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TO: House Financial Institutions Committee

FROM: Deborah B. McIlhenny, Esq.
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RE: HB 2793

DATE: 30 April 2012

Chairman Knox and Members of the Committee:

On March 23, the Kansas Court of Appeals issued an opinion in *Consumer Law Associates, LLC, v. Stork,* No. 106,115, that includes the following ruling:

> Individuals who are licensed to practice law in Kansas are exempt from regulation by the Office of Kansas State Bank Commissioner. The statutory exemption under K.S.A. 50-1116(b) does not apply to a limited liability company or any other entity that is not licensed to practice law by the Kansas Supreme Court.

The implication of the ruling is that law firms that represent consumers in bankruptcy, personal injury, or compromise of debts, must register with the State Banking Commissioner and be subject to the limitations set out in the Kansas Credit Services Organization Act ("KCSOA"). Such a requirement not only would usurp the Kansas Supreme Court's exclusive jurisdiction over attorneys and their firms, it would frustrate the legal system, as the following points indicate:

(1) I am convinced that the Legislature never intended for the KCSOA registration requirement and limitations to apply to law *firms*. The limitations on fees alone would inhibit representation of clients injured as a result of intentional or negligent acts. Those clients typically cannot afford to obtain representation on an hourly fee basis and, therefore, usually hire counsel on a contingency fee. Under that fee arrangement, the client pays the lawyer from proceeds of settlement or judgment, if lawyer wins the case. Typically, the attorney attempts to negotiate settlements with her client's medical providers. That aspect of the representation may fall within the KCSOA under the *Stork* interpretation of K.S.A. 50-1116(b). If so, then per the KCSOA, fees charged to "consumers" are limited to a one-time consultation fee not to exceed $50 plus an additional fee of $20 per month or $5 per month per creditor. That arrangement makes no sense and, even if it made sense, it simply is unworkable for a law firm. Firms never would provide that service for the client, to the detriment of the client and the firm.

(2) As well, the Legislature could not have intended the *Stork* court's interpretation because it creates an absurd result regarding the application of other statutes. For example, regarding negotiating, protecting, and collecting PIP liens. To avoid committing malpractice, personal injury counsel *and their firms*, be they partnerships, LLCs, PCs, or sole proprietorships, must negotiate the liens, and then protect and collect them. For that effort they receive attorneys fees by statute. The Court has done so since 1977 pursuant to K.S.A. 40-3113a(e), in which "the *court* shall fix attorney fees which shall be paid proportionately by the insurer or self-insurer and the injured person, such person's dependents or personal representatives *in the amounts determined by the court*." (Emphasis added.) That amount ranges from 25-33% of the amount of the lien collected, a far cry greater than the $50+ under the KCSOA, which became law in 2004. *See Potts v. Goss*, 233 Kan. 116 (1983)(awarding attorney fee equaling one-third of lien amount for attorney's effort to protect and collect the lien for PIP carrier's benefit). If K.S.A. 50-1116(b) does not exempt the *firms*, then the KCSOA would apply in direct conflict with the older, well-respected, oft-applied, and very practical K.S.A. 40-3113a(e). Surely the Legislature did not so intend.

(3) The plain language of the statute more than suggests that the Legislature meant to exempt the *firms*, not just the lawyers who work there. The exemption provision in K.S.A. 50-1116(b) uses the word "person," which the Legislature defined very broadly in K.S.A. 50-1117(f) to include corporations, partnerships, or other entities, "however organized." That language includes *firms*, be they LLCs, PCs, Associations, or Partnerships. Yet, the *Stork* court has decided that the Legislature intended far far less than what the Legislature actually said.

Thus, I respectfully request that the Legislature clarify that its intent was to exempt both lawyers and their law *firms* from the KCSOA.