Dark Money:

Undisclosed Third Party Litigation Funding and Its Impact on Medical Technology*

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AdvaMed
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Table of Contents

Introduction and Executive Summary

Outside financing that generates mass tort litigation is a driving force behind litigation today, particularly over beneficial medical devices. The litigation is "fueled by banks, private equity firms and hedge funds."[1] These financiers are injecting huge amounts of unregulated investment capital into leveraging the civil justice system in an attempt to drive liability regardless of the merits. As a result, the litigation is being turned into a profit generation machine, with traditional notions of justice growing ever more feint.

Litigation generated, funded, and influenced by outside parties has significant implications for the civil justice system, and, in turn, public health and innovation. Lawsuit campaigns fueled by third party litigation funding (TPLF) attempt to leverage and overwhelm the civil justice system, seeking to pressure a company to settle regardless of whether science supports the allegations. The financial interests of outside funders in maximizing their return on the investment are placed above the interests of patients and health care. The ads they pay to generate may deter patients from seeking beneficial medical treatment or to believe a medical device has been recalled, when it has not. In fact, patients have been coaxed into having a medical device removed without consulting their doctor through unnecessary, expensive, and potentially harmful procedures – to boost the settlement value of the claim for attorneys and funders. Plaintiffs have seen their recoveries in mass tort settlements siphoned by outside lenders.

TPLF-funded litigation also has an adverse impact on health care innovators. Saddling companies with unsound liability untethered from the merits can chill innovation and diminish the value of important devices. Lawyers and funders try to leverage the inherent risks of devices into profit-generating litigation, even when those devices are highly valued and not defective. This litigation, therefore, hinders their ability to develop new health care technologies.

This paper shines a light on the growing use of TPLF, which remains unregulated and continues to be used to distort the operation of the judiciary. First, the paper describes three types of litigation funding, each of which raises distinct public policy concerns.

- Commercial litigation funding, in which businesses, hedge funds, and others fund litigation expenses, has become a multi-billion dollar industry. These lenders typically invest millions into a particular case or portfolio of cases, expecting to handsomely profit when the litigation settles. Despite the industry's assurances otherwise, situations have been revealed in which lenders influenced a party's choice of counsel or vetoed settlements as too low. Commercial litigation funding may also hide ulterior motives behind the litigation, such as competitor's desire to obtain proprietary information. Major commercial litigation funders alone invested $3.2 billion into litigation in 2022 and had $13.5 billion in assets under management. This form of TPLF has increased by nearly 40% since 2019.
- So called "pre-settlement advances," while most commonly used in common slip-and-fall or auto accident cases, have emerged as a significant concern in mass tort litigation. Predatory lenders offer plaintiffs loans for personal expenses while they await a settlement check. Plaintiffs may balk at reasonable settlement offers, knowing that they will be left with little or nothing after paying their lawyer's contingency fee and paying back the lender with interest, or expect a larger settlement to offset these costs.
- Outside funding of a plaintiff's medical expenses has led to litigation in which patients are urged to undertake unnecessary medical treatment to drive up their cases' settlement values. It has led patients to remove medical devices without consulting their doctor through expensive and potentially harmful procedures. Medical funding has also led to outright fraud in litigation.

Second, the paper finds that as TPLF has grown, not coincidentally, so has advertising seeking to recruit plaintiffs for mass tort litigation.

- The amount spent on ads seeking to generate mass tort litigation, including lawsuits against medical device manufacturers, has doubled over the past decade.
- Meanwhile, mass tort litigation in federal courts has increased from about 25% of the civil docket in 2012 to 73% in 2022.
- Litigation targeting medical device manufacturers are among the largest multidistrict proceedings.
- Judges have criticized these practices as incentivizing filing high volumes of unvetted and unsupportable claims in the hope they will be swept into a global settlement.

Third, the paper explores public health concerns that stem from inundating the public with lawsuit advertisements that exaggerate or misrepresent risks of medical devices or other FDA-approved products. Misleading ads have:

- Fostered a general mistrust of medical devices, which may lead future patients to delay or forego treatments.
- Led patients to abruptly stopping medical treatment without first consulting their medical providers, in some cases leading to grave consequences.
- Mistakenly led viewers to believe a medical device has been recalled, when it has not.

