Testimony to the Ohio Senate Judiciary Committee
SB10
March 12, 2025

Chairman Manning, Vice Chair Reynolds, Ranking Member Hicks-Hudson and Members of the Senate Judiciary Committee, my name is Dai Wai Chin Feman and I am testifying on behalf of the International Legal Finance Association, which represents the commercial litigation funding industry. I would like to thank the members of this committee for allowing me to provide remarks regarding our opposition to Senate Bill 10.

Commercial vs. Consumer Litigation Funding

I am a managing director of Parabellum Capital, a litigation funding firm. Parabellum's core business is in the commercial litigation funding industry, 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, intellectual property 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.

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 the 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 financing, many meritorious claims would not go forward.

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. Therefore, 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. 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, unlike insurance agreements, in the vast majority of cases, the funding agreement is not relevant to the underlying merits. A "chorus of courts" have repeatedly find found litigation funding agreements are not relevant to pending cases. And when they are relevant, courts already have the ability to disclose some, or all, of the agreement, depending on the facts of a particular case.

National Security

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. However, those who engage in fearmongering by spreading reckless and baseless accusations without any evidence or facts in order to obtain a long-sought 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.

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.

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Commercial litigation funding contributes to a fairer and more just legal system. If passed, Senate Bill 10 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.