On August 18, 2026, Martin, Magnuson, McCarthy & Kenney filed an amicus brief on behalf of MassDLA in Cross v. BeFree Enterprises LLC d/b/a The Little Gym of West Boylston (No. SJC-13933). In Cross, the SJC will consider whether the motion judge erred in allowing defendant's motion for summary judgment, including whether the judge erred in concluding that G. L. c. 93, §§ 78 and 80, which apply to contracts for health club services, did not preclude enforcement of a waiver of liability signed by the minor plaintiff's father. Cross involves a child whose father voluntarily signed a waiver so the child could participate in a developmental gymnastics class. The child, while participating in the class, separated from the group and injured her arm during a fall. Plaintiff alleges the waiver signed was invalid under the Health Club Services Contract Act ("HCSCA"). Our motion is in support of the defendant-appellee and, thus, answering the certified question "no."

The amicus brief asserts three main arguments. First, that plaintiff-appellant's claim for tort liability is impermissible under the HCSCA because the legislative history and relative placement of the statute demonstrate it was enacted solely as a source of consumer financial protection. Support for this argument comes from preceding legislative proposals, contemporaneous legislative reports, and the subsequent treatment of the statute, as well as the location of the statute in Chapter 93 of the Mass. Gen. Laws which largely regulates trade and other aspects of business operation. Second, the amicus brief asserts that plaintiff-appellant's interpretation of the HCSCA does not comport with Massachusetts' well-settled, longstanding protection of the freedom to contract and would negatively impact public policy. An abundance of Massachusetts case law provides the basis of this argument which largely rests on historical treatment of liability releases by the state. Additionally, interpretation of analogous statutes from other jurisdictions were considered as persuasive and informative. Public policy considerations were woven throughout the second argument, including infringing on people's right to allocate risk and the potential chilling effect on small businesses. Finally, the brief asserts that even if tort liability is available under the HCSCA, the waiver at issue in Cross does not violate the statute. This argument is supported by two key points: (1) evaluation of the waiver provision in the context of the complete statute demonstrates that the statute seeks to regulate consumer financial abuse, not tort liability, and (2) The Little Gym is not a health club the legislature intended the HCSCA regulate, rather it is a hybrid youth enrichment program. Through an evaluation of the text, legislative history, judicial history, and relative location of the HCSCA, the amicus brief ultimately argues that there is irrefutable evidence the HCSCA does not apply to tort liability and was solely enacted to protect consumers from abusive financial practices by health clubs.

MassDLA's amicus brief provides the Court with persuasive arguments in support of defendant-appellee and we are hopeful it will encourage a defense verdict. Oral arguments in Cross will take place before the SJC on September 9, 2026.