Finally, the paper surveys current law regarding disclosure of TPLF arrangements and ongoing efforts to obtain transparency and other safeguards. It finds that:

- Under current court rules, TPLF is rarely disclosed.
- Longstanding efforts to amend the Federal Rules of Civil Procedure to require TPLF disclosure are ongoing.
- In absence of a generally-applicable disclosure requirement, judges can and have required disclosure. Some federal courts have done so through local rules or orders, or required disclosure in specific mass tort litigation.
- Meanwhile, several state legislatures have enacted TPLF disclosure requirements and more are expected to do so. State judiciaries can also act.

The paper concludes that federal and state action is needed to address the use of outside money to influence the judicial branch of government. When outside money is used to influence the executive or legislative branches of government, there are disclosure and reporting requirements that help assure there is proper transparency. Similar requirements are needed here.

Specifically, disclosure of TPLF is a needed first step to allow courts to consider potential conflicts of interest, address ethical violations, consider improper motives underlying the litigation, and respond to predatory arrangements. The paper also highlights several other options that policymakers may consider, such as prohibiting lenders from influencing litigation or settlement decisions. The stakes are incredibly high, not just for the notion of justice, but for the continued advancement of innovative medical devices that can help people live longer, better lives.

Types of Third Party Litigation Funding

Third party litigation funding (TPLF) is the growing practice of persons or entities investing in litigation, usually in exchange for a portion of the anticipated settlement, judgment, or other monetary recovery. There are several forms of TPLF, each of which raises distinct public policy concerns for medical technology companies.

Commercial Litigation Funding

Commercial litigation funding is a type of lawsuit lending in which a nonparty provides money to a law firm or party to pay for litigation expenses. It is used to finance a wide range of litigation. In response to a survey conducted by Bloomberg Law in 2022, 32% of participating litigation finance providers reported that they funded product liability litigation.[2] Similarly, 37% of in-house counsel and law firm attorneys surveyed by Lake Whillans and Above the Law in 2023 indicated that they used TPLF in personal injury / mass tort litigation.[3] Commercial litigation funding is also frequently used in business litigation and patent, anti-trust, environmental, and bankruptcy-related cases. The goal of this funding is to leverage the civil justice system as an investment tool—not provide access to justice.

Litigation expenses covered by the outside funding include compensating attorneys and other legal staff to bring the cases; paying the cost of running television and social media advertisements and hosting call centers to recruit plaintiffs to file lawsuits; funding the "science" that will be used to accuse the device, drug or other product of causing harm; retaining expert witnesses to support the litigation; conducting discovery; and more.

Commercial litigation funders range from publicly traded companies to startup firms and even sometimes wealthy individuals. A consulting firm that advises litigation financers places commercial litigation funders in three categories: (1) dedicated funders that specialize in litigation finance, such as Burford Capital and Omni Bridgeway; (2) multi-strategy funders, usually hedge funds, that include litigation finance among their investments; and (3) ad hoc funders, which occasionally invest in litigation and do not publicize their participation.[4]

Concerns Raised by Commercial Lawsuit Lending

- Facilitates speculative mass tort litigation
- Pays for advertising that places generating as many lawsuits as possible above public health
- Hidden entities may influence litigation and demand higher settlements
- Funders may have ulterior motives, such as obtaining access to proprietary information
- Potential conflicts of interest

Investors may fund an individual case, but it is becoming common for funders to finance a portfolio of cases, such as product liability lawsuits targeting a specific medical device.[5] About two thirds of commercial litigation funding by major lenders is invested in portfolio arrangements.[6] The funded amount is typically in the millions of dollars. Major dedicated commercial lenders, for example, reported that their average financing arrangement overall was \$8.6 million, including \$4.3 million in a single matter and \$10.5 million in a portfolio arrangement.[7] Burford Capital, the largest commercial litigation funder, rarely invests below \$5 million in an individual case and, according to its CEO, recovers in 90% of its cases and typically doubles its money.[8]

Commercial litigation funders often assert that they do not influence how attorneys conduct the litigation or its settlement.[9] Yet, situations have come to light in which funders chose a party's counsel[10] or vetoed settlements as "too low."[11]

When used in mass tort litigation, the goal of the attorneys and their investors is to generate as many cases as quickly as possible. The availability of outside money allows plaintiffs' law firms to share the risk with others, making them more willing to bring speculative claims. The sheer number of claims, adverse publicity, and cost of defense places inordinate pressure on defendants to settle regardless of the merits. The funder is then entitled to a share of a global settlement that may be in the hundreds of millions or billions of dollars. Meanwhile, the scare tactics and exaggerated claims made in these ads, particularly when they target medical devices or medications, has significant public health implications, as discussed later in this paper.

