

Litigation Finance Legislation

Prof. Maya Steinitz

Evolution of Litigation Finance

Single-case finance

Portfolio finance

Law firm finance

[Secondary trading/securitization]

* **Consumer vs. Commercial funding** - a limited distinction

Affected Stakeholders

Plaintiffs

- Price of financing
- Attorneys' and funders' conflicts of interest

Defendants

- Due process
- Case volumes

The courts and the public

- Reshaping of the civil justice system
- Reshaping of the legal profession

Investors

- Hard-to-price-assets
- Information protected by the attorney-client privilege
- Absence of regulation

Regulatory Models

Cutting-edge jurisdictions:

- Arizona
- The EU (EU Parliament proposed directive P9_TA(2022)0308)

Pillars of the emerging regulatory approaches

- Fiduciary duties to the client (cf. lawyers and insurers)
- Other ethical requirements
- Limitation on (direct and indirect) control of litigation
- Minimum return requirements (work better than fee caps)
- Disclosure of relationships of funders
- Duty to fund
- Disclosure of funding agreements
- Capitalization requirements
- Designation of enforcement authorities and establishment of complaint mechanism

For more see:

- M. Steinitz, “Litigation Finance, Law Firm Ownership and the Future of the Legal Profession,” forthcoming *Cambridge University Press* (expected 2024).
- Written Testimony of Professor Maya Steinitz Before the Committee on Oversight and Accountability United State House of Representatives
- M. Steinitz, “The Partnership Mystique: Law Firm Finance and Governance in the 21st Century,” 63 *William & Mary L. Rev.* 939 (2022).
- M. Steinitz, “Follow the Money? A Proposal for the Regulation of Disclosure of Litigation Finance,” 53 *U.C. Davis L. Rev.* 1073 (2019).