NATIONAL COUNCIL OF INSURANCE LEGISLATORS
FINANCIAL SERVICES & MULTI-LINES ISSUES COMMITTEE
2024 NCOIL SUMMER MEETING – COSTA MESA, CALIFORNIA
JULY 18, 2024
DRAFT MINUTES

The National Council of Insurance Legislators (NCOIL) Financial Services & Multi-Lines Issues Committee met at The Westin South Coast Plaza Hotel in Costa Mesa, California on Thursday, July 18, 2024 at 4:00 p.m.

Senator Mary Felzkowski of Wisconsin, Chair of the Committee, presided.

Other members of the Committee present were:

Rep. Rod Furniss (ID)
Rep. Matt Lehman (IN)
Rep. Michael Meredith (KY)
Rep. Edmond Jordan (LA)
Rep. Brenda Carter (MI)
Sen. Paul Utke (MN)
Rep. Bob Titus (MO)
Rep. Nelly Nicol (MT)
Sen. Jerry Klein (ND)
Asm. Jarett Gandolfo (NY)
Asw. Pam Hunter (NY)
Sen. Bob Hackett (OH)
Rep. Forrest Bennett (OK)
Rep. Ellyn Hefner (OK)
Del. Walter Hall (WV)

Other legislators present were:

Rep. Joseph Gullet (GA)
Rep. Martin Momtahan (GA)
Rep. Matt Lockett (KY)
Rep. Michael Sarge Pollock (KY)
Rep. Rachel Roberts (KY)
Rep. Cherlynn Stevenson (KY)
Rep. Dennis Bamburg (LA)
Sen. Royce Duplesis (LA)
Rep. Gabe Firment (LA)
Sen. Franklin Foil (LA)
Rep. Kyle Green (LA)
Rep. Brian Glorioso (LA)
Rep. Jason Hughes (LA)
Rep. Shaun Mena (LA)
Sen. Kirk Talbot (LA)
Sen. Bill Wheat (LA)
Sen. Arthur Ellis (MD)
Sen. Lana Theis (MI)
Sen. Michael Webber (MI)
Sen. Jeff Howe (MN)
Sen. Joseph Thomas (MS)
Asm. Alex Bores (NY)
Asw. Catalina Cruz (NY)
Rep. Greg Scott (PA)

Also in attendance were:

Commissioner Tom Considine, NCOIL CEO
Will Melofchik, NCOIL General Counsel
Pat Gilbert, Director, Administration & Member Services, NCOIL Support Services, LLC

QUORUM

Upon a Motion made by Rep. Matt Lehman (IN), and seconded by Asw. Pam Hunter (NY), NCOIL Vice President, the Committee voted without objection by way of a voice vote to waive the quorum requirement.

MINUTES

Upon a Motion made by Rep. Lehman and seconded by Sen. Jerry Klein (ND), the Committee voted without objection by way of a voice vote to adopt the minutes of the Committee's April 13, 2024 and May 31, 2024 meetings.

CONTINUED DISCUSSION ON NCOIL TRANSPARENCY IN THIRD PARTY LITIGATION FINANCING MODEL ACT

Sen. Felzkowski stated that we're going to start today with a continued discussion on the NCOIL Transparency in Third-Party Litigation Financing Model Act (Model). You can view the latest version of the model in your binders on page 122 and on the website and app. Before we go any further, I'll turn things over to the sponsor of the Model, Rep. Matt Lehman (IN).

Rep. Lehman stated that we have a lot of people scheduled to speak today and I look forward to that. I want to make sure I'm clear on one thing - I want to stay focused on what I have said for years has been my fundamental philosophy at NCOIL which is we are not creating model language that goes back and gets stamped in your states for approval. This is where we build the foundational structure of a bill and you take it back to your states. I know we've had some discussions around rates and other things that in my opinion, really belong more in the states. I do appreciate all the input people have given. I think we have made good progress. We had an interim meeting in May and since that time we made a couple of changes to the Model. Some are just technical, some are for clarity. And then there's two that I would call substantive changes which I'll discuss here. The first substantive changes is around making sure that individuals are added to the definition of a "foreign country of concern." We talked about wanting to keep the entities or foreign governments that are bad players out. We also want to keep individuals who are on the list for the federal government that are bad players out as well. So, they have been added and that's in section 3 of the model on page 124. The other substantive change is to sections 7 and 16 of the model which are on pages 128 and 133. These expand the scope of disclosure. The model now requires that funding agreements be disclosed without waiting for a discovery request. All the parties of litigation that required to get that including insurers who have a duty to defend a party in the litigation.

I want to be clear that I think there are four very core parts of this Model that I think we need to stay focused on. One of those is who can do this? We talked about adding individuals. We want to be clear that we do not want to make our judicial system a trading floor. We don't want people to look at it and say is this a good investment or a bad investment? So, we've got to make sure we know who is behind these investments. The second thing is to make sure they do not have access to data. There should never be a process where I can file a suit only so I can get a seat at the table so that I can take proprietary information - that's in this Model. Third, I think we need to make sure that their role is very clear - you do not dictate the direction of the suit. As the funder you are providing the money and you step aside. The legal profession will determine the direction that should go. So, you have no say in that direction of the suit. And then the fourth, which is the new one, is the required disclosure versus the discovery process. I know there are some folks that are opposed to that and we're going to hear about that today but I made those changes because I want to hear why that manner of disclosure is bad public policy. I think as lawmakers we're required to pass legislation that's good public policy and transparency

in my opinion, is always good public policy. Also, the reason I took this disclosure language too is that it appears in the West Virginia law and the co-sponsor of the Model is Del. Steve Westfall (WV) and I felt like if it's relevant in West Virginia it's relevant here. And my understanding was there was not a lot of opposition to this in West Virginia so again, I want to have that discussion. I'd also like to stress that the version before you is not going to be the final version. We're really trying to get this in a good place. Like I said, that is foundationally and structurally sound. We'll probably have an interim meeting between now and November and then hopefully we can finalize something in San Antonio in November. I'll stop there and just make a quick note that I know there's a lot of people here to talk about this and it's important to make sure that we are respectful of positions.

Sen. Felzkowski stated that we have several speakers here today and we need to remain on schedule so we are going to set forth some time limits. Professor Klein, please keep your remarks to 10 minutes at most. For everyone else, if you haven't spoken on this Model before, you'll be capped at five minutes. And for everyone else, since you've spoken on this Model before, your remarks will be capped at three minutes and limited to only the changes that have been made to the Model since our last discussion.

