Written Testimony of

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"Unsuitable Litigation: Oversight of Third-Party Litigation Funding"

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INTRODUCTION

Chairman Comer, Ranking Member Raskin, and members of the House Committee on Oversight and Accountability, thank you for inviting me to testify today. I appreciate the opportunity to share with you some of what I have learned over nearly 15 years studying, writing about, and advising on the phenomenon of third-party litigation finance. My name is Maya Steinitz and I am a Professor of Law and R. Butler Gordon Scholar in International Law at Boston University Law School. I have published numerous scholarly articles as well as publications intended for broader audiences on the topic and my forthcoming book, "Litigation Finance, Law Firm Ownership & The Future of the Legal Profession," is expected to be published next year. My comments today will address what I have learned from this research. Specifically, I will discuss what are the benefits and pitfalls of litigation funding as they relate to plaintiffs, defendants, the courts, and the public and what might be possible directions for regulating this segment of the finance industry. These comments are made in my personal, academic capacity. I have not received any compensation in connection with my testimony, and I am not testifying on behalf of any organization. The views expressed in my testimony are solely my own.

Litigation funding is a utility - it can be well used or abused depending on the context. It can be beneficial to individuals, to businesses large and small, and to the public. It can also be harmful to individuals, to businesses large and small, and to the public. And its systemic effects implicate democracy at large, effecting as it does all of civil justice, an entire branch of government, and the structure and core tenets of the legal profession and of the attorney-client relationship which is a central, and therefore protected, relationship in a free society. Third-party litigation funding's proper regulation—neither over nor under regulation and regulation of the right kind—should therefore be a matter of broad concern cutting across usual political divisions.

I. Valuable uses of litigation finance and potential beneficiaries

Third-party litigation funding, like finance more generally, is an important service that can provide access to justice to parties that cannot afford to bring their disputes to court, such as individuals, startup companies, and small businesses. The ability to acquire financing can put individual plaintiffs on a more equal footing with defendants, making them both more likely to advance a claim and better able to sustain it against what were, historically, significantly better-resourced opponents. Furthermore, funded plaintiffs may be able to hire counsel more experienced and specialized than they would be able to afford if they were spending their own funds.

Third-party litigation funding is also used by businesses as a form of corporate finance and to otherwise enhance efficiencies. Third-party funding can allow businesses to monetize unrealized claims, to shift litigation risk, to manage balance sheets, and to obtain operating capital during a time when litigation otherwise limits access to capital. By shifting the risk of litigation or assigning

a claim altogether, a corporate claimant can reduce the impact of that litigation on normal business activities like seeking loans or other financing and engaging in mergers and acquisitions.

On rare occasions, even defendants, and local governmental entities, have taken advantage of third-party funding.[1]

Third-party litigation funding sometimes functions as venture capital for new law firms. This may encourage competitiveness in the market for legal services and innovation in the legal industry. It may even allow constituencies that face barriers to advancing within established firms to set up competing, well-resourced law firms.

The enhanced efficiencies that third-party funding can provide to individuals, business, and law firms is a social benefit for the public at large. And third-party funding can back claims on legal issues that otherwise would not be heard by courts, thus helping the development of the law.

The benefit to the public can also include the availability of third-party funding of not-for-profit impact litigation (cause lawyering). Litigation funding can, and to my understanding has been used to assist plaintiffs pursuing both progressive and conservative causes.

Third-party funding can, in other words, benefit individuals, small businesses, large businesses, nonprofits and for-profit entities. It can be used to advance, or challenge, both liberal and conservative goals.

II. Problematic litigation finance practices and constituencies that may be harmed by third-party litigation funding

Two preliminary notes are worth making when discussing potential problems that may be caused by third-party funding.

