SCHALLER, J., concurring in part and dissenting in part. Although I agree with part I of the majority opinion, I respectfully disagree with part II. The plaintiff, Aaron Manor, Inc., claimed in its breach of contract action that the defendant, Janet A. Irving, was the party responsible for payments for the care of its patient, her late father, William Ammon. The defendant successfully defended the action. In my view, the defendant was a "consumer" entitled to recover attorney's fees from the plaintiff under General Statutes § 42-150bb.[1] Accordingly, I dissent from part II in which the majority concludes that the defendant was not entitled to recover such fees.

The plaintiff, a nursing facility that provides medical care and services, incurred expenses providing such services to Ammon. The record indicates that on the day he was admitted to the facility, "confusion" prevented him from signing the forms necessary for admission. In order to gain him admission to the facility, his daughter, the defendant, signed a number of documents, including the admission agreement, as the "responsible party." As found by the trial court, the defendant informed the plaintiff that she would be the contact person for matters concerning the patient's personal care, and that her brother, William P. Ammon, Jr. (Ammon, Jr.), would be responsible for the patient's financial matters. The admitting record form lists Ammon, Jr., as the person responsible for the account. Ammon, Jr., held a power of attorney for his father and managed his financial affairs, including paying his bills from his bank account. The plaintiff mailed monthly bills for the services provided to the patient directly to Ammon, Jr.

The plaintiff provided care and services for which it was not paid by either medicare or the patient's insurance carrier. The plaintiff, a commercial party, commenced the present action against the defendant, alleging in its complaint that she had agreed, by signing the admission agreement, to apply her father's income and assets to pay for such care and services if she had control of or access to her father's income or assets. The plaintiff alleged that she had such control or access but had failed to pay the outstanding balance for the services. It alleged further that, because of the defendant's breach of the admission agreement, it was entitled to interest and reasonable attorney's fees as provided in the agreement.

The defendant successfully defended this breach of contract action based on the plaintiff's failure to prove that she had the requisite control of or access to her father's income or assets. The defendant requested the court to award her attorney's fees pursuant to § 42-

150bb and Practice Book § 11-21, which the court granted in the amount of $36,000.[2]

Section 42-150bb provides that a "consumer" may recover attorney's fees against a commercial party when the consumer successfully defends an action based upon a contract "in which the money, property or service which is the subject of the transaction is primarily for personal, family or household purposes" if the contract provides for attorney's fees for the commercial party. General Statutes § 42-150bb. Section 42-150bb provides in relevant part that "[f]or the purposes of this section . . . 'consumer' means the buyer, debtor, lessee or personal representative of any of them. . . ." As noted by the majority, the issue in the present appeal is whether the defendant was the "personal representative" of her father, and therefore, a "consumer" entitled to avail herself of the statute.[3]

Whether the defendant is a "consumer" pursuant to the statute presents an issue of statutory construction, which is "a [question] of law, over which [this court exercises] plenary review." (Internal quotation marks omitted.) *Saunders* v. *Firtel*, 293 Conn. 515, 525, 978 A.2d 487 (2009).

As the majority points out, the statute is in derogation of the common law American rule that attorney's fees and ordinary expenses and burdens of litigation are not awarded to the successful party absent a contractual or statutory exception. *ACMAT Corp.* v. *Greater New York Mutual Ins. Co.*, 282 Conn. 576, 582, 923 A.2d 697 (2007). While there are few exceptions to this rule, it does not necessarily follow that the statute must be construed narrowly, as the majority determines. "The law expects parties to bear their own litigation expenses, *except* where the legislature has dictated otherwise by way of statute. . . . Section 42-150bb clearly authorizes an award of attorney's fees to the consumer who successfully prosecutes or defends an action or a counterclaim on a consumer contract or lease." (Citations omitted; emphasis added; internal quotation marks omitted.) *Traystman, Coric & Keramidas, P.C.* v. *Daigle*, 282 Conn. 418, 429, 922 A.2d 1056 (2007).