Ken Klein, Louis and Hermione Brown Professor of Law at California Western School of Law thanked the Committee for the opportunity to speak and stated that before being a law professor I was a business defense attorney. My entire professional life has been defined, among other things, by defending cases and by insurance, so I'm happy to talk about this stuff. I just wanted to tell you an opening thought and Rep. Lehman I have to tell you with all candor, in many ways, from a defense attorney's perspective all that litigation is, is setting price. It is setting price on a dispute. That's what it is. And it was never lost on me as a defense attorney that I had a built-in advantage because time and resources were on my side. And if I found out that a plaintiff had resources as well, such as a financing agreement, that was bad news because it meant I couldn't squeeze them and I was going to have to win this one on the merits. I had intended to talk about these four vectors that I read in the Model but we'll see where it intersects. First, let's just talk about protecting consumers, the consumer side of this. Next slide please. So, intuitively litigation finance agreements feel wrong, right? They feel like payday lenders or credit card companies that are being over aggressive. They feel predatory. And so we want to cap rates or amounts of return but they are not the same as these other entities because the plaintiff has an attorney, right? The plaintiff has an attorney who tells them this is what they're offering to lend you. These are the terms of the loan. This is what you can expect out of the litigation. So, they don't need the consumer protection of caps on rate of return or the equivalent of usury laws. Rather, what you're going to do with these things is you're going to not help any consumer but you are going to hurt some who needs the money and for them it's a fair deal informed by their attorney. I will note as a technical matter that the Model has some strangeness in its definition of a consumer in two ways. A consumer is basically defined as a flesh and blood individual who is in your forum state as a resident. That means that you provide no protection to a plaintiff who is from the next state over and you provide no protection to an individual who has organized their business as a small company or a partnership because they are no longer a flesh and blood human.

Regarding deterring foreign bad actors, I will just tell you for me it is a mystery why this is a state level issue as opposed to a federal issue but I will tell you that the notion of foreign owned entities being across from me or people who's motives were other than the merits of litigation is nothing new. For example, many reinsurers are owned by foreign entities that insurers have some foreign ownership interests. And many litigants have bad motives. They're actually seeking to acquire information from their opponent. That's why they're in the process. These are not new problems for the litigation system. We have existing architecture to deal with it.

That architecture works. There is nothing special about litigation finance agreements in this regard. And so, if you add a layer of regulation for litigation finance agreements all you're doing is burdening the system, making it more expensive to get to a result without gaining any extra benefit. The “I” in NCOIL is insurance, right? So, we're talking about insurance and the pressure on insurance premiums, except the industry's own data and I'm particular talking about an Insurance Research Council study that was released that shows that litigation costs do not correlate to rising premiums. That's not the driver. Now the second point here is important. On the commercial side of litigation financing, and I believe other panelists work in that space, insurance companies are usually not involved. And so, it's not an insurance issue in commercial litigation financing for the most part. The litigation system already has cradle to grave architecture to weed out frivolous lawsuits and there is a lot of study on that in my space which is legal scholarship. And what it concludes is that it’s working. Fundamentally, frivolous lawsuits do not generally proceed through the system. So, at the end of the day anything you do including this Model that makes litigation harder to win, harder to file, makes all litigation harder to win and harder to file. But most litigation is not, in fact frivolous. So primarily you are hurting meritorious cases without weeding out very much frivolous cases. This issue has actually been studied and this reference in the slide is to that study and all I'll say is these economists, and there has not been any contradicting paper that has followed, actually looked at does litigation financing involvement increase frivolous litigation? There is no evidence of that. Does it in fact deter wasteful bullying tactics? There is lots of evidence for that. I will say this, insurance companies do control litigation when their insured is the defendant. So, if control is an issue, you better look at both sides. Now the last thing on this slide is disclosure. Here's the thing, I have as a defense attorney, an inherent advantage. I know that I am likely over-resourced as opposed to my opponent. If I'm a litigation financier funding the plaintiff it doesn't matter to me whether you know about me or not. But you know who it does harm? It harms the plaintiff who doesn't have a litigation financier because they have now been isolated as the plaintiff the defendant can squeeze.

I have basically three closing thoughts. The first is it's not really clear to me why litigation financing agreements are an insurance issue. They aren't driving premium. The second is this is an unbalanced system, right? It's a system that favors defendants. I loved that as a defendant. But what I'm telling you here is you want to know what was the monetization of my advantage, there's a pretty good measure of it. The net profits of litigation financing are a pretty good measure of what was my advantage as a defendant. Or put another way, a litigation financing agreement is simply a fund that is looking at the landscape of commercial real estate, the stock market, a variety of other investments and saying where can I make the most return on my money? If you as a defendant, an insurance company, for example, are finding that litigation financing is looking at the landscape and saying, “You know the place where I can make the most money, investing in your misbehavior.” Well, if you don't want them to invest in you don't be quite so investable. I have lived through decades of litigation reform movements and this is simply another form of them. And the reason they keep coming up is because they don't work. Money always finds a way. If you’re a football team that is constantly losing to your biggest rival, you need to play better. You don't need to lobby to outlaw the other team's owner.

Will Weisman, Director of Commercial Litigation at Parabellum Capital, thanked the Committee for the opportunity to speak and stated that Parabellum is a commercial litigation funder. I'm also a licensed attorney. I was a defense lawyer for many years. Before entering litigation funding, I actually worked in the insurance industry. I was at Liberty Mutual so insurance issues are near and dear to me and were a big part of my career professionally. Insurance coverage for funded commercial cases, the type of cases that Parabellum funds, essentially doesn't exist. We don't fund disputes where an insurance company is ultimately going to be responsible for the

judgment. We fund business to business disputes for things like breach of contract, patent infringement, intellectual property disputes and business torts, which are not covered by insurance. The other thing I want to mention just to kind of properly set the table is how few cases commercial funders actually fund. Unlike consumer funders, which enter into thousands of transactions per year, commercial funders like Parabellum fund relatively few cases per year. And that's true of our competitors as well. I wouldn't say you could count the number of investments we make per year on two hands but if you said two hands and two feet you might get there. We don't invest in a lot of transactions so it's just not a lot of investment activity. Regulation of commercial litigation funding around the country is very much the exception, not the norm. And that's for good reason. Courts have long had the ability to probe funding if they want to and they typically don't do so. And the reason they don't is because one, it's very well accepted that it's not relevant to the underlying litigation and two, the funding agreement itself, communications with the funder and the like are protected work product. And a number of very serious non-partisan groups have looked into this exact issue and looked into it recently and have concluded that regulation isn't needed here for the commercial space. And I'm talking about the Federal Rules Advisory Committee which writes the federal rules on civil procedure, the Government Accountability Office (GAO), which is the nonpartisan arm of Congress, the Uniform Law Commission, and the New York City Bar. They all have reached the same conclusion that commercial funding is a rare phenomenon and that the regulation of the type that the Model is proposing is not needed.