Concerns Raised by Consumer Lawsuit Lending

- Predatory interest rates and fees
- Complicates the ability to resolve litigation and inflates settlements because plaintiffs may reject reasonable offers that will be siphoned by lenders and attorneys
- Lenders may target plaintiffs who await payment after global settlements of mass tort litigation

In addition, this form of TPLF may hide the ulterior motives of those who are actually driving the litigation. A company could fund a lawsuit to gain access to a competitor's intellectual property or other proprietary information regarding its technology. Recently, for example, it was revealed that a Chinese firm, Purplevine IP, which is linked to a Chinese consumer electronics giant, TCL Corp., is paying the costs of patent infringement lawsuits against Samsung in U.S. courts.[12] An outside funder can also enable or prolong litigation to place a competitor at a disadvantage, or even attempt to drive a company out of business for any number of reasons, through distracting, costly litigation.[13]

Another concern is that, unlike attorneys who have a duty to act in the interests of their clients, funders are solely motivated by their own financial interests. A funder may direct attorneys to reject reasonable settlement offers that may be in a plaintiff's best interest and hold out for a higher payment. Plaintiffs, particularly in mass tort and class action litigation, may not even be aware that their attorneys have taken outside funding, which will be repaid out of their settlements. They may be unaware their claims are pawns in this money play.

Consumer Lawsuit Lending

A second form of TPLF is referred to by some lenders as "pre-settlement" cash or advances. Consumer lawsuit lending is most often seen in ordinary auto accident or slip-and-fall cases. Lawsuit loans of this kind are also a significant concern, however, in mass tort settlements where lenders, after announcement of a global settlement that will take time to implement, offer predatory loans to waiting plaintiffs.

These arrangements are comparable to payday loans. Lenders provide money directly to vulnerable, injured consumers who have already filed a personal injury lawsuit. In many cases, recovery is all but certain, as an insurer or defendant is likely to pay the claim. In some instances, there is already a settlement and the only question is when the check will arrive.

Lenders, such as LawCash and Oasis Financial, provide loans to consumers who are plaintiffs in litigation to cover personal expenses, such as rent or car payments. In exchange, many lenders charge excessive interest rates and fees. Consumer lawsuit lending industry representatives say that the average lawsuit loan is about $2,000,[14] but the amounts can be far greater. At payback, a consumer may owe the lender three, five, or even ten times the advanced amount. For instance, a plaintiff in a product liability lawsuit took out four loans totaling $30,000, then found himself owing the lender over $340,000 when the lawsuit settled five years later.[15] Victims of these largely unregulated and often predatory loans have even included 9/11 first responders, who took advances while waiting for payment from the federal victim compensation fund,[16] and former professional football players, whose settlements from a class action lawsuit alleging concussion-related injuries were "cannibalized" by lenders.[17]

These arrangements may complicate the ability to resolve litigation as plaintiffs may reject reasonable settlement offers because, after the lender and the plaintiff's attorneys' take their shares, there may be little or nothing left for them.

The federal judge overseeing the largest federal multidistrict litigation (MDL) in history, including 260,000 lawsuits, recently raised these concerns. One day after 3M reached a $6 billion settlement with plaintiffs' counsel to resolve product liability claims alleging that earplugs used by veterans and current military service members led to hearing loss, Judge M. Casey Rodgers of the Northern District of Florida issued an order intended to prevent predatory lawsuit lending.[18] The August 29, 2023 order recognized that "for at least the past decade, settlements of this size and nature have often attracted the attention of third-party litigation funding entities intending to prey on litigants" – offering loans "often with exorbitant fees and rates of interests."[19] The order noted that these types of loans can deter plaintiffs from accepting settlement offers "because they may want to make up the amount they will be forced to repay the funder."[20] To avoid claimants being "exploited by predatory lending practices," the court required plaintiffs' lawyers to disclose all TPLF agreements already entered to the settlement administrator and the court, which the court said it would review "with a high degree of scrutiny," and barred any further TPLF to a claimant in the litigation without court approval.[21]

In many states, the legality of the consumer lawsuit loan industry and its practices are unclear. The industry often claims that, because it offers money on a "non-recourse" basis, which a consumer is not required to repay if there is no settlement or judgment, it is not subject to usury laws and other protections that apply to ordinary consumer loans. In some states, such as Colorado and Kentucky, courts have disagreed.[22] In recent years, the lending industry has urged state legislatures to enact laws to license and legitimize its practices.

