

Pre-Settlement Finance

The Real Dangers and How It Can Wreck Your Accident Case

By: Frank J. Dito Jr.



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“I have written this report to educate injury victims as to the dangers of pre-settlement finance loans. As I have seen many clients who have been hurt by the outrageous fees that these companies charge...”

Injured clients are continually bombarded with radio, TV and newspaper ads promoting the “benefits” of financing your anticipated recovery in your lawsuit. The ads proclaim “Why wait for your money?” or “make no payments and have everything forgiven if the claim does not result in you getting money”, “why wait?” If, as most seriously injured clients, you are struggling financially, this all sounds like such a wonderful deal. You most likely can’t work and are unable to afford your bills. You may be unlikely to get a regular loan because of your credit but, surprise!, there is no credit check for a pre-settlement loan. This sounds like the answer to your needs - a deal too good to be true. Well, guess what, it is too good to be true!

I have written this report to educate injury victims as to the dangers of pre-settlement finance loans. As I have seen many clients who have been hurt by the outrageous fees that these companies charge, I have amended my retainer agreement to include my right to terminate my services if the client applies for a pre-settlement loan. In most cases, the loan creates a disincentive to settle your case, because you may have to pay the entire amount of your settlement to the pre-settlement finance company.

A pre-settlement finance loan is not really a loan. It can’t be called a loan because the interest rate is so high that the “loan” would be

illegal in all states. Instead, these companies are “advancing” you a portion of your anticipated settlement, without ever knowing what the case will actually settle for or even when. It’s known as non-recourse funding, which means that if you lose your lawsuit, you won’t have to repay the cash advance. If your settlement or verdict is smaller than anticipated, you would never have to pay back more than your share of the settlement or verdict. Since there is such risk to making this advance, you can imagine that the interest rates are so high.

The way pre-settlement finance works is that an injured person contacts one of the many companies that offer pre-settlement lawsuit funding and asks for a loan. The pre-settlement finance company then contacts your lawyer who is handling your case and asks them about how your accident happened and what your injuries are. From the information that your lawyer provides, the pre-settlement loan company will estimate how much your case may settle for or how much a jury may award you and offer you a cash advance based upon that estimate. The fee the companies charge is called a “service charge” which accrues each month that the loan is outstanding. When the case settles, or the defendant pays after losing in court, your attorney repays the loan and associated fees to the finance company based upon the agreement that you signed when you took the loan. Technically, as the contract is not to repay the amount received but is instead a promise to pay a portion of any eventual verdict

or settlement, these funds are not loans. No matter what happens, a person who receives a pre-settlement funding keeps the full amount of the loan.

The amount that you may receive varies upon your case value. Most companies offer pre-settlement funding loans between \$500 and \$25,000 and a few offer substantially more money. Fees also vary by company but most will charge a monthly fee, known as a “usage fee”, for each month from when you receive the loan until its is repaid, at rates as high as **6% per month**. Some companies charge a flat rat instead of monthly interest.

Faced with these high loans, many clients have asked me to loan them money instead of going to a pre-settlement company. I regretfully inform them that to do so would be an ethical violation. The New York State bar association recognizes that when a lawyer takes a financial interest in the case apart from the retainer, a conflict of interest is created that may interfere with the attorney-client relationship. The lawyer may look to get his loan repaid and suggest a settlement even if the settlement may not be in your best interests.

When pre-settlement financing first became popular, many attorneys didn't want to sign any contract with a settlement financing company feeling that the loans were illegal. Some states have gone so far

as to prohibit lawyers from signing pre-settlement liens. As a result, companies require that the client sign the contract, and that the attorney sign an acknowledgement of the client's instruction that the loan and associated fees be repaid from any eventual verdict or settlement.

What many clients don't realize is that lawsuits can take a very long time. Sometimes, cases drag on for years through no fault of the client or the attorney. While cases are pending, the injured person has to have enough money to get by. If the injured person is unable to work, has reduced income, or has expenses associated with their medical care or disability, it may not be possible to wait for a settlement or a verdict but, except in the cases with severe injuries, clients should look elsewhere for funding.