First, is that some types of funding scenarios—such as funding motivated by revenge, by a desire to harm a competitor, or by a desire to advance unfriendly foreign interests—may grab a lot of attention but are, or would be if they came to pass, outliers. 'Revenge funding,' is a term used to describe funding such as the one provided in the high-profile and much debated case of billionaire Peter Thiel's funding of the wrestler Hulk Hogan's invasion of privacy suit against the media outlet Gawker.[2] That case led to a 140-million-dollar judgment that drove Gawker to bankruptcy. It thus caused much debate about whether third-party funding would undermine the free press. However, the American press is not under systemic threat from third-party funding. The other two examples, of anticompetitive funding or funding to advance foreign interests are, to my knowledge, at this point hypothetical and future-looking concerns. Most funding is for profit or (probably at much lower volume) impact funding.

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[1] This was reportedly the case when agricultural groups in Iowa provided third-party funding for the defense of three state counties against pollution charges. *See* Llewellyn Hinkes-Jones, *Open Records Request Exposes Rare Litigation Finance Document*, BLOOMBERG L. (Feb. 23, 2017).

[2] Described in W. Bradley Wendel, *Paying the Piper but Not Calling the Tune: Litigation Financing and Professional Independence*, 52 AKRON L. REV. 1 (2018).

Outlier scenarios such as those mentioned above are not paradigmatic cases and should not drive regulation as such. This does not mean, however, that they should be ignored in the rare instances in which they arise or that any regulation should not facilitate addressing them. Defendants have due process rights to confront their adversaries and to fully develop and present their case in any individual litigation, even if that litigation has unusual features. This right includes, for example, pursuing avenues reasonably calculated to lead to material information that may help expeditiously and fairly resolve the dispute; seeking to know, and confront, the real party in interest in the case they are defending; and seeking sanctions or costs when appropriate. So, while regulation should not center on outlier scenarios, any new regulation should certainly leave room for judges to manage these scenarios if and when they arise.

There are, however, concerns that are systemic.

Before addressing those, a second preliminary note is warranted. There is almost no empirical data about litigation funding.[3] However, there is plenty of scholarship and commentary,

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[3] A rare exception is a series of articles that are based on a dataset from a single funder in the consumer litigation finance industry market segment: Ronen Avraham & Anthony J. Sebok, *An Empirical Investigation of Third Party Consumer Litigant Funding* 104 CORNELL L. REV 1133 (2019); Ronen Avraham, Lynn A. Baker & Anthony J. Sebok, *The MDL Revolution and Consumer Legal Funding*, 40 REV. LITIG. 143 (2021); Lynn A. Baker, Ronen Avraham & Anthony J. Sebok, *The Mysterious Market for Post-Settlement Litigant Finance*, 96 N.Y.U. L. REV. ONLINE 181 (2021) (concluding that the funder who provided the dataset "offers not only clearer contract terms but also better financial terms to post-settlement clients relative to pre-settlement clients. Yet these better terms do not come close to reflecting the virtually nonexistent litigation risk to the Funder" and recommending "that consumer post-settlement litigant funding be subject to the same regulations as conventional consumer credit and that a standardized, simple disclosure be required."); and Ronen Avraham, Anthony Sebok, & Joanna Shepherd, The *Whack-a-Mole Game: An Empirical Analysis of The Resolution of Litigant Third Party Financing*, THEORETICAL INQUIRIES IN L. (forthcoming) [hereinafter *Whack-a-Mole Game]*. There is also some data about the funding of class actions in Australia. *See, e.g.*, Deborah R. Hensler, *Third-Party Financing of Class Action Litigation in The United States: Will The Sky Fall?*, 63 DEPAUL L. REV. 499, 520 (2014) ("IMF appears to pursue a cautious investment strategy. From February 1999 to 2007, IMF is said to have agreed to fund 90 of the 763 cases that it considered. Of the 130 completed cases audited by Ernst & Young, plaintiffs settled 67%, won trial judgments in 9%, and lost five cases (4%) at trial. In 20% of the cases, IMF terminated funding before the case was concluded."); and David S. Abrams & Daniel L. Chen, *A Market for Justice: A First Empirical Look at Third Party Litigation Funding*, 15 U. PA. J. BUS. L. 1075, 1081, 1106-07 (2013) (making use of "data from Australian courts, administrative agencies, and the largest third-party litigation funding firm in Australia, IMF (Australia) Ltd." and concluding that "States that have a greater litigation funding presence experience a greater backlog in courts, fewer finalizations, and a lower clearance rate. This is also reflected in court expenditures, which increase with greater litigation funding. While congesting the courts may be a cost of third-party funding, the overall welfare effects could still be positive. If the value of the adjudication of cases is greater than the expense of adjudicating them, then third party funding should be encouraged. Further, court congestion may be a transitory effect of the entry of litigation funders, and not one that persists. The expectation would be that once defendants recognize the increased likelihood of litigation and the greater resources held by plaintiffs, they would be more likely to settle in equilibrium. While transitioning to that new equilibrium, there is another potential benefit from litigation funding: earlier resolution of the law.").