The purpose of § 42-150bb is to make attorney's fees clauses reciprocal in order to bring parity between a commercial party and a consumer. *Rizzo Pool Co.* v. *Del Grosso*, 240 Conn. 58, 75, 689 A.2d 1097 (1997). In *Rizzo Pool Co.*, our Supreme Court examined the legislative history of the statute, noting that "[i]n 1979, the Connecticut legislature enacted No. 79-453 of the 1979 Public Acts, entitled 'An Act Concerning Attorney's Fee Clauses in Consumer Contracts.' " Id., 74.[4] The legislative emphasis on reciprocity, equity, fairness and consumer protection is evident throughout the debate on the bill. For example, speaking on behalf of the bill, Senator Alfred Santaniello, Jr., remarked: "This bill makes attorney's fee clauses reciprocal." (Internal quo-

tation marks omitted.) Id., 75. Representative Richard D. Tulisano commented: "What [the statute] does is give some *equity* to the situation." (Emphasis added; internal quotation marks omitted.) Id. In response to a remark in opposition to the bill, in which the opponent argued that the bill took away the parties' freedom of contract, Senator Salvatore C. DePiano stated: "I think that most of the time these consumer contracts are drawn up by the creditor and under the circumstances many of the consumers are not aware of [the attorney's fees] provision in the [contract], and therefore, I think [the consumers] should be protected because . . . if a creditor brings a lawsuit . . . had he been successful, he would have collected attorney's fees. I think it's only fair that we legislate that the consumer can get the same protection and therefore be entitled [to] attorney's fees [should the consumer prevail]. I think it's a good consumer bill and I urge its passage . . . ." 22 S. Proc., Pt. 13, 1979 Sess., pp. 4276–77.

I conclude that, as a consumer protection statute, § 42-150bb has a remedial purpose that should be *interpreted broadly* in favor of those persons whom the legislature intended to protect. See, e.g., *Rizzo Pool Co.* v. *Del Grosso*, 232 Conn. 666, 678, 657 A.2d 1087 (1995) (noting that "[a]s remedial legislation [the Home Improvement Act, General Statutes § 20-418 et seq.] must be afforded a liberal construction in favor of those whom the legislature intended to benefit"); *Cagiva North America, Inc.* v. *Schenk*, 239 Conn. 1, 14, 680 A.2d 964 (1996) (noting that "the Lemon Law [General Statutes §§ 42-179 through 42-186] is a remedial statute that ought to be read broadly in favor of those consumers whom the law is designed to protect").

In the present case, the issue is whether the defendant is a "personal representative" of the buyer. As noted by the majority, the term "personal representative" is not defined in § 42-150bb but is commonly used in various statutes to refer to a person who acts as a custodian or guardian of a person who lacks capacity or one with authority to act on behalf of a decedent. In this instance, however, unlike such statutes as the Uniform Transfer on Death Security Registration Act[5] and the Connecticut Uniform Transfers to Minors Act,[6] the legislature chose not to define the term in a way that limited its application to legal representatives.[7] Evidence of the defendant's authority to make decisions of a personal and medical nature on the patient's behalf was presented to the court by the plaintiff, itself. Before her father could be admitted to the facility, the defendant was required to sign various forms on his behalf as the representative of her father with respect to certain matters affecting her father's well-being and other interests. For example, she was required to sign a document concerning which "heroic measures" could be administered to him, in which she declined cardiopulmonary resuscitation. She was required to sign other documents

regarding his medical care and treatment, including an organ and tissue donation form, an admission screening form for medicare as a secondary insurance, an assignment of medicare benefits form and a form consenting to such rehabilitation therapy as may be ordered by his physician. On that same day, she was required to sign various other documents required by the plaintiff, including the admission agreement, a document regarding the resident's responsibilities, his consent to be photographed, his consent to room changes, notifications concerning the privacy act and the patient's bill of rights and other documents. On a date shortly thereafter, as the responsible party and at the plaintiff's request, she authorized the facility to administer an influenza vaccine to her father.[8]