So, I think with that in mind we should talk about what makes the Model particularly problematic from where I sit. And I think what everyone needs to appreciate is how prejudicial it is to a funded party to actually be required to turn over the funding agreement. The funding agreement tells defense counsel exactly how much money a plaintiff has to spend on their case. And it also tells them other critical information that bears directly on litigation strategies such as exactly how much a plaintiff will realize from any settlement. No one in this room, and I've never heard anyone suggest this, would say that defendants have to turn over their defense budget or that insures have to turn over information about how much they're reserving for a case or other information that bears directly on defense strategy. And yet, that's exactly what the Model calls for. The other thing which we will see happen here is if you require turning over the funding agreement not only are you prejudicing the plaintiff, you're exasperating the problem of inefficient, wasteful litigation. Defendants don't stop at the funding agreement. They don't say thank you for telling us, now let's move on to the substance. I was a defense lawyer. We all know the name of the game here. It's delay, it's run out the clock. So, what follows from turning over a funding agreement are ancillary discovery fights. People want to see the communications with funders, the analysis that went into the underwriting by a funder. And you have to then adjudicate all of these ancillary disputes which are a sideshow before you can ever get to the substance. I don't think that's what's intended here. I think that the Model is well-intentioned and I think there's a better way to go about it and I just want to take a final minute here to talk about what that might look like. I think the place to start for sound public policy is protection against the prejudice that I'm so worried about and I think that everyone in this room should be worried about. Automatic disclosure of the funding agreement causes substantial harm. The funding agreement itself should be subject to the ordinary rules of discovery. If it's relevant, if it's germane to the dispute, it can be disclosed. If it's not relevant, if it's a sideshow, if it's a defense tactic to get at strategic information it shouldn't be disclosed. The legitimate concerns here are transparency. People want to know who's funding this case to make sure there's no conflict of interest or nefarious activity going on. Commercial funders don't have a problem with being disclosed. So, I think a bill that required a party to disclose that they're a funded party without turning over the funding agreement I think you'd find wide acceptance in my industry to that. The other I think very legitimate concern is passivity. You want to know about a funder not

exercising undue control. And there's ways to get at that information without prejudicing the plaintiffs. You can require a statement from the plaintiffs that the funder is not controlling the litigation. Attorneys who have an ethical duty to not allow that can be required to submit that information to the court. And we've seen other courts deal with these issues that way. That's an effective, sound way to regulate in this area which doesn't cause harm to plaintiffs and slant the playing field in favor of the defense bar and I think that should be the focus here.

Brad Nail, of Converge Public Strategies representing Uber, thanked the Committee for the opportunity to speak and stated that we thought it would be helpful for the committee to hear the perspective from one of the businesses who was likely to be a defendant in some of the litigation that's backed by the large litigation funding companies so this is not the seen as just another insurer versus trial lawyer issue. We have serious concerns about the impact that heavily funded securitized litigation is having on our courts. I would ask you to imagine a really bad scenario to explain why both transparency and oversight are needed in this space. Imagine a plaintiff who has accepted financing in the course of conducting its litigation. As is typical today, no one knows the details of that financing or the relationship between the plaintiff and the finance company. Not the defendant, not the courts overseeing the litigation. Imagine that the plaintiff and the defendant negotiate in good faith and reach a settlement that's agreeable to both sides. Then the litigation finance company steps in to prevent that settlement because they believe the settlement is too low, that it doesn't maximize their potential profit from the lawsuit. Imagine that the finance company actually takes action to prevent the plaintiff from settling the case even going so far as to try to substitute the finance company as the plaintiff. This is happening today. I would encourage you to read about the antitrust cases involving Sysco Corporation and their litigation funder Burford Capital and meat producers in Minnesota where a motion to make the litigation funder the plaintiff was denied. And the similar case in Illinois where the motion to make the litigation funding company the plaintiff was granted.

I would ask you to imagine another bad scenario. And in any regulated industry one would suspect that individuals with prior convictions for fraud would be heavily scrutinized if not prevented from operating the same business for which they were convicted of fraud. But in the case of Tribeca Capital, there have been no such limitations because there is no oversight. The company that is, according to their website, the largest litigation funding company in the U.S. is run by someone who pled guilty to fraud in conjunction with prior litigation funding activity. Tribeca Capital just last month announced an injection of $50 million into their litigation funding business from a foreign investment group called Nera Capital. Their own press release describes it as a $50 million funding facility for antitrust claims and law firm portfolios. That $50 million is just a drop in the bucket when you look at the scope of litigation funding in the U.S. Westfleet Advisors, which is a litigation finance advisory firm, in March of this year reported that there was $15.2 billion in combined assets allocated to U.S. commercial litigation investment. That's how they wrote about it in their press release. These are assets. This is an investment. They are turning our civil justice system into another market for speculative investment activity. So, as is nearly always the case for you as legislators you are called upon to balance competing interests. Access to justice is important. We understand that a sizable segment of the industry is dedicated to smaller individual financing arrangements for plaintiffs with meritorious cases and immediate financial needs. But the activity of litigation financiers in the aggregate necessitates action. The Model before you is good and we will support it. We think it could be made better. We've spoken with Rep. Lehman and offered some language to strengthen the transparency and disclosure elements of it even further. I would also direct your attention to the discussion draft of federal legislation released last week by Congressman Issa which contains disclosure requirements to the court that we think are a good solution. So, I'll conclude by emphasizing to

you the need for this Model and the need for real transparency and oversight of the activity of these investment firms.

Mahima Raghav, AVP & Senior Consultant of Claims, Judicial & Legislative Affairs at Zurich, thanked the Committee for the opportunity to speak and stated that I too have practiced as a defense attorney in the past and now work on a social inflation task force within the company. So, I'm going to start with some statistics. These statistics are quoted from a Swiss Re report. They talk about litigation funding being comprised of personal injury cases and mass tort claims and commercial litigation – 75% of litigation funding contracts support commercial litigation and mass torts. Two thirds of settlements involve large companies and not small businesses. About 30$ of patent infringement cases are believed to have involvement of litigation funding. And as Mr. Nail mentioned, the industry is estimated to be about $15.2 billion. Law firms report that they take litigation funding usually because of lack of funds and to hedge risk which sounds awfully like insurance. And lastly, the internal rate of return for some of these litigation funding companies is about 25%. That represents a wealth transfer from the plaintiff back to investors and law firms.

