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Third-Party Litigation Financing and the Impending Resurgence of the Legal Profession

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The deterioration of the legal jobs market and the crisis in legal education have dominated recent headlines. Some conclude that the current weak market reflects the new normal in legal education and the profession, and they fill the ether with their tales of doom and gloom. I remember hearing the term "new normal" just prior to the Dotcom Bust in the early 2000s, so such references signal to me a radical change is coming. The growth of third-party litigation financing (TPLF) may be the catalyst that ushers in a reversal of the legal market and an unprecedented resurgence of the legal profession.

Despite its critics and shortcomings, TPLF has significant legal and professional support and is gaining significant traction. The concept is simple: finance companies fund the cost of litigation in exchange for a share of a plaintiff's potential recovery. The hundreds of millions (and perhaps billions) of dollars of TPLF undoubtedly will drive up the demand for litigation attorneys, but its ripple effects will also increase the demand for transactional and regulatory attorneys. In short, TPLF will transform the legal profession.

First, the capital infusion will make more lawsuits viable and increase the complexity of lawsuits. The increase in the number and complexity of lawsuits will drive up the demand for more and better litigating attorneys.

Second, faced with the increased likelihood of having to defend their actions and incur the costs of litigation and the higher costs of losing lawsuits, businesses will take greater care to structure transactions and practices legally. Such efforts will require the skills and expertise of competent transactional and regulatory attorneys, further increasing the demand for attorneys.

Third, TPLF, combined with an improving economy (which can't hold back indefinitely) and the relative dearth of attorneys that will result from the decreasing law school enrollment, portend a perfect storm that will hit the legal market.

The recession and slow recovery from it have created a buyers' market for legal services. Consumers of legal services have been able to pressure law firms to modify their billing and hiring practices. Law graduates have felt the effects of the buyers' market as law firms have hired fewer graduates and paid them less. Reports of the dire prospects for law graduates have resulted in fewer law school applications and smaller graduating law school classes. Thus, the supply of attorneys has decreased significantly over the past few years.

The demand for legal services will inevitably turn to favor attorneys. When that happens, the lack of attorneys in the pipeline will create a substantial shortage of qualified attorneys. For law firms to meet

the new demand for legal services, they will have to aggressively recruit the top law graduates. To entice them to join their firms, law firms will have to raise starting salaries to unprecedented heights, creating a market reversal of epic proportions.

In fact, the legal services market, which has been a buyer's market for the last several years, will quickly become a seller's market. Those who invest in the legal profession stand to gain handsomely from the reversal.