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February 20, 2019

Ms. Rebecca A. Womeldorf
Secretary of the Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Washington, D.C. 20544

Dear Ms. Womeldorf:

I write personally to supplement today's response by Burford and other litigation finance firms to the January 31, 2018 letter suborned by the U.S. Chamber Institute for Legal Reform.

I am the former Executive Vice President & General Counsel of Time Warner Inc. I am also the Chief Executive Officer and one of the founders of Burford Capital, the largest litigation finance company.

From personal knowledge and experience, I wanted to rebut the Chamber's suggestion that the business community doesn't use litigation financing. That is simply false.

When I was at Time Warner, like most general counsel I faced significant challenges around legal costs and budgets. We regularly sought alternatives to traditional hourly billing approaches and looked hard for ways to move legal costs off the balance sheet – including what is now called litigation funding. The simple fact is that most companies, regardless of their size or financial position, are simply not willing to allocate the capital necessary to enable their legal functions do all the things they can and should be doing.

When I co-founded Burford ten years ago, it was at the behest of law firms and corporate clients who were searching for external capital solutions to these very problems. Burford was a response to corporate demand, not an attempt to stimulate it. Indeed, our very first matters were to support corporate clients of firms like Latham & Watkins and Simpson Thacher & Bartlett.

Since then, we have gone on to provide billions of dollars of capital to a wide selection of corporate clients. In doing so we have worked with 90% of the AmLaw 100. We are a multi-billion dollar publicly traded company with audited financial statements; we aren't just making this stuff up.

Moreover, a number of the companies who signed the January 31 letter are clients of ours, and several signatories of the letter have personally discussed the use of litigation finance with me. A notable example is a lengthy and pleasant meeting I had in 2015 with Brackett Denniston when he was GE's General Counsel. Moreover, in the few weeks since the letter was sent to you, one of its signatories has in fact approached Burford seeking litigation financing.

Why, then, the apparent dissonance of corporate counsel signing the Chamber's letter while also using our capital? The simple answer is the bare-knuckled tactics of the Chamber, not merely in its political lobbying, but also in managing its members, for whom it is easier to sign on publicly rather than to refuse to go with the flow.

Having signed the letter, however, those members must then go back to running their businesses – many of which benefit from litigation finance. If one carefully parses the last paragraph of the January 31 letter, one notes that it is written cautiously and never says that the signatories do not use litigation finance.

Finally, on the substantive question of disclosure, companies don't want it when they are plaintiffs and they do want it when they are defendants. As plaintiffs, they value keeping their financial affairs private, and view litigation finance as no different than any other source of capital to manage legal expenses. But as defendants, they value distraction and delay, and imposing a disclosure regime provides another arrow in that quiver. There is nothing surprising in these positions; I would have taken the same position whenever I was a defendant. But that does not make it correct – nor does it alter the fact that no change is needed to the clear and robust litigation disclosure rules that have worked well in the United States for many decades.

Respectfully submitted,

/s/

Christopher P. Bogart
Chief Executive Officer