MYTH OR FACT?

ILFA | INTERNATIONAL LEGAL FINANCE ASSOCIATION

MYTH	FACT
Commercial legal finance is an unregulated industry.	Existing law, court rules, and ethical guidelines already govern the important questions surrounding commercial legal finance. Those rules ensure that clients maintain control of their cases and that their attorneys do not breach their duties of loyalty and confidentiality to their respective clients. Furthermore, various regulations apply to legal finance providers that are publicly traded companies or that offer other types of securities.
Commercial legal finance includes cases pertaining to personal injury, employment discrimination, malpractice, and consumer fraud.	Commercial legal finance involves business-to-business disputes, including contract and anti-trust disputes, intellectual property disputes, as well as international arbitration matters. This industry is separate and distinct from consumer litigation funding, which typically consists of small advances between \$500 and \$2,000 paid out directly to plaintiffs in personal injury cases.
Legal finance companies control the management of litigation and have a veto power over how funded entities and their attorneys manage cases.	The recipient of legal finance maintains full control over the conduct of the case, including strategy and ultimate decision-making. Legal finance companies are passive outside investors whose involvement in litigation is limited to careful evaluation of the merits prior to the investment, and ancillary advice on identifying expert witnesses or providing counsel based on past experience.
Foreign interests are manipulating the U.S. legal system through investments in legal finance companies.	Investors in legal finance companies have no control over investment decisions made by ILFA member companies. ILFA member companies' investors do not direct investments in specific cases or portfolios of member companies. Nor do investors have the ability to control or influence the provisions of funding agreements, gain access to sensitive case information, or control or influence litigation decisions, including settlement. In addition, under the Federal Rules, corporate defendants can protect confidential discovery material from unwarranted disclosure through the issuance of a protective order. For example, Rule 26(c) allows protection from "annoyance, embarrassment, oppression, or undue burden or expense" through a court issued order that specifies the terms and conditions for the discovery process.
Increased numbers of lawsuits and larger verdicts or settlements for injuries — which the insurance industry has labeled "social inflation" — are products of the commercial legal finance industry.	Insofar as corporate wrongdoers and their insurance companies have pointed to higher verdict amounts as evidence of "social inflation," those cases have little to do with the sorts of matters impacted by commercial legal finance. Moreover, commercial legal finance providers conduct rigorous underwriting before investing in cases, so those cases being brought are far more likely to result in rational settlements reflecting true value. These are non-recourse investments, meaning the legal finance provider receives nothing if a case loses, which necessarily dictates that legal finance providers only invest in the most meritorious of cases.
Plaintiffs should have to disclose the specifics of their legal finance agreements to opposing parties, because disclosure helps determine whether the funders are exercising undue influence, violating any ethical rules, or whether conflicts of interest exist.	Time and time again, courts have continued to rule that the details of legal finance agreements are generally not relevant to pending cases, protected by work-product as well as other protections, and should not be discoverable to opposing parties. The Administrative Office of the U.S. Courts has also repeatedly been presented with and rejected calls to impose an automatic forced disclosure provision. To the extent that a particular court has specific cause to ensure that ethical or legal rules are being followed, it has ample powers to review materials on a confidential basis.
Legal finance puts investors ahead of companies in the cases that they fund, because they are financially motivated to take control of litigation to maximize profits, depriving companies of turning their legal claims into assets.	Legal finance empowers those companies that use it to pursue meritorious claims that might otherwise be abandoned, treating pending litigation as valuable assets that can be leveraged. This financing mechanism relieves budget pressure and frees capital so that it can be deployed when and where it's needed the most within a business.