000

Circumstances of the case change and claim settles for \$10,000 not projected \$20,000

Attorney receives typical 30% \$3,000

Medical and other liens \$5,500

Leaving \$1,500 left which goes to the Funding Company to repay the funded amount.

Consumer has no further obligation to the funding company as they only have to repay out of the proceeds of the legal claim and no other means.

Total to the consumer is **\$2,000 / 0% Annual Interest Rate**

# Settlement Outcome B

Legal Funding Company determines claim should settle for \$20,000

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Company funds consumer 10% of the value of the projected settlement amount, \$2,000

Claim settles for projected value of \$20,000

Attorney fees 30% \$6,000

Medical and other liens \$5,500

Repayment of funding to the funding company plus fee \$3,000 (typical)\*

Total payments out of the settlement \$14,500

Leaving \$5,500 to the consumer, at time of settlement

Consumer also received \$2,000 upfront from the funding company

Total to the consumer is **\$7,500 / 50% Annual Interest Rate (\$1000 fee for \$2,000 up front benefit)**

\*This includes the \$2,000 that was given to the consumer upfront . This could occur up to 36 months from the time of funding

# Settlement Outcome C

Legal Funding Company determines claim should settle for \$20,000

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Company funds consumer 10% of the value of the projected settlement amount, \$2,000

Claim settles for \$30,000 instead

Attorney fees 30% \$9,000

Medical and other liens \$5,500

Repayment of funding to the funding company plus fee \$3,000 (typical)\*

Total payments out \$17,500

Leaving \$12,500 to the consumer at time of settlement

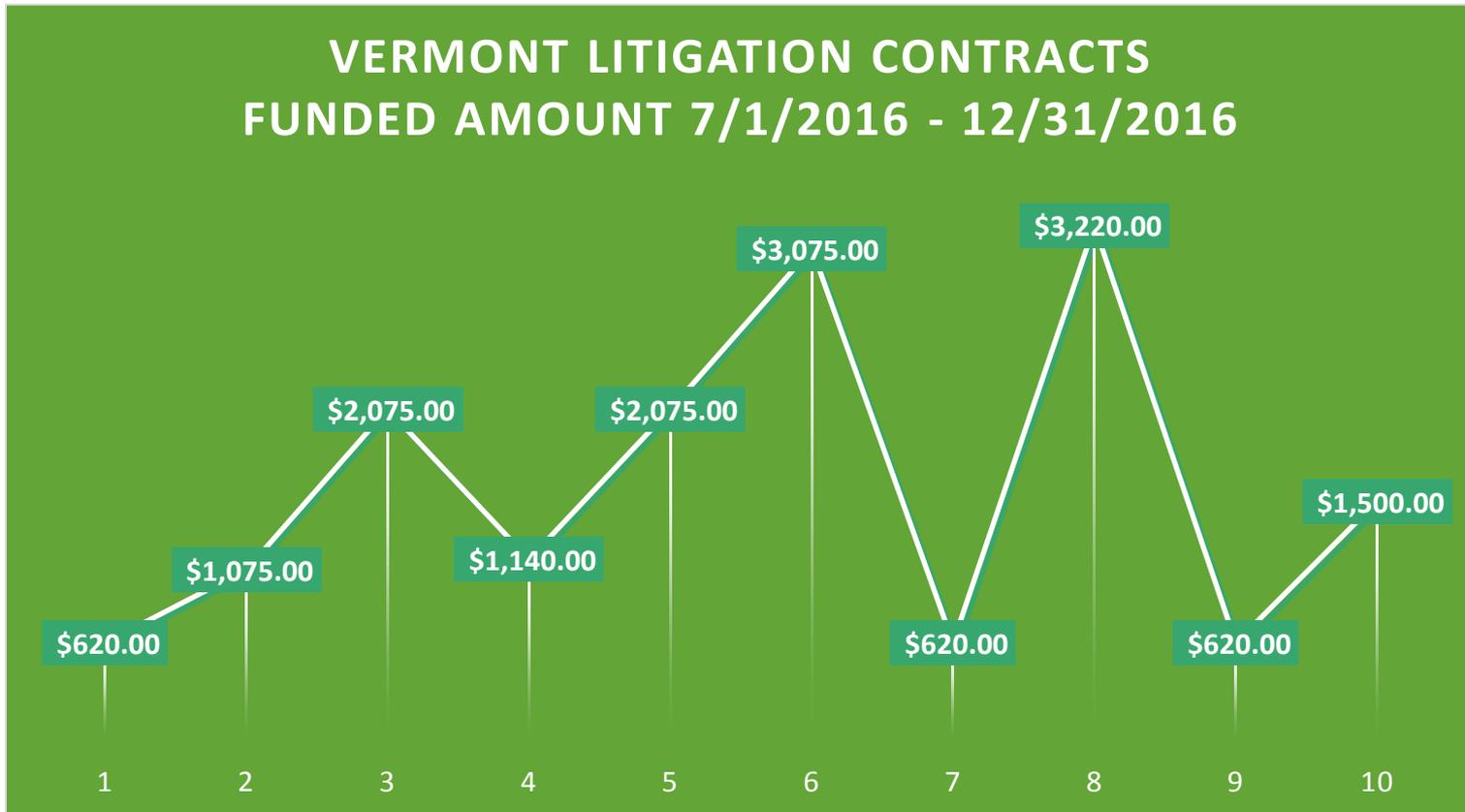
Consumer also received \$2,000 upfront from the funding company

Total to the consumer is **\$14,500 / 50% Annual Interest Rate (\$1000 fee for \$2,000 up front benefit)**

\*This includes the \$2,000 that was given to the consumer upfront . This could occur up to 36 months from the time of funding

# Vermont Data

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Consumer  
Access to  
Funds



Protecting  
Consumers

January 31, 2017 status and recommendations report

- Changing Registration from one to three year cycle
- Continue to monitor litigation funding activity in Vermont for future analysis and recommendations.

DFR & Attorney General Research &  
Recommendations

# H.182

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- Change registration from three-year cycle to annual cycle
- Fee neutral
- Language to bridge the gap for existing registrants

