Opponent Testimony to HB 105
Ohio House Insurance Committee, March 18, 2025,
Dai Wai Chin Feman | International Legal Finance Association

Chair Lampton, Vice Chair Craig, Ranking Member Tims, and members of the House Insurance Committee, thank you for allowing me to provide remarks in opposition to House Bill 105.

My name is Dai Wai Chin Feman and I am testifying on behalf of the International Legal Finance Association, or "ILFA." ILFA represents the commercial litigation funding industry.

Commercial vs. Consumer Litigation Funding

I am a managing director of Parabellum Capital, a litigation funding firm based in New York. Parabellum's core business is commercial litigation funding, which is entirely separate and distinct from consumer litigation funding.

Unlike consumer funding, the commercial litigation funding industry focuses on providing non-recourse capital to businesses and law firms engaged in high value business-related disputes, such as breach of contract, antitrust, patent, and international arbitration. These are passive outside investments, meaning that funders do not control the matters in which they invest, including questions of strategy and settlement.

Litigation funders prefer economically rational outcomes. Because we are passive, we emphasize the alignment of interests when structuring investments to promote the likelihood of settlement occurring. Trials are binary and carry increased duration risk due to the potential for appeals and enforcement proceedings. The notion that funders delay litigation is therefore misplaced.

Commercial litigation funding is beneficial to businesses, from startups to Fortune 100 companies. It allows them to keep capital in their businesses so they can continue to grow and innovate. In many instances, commercial litigation funding gives smaller companies necessary resources to pursue meritorious claims. Many funded commercial matters are "David vs. Goliath" in nature, in which a smaller company is engaged in litigation against a larger well-resourced company. Without access to this capital, many meritorious claims would not go forward due to financial constraints.

To be clear, funders are purely interested in meritorious cases—cases the legal system should undeniably address. Because these are non-recourse investments, commercial litigation funding providers do not receive any compensation if the case is not successful. Business necessity dictates that commercial litigation funding firms fund only those cases that have a high likelihood of success—in other words, those with meritorious claims.

Prejudicial Disclosure

Automatic forced disclosure allows opposing parties to weaponize the financing agreement to their advantage, which disadvantages businesses that seek commercial litigation funding. There is no need for a special rule for the litigation funding industry and no basis for one litigant to have to disclose their confidential financial arrangements to an opposing party in litigation.

Commercial litigation funding agreements are highly specific, heavily negotiated, and involve an in-depth due diligence process. Unlike insurance policies, funding agreements are entered into *after* the accrual of legal claims. The result is an agreement that often includes sensitive and privileged information as well as a budgetary roadmap for the litigation. It is important to note that this is the client's information—the sensitive and privileged information of companies that are unfortunately in litigation. Increasing the risk that this information will be turned over to the opposing party in litigation will significantly disincentivize future companies from using litigation funding—at a potentially great cost to their business and at a detriment to access to justice.

For these reasons, courts have consistently held that the details of litigation funding agreements are protected by work-product, as well as other legal protections, and should not be turned over to opposing parties in litigation. In addition, in the vast majority of cases, funding agreements have been deemed irrelevant to the case's underlying claims and defenses. A "chorus of courts" have repeatedly found that litigation funding agreements are not relevant to pending cases. And when they are relevant (such as in certain patent cases), courts already have the ability to disclose some, or all, of the agreement, depending on the facts of a particular case.

We do not oppose disclosure because we have something to hide. It is because we have something to protect: namely, highly sensitive information that would be ripe for exploitation by the defendant. Indeed, defendants regularly seek this very information through document requests, interrogatories, deposition questions, and/or subpoenas to funders and/or potential funders. These new pages in the defense playbook cause unnecessary discovery and motion practice that only add delay and expense—an effective tax on plaintiffs, defendants, and the courts.

We agree with the Ohio Chamber's statement that "an important component of a strong business environment" is "a stable and predictable justice system." But litigation funding is meant to help plaintiffs, not be used to preserve the historically uneven playing field tilted in favor of deep-pocketed defendants.

The Chamber of Commerce's National Security Scare Tactics

The Chamber of Commerce and insurance lobbies have manufactured allegations that litigation funding is a threat to national security. We believe national security is a very serious matter. But those who engage in fearmongering by spreading reckless and baseless accusations without any evidence or facts in order to fulfill a long-sought big-business policy agenda are actually subverting our national security interests by diverting resources from the real and critically important security challenges facing the country today. Despite over three years passing since these allegations surfaced, there is still no actual evidence of any national security threat—despite multiple studies by the United States Government Accountability Office, the Delaware judiciary, and other bodies.

This is not surprising. The litigation funding industry adheres to the same laws, rules, and regulations as everyone else, including any economic sanctions put in place by the government. Moreover, these allegations contravene how litigation works and the role of investors. Foreign investors, or any investor for that matter, cannot direct what matters to invest in, cannot control any aspect of an investment, and cannot control what provisions are in a financing agreement.

Parties in commercial litigation also routinely enter into protective orders that limit the dissemination of confidential information to third parties. This prevents third parties from accessing trade secrets and other sensitive materials.

Courts have significant experience in protecting sensitive and confidential information. While it would be a very serious concern if certain trade secrets or other proprietary information were obtained by a foreign adversary, it would also be very concerning for such information to be obtained by an adversary in litigation. We all have confidence in the system to safeguard information as to the latter. Courts are capable of safeguarding against the former as well. They already have the inherent authority to order disclosure of funding agreements, and parties have the ability to make requests, when relevant, during the course of discovery.

Finally, to the extent the legislature seeks to limit foreign involvement in courts, it is important to recognize the reality that Ohio courts often adjudicate matters involving (1) foreign entities and individuals, (2) Ohio businesses with foreign owners, investors, and lenders, and (3) foreign insurance and reinsurance companies.

Misconceptions Regarding Commercial Litigation Funding and Insurance

This Committee has received testimony from numerous proponents that attempt to link commercial litigation funding with "social inflation" in the property and casualty insurance markets. However, while insurers customarily cover *consumer* claims, coverage is rare or non-existent for the majority of funded commercial cases.

Commercial claims seldom implicate insurance coverage. Commercial litigation funding involves just that: *commercial* litigation—not home or auto incidents. Coverage for patent and antitrust claims is the exception rather than the norm, and coverage for contract and business tort claims is also uncommon. And even where coverage is present, it may ultimately be limited to defense costs in light of the intentional misconduct frequently at issue.

Accordingly, there is no actual support for claims that commercial litigation funding corresponds to any impact on insurance costs.

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Commercial litigation funding contributes to a fairer and more just legal system. Despite a years-long effort to regulate litigation funding in Ohio, no proponent has proffered any evidence that commercial litigation funding has negatively impacted Ohio courts, Ohio businesses, or national security. HB 105 is thus a classic solution in search of a problem.

If passed, HB 105 would deprive Ohio businesses from critical access to capital. Thank you again for the time and for allowing me to participate today. Please consider me, and the International Litigation funding Association, as resources, if you have any further questions as you continue to discuss this legislation.