Introduction to Litigation Finance

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What we will cover today

- Background
  - Litigation finance defined
  - Brief history of litigation finance
  - Benefits
- Litigation finance applied
  - Investment process
  - Types of litigation finance
- Ethical considerations
  - Funder relationship
    - Work product

Background

Litigation finance definitions and history

What is litigation finance?

- Litigation finance is:
  - Transaction in which litigation claim is used as collateral to obtain financing
  - Most often non-recourse investment; returns only upon successful outcome of the case
  - Litigation funders are passive finance providers
  - Litigation finance is not new; specialty litigation finance companies financing commercial claims is relatively new
- Litigation finance is not:
  - The purchase of a claim or lawsuit
  - Control over a litigant's lawsuit or settlement
  - Pursuit of frivolous claims

What is litigation finance?

- Helps plaintiffs unable to pay or that need to preserve cash
- Aids firms that wish to expand contingency or alternative fee practice
- Promotes access to justice by enabling meritorious claims to proceed
- Although third-party funding of litigation exists for other purposes (e.g., personal injury, divorce), this presentation focuses solely on the financing of commercial litigation

A brief history

- Rules originating in ancient Greece and medieval England were barriers to litigation finance until 1900s
- Maintenance and champerty established at time of Magna Carta as crimes and torts "to weaken the hold of gangster barons"
  - Maintenance: Helping another maintain a lawsuit, generally by providing financial assistance
  - Champerty: Maintenance for profit
  - Barratry: Serial maintenance
- Regarded as unnecessary by the 1800s, champerty and maintenance were abolished as crimes and torts in England in 1967
- Three main Australian districts abolished them as crimes and torts in the 1990s