So, this is an investment and all investment classes usually have some kind of regulation or some kind of guardrails around them. They usually contain both a consumer angle, something like mortgage lending where consumers are protected to understand contracts, and a market integrity portion where we can trust, for example, that the stock market isn't subject to rampant insider trading or manipulation. Similarly, we need these two issues addressed and the Model does address both in the form of the disclosure requirement and not just the discovery as Rep. Lehman had indicated. Unfortunately, we're seeing some examples that go contrary to some of the research quoted earlier by Professor Klein. I'm going to go through just some of those examples for you. In the Camp Lejeune cases, multiple fraudulent claims were found. Those were filed from lead generators or advertisers looking for plaintiffs to drum up the appearance of more cases. There were various vaginal mesh cases where unnecessary surgeries were performed again, on the medical funding end. Forty thousand fake claims were discovered in the Deepwater Horizon mass litigation. Individuals found claims on Craigslist soliciting Americans with Disabilities Act (ADA) type claims and a bounty for a #metoo claim also on Craigslist for $100,000. In New York, there's a slip and fall case which conscripted indigent individuals many asking for food from their attorneys to fake accidents in order to file insurance claims. There was, of course, funding involved in that as well. And I'll just spend a moment on the Tom Girardi debacle here in California. Mr. Girardi was a prominent attorney. He was subject to the rules of California, both the ethical and legal rules, and he continued for over a decade almost close to two decades taking funding, not paying his clients and practically using his law firm as a ponzi scheme. That entire scheme was supported by multiple rounds of lending which nobody knew about, of course which is why we need the disclosure. If courts had been privy to some of this information they could have offered some protection to the plaintiffs who later received nothing. The other debacle that I'll mention is McClenny, Moseley and Associates where Texas attorneys descended on Louisiana homeowners. They filed fraudulent claims on their behalf and had taken a hefty loan collateralized by Zantac litigation. So, while it seems like this could just be a benign help to the consumer, unfortunately, just the amount of money involved does lead to law firms getting themselves into bad situations at best and fraudulent activity at worst. I'll also mention that it was mentioned earlier something about insurance and being foreign and whatnot and it's not lost on me that my company's name is Zurich. However, we are heavily regulated in every state and I would invite the funders to be as heavily regulated if they wish to be in the similar scheme.

Eric Schuller, President of the Alliance for Responsible Consumer Legal Funding (ARC), thanked the Committee for the opportunity to speak and stated that we represent companies that offer the consumer legal funding product. I just want to clarify the average funding we give the consumer is about $3,000 to $5,000. So, we're not giving people tens of thousands of dollars for their cases. We're just making sure they can pay their mortgage, rent, car payments, and keep a roof over their head and food on the table. A couple things that we just want to clarify is on the changes that were made. We agree with Rep. Lehman that this needs to be a foundational bill. And so, with that, we suggest taking the profit restrictions out of it and let each individual state make that determination because we have had states who have put some stuff in and we had other states where they haven't had that. We think that should be up to the individual states. As far as the disclosure requirements, we'd like to recommend that the committee go on the path of what Indiana did where if requested, there's an acknowledgement of the transaction. Then it follows a normal course of discovery and filling and it's inadmissible against the consumer. This way does not slant the process one way or the other. By having an automatic disclosure regardless of the discovery process, you're basically tilting the case in favor of the defense. You're giving them a whole lot of information that they may or may not be able to have during a normal course of discovery. We're not opposed to regulation. In fact, our organization supports regulation. We just want to make sure this product is regulated properly and is available to the consumers but also does protect the legal system.

Jack Kelly, Managing Director of the American Legal Finance Association (ALFA), thanked the Committee for the opportunity to speak and stated that ALFA is America's oldest trade association for the leading of prominent members in the American legal finance business. First, I want to reiterate what was stated by Mr. Schuller. Our fundings are not in the business of providing funds to prosecute litigation. That's very important to note. Earlier Prof. Klein shared with us his points and as we went down the table until we came to me there was an entire discussion about large multi-million dollar funding of litigation. That's funding the litigation. For any of us who practiced we know what it is to collect fees but that is knowing that somebody is paying you legal fees. That is giving you money to pay for the prosecution litigation. That's paying for your witnesses. That's paying for your discovery. That's paying for the lawsuit. We do not do that. We have nothing to do with that. We provide a small amount of money to somebody who already has litigation filed and initiated in a personal injury case - $3,000 to $5,000 to pay for your rent, to get your car fixed, to maybe get schoolbooks when you have to get them for your kids. And that money is non contingent. It's only paid back if you prevail in the case. We support this Model. Rep. Lehman and I worked on this 10 years ago. That day unfortunately, the Model was not adopted. It was a tie vote. It wasn't defeated, it wasn't passed. It was tied. Rep. Lehman went back to Indiana and he passed legislation. A dozen states have done the same thing and what we have here today is a lot of that bill. We have included in here much of the bill that was passed in the New York Senate by Senator Jeremey Cooney who is a member of this committee but is not here today. And it's a good bill. Two things that Rep. Lehman brought up is can you dictate the case? No. This legislation says you cannot be involved in the decision process. It precludes it. And that's what we need. We need to protect consumers. But there's only one issue that I have concerns with and I really want to commend the committee and thank them for the technical amendments made to the Model. The amendment concerning disclosure of funding we have concerns with and our goal is to work together and get this Model done. But our concern is this - I spent a lot of years working in in the poultry world. And if you're a poultry grower and you're down in Alabama and you're out on your F-150 and you have an accident you have to get that F-150 repaired and deal with your insurance company about how this is going to be paid. But you've got to get down and be able to get in there and get the chickens fed. And anybody who's ever fed chickens knows if you

don't have the feed lines filled at night and the water clean you're not going to do too well getting those chickens fed and they're going to die.

So, you go out and you get $5,000 to help get that truck repaired and you're back out there. But next door to you down the road the guy's a little bit richer than you are and he's got a brother who's a big fancy lawyer and he can go to him and borrow the $5,000 and he just says, you pay that back when you got some money and we'll work it out. Now the guy who had to go get the funding the way this proposal is written he's got to tell the other side that he got funding just because he doesn't have the financial advantage of being able to go to somebody rich or have somebody's that's going to lend him the money. Is that equitable? Anybody here who studied the law or taught the law and lived the law knows one word, equity. Equity is what the law is all about. And is that equitable? How do we deal with the equity of letting that funding be disclosed or not disclosed? And I think that's the issue. I think what Rep. Lehman and others have said is that's what we've got to wrestle with. How do we do that? My position is you should only have to disclose funding if the money is used for the prosecution of the litigation. If the money that you get pays for the lawyer, if the money that you get pays for discovery. If the money that you get pays for witnesses. Then you should have disclosure. But if the money is used to get your truck fixed. Is that really fair? With that, I thank every member of the committee. This committee has done a great job in working with this and I want to thank Rep. Lehman for the work he's done and the fairness that's been done.

Jon Schnautz, VP of State Affairs at the National Association of Mutual Insurance Companies (NAMIC), thanked the Committee for the opportunity to speak and stated that NAMIC is supportive of the Model as it stands. I think it's a good baseline starting point for regulation for an issue that deserves a lot more scrutiny and that is, as Rep. Lehman said, what are the implications of the fact that litigation is increasingly becoming an investment market? I want to focus specifically on what we like about this. The main thing is what's in the title and that's disclosure. I also want to be clear because from some of the earlier speakers I'm not sure if I'm reading the right Model. This Model doesn't ban third-party litigation funding in any way. The provisions it includes are fairly modest, in fact. The most important one we think is a disclosure provision. We think the new language is also an improvement in that regard. I do think it needs a little further refinement and the further refinement is not to apply only in cases where the plaintiff is actually being funded because that's the way it's structured right now. We think it needs to broadly cover investment in litigation that is contingent on the outcome of the case. Because on the commercial side that is the more common pattern rather than plaintiff funding, we believe. A couple of responses to arguments you've heard. You've heard some contradictory arguments, and you would think sometimes if they're contradictory maybe one of them is right. But I don't think in this case that any of them hold up under very good scrutiny.