The plaintiff commenced this action against this defendant *precisely because* she was the party who signed the forms *that it required* in order for her father to receive care. The plaintiff relied on the defendant's position and authority as the "responsible party" under the agreement that it had required when it initiated the lawsuit against her. It alleged that, by virtue of her authority as the "responsible party," she was liable for her father's outstanding bill, at least insofar as she had control of or access to his income or assets per the admission agreement. The plaintiff failed to prove that the defendant had the requisite control of or access to the patient's assets. As a result, she prevailed in the breach of contract action.[9]

The purpose of § 42-150bb is to bring parity between a commercial party and a consumer who defends successfully an action on a contract prepared by the commercial party. The plaintiff bears full responsibility for placing the defendant in the position of having to defend a breach of contract action by alleging that, as the "responsible party," she was responsible for paying certain outstanding bills by virtue of her authority to act on behalf of the patient. It cannot now maintain that, because *it failed to prove* that she had access to or control of the patient's financial assets, she had *no* authority to act on behalf of the patient and is not entitled to recover the fees she incurred defending that action. Under the facts and circumstances of this case, I would conclude that the defendant was the "personal representative" of the patient buyer for the purposes of the statute and, accordingly, is a "consumer" under § 42-150bb. Because the defendant is a consumer who defended the action successfully, pursuant to terms of the statute, she would be entitled by operation of law to reasonable attorney's fees as provided in the contract. Accordingly, I dissent from part II of the majority opinion.

Because the majority concluded that the defendant was not entitled to attorney's fees, it did not reach the question of whether the fees awarded were reasonable.

Because I conclude that the defendant was entitled to reasonable attorney's fees by operation of law as provided in the contract, I will address the plaintiff's argument.

The trial court's memorandum of decision did not go into detail on the issue of the reasonableness of the fee awarded. The court found that the defendant was entitled to "reasonable" attorney's fees pursuant to § 42-150bb and the contract for defending the complaint but not for prosecuting the counterclaim on which she did not prevail. Although the defendant requested $39,000 in fees, the court awarded $36,000 without making any other findings pertaining to the reasonableness of the fees.

The plaintiff objects primarily to the portion of the attorney's fees awarded that were incurred by the defendant's husband, which was the basis for approximately $25,500 of the amount claimed. The itemized bill from the defendant's husband was admitted as a full exhibit at trial, but the plaintiff did not challenge the bill at that time. At oral argument on the motion for counsel fees, the court asked the plaintiff whether it challenged the amount of counsel fees or the reasonableness of the counsel fees claimed, and the court heard the plaintiff's argument. In light of this record, I find the plaintiff's claim that it had no opportunity to challenge the reasonableness of the fees to be unavailing. The plaintiff had at least two such opportunities.

Moreover, the plaintiff failed to seek an articulation from the court as to how it arrived at the $36,000 award. Making every reasonable presumption in favor of upholding the trial court's ruling, the evidence before the court included the itemized bills from which it reasonably could have determined that $3000 was an appropriate deduction for the prosecution of the counterclaim. See *Appliances, Inc.* v. *Yost*, 186 Conn. 673, 681 n.5, 443 A.2d 486 (1982) (itemized list of services, court file and court's own general knowledge could provide evidentiary basis for court to decide amount of reasonable attorney's fees). Although the amount of the award is troubling, I find no basis on which to reverse the court's decision.