Medical Funding

Outside funders or healthcare providers sometimes cover a plaintiff's expenses for medical care with the expectation that they will be repaid out of a settlement or judgment. This form of TPLF poses the risk that attorneys refer clients to medical clinics or doctors with whom they have a relationship. The healthcare providers involved may then provide unnecessary or excessive treatment, such as rehabilitative care or surgeries, or charge inflated amounts, and the funders may charge excessive interest rates.

Concerns Raised by Medical Funding

- Incentivizes urging plaintiffs to receive unnecessary medical treatment and healthcare providers inflating medical bills
- Excessive charges inflate settlement values
- Facilitates fraud

For example, medical funding was used to coax women into having unnecessary surgery to remove pelvic mesh implants so that lawyers and funders could profit from higher settlements in litigation against medical device manufacturers. A *New York Times* expose revealed how a network of marketers, lawyers, doctors, and litigation funders solicited women to bring lawsuits alleging complications from the implants.[23] As part of the recruitment process, the marketers reportedly told women that they had a defective mesh implant that needed to be removed immediately. The marketers worked with litigation finance companies to provide plaintiffs with high-interest loans to pay for the questionable surgery, which would be secured by future recoveries from settled litigation over the devices. The procedure was performed by doctors who were often associated with the marketers. The settlement payout for a case in which a woman had an implant surgically removed was higher than settlements for women whose inserts remained implanted, and some of those involved stood to get a cut of the recovery. Federal prosecutors charged a funding facilitator and a surgeon for their roles in this scheme,[24] leading to guilty pleas and criminal penalties.[25]

Medical funding can also facilitate outright fraud. In New York, for example, homeless individuals were recruited to stage trip-and-fall accidents at business locations. According to federal prosecutors, the "injured" person was referred to attorneys who were in on the scheme. They would allegedly file lawsuits and instruct clients to receive ongoing chiropractic and medical treatment from certain doctors. The patients were told that if they intended to continue their lawsuits, they must undergo surgeries, even if not needed, to boost the value of their claims. Their medical and legal expenses were reportedly fronted by litigation funding companies, which paid participants in the scheme referral fees and charged the patients high rates of interest, sometimes up to 50% on medical loans and up to 100% on personal loans. According to prosecutors, "[t]he interest rates were so high that oftentimes the majority (if not all) of the proceeds" awarded in the lawsuits went to the funding companies, lawyers, and doctors. Prosecutors charged two lawyers, two doctors, and a litigation funder who also owned an MRI facility that benefited from the scheme.[26] All eventually pleaded guilty or were convicted at trial, including the litigation funder, who was sentence to three years in prison, ordered to forfeit over $650,000, and pay restitution.[27]

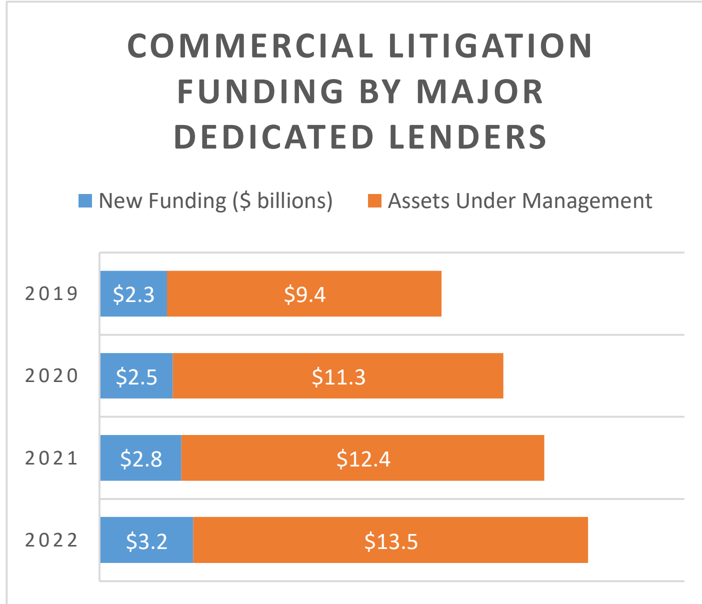
Industry Growth

TPLF has quickly become a multibillion-dollar industry because this influx of outside money has proven effective at distorting the litigation system, leading to handsome returns on investment. According to a Government Accountability Office (GAO) report, in 2021, the best available estimate was that commercial litigation funders had a total of $12.4 billion in assets under management and had committed $2.8 billion to new litigation financing agreements."[28] The GAO also found that TPLF for both single-case and portfolio arrangements had more than doubled between 2017 and 2021.[29]

That amount continues to grow. Westfleet Advisors, which the GAO relied upon for its estimates, indicated that, between July 2021 and June 2022, 44 major commercial litigation funders had a combined $13.5 billion in assets under management and had invested $3.2 billion that year into "only a few hundred commercial litigation and arbitration matters."[30] The latest data indicates a 16% rise from new commercial TPLF investment over the previous 12-month period and a nearly 40% increase since 2019.