including by Bar associations, analyzing *structural* challenges including misaligned incentives, ethical challenges and conflicts of interest, and the potential for predatory lending practices.[4] Litigation that has arisen out of litigation finance arrangements since the emergence of the industry has, predictably, related to these very concerns, validating the theoretical models.

A. Plaintiffs' concerns

Predatory financing is a key concern. There are reports that in some cases plaintiffs are paying exorbitant rates for the funding they receive as well as reports of other issues familiar from other contexts in which vulnerable borrowers fall prey to predatory lending practices.[5]

Another common concern is that litigation funding can interfere with the attorney – client relationship in various ways. The primary worry here is that funders and lawyers often have ongoing relationships and that the lawyers may be tempted to prefer the funder's interests over those of the client when such conflicts arise. Examples of possible conflicts of interest between the funders and the client include situations where a funder may wish to continue litigating whereas the plaintiff may wish to conclude it, or vice versa; situations where a client may want injunctive relief but the funder wants monetary damages; or situations where a funder may wish to pursue a litigation strategy that may harm a given plaintiff's case but may benefit the value of the funder's portfolio. For the same reasons, Bar associations and commentators have cautioned that third-party funders may compromise lawyers' fiduciary duties of loyalty and zeal, duty of independent judgment, and ability to preserve their clients' confidential information.[6]

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[4] *See, e.g.*, Douglas R. Richmond, *Other People's Money: The Ethics of Litigation Funding*, 56 MERCER L. REV. 649 (2005); Vicki Waye, *Conflicts of Interests Between Claimholders, Lawyers and Litigation Entrepreneurs*, 19 BOND L. REV. 225, 237 (2007); Jennifer A. Trusz, *Full Disclosure? Conflicts of Interest Arising from Third-Party Funding in International Commercial Arbitration*, 101 GEO. L.J. 1649 (2013); Victoria Shannon, *Harmonizing Third-Party Litigation Funding Regulation*, 36 CARDOZO L. REV. 861 (2015).

[5] *See, e.g.*, Victoria Shannon Sahani, *"Keep to the Code": A Global Code of Conduct for Third-Party Funders*, 102 B.U. L. REV. 2331, 2334-35 (2022) ("In New York City, several attorneys, surgeons, and a third-party funder participated in a $31 million fraud scheme involving fake slip-and-fall cases. The scheme exploited poor, homeless, and destitute individuals by giving them meager financial incentives to undergo unnecessary surgeries to "prove" their fraudulent slip-and- fall accidents, then serve as plaintiffs in the cases. In another fraudulent scheme, a surgeon teamed up with a third-party funder of medical claims who misled women into having unnecessary surgeries to remove transvaginal mesh so that the funder could obtain a higher return on investments in those patients' medical device litigation settlements." Sahani's article also discusses other troubling accounts such as: "a winning corporation paid a losing individual claimant to pursue and intentionally lose an appeal to create a precedent against thousands of potential similar litigants.").