Besides the length of time that your lawsuit may take to settle, the money "advanced" to you is based upon an early diagnosis of your injury. Sometimes, the initial diagnosis may be a "probable" fracture or even a possible torn meniscus to your knee. After additional x-rays or MRI's, the "probable" fracture turns out not to be the case or the torn ligament is only a sprain. The "loan" that you took out was based on a fracture or a torn ligament. Now that's the case, you won't get as much money from your settlement as was estimated and most likely your entire settlement may go towards repaying the loan.

A major problem occurs when a pre-settlement loan is taken out at the very beginning of your case. Besides the value estimate, the case may take a very long time to resolve. Some cases in Staten Island may take well over three (3) years to reach a jury. During that time that your lawsuit is pending, “interest”, titled a “usage fee”, is being compounded monthly at rates of 3.5% - 6%!

I write about a recent example of a client who took a “loan” soon after their accident. I was contacted by a pre-settlement loan company and told that my client contacted them and asked for a loan. I was asked about the information that I had on the case, including whether an insurance company had acknowledged the claim and copies of any medical records that I had received. Based up the medical records, the pre-settlement company decided that they would loan the client \$3,000.00. On top of the \$3,000.00, the company included a \$250.00 “Processing Fee”. The client received \$3,000.00 but instantly owed \$3,250.00. In one month, that number climbed to \$3,363.75. The rest went on as follows:

90 days - \$3,603.33;
6 Months - \$3,995.08;
9 Months - \$4,429.42;
12 months - \$4,910.97;
18 months - \$6,036.84;
24 months - \$7,420.82;
30 months - \$9,122.08;
36 months - \$11,213.36.

The case received a settlement offer of \$17,500.00, just shy of three (3) years after the accident. The offer was fair value for the client's injuries. After legal fees, expenses and paying back the loan, the client would receive a little over \$200.00! Needless to say, the case did not settle but continued on for months to come, eventually settling for little more money but only after additional expenses were incurred in pursuing the case and interest on the loan continued to accrue at an alarming rate. The client was being charged a usage fee of 3.5% per month, which amounts to an astonishing **annual percentage rate of over 51%! Even the highest credit cards won't get much above 21% - the "loan" is more than double that rate.**

Pre-settlement lawsuit funding should be considered as a last resort, after all other options are exhausted. Given the exorbitant fees involved in pre-settlement funding, it is important for injured people to consider any available alternatives. This type of financing should be looked upon as a last resort. If you decide to obtain a pre-settlement loan, you should check with several companies, in order to obtain the most favorable terms. If your injuries are not very serious, I recommend that you should avoid pre-settlement funding for your case.

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With a legacy of leadership, excellence and reliability, the attorneys at DDD&I understand that effective representation starts with listening and active communications with their clients. Only after extensive communication with a client to evaluate the client's potential case and to discuss the legal process and available options will the attorneys at DDD&I accept engagement in a new legal matter.

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About the Author

Frank J. Dito Jr., Esq.

Frank J. Dito, Jr. is a partner in the Staten Island, New York law firm of Decker, Decker, Dito & Internicola, LLP where he practices Personal injury Law. For over 11 years, Frank has been helping people who have been injured in car, truck and motorcycle accidents. He has experience negotiating with insurance companies and trying car accident injury and death cases. Frank also helps people who have been injured in slips and falls, by dangerous products, and because of medical malpractice. Frank also practices in the field of workers' compensation, helping injured workers recover financial and medical benefits for the work related injuries.

Frank is a member of the New York State Trial Lawyers Institute and the Association of Trial Lawyers of America, an organization devoted to protecting individual rights and preserving the civil jury system in America. Frank is a member of the Million Dollar Advocates Forum, an exclusive group of trial attorneys that have achieved a verdict, award or settlement in the amount of One Million Dollars or more.

Mr. Dito is licensed to practice law and regularly handles cases throughout New York State, practicing extensively in Staten Island and Brooklyn. He is a member of the Richmond County and Brooklyn Bar Associations.



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