These estimates are a vast understatement of the full scope of TPLF since they rely on self-reported data by major commercial litigation funders and do not account for other investors. As the GAO acknowledged, it is not possible to make a comprehensive estimate of the total amount invested in TPLF because of the lack of publicly available data. Some experts predict that commercial litigation funding could reach $31 billion by 2028.[31]

While it is difficult to accurately estimate the amount of outside money invested in litigation, all evidence suggest that it is growing dramatically. In response to a Bloomberg litigation finance survey, completed in late 2022, nearly three quarters of responding litigation funders reported that their business had increased since the pandemic and that they expected their business to increase in the year ahead.[32] Two thirds of lawyers surveyed said they were more likely to use TPLF than five years ago.[33]



Westfleet Advisors, 2021 and 2022 Litigation Finance Market Reports

New commercial litigation funding firms are opening to grab a piece of the pie.[34] The TPLF industry is considered so lucrative, and such a sure thing, that, in recent years, dozens of Supreme Court clerks have opted to go into litigation finance rather than fill top law firm positions that often come with large signing bonuses and compensation or take prestigious government positions.[35] Rather than create the next Facebook, young entrepreneurs are launching litigation finance firms.[36]

Professor Maya Steinitz, an expert on litigation finance who has testified before Congress, told *60 Minutes* in 2022 that litigation funders "are reshaping every aspect of the litigation process—which cases get brought, how long they are pursued, when they are settled. But all of this is happening without transparency. So we have one of the three branches of government, the judiciary, that's really being quietly transformed."[37]

TPLF Fuels the Mass Tort Litigation Machine

TPLF is a key factor in the exponential growth of mass tort product liability litigation against manufacturers of medical technology.

An entire industry has developed around mass tort litigation. Bolstered by outside investment, law firms and businesses known as "lead generators" spend extraordinary sums to identify potential plaintiffs through television, social media, and print advertisements, and even telephone and email solicitations. Anyone who used a product, or was treated with a medical device, is urged to "call right now" because they may be entitled to "substantial compensation." The FDA logo flashes on the screen, suggesting government endorsement of the information, and multi-million dollar verdicts are listed, even when courts have thrown out or substantially reduced such awards. Sometimes, lawsuit ads are introduced as "medical alerts" or presented in a newscast format to appear objective. Call centers gather medical and other information from those who respond, then package and sell potential claims to interested law firms.[38] In pelvic mesh litigation, strangers solicited individuals for lawsuits by phone, apparently through misuse of their medical records.[39]

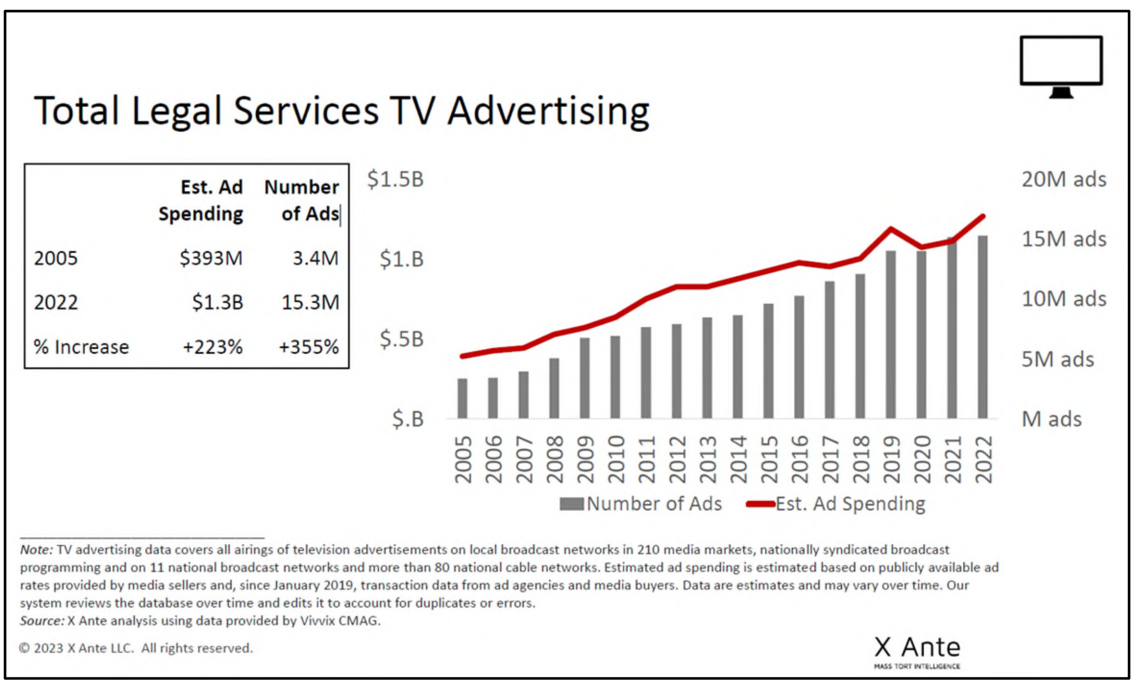
Third party-funded claim generation schemes chill support for companies on the cutting edge of innovation. These massive advertising campaigns cast doubt on companies and their products, regardless of whether the claims are supported by real science. Through these campaigns, large numbers of cases are filed, many of which are unvetted.

