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August 27, 2015

VIA ELECTRONIC TRANSMISSION

Sir Peter Middleton GCB
Chairman, Burford Capital
292 Madison Avenue, 23rd Floor
New York, NY 10017

Sir Peter,

Over the last several years, a growing number of reports have raised concerns about what impact the rapid expansion of third party litigation financing (TPLF) is having on our civil justice system. We write you, Chairman of one of the most prominent TPLF funders, seeking information related to those concerns.

In 2011, the New York City Bar Association estimated that more than \$1 billion was committed to litigation financing in the United States. By some estimates, that amount has tripled in just the last few years. While three of the largest firms involved in commercial litigation lending—Burford Capital (“Burford”), Bentham IMF (“Bentham”), and Juridica Investments Ltd. (“Juridica”)—are all publicly traded on foreign exchanges, each invests heavily in the United States civil justice system.¹ In January, for instance, your firm announced a 300 percent increase in its capital commitment, including an additional \$62 million in 2014 alone. A majority of this capital is committed to “U.S. litigation and arbitration.”² Likewise, while Bentham is based in Australia, it recently announced it was funding 10 additional lawsuits within the United States, and reported a gross revenue of \$31 million in the United States.³ Finally, Juridica earned \$73.9 million in net proceeds in 2014, and brought its total gross proceeds to over \$241 million from litigation, \$178 million of which is net profit. According to Juridica, its investments “have been made predominately in the United States.”⁴

¹ Both Burford and Juridica are incorporated in Guernsey and publicly traded on the London Stock Exchange’s Alternative Investment Market. Bentham Capital LLC is the wholly owned subsidiary of IMF Bentham Ltd. IMF Bentham Ltd is incorporated and domiciled in Australia and publicly traded on the Australian Securities Exchange.

² Burford Capital, *Annual Report 2014*, (March 17, 2015) at 8.

³ Bentham’s chief investment officer observed that “[t]he pace and volume of new funding opportunities have grown sharply in the past year.” *Id.*

⁴ Juridica Investments Ltd, *Annual Report 2014*, (April 10, 2015), at 15.

Your burgeoning industry is largely unregulated and operates with no licensing or oversight. Lending agreements between plaintiffs and commercial funders are confidential and generally not disclosed to the courts, the opposing party, or the public unless the terms of the agreement itself are the subject of subsequent litigation. And while commercial litigation lenders maintain that plaintiffs retain control over litigation and settlement decisions, the terms and fundamental structure of agreements that are publicly available call into question these assertions.⁵

We are concerned about the nature of commercial financing agreements and the impact they have on our civil justice system. Accordingly, please provide answers to the following questions:

1. For each year from 2009 to 2014, please identify the matters (by case name and docket number) being litigated or arbitrated in the United States, where you have entered into a financing agreement, or similar arrangement.
2. For each matter being litigated or arbitrated in the United States, please identify the lawyers or law firms, or other persons, with whom you have entered into financing agreements, or similar agreements.
3. For each matter being litigated or arbitrated in the United States, please summarize the subject of the dispute, whether it resolved and how much money was paid to (i) the plaintiffs; and (ii) your firm.
4. For each year from 2009 to 2014, please provide the total amount of capital committed to matters being litigated or arbitrated in the United States. Please provide these figures both in absolute terms, and as a percentage of the overall capital committed on a worldwide basis, for each calendar year.
5. Please describe your returns on investment for each matter for the years 2009-2014.
6. Please identify any referral agreements, either formal or informal, you, your firm (including any subsidiaries) or any representatives thereof have entered into with any lawyers or law firms in the United States. If you, your firm (including any subsidiaries) or any representatives thereof have entered into any such agreements, please provide copies, as well as a description of the terms. In your answer, please also provide the number of referrals made, the number of cases financed, and the final resolution of those financed cases.

⁵ See, e.g., *Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362, 384 (S.D.N.Y. 2014).

7. Have you been a party to any litigation or arbitration arising out of the terms or provisions of the financing agreements you have entered into? If so, please identify the matter, as well as the forum and current status.
8. Do any of your agreements include either: (a) a provision or language that vary the interest collected on the amount funded depending on the amount recovered by the plaintiff, or (b) language that provides that if plaintiffs settle the matter for an amount below a contractually provided figure, the net recoveries will be calculated by reference to an amount other than the actual recovery? Please provide copies of any such agreements, and identify the relevant provisions.
9. Do your financing agreements typically include arbitration clauses? If so, do those clauses cover disputes between you and the plaintiff over whether or not to enter into a settlement with the defendant?
10. In any matters where class treatment was sought under FRCP Rule 23 (or similar state rule of civil procedure), have you disclosed the existence or terms of the financing arrangement to the court or other interested parties?
11. Regardless of your answer to number 10, under what circumstances, if any, do you disclose the existence and/or terms of your financing agreements to other interested parties (including but not limited to the court and opposing parties)?
12. Does your firm or any of its affiliates make any investments other than in litigation? If so, please identify these investments and the amount of capital – absolute and relative, as described in question 4 – committed to those investments?

Thank you in advance for your cooperation with this request. We would appreciate a response by September 18, 2015. If you have questions, please contact Ted Lehman or Noah Phillips from our respective Committee staffs at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
United States Senate Judiciary Committee



John Cornyn
Chairman
Subcommittee on the Constitution