[6] Bar associations have issued words of caution and guidance to lawyers on how to navigate such conflicts as well as other issues that the presence of a third-party funder may give rise to. *See*, for example, ABA COMM'N ON ETHICS 20/20 INFORMATIONAL REPORT TO THE HOUSE OF DELEGATES 23 (2011), *available at https://lowellmilkeninstitute.law.ucla.edu/wp-content/uploads/2019/02/ABA-White-Paper-on-Litigation-Finance.pdf,*. The New York City Bar Association has issued opinions that cast doubt on whether portfolio funding practices are consistent the rules of ethics prohibiting lawyers sharing fees with nonlawyers. *See*, N.Y. CITY BAR ASS'N. COMM. ON PRO. ETHICS, Formal Op. 2018-5 (2018); *see also* N.Y.C. BAR ASS'N,

Loss of plaintiffs' control and autonomy is an often-cited concern by scholars, commentators, and increasingly courts. Control over the case by funders can be obtained by degrees and can be direct or indirect. Notably, even litigation funding contracts that have explicit language disclaiming control nonetheless can afford significant control to funders who may, for example, retain the right to stop funding and obtain the right to select and replace the lawyers. The lawyers selected are often lawyers and law firms who have ongoing relationships with the funders and may even be entirely financially dependent on the funders.[7]

B. Defendants' concerns

The most common concern voiced by businesses and their attorneys is a concern that litigation funders do or will fund non-meritorious cases. In the case of funding of single cases, the funding of non-meritorious cases is unlikely because funder's return is often contingent on the plaintiff's wining and recovering and plaintiffs are unlikely to win if their cases are non-meritorious. As a business model, funding non-meritorious cases is not a sound strategy.

The incentives change, however, when cases are aggregated, either through portfolios or through class and mass actions. In such scenarios it is potentially profitable to bundle non-meritorious cases together with meritorious ones to increase negotiation leverage—by increasing the perceived size of a potential loss as well as the actual costs a defendant will incur litigating the entire portfolio—and thus to increase the overall profitability of the portfolio or class.

Third-party funding may also protract litigation, driving up defendant's costs. This may be the case because of misaligned incentives, e.g., when a funder wishes to hold off for a higher return —possibly due to the effects a case may have on the value of its portfolio and not because of the value of the given case—even though a plaintiff is willing to settle. Or, the involvement of a third-party funder may protract litigation for the prosaic reason that the funder who is influencing or even controlling the litigation is not in the courtroom or in the mediation room to negotiate with.

Finally, defendants' due process rights may be implicated by the existence of an undisclosed third-party funder. Examples include situations when a funding agreement provides witnesses financial incentives that the defendant would use to impeach the credibility of the witnesses—if it were aware of them; when the funding relationship may create conflicts of interest for the judge (including conflicts which may come to light late in the game, after much time and money has already been sunk into litigating before that judge); when the availability of funding could affect an

REPORT TO THE PRESIDENT BY THE NEW YORK CITY BAR ASSOCIATION WORKING GROUP ON LITIGATION FUNDING 2 (2020).

[7] The manner in which funders obtain indirect control of litigation is explained in Maya Steinitz, *The Litigation Finance Contract*, 54 WM & MARY L. REV., 455 (2012) and Maya Steintz & Abigal C. Field, *A Model Litigation Finance Contract*, 99 IOWA L. REV. 711 (2014). Repeat-play relationship between funders and law firms is described, for example, in Maya Steinitz, *Whose Claim is This Anyway? Third-Party Litigation Funding*, 95 MINN. L. REV. 1268 (2011). The concern about client's potential loss of control is a common theme in Bar association guidance, discussed above.

analysis of how much discovery from the plaintiff is appropriate or to assess security of costs; and when the identity, resources and structure of a funder or a funding agreement may be relevant to identifying whether a plaintiff is immune from monetary judicial sanctions through the use of special purpose vehicles (e.g. in patent cases and when claims are assigned to the funder).[8]

C. Courts and public interest

At the risk of stating the obvious, how, why, and to whose benefit judicial resources, as taxpayer funded resources, are used is a matter of public concern.[9]