To the average person, the massive number of claims generated misleads them into thinking the cases have legitimacy. These meritless cases create financial and reputational risk to the company. The litigation may also require companies to divert significant resources from research and development to defending meritless claims, thereby slowing innovation and progress toward new treatments.

Rising Sums Spent on Lawsuit Ads, Including Medical Device Targets

According to an analysis by X Ante, which tracks and analyzes mass tort advertising, spending on television ads for legal services tripled from $393 million in 2005 to $1.3 billion in 2022. The number of ads rose by four-and-a-half times during that period, from 3.4 million ads to 15.3 million ads.[40]

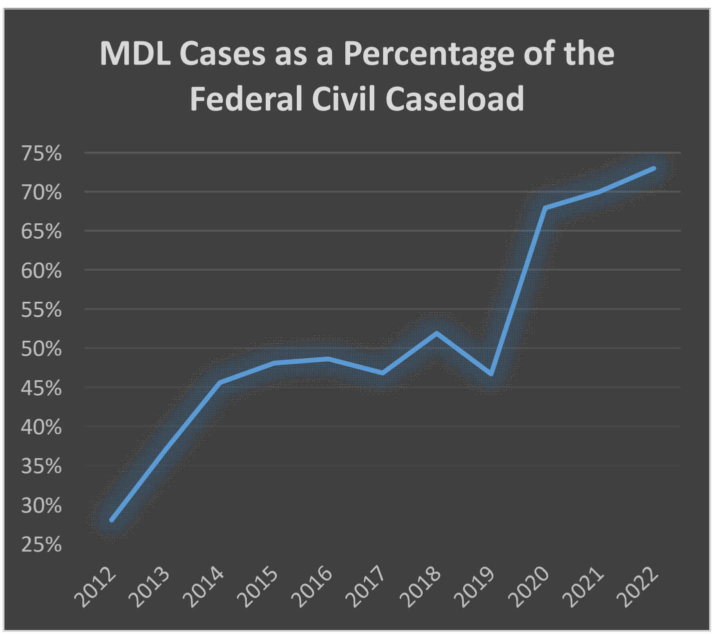
In the past decade, the amount specifically spent on TV ads to generate mass tort litigation nearly doubled from $115 million in 2012 to $220 million in 2022, peaking at $300 million in 2019.[41] Two of the top ten mass tort targets during this period were medical devices – hernia mesh ($104.3 million on ads) and Inferior Vena Cava (IVC) filters ($85.5 million on ads).[42]



In recent years, plaintiffs' lawyers and lead generators have invested between $400,000 and $3.4 million each month on television ads targeting medical device manufacturers.[43] In the first half of 2023, the top targets for lawsuits involving medical devices were pelvic mesh, hernia mesh, and CPAP machines, according to an X-Ante analysis prepared for AdvaMed.[44]

The amount spent on advertising to find plaintiffs for a single mass tort litigation can be astounding. In addition to hernia mesh litigation ads, campaigns to recruit plaintiffs for Xarelto, Roundup, talcum powder products, and Camp Lejeune litigation have each exceeded $100 million.[45]

The lack of transparency in TPLF makes it impossible to know how much of these ad campaigns are funded by outside investors. Yet, the exponential growth of TPLF during the same period that lawsuit advertising has surged is surely not coincidental. It appears that TPLF has contributed toward covering the upfront costs of generating mass tort litigation.



Lawyers for Civil Justice. Based on Duke Law Center methodology.

