

Kluwer Mediation Blog

The Role of Litigation Funding in Mediation: Opportunity or Obstacle?

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In a world where business disputes can drag on for years and generate exorbitant costs, mediation stands out as an efficient path to resolving conflicts more quickly and economically. However, when third-party litigation funding is involved, the dynamics shift significantly. The key question is: does litigation funding encourage mediation, or does it become an obstacle to its effectiveness?

On February 6, 2025, the [2nd Brazilian Mediation Day](#) took place at Paris-Panthéon-Assas during the [ICC Mediation Week](#), marking another important milestone in the development of mediation both in Brazil and internationally. Organized by the Brazilian Mediation Day Committee, under the coordination of Rissiane Goulart and Marina Gouveia, in collaboration with the [International Mediation Institute \(IMI\)](#), the event brought together leading experts to discuss key issues shaping the future of mediation.

Throughout the event, discussions focused on key best practices that have been gaining relevance globally, with topics ranging from the importance of negotiation skills for lawyers, and how well-prepared attorneys can prevent prolonged litigation, to the use of artificial intelligence in dispute resolution. Among these discussions, third-party funding was highlighted as a growing point of interest, expanding beyond arbitration into mediation. This shift is particularly significant for Brazil, where funding mechanisms and their impact on consensual dispute resolution are still evolving and require further exploration.

One of the main points raised was how investors assess the feasibility of a settlement. When a third-party funder is involved, the decision on whether and when to settle is influenced not only by the original parties' interests but also by the investor's expected financial return. This creates two distinct scenarios:

1? – **Mediation as a strategic tool** – If funders recognize that a quick settlement can yield economic benefits and mitigate unnecessary risks, they may actively encourage negotiation and consensual dispute resolution.

2? – **Mediation as a barrier to funding** – In some cases, funders may prefer to push the case forward, betting on a more favorable arbitral or judicial decision, even if it means a prolonged and costly process. This is particularly true when they perceive that an early settlement would result in a lower return than expected.

The discussion also highlighted the role of timing in decision-making. If a case can be resolved through mediation within six months, this may be seen as a win for all parties. On the other hand, some disputes may extend over several years, requiring continuous investment that could become unsustainable.

Moreover, it was emphasized that funders are not a homogeneous group—some actively participate in negotiations, while others take a more hands-off approach, merely assessing financial risks. This diversity in strategies makes the debate even more relevant.

Conclusion

Litigation funding and mediation are not necessarily opposing forces. When properly aligned, they can complement each other and enhance the efficiency of resolving complex disputes. However, for mediation to be effectively integrated as a viable alternative, mediators must understand funders' motivations and structure discussions that balance economic and legal interests.

The discussions at the 2nd Brazilian Mediation Day reinforced an important point: mediation should not be merely a secondary option—it should be positioned as a strategic tool for business dispute resolution and sustainable solutions. As mediation continues to gain traction in both the legal and business spheres, events like this demonstrate its increasing relevance and the importance of engaging with all stakeholders — including funders — to ensure that mediation remains at the forefront of dispute resolution strategies.

We now look forward to the 3rd Brazilian Mediation Day, eager to continue these discussions and see how mediation will further evolve on the global stage.

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