

Using NY Lawsuit Loan Law, Ruling Against Shady Injury Suits

By **Andrew Hamelsky and Maxx Johnson** (June 17, 2026)

In a significant development for defendants in New York personal injury litigation, a unanimous November 2025 decision by the Appellate Division's First Judicial Department in *Lituma v. Liberty Coca-Cola Beverages LLC* recognized that third-party litigation funding discovery is available when a defendant establishes a factual predicate suggesting fraud.

This landmark judicial precedent is now reinforced by a major legislative shift: the New York Consumer Litigation Funding Act, which took effect June 17. Together, these two developments fundamentally alter the transparency, profitability and legality of lawsuit loan networks across the state.

Defense counsel in premises liability, labor law and motor vehicle matters should immediately leverage both tools to expose organized claim activity, fabricated accidents and coordinated treatment schemes.

Up First: *Lituma v. Liberty Coca-Cola Beverages LLC*

Decided on Nov. 20, 2025, *Lituma v. Liberty Coca-Cola Beverages* shattered years of public policy protections that previously insulated lawsuit lenders from discovery.

The case arose from a standard motor vehicle accident, but the defendants asserted the accident was intentionally staged. Specifically, Liberty Coca-Cola alleged that the plaintiff deliberately accelerated, cut directly in front of their commercial vehicle and slammed on the brakes to force a collision.

Rather than merely guessing or speculating, the Coca-Cola distributor successfully counterclaimed for fraud by presenting a highly comprehensive affidavit from an insurance agent. This affidavit detailed a long chronology of suspicious activity, explicitly connecting the plaintiffs, their specific legal representation and their medical providers to other highly suspect local accidents.

The First Department affirmed the trial court's order vacating the plaintiff's note of issue and compelling the disclosure of third-party litigation funding files. The court applied the broad standard of Section 3101(a) of the New York Civil Practice Law and Rules, determining that:

- Funding documents are "material and necessary" to a defense when fraud is properly pled; and
- Accessing funding agreements and internal underwriting applications is essential because they expose a clear financial motive to fabricate an accident or inflate medical treatment.



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The Next Factor: The Consumer Litigation Funding Act

Signed into law on Dec. 20, 2025, and taking effect this week, the New York Consumer Litigation Funding Act adds Article 39-H to the New York General Business Law. While the Lituma decision handles active litigation on a case-by-case basis, this statute completely restructures the daily operations of the consumer lawsuit loan industry.

Major Pillars of the Act

The 25% Gross Recovery Cap

A funding company's total recovery is strictly capped at 25% of the consumer's gross litigation recovery. This removes the predatory dynamic where exploding compounding interest wipes out a plaintiff's entire take-home settlement.

Prohibition on Strategic Interference

Lenders are legally barred from influencing any litigation strategy or interfering with the attorney's professional judgment. Funders cannot pressure a plaintiff to reject a reasonable settlement offer just to artificially increase loan interest returns.

Banning Interconnected Fraud Networks

The act completely prohibits funding companies from paying referral fees to specific attorneys or medical providers. It also bans law firms from holding any financial interest in the funding groups. This directly strikes at the coordinated loops where attorneys send clients to lenders, who then fund unnecessary lien-based surgeries at predetermined clinics.

Time-Based Payoff Schedules

Rather than taking an arbitrary percentage of the final verdict, contracts must utilize fixed, time-based repayment structures, typically set in 180-day intervals, with zero prepayment penalties.

Mandatory Consumer Protections

Plaintiffs receive an automatic 10-business-day right to cancel the loan and return the funds without penalty.

Lenders must register with the state, post a suitable bond and submit extensive annual reports.

Key Takeaways

The central lesson from Lituma is that litigation funding materials are discoverable when the defense demonstrates they are material and necessary to explore a potential financial motive for fabricating or advancing a fraudulent claim.

Crucially, the act introduces a statutory backstop by capping funder returns at 25% of gross proceeds and banning referral fee networks between funders, law firms and medical providers. The decision provides the courtroom mechanism to expose funding arrangements, while the new statute severely restricts how those funding networks operate on the back end.

Why the Dual Framework Matters

New York courts have historically resisted requests for litigation funding discovery, labeling such materials as collateral to liability and damages. Lituma and the act shatter this status quo in two distinct ways.

The Judicial Avenue: Discovery

The Lituma court's ruling signals a willingness to permit targeted discovery into potential financial motives behind a claim, offering a new avenue to investigate suspected organized claim-generation activity.

The Statutory Avenue: Structural Restrictions

Effective June 17, the new act forces funding companies to register with the state, mandates plain-language contracts and grants consumers a 10-day right of rescission.

This dual framework is highly relevant in cases where accident circumstances are difficult to test through conventional liability discovery alone, but where the presence of a funding agreement may point to an underlying, coordinated financial scheme.

Broader Impact Beyond Motor Vehicle Cases

The combination of Lituma's reasoning and the act's strict bans on referral networks will heavily disrupt several categories of personal injury litigation, including:

- Premises liability, such as unwitnessed slip-and-fall or trip-and-fall claims, where immediate funding is secured to bankroll high-interest medical treatments;
- Construction and labor law claims where treatment and referral patterns raise concerns regarding collaborative attorney-funder-provider networks, which are completely outlawed under the new act; and
- High-volume bodily injury matters involving repeat providers, immediate attorney involvement or suspicious claim histories.

Evidence of litigation funding is no longer just financial background; it is proof of whether a funding company is unlawfully influencing legal strategy or violating the statutory 25% recovery cap.

Practical Guidance for Defense Counsel

To make effective use of Lituma and the incoming statutory regulations, defense counsel must build a precise record before moving to compel discovery.

1. Identify early warning signs and statutory infractions.

At intake and during early case evaluation, look for indicators such as:

- Unwitnessed accidents with immediate attorney retention;

- Recurring combinations of specific medical providers and funders; and
- Treatment paths or funding agreements initiated after the passage of the act that fail to include mandatory state-registered disclosures or attorney attestations.

2. Develop a factual predicate.

The Lituma decision requires specific evidence, not generalized suspicion. Counsel should use:

- Claim-history searches, index number traces and social media investigations;
- Targeted deposition questions probing how the plaintiff was introduced to the funding company, to check for illegal referral networks; and
- Nonparty discovery and insurer or investigator affidavits.

3. Tailor discovery requests.

Avoid boilerplate demands. Frame funding requests directly around the Lituma standard of showing motive and coordination, while simultaneously demanding proof of compliance with the act's contract and registration requirements.

4. Preserve the ability to reopen discovery.

If evidence of an illegal funder-to-attorney referral pipeline surfaces late in a case, Lituma supports an application to reopen discovery based on unusual or unanticipated circumstances. Counsel must preserve this issue early.

Strategic Implications

For defendants, Lituma and the act represent a powerful combined toolkit to challenge questionable personal injury claims.

The true value lies in the court-approved pathway to investigate fraud, paired with the state's severe financial squeeze on predatory lending practices. Where a documented basis exists to suspect fabrication, defendants now possess unprecedented leverage to expose, litigate and dismantle coordinated claim activity.

Conclusion

Lituma v. Liberty Coca-Cola Beverages and the Consumer Litigation Funding Act are together reshaping discovery and settlement strategy in New York personal injury defense.

For practitioners confronting suspicious claims, the road map is clear: Identify red flags early, develop a detailed factual record and pursue tailored discovery that connects funding networks directly to motive, structural noncompliance and fraud.

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[1] Lituma v. Liberty Coca-Cola Beverages LLC, 2025 NY Slip Op 06389 (1st Dept. 2025).