As a general rule, the real parties in interest should be before the courts. This is important in order to ensure the integrity of the process for all parties and prevent abuse of process, and in order to facilitate efficient case management which, in turn, affects court dockets. Transparency as to the role a funder is playing may be especially important in the mass and class actions contexts where plaintiffs may be absent, unnamed, or even unknowable, or where their stakes may be too small for them to manage the lawyers. Such cases are notorious for their potential for conflicts between the lawyers and their clients.[10] The presence of third-party funding may exacerbate these conflicts by further moving lawyers' interests from those of clients and aligning them, instead, with funders whose interests may be different than those of the plaintiffs. Traditionally, courts exercise more supervision over such litigation including, critically, over settlements because of the myriad conflicts they entail and the scale of threat they present to defendants. The Federal Rules of Civil Procedure have long given judges an especially active role in overseeing these types of litigation including, e.g., ensuring the fairness of settlement arrangements and fairness of attorneys' fees.[11]

Additionally, one of the key policy rationales for claim aggregation devices (class and mass action) is that such litigation is a privatization of the enforcement of the law. This, like all law enforcement, is done at the behest of the public, not just the plaintiffs. Given the public's interest in law enforcement—for example, in deterring tortious conduct—the case could be made that the public should be able to assess who is controlling the cases and shaping the creation of precedent

[8] *See, e.g.*, Sean Keller & Jonathan Stroud, *Litigation Funding Disclosure and Patent Litigation, 33 FED. CIR. BAR J.* (forthcoming 2023), https://ssrn.com/abstract=4527378 (discussing such concerns in the patent litigation context).

[9] This includes availability of data that the government, academics, nonprofits, and journalists can analyze. *See* above, note 3, for discussion of the lack of data on litigation funding.

[10] *See, e.g.*, Geoffrey P. Miller, *Conflicts of Interest in Class Action Litigation: An Inquiry into the Appropriate Standard*, 2003 U. CHI. LEGAL F. 581 (2003); John C. Coffee, Jr., *Class Wars: The Dilemma of the Mass Tort Class Action*, 95 COLUM. L. REV. 1343, 1432 (1995); and Samuel Issacharoff, *Class Action Conflicts*, 30 UC DAVIS L. REV. 805, 828 (1997).

[11] FED. R. CIV. P. 23.

through the courts.[12] Similarly, if courts become congested because of cases brought largely or even entirely for the benefit of non-party financiers that too is a matter of public concern.

In the case of impact litigation, the public's interest in transparency of the sources of funding of judicial law-making is, arguably, similar to the public interest in transparency with respect to lobbying of legislatures.[13]

The public also has an interest in the preservation of the integrity of the attorney – client relationship. The fiduciary relationship between attorneys and their clients is a cornerstone of a free society and if that relationship is being eroded in the ways described above that, too, is a matter that should be transparent to the public. As the finance of litigation evolves from funding individual cases to the funding of portfolios of cases being handled by a given law firm, to the new frontier in some states—direct financing by nonlawyers of law firms—the ethical tensions and potential conflicts of interest will become more widespread and, potentially, a systemic challenge to the traditional functioning of the attorney-client relationship.

Some practices can harm all constituencies. For example, when plaintiffs lose control over settlement decisions everyone loses. The plaintiffs lose their autonomy. A system in which third-party funders could compel litigants to litigate against their wishes would be like a system in which medical insurers can compel patients to receive medical treatment against their wishes. Defendants may be unable to settle an otherwise settlement-ready case because of an invisible nonparty whose identity, motivations, or settlement price-point are unknown and unknowable. And the courts could be clogged with cases that would have settled if only the plaintiffs and the defendants were the only parties who could decide whether, when, and for how much to settle. Further clogging the already burdened courts is a matter of interest for the public.

III. Possible approaches to the regulation of litigation funding

To use a dramatic analogy, like nuclear energy—which can be used as a weapon of mass destruction or as a source of clean energy—litigation funding is neither inherently 'good' nor 'bad'. Whether the good ultimately outweighs the bad, at the scale of our society as a whole, will depend largely on whether and how well it is regulated.

Two good starting points when considering how to regulate litigation funding are: (1) to look at what approaches some jurisdictions, in the United States and abroad, have adopted or are

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[12] On how third-party funders can shape precedent *See* Steinitz, *supra* note 7, at 1268; Jeremy Kidd, *To Fund or Not to Fund: The Need for Second-Best Solutions to the Litigation Finance Dilemma,* 8 J.L. ECON & POL'Y 613 (2012).