Mass Tort Litigation Has Surged

The surge of lawsuit advertising appears to have had its intended effect. Mass tort litigation has exploded in recent years, as shown by federal multi-district litigation (MDL) statistics. As recently as 2012, the percentage of the federal civil docket that was in MDLs, which are primarily product liability mass tort cases that are consolidated for pre-trial purposes, was less than 30%. Since that time – again, coinciding with rising TPLF and lawsuit advertising – this proportion has increased nearly every year.[46] In 2020, for the first time, cases in MDLs made up more than half of the federal civil caseload.[47] That percentage reached 73% at the conclusion of the 2022 fiscal year (392,374 cases out of 536,651 federal civil cases).[48] The largest MDL in history targets 3M's Combat Arms earplugs. Other large MDLs involving medical device litigation include certain hernia mesh products, IVC filters, and IUD products.[49] These statistics do not account for medical device and other mass tort litigation pending in state courts.

Impact on the Civil Justice System

The goal of these ad-generated lawsuits is to overwhelm defendants and the judicial system with so many claims that they cannot separate those that may have merit from those that do not. The cost of defending thousands of cases, with no end in sight, and prolonged adverse publicity that harms the company and its employees and investors, pressures companies to settle. In some instances, manufacturers have settled mass tort litigation at levels in the hundreds of millions of dollars even after prevailing in *every* bellwether trial.[50]

A Federal Advisory Committee on Civil Rules report estimated that 20% to 30% of cases and, in some litigation, as many as 40% to 50% of claims in federal MDLs are unsupportable:[51] Judges that have overseen MDLs have expressed concern that these claims are not properly screened and pose challenges for the fair administration of justice.

For example, Judge M. Casey Rodgers of the U.S. District Court Northern District of Florida has observed that it is difficult to apply the ordinary procedural safeguards used to verify claims when "the volume of individual cases in a single MDL can number in the hundreds, thousands, and even hundreds of thousands."[52] She cautioned that the "high volumes of unsupportable claims clog the docket, interfere with a court's ability to establish a fair and informative bellwether process, frustrate efforts to assess the strengths and weaknesses of the MDL as a whole, and hamper settlement discussions."[53]

The Chief Judge of the U.S. District Court for the Middle District of Georgia made similar observations when overseeing an MDL of lawsuits targeting a medical device, a suburethral sling product called ObTape Transobturator Tape, which was used to treat women with stress urinary incontinence. Judge Clay D. Land noted that the litigation began with 22 cases, but then ballooned to 850 lawsuits – "an explosion [that] appears to have been fueled, at least in part, by an onslaught of lawyer television solicitations." [54] Judge Land expressed concern that consolidation for products liability actions in MDLs had "the unintended consequence of producing more new case filings of marginal merit in federal court, many of which would not have been filed otherwise."[55]

Judge Land explained:

> "Although one of the purposes of MDL consolidation is to allow for more efficient pretrial management of cases with common issues of law and fact, the evolution of the MDL process toward providing an alternative dispute resolution forum for global settlements has produced incentives for the filing of cases that otherwise would not be filed if they had to stand on their own merit as a stand-alone action. Some lawyers seem to think that their case will be swept into the MDL where a global settlement will be reached, allowing them to obtain a recovery without the individual merit of their case being scrutinized as closely as it would if it proceeded as a separate individual action. This attitude explains why many cases are filed with little regard for the statute of limitations and with so little pre-filing preparation that counsel apparently has no idea whether or how she will prove causation."[56]

These arrangements do not necessarily benefit plaintiffs. After attorneys and litigation funders take their shares off the top, and because meritless claims may not be properly screened out, deserving plaintiffs may get less money.

Public Health Implications

These well-funded and omnipresent ads do more than just recruit large numbers of potential plaintiffs. Misleading lawsuit ads foster a general mistrust of medical devices, which may lead future patients to delay or forego treatment because of an exaggerated perception of risk.[57]

Patients have responded to lawsuit ads by abruptly stopping medical treatment without first consulting their medical providers, in some cases leading to grave consequences.[58] For those who already use medical devices, fear can even lead to unnecessary treatment, such as unneeded surgery to remove an implanted device.[59]

