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MDL subcommittee passes off litigation finance disclosure proposal

(Reuters) - On Tuesday, at the semi-annual meeting of the Advisory Committee on the Rules of Civil Procedure, a subcommittee designated to consider the rules of multidistrict litigation declined to act on a U.S. Chamber of Commerce-backed proposal to require plaintiffs in all civil suits to disclose litigation funding agreements. Instead, according Michigan law professor Edward Cooper, who serves as reporter for the Advisory Committee, the MDL subcommittee referred the issue of litigation funding disclosure back to the larger group, concluding that litigation finance is not an issue only in MDLs.

Cooper said the Advisory Committee does not have immediate plans on the disclosure proposal but will monitor developments in federal districts that have adopted local rules implicating the transparency of litigation finance agreements. "What will come next remains to be seen," he said.

As you may recall, the Chamber and other business groups have been tussling with litigation funders over disclosure for at least five years. Several groups first asked the **Rules Committee** to consider a disclosure requirement in 2014. When the committee opted not to proceed with formal consideration of the proposal, a larger group revived the push for disclosure in 2017. The **Rules Committee** referred the matter to the MDL subcommittee, which delved deeply in the past two years into litigation finance, among other matters, at conferences around the country. As I've reported, the Chamber and other groups, including Lawyers for Civil Justice, made a major push for the MDL subcommittee to call for amending the Federal Rules of Civil Procedure to mandate disclosure of litigation finance deals.

But the subcommittee, according to **Rules Committee** reporter Cooper, determined that litigation funding "is not peculiarly a phenomenon of MDL litigation," he said. As a result, he said, the subcommittee "passed the torch back."

Page Faulk of the Chamber's Institute for Legal Reform portrayed the subcommittee's referral of the disclosure proposal back to the full committee as an "important step ... We're very pleased that the committee has left this on its agenda." Lawyers for Civil Justice general counsel Alex Dahl said the MDL subcommittee "left the door wide open" for the **Rules Committee** eventually to act on the business lobby's calls for disclosure. The subcommittee made "a decision not to write a rule right now," he said. "It's clear the full committee is going to do something. They're working on a plan of what to do."

But the litigation financier Burford said in a blog post that the MDL subcommittee's decision to refer the matter back to the full committee marks "a third failure for the Chamber" to change the federal rules to require disclosure of funding deals. "No change has happened because no change is merited," the Burford blog post said.

In an interview, Burford senior vice president Andrew Cohen emphasized the MDL subcommittee's two years of immersion in litigation finance issues. "After two years, the subcommittee has concluded that (litigation funding) doesn't affect MDLs," he said. Notably, Cohen added, there has been no call to arms on litigation finance from federal judges in districts with more stringent disclosure requirements than those in the federal rules. The subcommittee's recommendation, Cohen said, seems to have been that the full committee keep an eye on developments as the litigation finance industry continues to grow, but that "it's not time for a general rule," Cohen said.

(Reporting by Alison Frankel)

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