

Section 3

4. "Commercial litigation financing agreement" - ~~means, a nonrecourse agreement that a commercial litigation financier enters into, or offers to enter into, to provide funding to support a plaintiff or the plaintiff's attorney in prosecuting the civil proceeding, if the repayment of the funded amount is:~~

~~(a) required only if the plaintiff prevails in the civil proceeding; and~~

~~(b) sourced entirely from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.~~

(a) The term "commercial litigation financing agreement" means, with respect to any civil action or group of civil actions, a written agreement—

(i) whereby a third party agrees to provide funds to one of the named parties or any law firm affiliated with the action or group of civil actions, and

(ii) which creates a direct or collateralized interest in the proceeds of a civil action or group of civil actions—by settlement, verdict, judgment or otherwise—and whose interest is based in whole or part on a funding-based obligation to the action or group of actions or the appearing counsel or any contractual co-counsel or the law firm(s) of the counsel or co-counsel executed with:

(A) any attorney representing a party; or

(B) any co-counsel in the litigation with a contingent fee interest in the representation of that party; or

(C) any third-party who has a collateral-based interest in the contingency fees of the counsel or co-counsel firm related in whole or part to the fees derived from representing that party.

(b) The term "litigation financing agreement" shall also include any contract (including any option, forward contract, futures contract, short position, swap, or similar contract) or other agreement that is substantially similar to a litigation financing agreement.

(c) The term does not include a consumer litigation funding transaction, an agreement between an attorney and a client for the attorney to provide legal services on a contingency fee basis or to advance the client's legal costs, a health insurance plan or agreement, a repayment agreement of a financial institution if repayment is not contingent upon the outcome of the civil proceeding, a funding agreement to a nonprofit organization that represents a client on a pro bono basis, or an agreement of an assigned claim to prosecute an environmental contamination matter seeking remediation of, or to recover the cost of remediating, a site that is or has been on the U.S. Environmental Protection Agency's Superfund National Priorities List.