



November 19, 2024

Dear Members of the Financial Services & Multi-Lines Issues Committee,

On behalf of the International Legal Finance Association (ILFA), we wish to express our gratitude to the members of the National Council of Insurance Legislators (NCOIL) Committee on Financial Services & Multi-Lines Issues, as well as the NCOIL staff. We appreciate the committee's efforts to keep us informed throughout the drafting process of the model legislation on third-party litigation financing. We are thankful for the opportunity to attend and participate in the interim meetings.

However, ILFA is unable to support the model bill in its current form, primarily due to concerns surrounding the requirement in Section 16 to automatically disclose funding agreements:

A party or his or her counsel shall, without awaiting a discovery request, provide to the other parties, and each insurer that has a duty to defend another party in the civil proceeding, any agreement under which any commercial litigation financier, other than an attorney permitted to charge a contingent fee representing a party, has a right to receive compensation that is contingent in any respect on the outcome of the legal claim.

We believe there is potential for consensus if the disclosure requirements were more narrowly tailored for legitimate judicial purposes. For instance, requiring disclosure of a funder's identity to address judicial conflicts is reasonable, as is confirmation that a funder does not exert control over the litigation or operate under the influence of a foreign adversary. Such measures are neither inherently prejudicial nor controversial.

We are, however, concerned about any provisions that require automatic disclosure of funding agreements or underwriting communications to adverse parties. Such requirements undermine the adversary system by forcing disclosure of protected work product. This puts the funded party at a fundamental disadvantage and ultimately hinders their access to justice.

Thank you again for involving ILFA in this important dialogue. We appreciate your attention to our concerns.

Sincerely,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Shannon Campagna
Acting Executive Director