Opponent Testimony to SB 10
Ohio Senate Judiciary Committee, June 18, 2025
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Chairman Manning, Vice Chair Reynolds, Ranking Member Hicks-Hudson and Members of the Senate Judiciary Committee, thank you for allowing me to provide additional testimony in opposition to Senate Bill 10.

As you may recall, my name is Dai Wai Chin Feman, and I am returning in the same capacity on behalf of the International Legal Finance Association, which represents the commercial litigation funding industry.

Commercial vs. Consumer Litigation Funding

I am a managing director and corporate counsel at 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.

Recipients of commercial funding are sophisticated in nature and typically represented by independent legal counsel. Each individual case typically requires at least several millions of dollars of investment.

Our industry does not oppose consumer protection for *consumers*. However, the consumer protection provisions inserted into the substitute bill should be limited to consumer litigation funding only, as they are inappropriate for high-value arms'-length commercial dealings between sophisticated parties.

Prejudicial Disclosure

Automatic forced disclosure allows opposing parties to weaponize the financing agreement to their advantage, which disadvantages businesses that seek commercial litigation funding.

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.

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—regardless of whether a defendant has disclosed insurance coverage. 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.

The substitute bill's linking of funding disclosure to insurance disclosure does not address these concerns. Instead, it attempts to position litigation funding and insurance different sides of the same coin. This notion is misplaced for several reasons.

First, insurance policies are placed before legal claims arise, and are therefore substantively innocuous. Commercial litigation funding agreements, on the other hand, are highly specific, heavily negotiated, and involve an in-depth case-specific 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 deter commercial litigation funders from operating in Ohio.

Second, it is a given that insurers have control rights, including with respect to settlement. Funders do not for various reasons, both legal and ethical, and also depending on state law.

Third, the goals of disclosure are different. The purpose of disclosing insurance coverage is to prevent the waste of judicial and party resources where a defendant is judgment-proof. The disclosure of funding would do the opposite by showing defendants exactly how far to litigate until the plaintiff runs out of funding.

Fourth, to have actual parity regarding disclosure, funded parties would need production of far more than an insurance policy. Defendants would need to provide equally prejudicial information concerning their case playbook and budget, as well as information concerning their own collectible assets.

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.

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Commercial litigation funding contributes to a fairer and more just legal system. Despite a multi-year 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. SB 10 is thus a classic solution in search of a problem.

If passed, SB 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.