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September 23, 2024

National Council of Insurance Legislators (NCOIL)
Will Melofchik, NCOIL General Counsel
wmelofchik@ncoil.org

Mr. Melofchik:

Thank you for the opportunity to submit comments on the NCOIL Transparency in Third Party Litigation Financing Model Act, sponsored by Rep. Matt Lehman (IN), past NCOIL President, and co-sponsored by Del. Steve Westfall (WV).

As a follow up to my verbal comments on the 9/20/2024 interim virtual meeting of the NCOIL Financial Services & Multi-Lines Issues Committee and on behalf of the Coalition Against Insurance Fraud, we submit the following.

The Coalition is the nation's only alliance uniting consumers, insurers, government agencies, prosecutors, industry associations, and other dedicated partners to combat insurance fraud. With over 300 member organizations, the Coalition is at the forefront of the fight against insurance fraud and that was our focus in reviewing this draft.

After reviewing the [NCOIL Transparency in Third Party Litigation Financing Model Act - Draft as of 7-1-24](#) and the most recent version from [9/13/2024](#), we note that the model draft addresses both consumer litigation funding companies and commercial litigation funding companies in two distinct areas and in some instances, the requirements and prohibitions are different between the two.

We do appreciate that the model draft prohibits both types of litigation funding companies from making any decision, having any influence, or directing the plaintiff or the plaintiff's attorney with respect to the conduct of the underlying civil proceeding or any settlement or resolution. Our concern is that, in other areas of the draft, unscrupulous or fraudulent litigation funding companies, or others involved, may intentionally take advantage of these differences to evade requirements or prohibitions.

In order to prevent this, we suggest that there be a more universal application of certain requirements and prohibitions for both types of litigation funding companies, even if they are handled separately.

Examples of where we think a universal requirement or prohibition to both consumer and commercial litigation funding companies apply are:

- Prohibiting direct or indirect financing by a foreign entity of concern or a foreign country or person of concern for both,
- Prohibiting disclosure or the sharing of any documents or information subject to a court order to seal or protect for both,
- Requiring registration with the state, filing of annual reports, and adherence to other requirements for both.

We would defer to the drafting group to determine if these suggestions would be best suited as amendments to a new version or drafting notes. There may be opportunity for other areas to universally apply important requirements and prohibitions and we would be happy to discuss.

Other suggestions from our review of the model draft include:

- Consider replacing the word “attorney” with "attorney or law firm" across the model draft. The purpose is to make the model more consistent with its own language elsewhere and to clarify that the Act applies to all individuals that may be involved in the handling of litigation financing for any individual attorney. As an alternative, perhaps define "attorney" to include the law firm.
- In Section 11. Registration, consider adding prohibition that prevents a litigation funding company, its principals, or investors from having been convicted of crimes involving fraud, moral turpitude, etc.
- In Section 12. Reporting, consider making it clear that sufficient disclosure of the litigation financier's corporate identity is required. In this same section, please also consider adding a requirement to disclose investors as this would support Section 13's prohibitions. This may require defining what exactly sufficient disclosure of the litigation financier's corporate identity is.

Once again, we support your efforts to address this critical issue and ensure that every insurance consumer has access to justice and the court system. We hope that our comments are considered helpful in preventing an opportunity for fraudsters to exploit a future statute. If we can be of further assistance, please contact me to discuss.

Thank you,

A handwritten signature in black ink that reads "Brent Walker". The signature is written in a cursive, flowing style.

Brent Walker
Director of Government Relations
brent@insurancefraud.org