First of all, on the litigation budget argument, let's think about this for a minute. What the Model actually requires is disclosure of the agreement, what's going to be in the agreement between the funder and the person receiving the funding? Well, things that they want to be able to enforce legally against each other. So, this idea that that needs to include everything about their litigation strategy. It doesn't. None of that is going to need to be in the agreement. There's no reason for it to be in there. We're talking about who the parties are, the funded amount, those sorts of issues. Basic information that doesn't go so far as to reveal strategy. I think that's a red herring. Second, I want to make this clear, the same sort of concern would exist on the insurance disclosure side. Almost every one of you comes from a state because I think this is true in almost every state where in litigation the insurance coverage at issue is disclosed. Not the fact that there is insurance, not the name of the insurer. The actual insurance policy. In some states that happens before the litigation is even filed. So, I agree insurance and third party

litigation funding are not exactly the same thing. Insurance serves a lot of roles in society that don't have anything in particular to do with litigation fortunately. But in terms of what needs to be disclosed in litigation we think that analogy is pretty good. Again, states are requiring that for insurance, if it's not a concern there it shouldn't be a concern on the other side as well. Finally, we heard an argument that if the funding has to be disclosed that somehow reveals that the plaintiff is in a bad financial position. That never made much sense because they basically would be saying I might have been in a bad one but now I'm not because I got this funding. Earlier we heard the argument of no, it's the opposite. If you don't disclose funding, that proves you're at a disadvantage. That's not a very reasonable inference. You don't know from the fact that someone didn't get funding that they needed it but didn't get it. They may just as well have not needed it. So, I don't think that argument holds up very well either although I do think it makes more sense than the original opposite argument. So, I'll stop there. There's a lot more we could say, but again, we think the Model is a good first step. We think the disclosure provision is the key. We think it needs to stay strong and be about disclosure of the actual agreement.

Rep. Edmond Jordan (LA), NCOIL Secretary, stated that I've heard this for several meetings now and I tend to side with Mr. Kelly on a lot of this regarding disclosure if it's covering the litigation costs. First of all, I don't necessarily agree with disclosure at all but to the extent that we will do it, if it's funding those costs then that's fine. But if it's funding that's necessarily expenses for the plaintiff then maybe that does not need to be disclosed. However, my question is more about the Model itself and maybe I missed it. In Section 7, I think it's saying that the duty is on the plaintiff or his attorney to disclose and so I'm not sure if we're not overstepping a little bit. At least in Louisiana, with that we might be legislating something that might be better left to the Supreme Court who legislates attorneys and attorney behavior. But more so in Section 8 for the violations, the violation is on the litigation finance company. So, the way it reads right now, me as an attorney if I decide that I'm not going to do that then there's no violation at all. There's nothing that you can do to enforce it against me. I guess the punishment is against the company and I'm not sure maybe I missed it, but I'm trying to see if somebody can reconcile that for me.

Rep. Lehman stated that I think that issue goes back to it's something that you do based on what's best in your state. Because the things Rep. Jordan just described might be different in Indiana than in Louisiana. Rep. Jordan stated that maybe we need to figure out if we can reconcile those items in Section 7 and Section 8 to make it more compatible.

Rep. Michael Meredith (KY) stated to Prof. Klein that I'm not an insurance agent. I'm not a lawyer. I'm a small-town country banker. And when you mentioned the fact that you didn't see a need for anything with regard to caps on these fees or interest in these situations because they're represented by a lawyer, I find that a very curious proposal. Because I kind of feel like I represent clients that have 20 and 30 year relationships with me and I have to disclose all those fees. We have caps on all our fees. And many times if they can get a better deal through Fannie Mae or Freddie Mac or somebody else I'm going to send them there because it's a long term relationship. When in reality, even though you might be represented by an attorney, that attorney's going to be paid based on a contingency of what your case is worth and what they can squeeze out of that case. And so, they have a measure of future ability for their own gain as well. Just like we would. But we're still enforced by the same level of caps on fees and interest. And so, I don't think that argument holds up. I'd like you to respond to that. Prof. Klein stated that no one's a big fan of regulation. Regulation just puts an inefficiency on everything. The reason we have consumer protection regulation is because we view consumers to be in a disadvantageous position. They need the money so they go for a payday lender. They don't have anybody telling them that's a bad deal. They get these flashy credit card companies coming in and saying it's basically free money. They don't have anybody telling them it's a bad

deal. That's not a plaintiff who's a consumer. A plaintiff who's a consumer and has filed a lawsuit has an attorney. They are the plaintiff's attorney. If they do their job ethically - some of them don't. Some insurers don't do their job ethically. Some legislators don't do their job ethically. But most people do. If they do their job ethically, they are telling their client here are the pros and cons of this deal. We're giving you the information. You're an adult. Does this deal make sense to you? And so there is no reason in that setting, recognizing that some people get hoodwinked, to have a layer of regulation that says a well-informed consumer, well counseled person who needs the money and the deal makes sense to him can't take it because we're going to cap what the deal can be. Rep. Meredith stated that I would just say I think a highly regulated industry like any kind of financial services that has disclosure requirements already you are providing those same levels of pros and cons that an attorney would provide. And again, in that situation, the attorney's contingencies are still going to figure into that discussion and so I think that is not something that necessarily holds water. That's just my personal opinion.

Rep. Meredith then stated to Mr. Weisman, you have referred to your work previously with Liberty Mutual and you talked about strategy and some of those kinds of things in that process. I just want to be clear that that does not represent anything about Liberty Mutual's views. Mr. Weisman stated that I'm not here on behalf of Liberty Mutual. I'm with Parabellum Capital.

Mr. Kelly then asked Sen. Felzkowski for leave to be able to submit a statement for the record. Sen. Felzkowski replied, yes.

Rep. Lehman thanked everyone for their comments and stated that I think we had a good robust discussion today. I think some very valid points were brought up on both sides of this. I know that several people reached out about splitting this Model into two Models, commercial versus consumer. I think it needs to leave NCOIL as one. What you do back at your state, you can split these apart but I don't want to run two different Models through NCOIL when they're very similar. So, we will keep this as one Model. Also, as Rep. Jordan brought up some issues on violations, I'd call that a small tweak and if there are other small tweaks that we need to address let us know. But obviously this is going to hinge at the end on disclosure and I think we really need to work on that piece. As we get into the interim meeting of the Committee sometime between now and November, please let me or NCOIL staff know where you're at and where you want to see some changes. Because we do need input from this committee. I think Mr. Kelly makes a valid point on do we talk about disclosure if it's being used to fix my truck versus being used to pay my lawyer? There's some merit in that. I think there's merit in Rep. Meredith's comments. I think one comment was made about insurers don't have to disclose their money but they're a second party to these claims, not a third-party. So, there's a difference there and they're heavily regulated in those states. I think that's what brought our attention to some of this is I think a lot of stuff is going on that you heard about, some nefarious stuff is happening because of the lack of regulation. So, I think we need to stay focused on that. So with that, thank you for the discussion. Please reach out to me and to NCOIL staff. I would like to get some amendments put together for our interim meeting so we can consider this in San Antonio in November[1].