[13] However, in a recent letter to Senator Grassley and Representative Issa, several state attorneys general have expressed free speech and freedom of association concerns if disclosure of private litigants' financial resources, especially nonprofit organization and public interest lawyers that bring litigation, is compelled. Letter from Steve Marshall, Ala. Att'y Gen., to Charles Grassley, U.S. Sen., & Darrell Issa, U.S. Rep. (Apr. 12, 2023).

contemplating; and (2) to look at how industries in which similar, or even identical, challenges arise are regulated.

Overlapping or analogous industries are finance and banking, insurance, and the practice of law. Third-party litigation funding is a form of finance and is part of the financial industry and some litigation funding structures are similar to lending provided, with respect to other types of assets, by banks. In covering plaintiffs' litigation costs, third-party funding is providing plaintiffs the same risk-shifting that insurance provides to defendants. And some of the services that some funders provide—like advice on litigation strategy or advice on the substance of a case that is developed by lawyers on a funder's staff—are similar to or possibly even venture into the practice of law.

The regulatory approach that has received the most attention, and generated the most controversy, is disclosure of all or parts of litigation funding agreements. I am sure the Committee is receiving reams of input advocating both for and against disclosure of various types. To that discussion I will add my previously-published view that the manner in which third-party litigation funding is provided and the ways in which it operates are too variable to be addressed by a one-size-fits-all disclosure rule.[14] To wit, "our legal system arguably should treat providing access to justice very differently than it does using the courts as a vehicle for revenge. Similarly, as already acknowledged, average Joes and Janes should receive more protection (which may require disclosure to courts) than do sophisticated funded parties. And foreign governments and their agents acting as financiers may require a different level of scrutiny than a commercial entity, especially if the cases they invest in have national security or foreign relations implications. Similarly, companies funding cases against their competitors should be treated differently than professional funding firms funding similar cases for a monetary profit. Politically-motivated funding, while distasteful to many, should be considered in light of First Amendment concerns not necessarily present in other types of cases."[15]

Therefore, I propose that legislators and courts adopt a flexible, discretionary balancing test. Such a test should take into account private interests—of plaintiffs, defendants, and funders—and public interests of the courts and the public at large. Such a test should also take into account various factors such as the type of plaintiffs bringing the action and why they are seeking funding; the type of funder and why they are providing funding; the nature of the case; the forum; the potential precedential effect; the structure of the financing; why disclosure is being sought; and where the case is procedurally.

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[14] Maya Steinitz, *Follow the Money? A Proposed Approach for Disclosure of Litigation Finance Agreements*, 53 UC DAVIS L. REV. 1073 (2019) (explaining in detail variability in litigation funding scenarios and private and public interests implicated and offering balancing test that can be adopted as legislation, as well as providing an example of how, in earlier part of twentieth century, with onset of contingency fees, Appellate Division of First Judicial Department of New York Supreme Court required lawyers in such cases to file retainer statements that set out terms of attorney's compensation as well as closing statements describing how recovery was divided. Data was then used to develop data-based regulation of contingency fees).

[15] Steinitz, *supra* note 15, at 1073.

Fiduciary duties and ethical requirements are a regulatory modality used in all three of the analogous/overlapping industries discussed above. A fiduciary duty to act in the best interests of the funded client can ensure that funders, like lawyers, will have to act in the interest of the plaintiffs, thus maintaining the balance of interests as it was before the rise of the litigation funding phenomenon. Arizona, for example, has taken the approach of imposing the rules of professional conduct that apply to attorneys, including fiduciary duties and other ethical obligations, to nonlawyers who holds an economic interest in an Arizona law firm.[16]

