You are general counsel to the law firm of Back, Toald & Ways, LLP (the “Firm”), one of the oldest and most venerable firms in the country. Its origins trace back to its mass torts practice, with the firm building its reputation on aggressively litigating asbestos and tobacco claims on behalf of those who have suffered debilitating injuries. In the past few decades, the Firm was also able to develop a vibrant commercial practice, representing some of the country’s largest corporations. Unfortunately, this growth has coincided with a steady decline in the Firm’s mass torts practice, to the consternation of many of the Firm’s old guard.

This year, the Firm has a new managing partner. A large group of beleaguered partners voted in favor of an outsider who promised to revitalize the Firm’s mass torts practice and respond to the needs of those long time partners in that group who felt they were being disregarded. This individual promised these partners to do everything from aggressively promoting the Firm’s mass torts practice to exploring the somewhat comical proposal of building a literal wall (or at least a fence) between the Firm’s commercial and plaintiff’s practice in an effort to somehow stave off conflicts.

You were brought in as new general counsel. One of the issues that management has asked you to assess relates to litigation funding companies (“LFCs”). True to their name, LFCs focus their efforts on providing loans to personal injury plaintiffs who are struggling to make ends meet. The litigation funding agreements (“LFAs”) these companies propose come in many different forms, with some giving LFCs the power to hire and fire the victims’ counsel, the power to approve a settlement, and/or the right to obtain regular reports from counsel outlining litigation strategy. LFCs have a range of different methods by which they obtain payment, with some even sharing in the proceeds of the recovery.

The Firm’s commercial partners previously led the charge to enact a policy prohibiting the Firm from having any involvement with LFCs, including recommending them for a client or executing any LFA upon request. This was one of the flash points that led to the management overhaul. The new managing partner wants to revisit this decision.

In another effort by the old guard to revitalize their mass torts practice, they are urging even greater involvement with LFCs. One of the Firm’s partners was asked to serve as outside general counsel for Ivonna Urmonie Inc. one of the largest LFCs in the nation. In that role, this LFC proposes to retain the Firm to do everything from evaluating claims of potential candidates for an LFA, reviewing whether settlements should be approved, and even recommending new counsel for the victim if existing counsel performs unsatisfactorily. New management sees this as a win-win engagement, as the Firm will receive long term work from this client, while also having an LFC that its mass torts team can now recommend for its clients. Management has also instructed you to examine this potential engagement.
Thus, please prepare a memorandum to your managing partner (1) revisiting the Firm’s policy restricting association with LFCs and assessing what, if any, limits should be placed on that association, and (2) evaluating the potential engagement with Ivonna Urmonie. You are to identify ethical concerns, and to aggressively assess whether they can be met. The Model Rules of Professional Conduct govern in your jurisdiction.