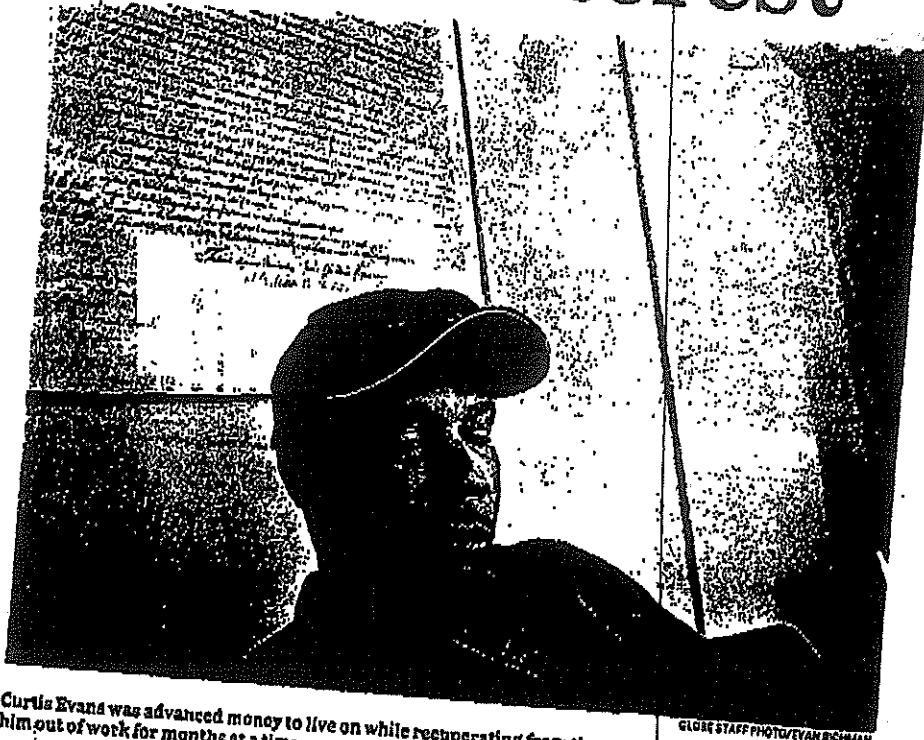


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With interest



Curtis Evans was advanced money to live on while recuperating from three shoulder surgeries that kept him out of work for months at a time.

GLOBE STAFF PHOTO/EVAN RICHMAN

Accident victims get money from 'advance funders'

By Diane E. Lewis
GLOBE STAFF

Cash-strapped accident victims with injury claims are turning to a growing number of companies that promise to advance money against a legal settlement or judgment before it is awarded in return for a piece of the courtroom victory. Called legal advance funders, the companies advance money to plaintiffs who need help meeting medical and personal expenses while their cases are in litigation. In return, the firms charge monthly interest rates ranging from 2 to 20 percent on their cash advances. Payment is not due until the case is settled.

From a handful in 1997, their

numbers have grown to about 100 today, say legal specialists, who attribute the industry's growth in part to the lucrative mega-settlements and judgments awarded in civil cases over the past few years.

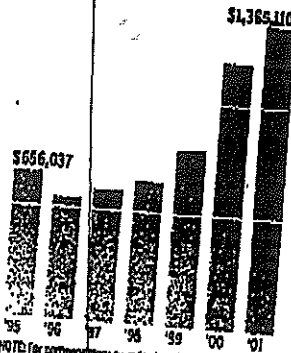
"With judgments having gotten as big as they are, this is an aggressive business practice that people have invented," said George Kuhlman, ethics counsel for the American Bar Association. He said that because many states — including Massachusetts — do not prohibit the practice, some companies have said "Hey, I see a pot of gold here."

In 2001, the mean amount received by a personal injury plaintiff for pain and suffering, emotional distress, loss of wages, or medical expenses was about \$1.3 million, up from \$666,037 in 1995, according to Jury Verdict Research Inc., a Pennsylvania firm that tracks verdicts nationwide.

The emergence of these firms UNLENDER, Page C8

Rising injury awards

The mean jury award in personal injury cases doubled from 1995 to 2001, the latest year for which data were available.



NOTE: For comparative awards given for emotional distress, physical pain and suffering, medical expenses, and wages lost only; \$200,000-dollar verdicts were excluded.

SOURCE: Jury Verdict Research Inc.

GLOBE STAFF PHOTO/EVAN RICHMAN

ADVANCE funders' reported on rise

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dercores the financial difficulties accident victims face between the time of their injuries and the date of their trial. During a period of sluggish economic growth and layoffs, injured workers may find it even more difficult to get by.

"No one pays much attention to how a person who has been injured is going to live while waiting for a case to go to trial," said Boston Bar Association Ethics Committee chairman Gerry Cohen. "The legal system tends to put people who cannot afford to wait for their money at a disadvantage."

Industry supporters say the cash advances give plaintiffs the ability to take on big insurers and corporations while waiting for a court date. When money is available to cover living and medical expenses, litigants who are out of work and recuperating from injuries are less likely to drop a lawsuit or accept a smaller settlement.