Requiring that plaintiffs in consumer and aggregate litigation receive minimum returns can help combat predatory financing. While sophisticated commercial plaintiffs who use litigation finance as a form of corporate finance do not need protection from predatory financial practices, individual plaintiffs and members of classes do appear to need such protections. And it appears that fee caps may not be an effective mode of regulation because funders can circumvent them by altering other terms in the funding agreement.[17] Setting minimum returns should help solve the problem.[18]

Finally, at least until the industry, its practices and its affects are better understood, in order to ensure transparency of this transformative phenomenon, it may be advisable to render disputes about litigation funding non-arbitrable so that the public—including journalists, regulators, and academics—can have transparency into what types of disputes arise, both qualitatively and quantitatively and better understand how third-party funding is affecting civil justice, the judicial branch, and the practice of law in the United States.

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[16] *See* M. Steinitz, *The Partnership Mystique: Law Firm Finance and Governance in the 21st Century*, 63 WM & MARY L. REV., 939 (2022) (describing and analyzing the change in Arizona's law). The European Union's current proposal for the regulation of litigation funding also includes a recommendation to impose a fiduciary duty on third-party funders. *See*, Resolution with Recommendations to the Commission on Responsible Private Funding of Litigation, Eur. Parl. Doc. P9_TA(2022)0308 (2022) (now pending before the EU Commission). The same Resolution also proposes prohibiting funders from obtaining direct or indirect control and rendering any such agreements void; requiring disclosure of relationships between funders and others, such as law firms, that my cause conflicts of interest; "that only under exceptional circumstances should arrangements between litigation funders and claimants depart from the general rule that a minimum of 60% of the gross settlement or damages is paid to the claimants"; and the establishment of a complaints system that does not give rise to excessive costs or an excessive administrative burden. *See also*, Sahani, *supra* note 5 (discussing ethical obligations in other jurisdictions and proposing an ethical code for litigation funding).

[17] *Whack-a-Mole Game, supra* note 3.

[18] Maya Steinitz, *Written testimony on lawsuit lending before the New York State Senate Standing Committee on Consumer Protection*, May 2018, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3178963 and Maya Steinitz, *Letter to the Hon. Sen. Orrt (NYS Senate) Regarding Lawsuit Lending*, May 2018, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3238148 (a follow-up research memorandum provided the New York State Senate Standing Committee on Consumer Protection at its request following up on the testimony).

CONCLUSION

The rise of third-party litigation funding is considered by many as the most important development in civil justice since the advent of the contingency fees about a century ago. It is already transforming the trajectory of individual cases, the work of the judicial branch at both the state and federal levels, and the practice of law. It has much positive potential but like many positive developments it comes with downsides and risks. These risks are borne by individual litigants, defendants and plaintiffs alike, and by society at large. Blueprints for regulation are readily available in the industries with which litigation funding overlaps, including the broader finance industry, the insurance industry, and the practice of law.

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BIOGRAPHY

Maya Steinitz is a Professor of Law and R. Butler Gordon Scholar in International Law at Boston University Law School. Her research focuses on a wide range of topics including the intersection of civil litigation and corporate law, public and business international law, and the global legal profession. Her articles have been published by leading law reviews and law journals published by Yale Law School, Harvard Law School, Stanford Law School, University of Pennsylvania Law School, Vanderbilt Law School, Oxford University, and others. She has recently published a book about cross-border mass tort litigation titled "The Case for an International Court of Civil Justice" (Cambridge University Press 2019) and her next monograph, "Litigation Finance, Law Firm Ownership & The Future of the Legal Profession" has been accepted for publication by Cambridge University Press. She has recently been elected as a Member of the American Law Institute.

Prior to joining academia, Professor Steinitz served as a litigator at Latham & Watkins, LLP and at Flemming, Zulack & Williamson LLP. She also clerked for the Hon. Esther Hayut, currently the Chief Justice of the Supreme Court of Israel.

Professor Steinitz has been interviewed and cited by scores of leading news outlets including CBS 60 Minutes, the New York Times, the Washington Post, the Wall Street Journal, NBC, NPR, The Atlantic, The Chicago Tribune, Reuters, Bloomberg, and the American Lawyer.

Professor Steinitz's publications are available on Social Science Research Network.