[1] General Statutes § 42-150bb provides: "Whenever any contract or lease entered into on or after October 1, 1979, to which a consumer is a party, provides for the attorney's fee of the commercial party to be paid by the consumer, an attorney's fee shall be awarded as a matter of law to the consumer who successfully prosecutes or defends an action or a counterclaim based upon the contract or lease. Except as hereinafter provided, the size of the attorney's fee awarded to the consumer shall be based as far as practicable upon the terms governing the size of the fee for the commercial party. No attorney's fee shall be awarded to a commercial party who is represented by its salaried employee. In any action in which the consumer is entitled to an attorney's fee under this section and in which the commercial party is represented by its salaried employee, the attorney's fee awarded to the consumer shall be in a reasonable amount regardless of the size of the fee provided in the contract or lease for either party. For the purposes of this section, 'commercial party' means the seller, creditor, lessor or assignee of any of them, and 'consumer' means the buyer, debtor, lessee or personal representative of any of them. The provisions of this section shall

apply only to contracts or leases in which the money, property or service which is the subject of the transaction is primarily for personal, family or household purposes."

[2] See *Traystman, Coric & Keramidas, P.C.* v. *Daigle*, 282 Conn. 418, 432, 922 A.2d 1056 (2007) ("the proper procedural vehicle for requesting an award of attorney's fees pursuant to § 42-150bb is a motion for attorney's fees pursuant to [Practice Book] § 11-21").

[3] I note that the plaintiff also argues that the statute is inapplicable because the admission agreement to the nursing care facility is not a contract " 'in which the money, property or service which is the subject of the transaction is primarily for personal, family or household purposes' " pursuant to the statute. The agreement states in part II, paragraph 1, that the plaintiff "agrees to provide room, board and general nursing care to the [patient] for a basic per diem charge." In its complaint, the plaintiff alleges that it agreed to "render care and services to the [patient] and the [d]efendant, as the [responsible] [p]arty, agreed to apply the [patient's] income and assets to pay for such care and services if the [d]efendant had control of or access to the [patient's] income or assets." It alleges further that, pursuant to the agreement, it "rendered care and services to the [patient]"—which it defines as "including but not limited to, long term care, medical care, skilled nursing care, rehabilitation, therapy, room and board, and prescription medication . . . ." Surely, such services are of a "personal" nature.

I am not persuaded by the plaintiff's argument that the contract was not for "personal, family or household purposes" under § 42-150bb because the patient, not the defendant, received the services rendered. The services described in the contract itself, and thus the "service[s] which [are] the subject of the transaction" pursuant to the statute, are of a personal nature, regardless of whom the plaintiff designates as a defendant. Accordingly, I agree with the court's conclusion that the contract at issue is the type of contract for which attorney's fees may be recovered under § 42-150bb.

[4] The issue in *Rizzo Pool Co.* v. *Del Grosso*, supra, 240 Conn. 73, was whether the term in § 42-150bb limiting a consumer's award of attorney's fees to " 'the terms governing the size of the fee for the commercial party' " incorporated General Statutes § 42-150aa by reference, thereby limiting attorney's fees awarded to the holder of a contract to 15 percent of the amount of the judgment. Our Supreme Court answered that question in the negative. Id., 74.

[5] See General Statutes § 45a-468a (5): " 'Personal representative' includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same function under the law governing their status."

[6] See General Statutes § 45a-557a (12): " 'Personal representative' means an executor, administrator, successor personal representative or temporary administrator of a decedent's estate or person legally authorized to perform substantially the same functions."

[7] Compare with statutes that do not define the term, including General Statutes §§ 3-94q (pertaining to personal representative of deceased notary), 20-122 (pertaining to personal representative of deceased dentist), 33-182g (pertaining to personal representative of deceased or legally incompetent shareholder).

[8] I would note that many of the documents that the defendant was required to sign pertain to matters commonly incorporated in a designation of attorney-in-fact or health care surrogate.

[9] Although the defendant did not have control of or access to her father's assets, she was not relieved of her other obligations under the admission agreement. For example, pursuant to that agreement, the defendant, as the responsible party, was bound to "apply promptly for, or assist the facility as necessary in establishing eligibility or otherwise applying for any applicable [m]edicare or other insurance benefits" and to "provide all information that may be requested" in connection with any application for medicaid assistance. The plaintiff did not allege that the defendant breached the contract in any respect, other than failing to pay the bill.