PRESENTATION ON REGULATION OF BAIL BONDS INDUSTRY

John Looney, Executive VP of the National Association of Bail Agents, thanked the Committee for the opportunity to speak and stated that I am also President of the Montana Bail Agents

[1] Wes Bissett, Senior Counsel of Gov't Affairs at the Independent Insurance Agents & Brokers of America (IIABA), and Mike Lane, Associate General Counsel at State Farm Insurance Company, each submitted a witness slip in support of the Model.

Association and I'm a bondsman. So, why am I sitting in front of NCOIL? Well, it's because I'm an appearance surety bond producer. I write insurance. Bail is an insurance product. It involves risk assessment and premiums. At the core of it it's a surety bond. Bail, it's a contractual agreement between the courts, a defendant and the surety producer that the defendant or offenders is going to appear for court. It's a financial agreement. If I write a surety bond and the defendant fails to appear I have to pay the court. With that comes a lot of responsibility and accountability which means I get to define the terms of my surety bail agreement or my contractual agreement with my defendant. If he fails to appear, I can go arrest him and return custody of him back to the court. I think it's important that regulators understand the use of the correct terminology and the insurance surety bail system. There's a significant difference between secured bail and cash bail. We get a lot of questions and it's in the news all the time you hear about the changes in cash bail and we need to do bail reform. Cash bail is a judge setting a cash requirement of whatever amount for a defendant to get out of jail in order to move through their court and get their problems taken care of. Whereas a surety bail or secured bail is a surety writing an insurance product that says we're going to accept the liability. The court then transfers custody of that defendant to the bail bondsman and the bail bondsman promises that that defendant's going to appear for court. The role of the surety bondsman is to ensure court appearance. That's it. My insurance that I write says I promise this guy's going to show up for court. I protect public safety because I put a lot of stringent requirements on my defendants when I remove them from the custody of the jail. They're required to check in with me weekly. They're required to tell me where they're at. They're not allowed to leave the state. They have to have family with them. They have to tell me where they live. Public safety is paramount when a surety bondsman is involved. We advocate for victims. We make sure that our defendants aren't going where they're not supposed to be going. They follow the rules that the court set for them before they were released from court or released from jail. We alleviate jail overcrowding. The pretrial services or anything other than a bondsman don't work 24/7, 365. A bondsman works 24/7, 365. If you get arrested on a Friday night at 5:30, you don't get to see a judge until Monday at 9:00. A bondsman can come in and get you out and start the process anytime.

And that brings me to my next thing which is the difference between secured bail and pretrial services. Secured bail operates at zero cost to the taxpayer unlike your state-run pretrial services which require significant public funding. The key difference is the 24/7, 365 day a year availability. Our doors don't close. Surety bailsman or surety producers are available 24/7. Also, there is an aspect of accountability. Bail agents are accountable financially and contractually with the court that says I took custody of the defendant. I'm going to make sure that he does what you say Judge and I'll make sure he comes back and appears before the court. And also, there is efficiency. I don't know that it needs to be said, but I don't know of another government program that runs more efficient than the bail industry. We have the latest technology, we have the training, we have all the things in place that we put there to secure our financial obligations. The importance of legislative regulation is the number one consumer protection. Regulations prevent the exploitation of defendants, individuals and families during one of the most vulnerable times of their lives. Also, with market stability, standardizing rates of premium bail promotes healthy competition among bail bond businesses and prevents any single company or entity from dominating the market. And also accountability and transparency - regulatory frameworks require bail bond companies to adhere to guidelines and maintain ethical standards and preventing fraudulent practices. One of the big issues with regulatory frameworks is the clarity and interpretation of laws. In my home state of Montana, there's 207 courts and not a single one of them processes a bail bond the same way because there's no regulatory framework in place that says this is how a bail bond works. It's kind of like the Wild West. Good laws and regulatory frameworks create consistency in application so there isn't a question of if I write a bond on one side of the state versus another side of the state. It also increases judicial efficiency. In other

words, we don't have judges or jurisdictions creating their own version of how a bail bond works. And good laws will maintain legislative intent. So, in plain English, we write a law or the legislature passes a law, it should not be able to be interpreted any other way than what it was intended to be interpreted as. In conclusion, the secured bail is a vital component of our criminal justice system. It bridges the gap between public safety, judicial efficiency and the rights of defendants. Effective regulation and clearly defined legislative language are crucial to maintaining the integrity of that system. By fostering a fair and transparent bail bond industry you can ensure that justice is served while protecting the interests of all stakeholders involved.

Jeff Clayton, Executive Director of the American Bail Coalition, thanked the Committee for the opportunity to speak and stated that the Coalition is a trade association of insurance companies who underwrite the liability written by our friends the bail bondsman throughout the U.S. Since the conquest, simple words – "all prisoners shall be bailable by sufficient sureties" has sort of been the fight over bail. And for those of you don't remember when the conquest was it was the year 1066. So, for guys working in bail like me, that means a lot of job security. But what it does mean in the modern era is that you have three branches of government regulating our industry. You have the judicial branch regulating it at an administrative level. Who can write bonds in that particular court and on a case by case level? Whether we can accept this bond, whether we use criminal proceeds to post that bond. And then we have departments of insurance issuing licenses to bail bondsman regulating surety corporations. And then we have regulations of when people don't pay and we shut them off from continuing to write bonds and that is handled. And so when you look at all the jurisdictional lines and try to decide where this jurisdictional lines are, we use a legal term of art to define that which is quite fuzzy. And every state does it differently. And we are here to help you do that. Why are we here? We're here to tell you it's a critical thing to regulate. Why? Because the accused's access to bail depends on it. The integrity of the system and the answering for the charges depends on it. Criminal deterrence depends on it. And so, it is a very important concept. When I transitioned from law practice to government relations, I was running a bill for then Governor Ritter and I sat down at a table with my dad and his partner who were old time cops, retired cops and lobbyists. And they said, "hey, Jeff, how's your first week going?" And I said, "To be honest with you, I don't think I'm going to be able to get this bill out." And they said, "well, why not?" And I said, "my sponsor just doesn't know what he's talking about." My dad's partner looked at me and he said, "Jeff. I'm going to give you a little advice. If you want to pass a bill, you need a sponsor that knows how to run a two car funeral. And your guy didn't know how to run a two car funeral." This is a personality business. This is a business of knowing what you're talking about and I like to think that we know what we're talking about when it comes to the regulation of bail. So, if you need to know what you're talking about and you need to run that two car funeral and you feel like you can't run it, definitely give us a call. We're here to help and explain the framework of how all this happens in each of your States and help you make the best public policy you can.

