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March 18, 2009

Re: HB 09-1305

Dear Members of the House Judiciary Committee:

The bill you are considering today is very important to me. Because of the present cost bond law, I may not be able to use the court system to recover anything for what I believe others negligently caused me to suffer. I filed a lawsuit against the people who caused what happened to me, but the court recently dismissed that lawsuit because I can't afford to post the \$50,000 cost bond it ordered me to pay.

In 2005, I broke my arm in an accident at work. I trusted my doctors and healthcare providers to treat my injury correctly, but instead I ended up having my dominant left arm and hand amputated below the elbow.

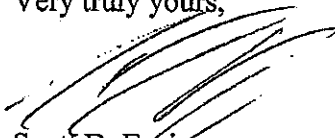
Before my accident and the negligent medical treatment, I worked as car painter in an auto body shop in Leadville. I wasn't rich, but I got by. Today, I can no longer do the work that I used to love. Instead, I work as a parts clerk behind a counter at a car dealership in Silverthorne. Because I was completely out of work for so long and because I no longer make even as much money as I did at the body shop, my financial condition is now terrible. The home I bought with my girlfriend about a week before my injury has almost been foreclosed on, and I don't know how long I will be able to continue making payments on it. I have more debts than assets, and my monthly income does not cover my monthly expenses. I am current on my child support payments, and this will continue to be my first priority.

I filed my lawsuit in June 2007. On March 10, 2009, almost 2 years after filing the lawsuit, the court granted a motion from one of the defendants requiring me to post a cost bond of \$50,000. I certainly don't have \$50,000 that I can put up. I contacted three bonding companies to write the bond, but I had no luck.

All I really want out of my lawsuit is to start my life over. To start my life over, I will need money, but because I don't have money, I don't even have the opportunity to use the courts to hold anyone responsible for causing my situation. For the responsible people to pay a fair amount of damages for the loss of my arm is my only hope.

I hope that you will take care of this completely unfair situation, even if the changed law won't apply to my case.

Very truly yours,



Scott D. Espinoza



Examples of Cost Bond Requirements Denying Access to the Courts in Colorado

In the Fall of 2007, a Colorado court ordered a resident plaintiff to post a \$30,000 cost bond. The plaintiff had a negative net worth and his only assets were in a college fund for his two college-aged children. He was required to liquidate the college fund or face dismissal of the lawsuit, which was for the wrongful death of his wife. His wife had earned more than 50 percent of the families' income and it was her death, allegedly caused by the defendant, that caused their financial crisis. Because there was no guarantee the plaintiff would win his lawsuit and because he had to choose between pursuit of the suit, which if he won would replace some of his wife's income, and sending his daughter to college, he agreed to drop the suit.

A 28-year old Colorado man had to have his arm amputated allegedly because of the actions of the defendant. Without an arm, he could no longer work as a trained autobody repairman and painter so he was forced to take a lower-paying job. The injured man has two children and pays child support in excess of what has been ordered. His current monthly expenses exceed his income, and his liabilities are in excess of his assets. The defense in his case has requested a \$50,000 cost bond, and the court is still considering the request. With the help of his attorney he has met with several bonding agencies. None will give him a \$50,000 cost bond, because he does not have sufficient assets to cover the bond. If the court imposes a cost bond, which he cannot obtain, his suit will be dismissed before he ever has a chance to make his case to a jury.

Jane Doe worked for a cab company in Denver. She was injured in a car accident that was not her fault. After the car accident, she lost her job which forced her to move in with her nephew in Houston. The defense requested a cost bond of \$5,000. Ms. Doe filed an affidavit with the court proving that she was indigent and could not afford to purchase a cost bond as she was unemployed and had no savings or assets. Nonetheless, the court granted the request and required Ms. Doe to post a \$5,000 bond or face dismissal of her lawsuit. Because no one would sell her a cost bond nor could she have afforded to purchase one, she settled the case for far less than the cost of her injuries.

Developer XYZ (plaintiff) hired a general contractor to run and build a commercial construction project. The general contractor (defendant) allegedly exercised poor oversight, used improper construction techniques and violated the building code in numerous ways. Because the general contractor left the project in an uninhabitable and incomplete state, Developer XYZ lost its line of credit. The project is an eyesore and stands unfinished. The defendant requested a cost bond of \$100,000. Developer XYZ was unable to obtain such a large bond as it had no assets other than its claim against the contractors for shoddy workmanship. Rather than face dismissal of its claim, Developer XYZ was forced to accept a low settlement offer.

A \$20,000 cost bond was requested of a woman who filed a lawsuit to get compensation for her injuries when she was hit by someone who ran a stop sign. The woman had lived in Colorado for six years. She was a legal resident with a Spanish surname. In the motion for the cost bond, the defense accused the plaintiff of being an illegal alien and claimed, falsely, that the cost bond was necessary because she was in the country illegally. While the judge denied the request for a cost bond in this case, the motion itself consumed court resources and was reportedly one of several intimidation tactics used by the defense.

A twelve year veteran of the Air Force, who was living and working in Colorado Springs as a civilian counter terrorism Intelligence Analyst for the Department of Defense was injured by a dentist. Before litigation commenced she was reposted to Washington DC, but maintained her residence at the home she owned in Colorado Springs with intent to return to Colorado after her posting in DC ended. The defendant requested a cost bond four times the victim's bills and the court granted a bond, albeit for a lower amount. This case is pending.