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# Bentham IMF's Allison Chock Speaks Out on Litigation Funding Transparency Bill

**By: John Freund | May 22, 2018**

*Earlier this month, Senators Grassley (R-Iowa), Tillis (R-N.C.) and Cornyn (R-Texas) introduced The Litigation Funding Transparency Act of 2018. The bill seeks to mandate disclosure of both the existence of litigation funding agreements and the agreements themselves in any federal class action or MDL case.*

The purported purpose of the Senators' funding bill is to ensure that judges in third party-funded cases are free of any conflicts of interest, a proposition Allison Chock, Chief Investment Officer of Bentham IMF called "a red herring."

Speaking directly to LFJ, Chock outlined three potential options for the extent of disclosure that is actually mandated by the bill. Option 1 mandates that only the existence and identity of the funder is disclosed; a regulation that Chock terms 'fairly harmless.' Chock notes that "in many jurisdictions, the existence and identity of a funder is probably discoverable anyway."

Option 2 would mandate that the funding agreement be disclosed for an in-camera review, whereby a judge reviews evidence in chambers, away from counsel or public scrutiny (ostensibly to determine if there are any provisions that cross ethical or legal lines – such as the allowance of the funder to exert control over case strategy, for example). U.S. District Judge Dan Polster recently ordered an in-camera review of funding agreements in an opioid epidemic case; a decision that made national headlines.

Chock is amenable to the in-camera approach, at least as pertains to certain cases. "We think that's okay too, in certain circumstances," Chock said. "I don't know that it's necessary in every circumstance, but certainly in the class action context or in certain MDLs there might be a need for that." Chock explains that the theme of disclosure seems to be popping up in the context of personal injury or mass tort claims (the NFL Concussion Case, the trans-vaginal mesh claims, slip-and-fall cases). Chock feels there may be more of a need for the Court to examine funding agreements in-camera in those specific types of class actions or MDLs, as opposed to reviewing agreements in all class actions or MDLs – such as security or antitrust claims – which Chock doesn't believe are as vulnerable to abuse, given the underlying sophistication of the claimants and their legal teams.

Option 3 is the most onerous to the litigation funding industry; namely the mandated disclosure of both the funder's identity and the specific funding agreement to both the Court and the counter-party. "We do think that would have an adverse effect on the legal market, for access-to-justice reasons," Chock said. "It very likely would lead to discovery sideshows, which makes it more burdensome for the Court and for the

parties. And then because of that you'd see a chilling effect on the information Plaintiffs (or in some cases Defendants) would want to share with their funders, because if they have to fight about the documents being discovered, they're just not going to give them."

Chock also noted the inherent unfairness of mandated disclosure of funding agreements, given that Defendants don't need to disclose how much money they are allocating to fund a case, so why should Plaintiffs have to?

In terms of the bill's supposed purpose – to mitigate the potential for conflicts of interest – Chock terms this motivation "a red herring."

"I've heard of zero instances of any judge having any conflict of interest after funding is brought to light in a case. There's not even an anecdotal instance," Chock said. "So the idea that we have to pass this legislation to prevent these conflicts is a little ridiculous."

Chock also noted that if judges do feel there might be the potential for a conflict, they already have the power to order an in-camera review, as Judge Polster did, in order to identify any such conflicts.

When I asked Chock if she feels there are political interests behind this bill – namely those of the U.S. Chamber of Commerce – she responded, "No question." The Chamber has been aggressively pushing for disclosure both federally and in numerous states (Wisconsin just passed a bill mandating disclosure in all third party-funded cases, and the New York State Senate just held a hearing on the litigation lending industry).

In light of the Chamber's efforts, I asked Chock if she thinks the Senators' Bill will act as a wake-up call to industry proponents to 'rally the troops' and push back against this proposed legislation. Chock noted that Bentham has proposed a code of best practices – similar to that of the Association of Litigation Funders (a UK advocacy group) – which they've invited other funders to join. However for reasons that aren't entirely clear, no U.S. commercial litigation funding advocacy group has yet materialized (there are 2 advocacy groups for consumer funders – ARC and ALFA).

Chock also notes that some funders, including Bentham, have lobbyists acting for their interests in Washington D.C. Of course, the funders are outnumbered by the Chamber of Commerce, whose lobbying budget is exponentially greater than that of all funders combined. Indeed, the Chamber has its own internal research organization – the Institute for Legal Reform – which cranks out news and research reports that support the Chamber's interests.

But that hasn't stopped Bentham and others from doing all they can to push back against the Chamber's efforts. "We do have righteous arguments," Chock said. "It helps to have the truth on your side."