CONTINUED DISCUSSION ON NCOIL EARNED WAGE ACCESS MODEL ACT

Sen. Felzkowski stated that next on our agenda is a continued discussion on the NCOIL Earned Wage Access Model Act (Model). You can view the model in your binders on page 134 and on the website and app. Also before you and on the website app as well are some responses to some questions that were distributed before the conference in an effort to try and get some clarification on some issues related to the Model.

Asw. Pam Hunter (NY), NCOIL Vice President and sponsor of the Model stated that we have been speaking about this model for quite some time. We did have an interim meeting and there were some questions that came out of that meeting and my colleagues have some of those

questions that were passed around. And we have a couple folks here today to talk about this model and we're not going to be voting on it today. There's been differing opinions and statements relative to this issue and we need some clarifying. So, if each of you who are here today could provide some feedback especially in the form of proposed amendments to the model that would be great. I also think that we're supposed to see a video and if you could touch briefly on the amendments that would be great as I think we all need a better understanding on some of these issues. So we will watch the video and then have a discussion. And after this meeting if you have any amendments, you can send them to me or NCOIL staff and I hope we can work through this to try to get to some conclusion for this model in November.

Ben. LaRocco, Senior Director of Gov't Relations at EarnIn, thanked the Committee for the opportunity to speak and stated that we did a video of what the actual customer experience is for EarnIn users. So, you'll be able to see sort of what it's like from the time you download the app and have your account until you actually use the product and what that looks like. So, that's what's going on here. So, go ahead and hit play and I will narrate as we go through because there's no sound. So, anybody can download the app in the App Store. This is what it will look like when you do. So, you start, you connect your bank account. We use a third-party service called Plaid and many financial services companies use that. It allows us to have read only access into the user's bank account. That's how we verify their employment and we do some risk modeling based on that as well. So, this Platypus Bank is not a real bank but just gives you a representation of what it might look like. This is also where you choose where your money goes into when you access your funds. So that's the other reason that you connect your bank. You are able to add a debit card if you would like. If you add the debit card, you're able to get your earnings in seconds for a fee which you'll see the option of how that presents itself in just a minute. You don't have to have a debit card in order to do that. There's your various terms and conditions and further verifying your employer.

Again, we work direct to consumer. So, virtually anybody that has a regular paycheck and a direct deposit employer can use EarnIn. There's two main ways right now that we verify earnings. One, we use your work e-mail to verify your employment. And two we track the amount of time that you're at work. And you choose which one to use. So, this is what the user experience will look like once you've gone through the setup and accepting the terms and conditions, that $100 is the amount of earnings that you have. You've earned it. This is you choosing how much of that $100 available you want to use. So again, the standard version is free. That's Automated Clearing House (ACH). That's usually next business day, but could be up to three days. Or you can debit and there are fees for the debit which is immediate and those are disclosed there in the process. So, you choose which one you want. The other way we make money is we ask people for voluntary tips. We've talked about this before, this is the user experience for that. You'll see that we do suggest a tip but it's very easy to change that and make it anything you want, including zero. So this person just chose to tip zero. Here is the amount they're accessing, the total amount they're paying and the amount of the day of their pay date so that way they'll know when we get paid back. So that's the transaction. I don't have any other further prepared remarks. I did submit answers to the questions. We submitted some amendments to the model with the reasoning for those amendments. And then we submitted some comments on the amendments that others submitted.

Andrew Kushner, Senior Policy Counsel at the Center for Responsible Lending (CRL), thanked the Committee for the opportunity to speak and stated that I don't have a ton of prepared remarks today. I really appreciate this continued conversation. I printed out copies of our responses to the committee's questions which are before you. I think the one thing that I do want to mention actually is some late breaking news in the this space. Just today the Consumer

Financial protection Bureau (CFPB) issued a notice of proposed interpretive rule under the Truth in Lending Act (TILA) and there are three key aspects to that rule that are likely very relevant to this committee's work and in particular to some of the questions that Asw. Hunter was talking about - are these products loans? What constitutes a finance charge? The CFPB, the nation's federal financial regulator expert in interpreting and applying TILA, is proposing a rule that would say that earned wage advanced products like EarnIn and what we're talking about in the context of this Model are credit products under the TILA. That's a straightforward conclusion that we think is correct by applying the language of the statute and prior judicial decisions and prior guidance from the CFPB and other federal agencies. And the rulemaking also says that those expedited fees that you saw an example of, as well as most tips are finance charges subject to TILA. In our country we have essentially a dual system of credit regulation. At the state level, interest rate caps and some of the more substantive terms of credit transactions are set. At the federal level there's the umbrella TILA that governs disclosure obligations for all different types of credit products, their terms and conditions. And what the CFPB has said is that the baseline definition of a credit product, earned wage access fits within that. And we think that's the right result and we think that should inform this committees work. We submitted amendments to the proposed model. I think the key aspects of our amendments are these products should be regulated as credit. There should be a cost cap because these products, like other credit products, can effectively create their own demand when folks are paying for them and paying high rates for them and getting caught in a cycle of reborrowing and the CFPB's work really backs that up.

Rep. Lehman asked Mr. LaRocco if it's correct that the only fee you charge is the service fee if they choose something other than ACH, and then also a tip? Mr. LaRocco replied yes, there's no late fees. There's no interest. There's no mandatory fees of any sort. Rep. Lehman asked if there is a fee to sign up for the program? Mr. LaRocco replied, no.

Sen. Felzkowski asked what is the role of the employer here then? At some point, somebody's paying this back. Can you walk us through the mechanics? Mr. LaRocco replied, yes, that's a great question and that is one of sort of the differences that we have in our proposed amendments is the terms of how you get paid back and there's three main ways that companies partner with employers. One is they don't partner at all. So, we have two million customers, the vast majority of those customers we don't have a relationship with their employers. We have 100 Congressional staffers that use our product, but we don't have any relationship with the U.S. Congress. But we do have relationships with some employers and there's two ways that companies have relationships with employers. One is sort of like a co-marketing agreement where there's not actually a business relationship it's more of like a referral. We have relationships like that with large employers like Home Depot and Walgreens where they basically say download the EarnIn app and you get a discount on that fee. So, it's less than the $3.99 for other people. The other way is that you are integrated in the employer's payroll system and then you get paid back basically from the employer rather than through the employee's bank account.

Sen. Bob Hackett stated that I understand where the fees come in with tips and then you multiply it annually for the year for the short period of time, it can really increase the Annual Percentage Rate (APR) especially when there's not a lot of money in the tip. If you use an example of $11 on $100 and you multiply that for the whole year, that's a lot. The other two things you mentioned were the debit card and another fee. Do you make any money off of the debit card? Mr. LaRocco stated that if you get your wages on a debit card then the issuing company and that's usually going to be the earned wage access company does get the interchange fee on that and that would be the same interchange fee that anybody else would get. And there's no fee to the user for that it comes from the normal interchange system. Sen. Hackett stated that with

EarnIn because you bring in a lot more debit cards potentially can you negotiate directly with that third party company that's saying, “hey, look, you know, you normally charge this. We want a little part of that.” Mr. LaRocco replied the interchange fees are set by Visa so even with a big number for us that's still a small number to Visa, so we don't really have that sort of market power unfortunately.