Critics contend the firms operate in a legal gray area that lets them skirt anti-usury laws designed to limit the amount of interest charged on consumer loans. The firms counter that they are not lenders and not necessarily governed by statutes designed to protect consumers from high-risk loans.

"We are not providing loans," said James Giordano, president of Cambridge Management Group LLC of New Jersey, also known as CMG Cash. He said the advance is not a loan because there are no monthly payments, no specific time when the money is due and, if the plaintiff loses the case, the funding company loses its money. Interest accrues monthly but is not tallied until the case is settled.

That was the situation with Curtis Evans, 49, of Everett. Evans, a Big Dig dredger and crane operator, filed a civil suit in 2000



Attorney Andrew Fischer (left) and Curtis Evans, who was advanced \$15,000 by LawCash at 3.9 percent interest per month. Evans lost his case and LawCash lost the money it advanced him.

GLOBE STAFF PHOTO/EVAN RICHMAN

against the city of Chelsea and its police department alleging that he was beaten and wrongfully charged with assault and other crimes after police pulled him over in 1996. While awaiting trial in Suffolk Superior Court, Evans underwent three shoulder surgeries, each time taking three to four months off work to recuperate. Faced with more than \$40,000 in medical bills, he contacted New York-based LawCash this summer. Two weeks before the trial, the company advanced him \$15,000, at 3.9 percent interest per month,

or an annual percentage rate of 58.2 percent.

Last month, Evans lost his case — and LawCash lost \$15,000 it had advanced him. No interest had been charged because the case was resolved shortly after Evans received the funds.

Dennis Shields, chief executive and president of LawCash, said 50 percent of all personal injury claimants do not prevail in court. "That's what happens," said Shields. "There's a lot of risk in this business."

Legal specialists say that so-called maintenance laws, which

prevent lawyers from paying clients' personal expenses while awaiting trial, also have helped boost legal advance funding by providing needy plaintiffs with a way to obtain cash. The easing of champerty laws, which prevent third parties from investing in lawsuits in return for future gains, also have helped.

Most states, including Massachusetts, have no laws regulating this kind of funding. In 1997, the Massachusetts Supreme Court struck down the state's champerty law. Attorney Andrew Savage, founder of Salem-based LawFunds, a large legal advance firm, said that decision opened the door to companies like his. However, the state hasn't been flooded by these firms; Savage appears to be among a handful operating in this state.

The industry has caught the eye of the BBA's Cohen, who plans to examine existing state statutes and ethical codes to determine whether standards should be developed for the association's members and whether the practice could violate plaintiff's rights.

Consumer activist Bertha Lew-

is, director of ACORN's office in Brooklyn's Flatbush-Crown Heights section, has mixed feelings about the companies. ACORN's website says it is the nation's largest community organization of low- and moderate-income families. Lewis started referring clients of her consumer group to LawCash after other firms targeted local residents, offering cash advances, with monthly rates of 15 to 25 percent.

"We were hearing about our members getting rooked for 25 percent a month," she said. "It was like loan sharking, and people had to pay. It had a wild, wild west atmosphere to it."

Legal advance firms vary in size and approach. LawFunds, for instance, advertises in law journals and has a staff of lawyers who analyze cases to determine whether they are viable. It has a portfolio of cases valued at \$25 million, and charges a flat fee of 25 percent or more, depending on the case.

Rival LawCash advances as much as 10 percent of the value of a case up to \$100,000, a spokesman said. The two-year-old company projects a case portfolio of \$25 to \$30 million in 2004, up from \$3 million in 2001. It relies on paralegals or employees from the insurance industry to help select cases. They go through medical records, court transcripts, and insurance data to determine how much and whether to advance funds to a plaintiff.

Harvey Hirschfeld, executive vice president of LawCash, said the average disposition of a civil lawsuit case is three years. The company will not advance funds until the client is within a year or 15 months of settlement or trial.

But deciding whether to take a

case is as much about feel as anything else, he said. "It's taking nuances into account in individual cases. Where is the accident? What is the jury pool there? It really depends on the jury pool."

Leah Eselgroth feels confident that a jury will be sympathetic to her case. The 50-year-old Stoughton woman has applied to LawCash for a \$100,000 cash advance, at 3 percent interest per month. Jobless and strapped with over \$200,000 in medical bills, she is among 3,000 plaintiffs nationwide who have filed lawsuits against contractors at the Hanford Nuclear Reservation in Washington state. The lawsuits allege the air and water surrounding the site was poisoned by radioactive leaks. Eselgroth lived near the site in the early 1980s.

She said that four years ago, she broke out in lesions and lost her skin and her hair. She was hospitalized five times between 1999 and 2001 and almost died. Poor health cost her a job and her home. Now, she rents a room and collects \$806 per month in disability payments from Social Security. Her lawsuit, filed two years ago, is set for trial in 2005.

"When you are financially destitute and you do not have medical insurance, you have to think creatively," said Eselgroth. "So, when I became aware of personal injury funding I began to look into it. So, I have no hesitation about paying 3 percent per month, if that is what they decide to charge. Hopefully, I will pass muster."

Scott Bernard Nelson contributed to this article. Diane E. Lewis can be reached at dlewis@globe.com.