Sen. Paul Utke (MN), NCOIL Treasurer, stated that as I'm listening to this I want to just dig down a little bit further and it looks like all of the ways that you could make money are voluntary. They can pay fees, they can make tips. How do you stay in business? Are they just that generous or what pays the bills? And then the other thing is, if the paycheck can still go to the individual and rely on them to give you payment back, what kind of bad debts do you encounter? Mr. LaRocco stated that those are great questions and very common questions that we get. All of the fees are voluntary. There's a lot of financial services especially that serve the working class that are monetized by punishment like overdrafts, late fees, and high interest rates. We only monetize if we have a system or a product that the consumers want to opt into. But to your point, we don't necessarily know every transaction that a certain person is going to choose the fee or a certain person is going to pay a tip or not. Most people don't tip. About two thirds of the transactions opt into the expedited fee and so when you're doing hundreds of millions of transactions which is how many transactions we've done over the course of our business, you know on average how many people are going to choose the fee and how many tips are going to be made and that gets built into the business model. As far as not paying us back, every company is a little bit different and it fluctuates throughout the year. A published number is about 3% of transactions don't get paid back. So just putting that into perspective and talking about what Sen. Hackett said, you take 3% and the average transaction is nine days long. So just the non-payment rate of 3% over nine days if you were to annualize that, that's 128% APR. So, 3% may sound like “oh you get paid back 97% of the time.” But when you analyze that it's 128%. And so the APR disclosure in that instance when you're dealing with such a short amount of time I think becomes a lot less salient and not actually applicable to the true cost that the user might be paying which is why we've suggested other disclosures which we feel would be more salient to the customer.

Rep. Matt Lockett (KY) asked if there is any data that would suggest that you have repeat customers? In other words, somebody gets in a cycle of having to get a loan one week and owe the next week the same thing? What kind of data do you have that would show that? Mr. LaRocco stated that I think we see a couple use cases and actually with what the CFPB put out today, we disagree violently with what the CFPB said today. It's almost certainly going to be decided in the courts and that's why I think NCOIL has a big opportunity here. There's an existing rule, it's not a good fit for this product. It needs some clarity on the federal level and it seems like the courts are probably going to provide that unless Congress steps in. But I think on the state level NCOIL can do that. The CFPB today showed like a U-shaped curve. So, there's a lot of people that use it just two or three times and then never use it again. There's a lot of people that use it a couple of times and then don't use it again or they use it and then they don't use it for three months and then they come back and they use it for a couple months and or for a little while then they don't use it again for a couple months and they come back. And then there's some people I think a lot of us know these people that they just aren't great managing their money and they do use it a lot. Generally when I get asked questions by lawmakers like you, it’s if people are going to use our product a lot. But if you take away our product, they're going to be using some other product a lot too. They're going to be using a credit card. They're going to be using loans, they're going to be using something else. And the downside risks to the customers that really just are not great at managing their money are going to be higher in most of those other products than the downside risks of our product.

Mr. Kushner stated that there are a couple of figures put out by government regulators on that issue. The California Department of Financial Protection and Innovation (DFPI) has a data set of earned wage access transactions provided by companies and they found on average users took out 36 transactions a year. The CFPB today said in their data set the average was 27. And what's interesting about what the CFPB said is roughly half of those users took out more than one a month but the average was still 27 a year which means you have a small number of really high users, people who use it all the time. And in fact that's a distribution you see with payday loans as well, about 70% of payday loan originations go to users who take out 10 or more of them per year. And there's a relatively small number of users with high frequency but that for us is very concerning because it shows that there are a small number of people who are the source of a lot of the origination in this market. You see similar statistics in sports gambling apps on your phone. There's a small group of users who use the apps all the time and that for us is a reason why cost caps and other protections are necessary to protect folks who really are financially vulnerable.

Asm. Alex Bores (NY) stated that you mentioned that two-thirds of users roughly do the expedited option and the majority don't leave tips. Is there any more precision about how many people leave tips or sort of how that revenue compares to the short term expedited option? Mr. LaRocco stated that it changes. With two million customers about 45% of people leave a tip. About 20% never tip ever. About 10% tip every time. And most people tip sometimes and not other times. Our medium tip is zero. Our average tip is $1.25. So, that's sort of the order of magnitude of what you see.

Asw. Hunter stated that I just mentioned to my colleague, it didn't escape me that it's ironic that the conversation we just had relative to litigation funding was I don't have money, I need to be fronted money and I may have to pay a little bit of money in order to get money. And this is in some ways a similar situation. I worked, I need money and getting money from someone to maybe pay a little bit of money. There's an overall problem in this country that dictates we need these kinds of products and that's not what we're here to solve today. It's interesting with that new information today that was released. Is it a loan? Is it not a loan? I think when we first started this conversation several months ago I started the conversation with “I worked, why can't I get paid today?” And that started this whole kind of conversation relative to why am I having to pay a fee for getting my money today? Employers could essentially pay their employees every single day. They don't. Or can't for a variety of reasons. So, we’re presented with this Model that I hope with amendments and based on all of your considerations that we can present a foundation that you bring back to your state. But this is not going away. This issue is not going to stop just because we don't do something about this. And each state obviously is going to be presented with this issue that they're going to have to address and addressing the underlying problem obviously is probably a greater issue than trying to fix this. But I do appreciate the repeated conversations that we're having relative to this. Obviously with EarnIn you’re fitting a need for consumers who obviously have for whatever reason a myriad of issues that they need money and they need it today. We would be remiss if we didn't take into consideration obviously consumer protections because we want to make sure people are protected when they have these products. So, we're going to have to go back and look at this and if you have any questions and more thoughts about amendments we'd like to come up with some kind of solid foundation for you all to consider. We'll probably have an interim meeting before our November meeting. I would suggest strongly in the states that you represent to bring this back to your legislatures and really kind of dig down because if we don't do something the companies are going to be out there continuing to do what they're doing and we're talking about actual pay for people working at their job.

ANY OTHER BUSINESS

Sen. Felzkowski stated that I have one more piece of business which is really a reminder that our Workers' Compensation Insurance Committee has jurisdiction over a Model Law dealing with structured settlements. That model crosses different lines of insurance so we've begun providing notice to everyone when the model is being discussed by the work comp committee. It's likely that the work comp committee will have another presentation on structured settlements during its November meeting. So, if you have any questions or comments, please reach out to the Chair, Sen. Lana Theis (MI), or the NCOIL staff.

ADJOURNMENT

Hearing no further business, upon a motion made by Sen. Utke and seconded by Rep. Lehman, the Committee adjourned at 5:30 p.m.