Many viewers of lawsuit ads mistakenly are led to believe that the targeted product has been recalled, when it has not. For example, a study found that more than half of new patients who went to a specialty urology clinic to seek treatment for pelvic organ prolapse (POP) and stress urinary incontinence (SUI) mistakenly believed there was a recall due to television ads recruiting individuals for lawsuits.[60] Nearly 70% of the patients surveyed listed television as a source of information about mesh use in surgery, while only 16% listed a doctor as a source of information.[61] Patients who relied on television as a source of medical information were three times more likely than others to believe there was a recall.[62] The authors attributed this misinformation to "the numerous litigation ads that are seen on television."[63] They also expressed concern that the misinformation could "erode physician-patient trust" and result in confusion, fear, and uncertainty when a doctor suggests mesh as an option for treatment after the patient has viewed lawsuit ads.[64]

In addition, when FDA-approved or FDA-cleared devices become subjects of meritless litigation, the federal regulatory framework loses credibility. As a result, the public may lose trust in treatments that are not subjects of mass tort litigation, thereby stifling progress on a much greater scale.

The American Medical Association (AMA) has passed resolutions against “fearmongering” lawsuit advertisements. In 2016, AMA found that these ads were “dangerous to the public at large” because they emphasized potential lethal side effects or complications without informing viewers of the small degree of risk generally associated with that side effect, the product’s benefits, or that the FDA evaluated and approved the product after considering its benefits and risks.[65] Three years later, the AMA found that misleading lawsuit ads had become “even more pervasive” and that “actual patient harm is occurring.”[66] The organization called for commonsense reforms, including prohibiting ads from using government logos or the term “recall,” and requiring ads to clearly warn patients of the danger of stopping a course of treatment without first speaking with their doctor.[67] The Federal Trade Commission has also intervened, sending letters to lawyers and lead generators that have sponsored ads that open with sensational warnings or alerts, suggest they are public service announcements or medical alerts, and make claims about product risks that may be deceptive or unsubstantiated.[68]

AdvaMed has partnered with health care and civil justice groups to urge lawmakers to enact legislation that ensures responsible advertising for patient safety.[69] In recent years, seven states have responded by enacting legislation to prohibit common deceptive practices lawsuit advertising.[70]

Disclosure of TPLF: Current Law & Ongoing Efforts

A significant concern with TPLF, in any form, is the lack of transparency. Courts and the actual parties in litigation are often unaware that an outside entity is trying to leverage the judiciary and their cases solely for financial gain. This secrecy may hide improper motives of the funders and lawyers, potential conflicts of interest, or why parties have difficulty resolving the claims. Disclosure of TPLF—just like disclosure of money used to influence other branches of government—would allow courts to address ethics violations and predatory arrangements. Disclosure and other safeguards are desperately needed.

Current Disclosure Rules

In most courts, there is no obligation for a party or party's attorney to disclose that they are receiving TPLF. The Federal Rules of Civil Procedure, and rules that apply in most state courts, require defendants to automatically share a copy of any insurance agreement that may satisfy all, or a portion of, a judgment.[71] There is no similar requirement for other parties to share their funding source, such as TPLF, including whether the funder has control over when and under what terms the case can settle. In a 2022 *Bloomberg Law* survey of legal professionals and litigation finance providers, most respondents indicated TPLF is never or rarely disclosed in court.[72]

Some federal district courts have local rules or forms written broadly enough to require disclosure of the identity of litigation funders in some circumstances. These districts expand on Federal Rule of Civil Procedure 7.1, which provides for corporate disclosure statements. These local rules typically require a party to disclose the identity of any person or entity, other than the parties to the case, that has a financial interest in the outcome. Some districts limit this disclosure obligation to corporate parties, while others extend the requirement to all private parties. The purpose of these rules is to assist judges with assessing possible recusal needs or disqualification.[73]

Likewise, about half of U.S. Courts of Appeals have rules that should require identification of litigation funders in some circumstances by expanding on Federal Rules of Appellate Procedure 26.1.[74]

While these court rules should theoretically require disclosure of TPLF, it is uncertain whether parties are interpreting and following them, or courts are enforcing them, in this manner.

Benefits of Transparency

- Allows courts to address ethical violations, conflicts of interest, and predatory arrangements
- May reveal improper motives underlying the litigation
- Permits the judiciary and policymakers to evaluate the scope and effect of TPLF, and the need for additional safeguards

Seeking TPLF Information through Discovery

Through the discovery process, parties in litigation can seek information about "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case."[75] Courts have allowed parties to obtain information on TPLF through discovery in some circumstances, especially when the presence of outside funding can be tied to the merits of the case. Obtaining such information through discovery is challenging, however, as attorneys for funded parties frequently object, claiming that how the litigation is funded is either irrelevant to the claims or defenses in the case, that the information is privileged and reflects litigation strategy, or both.[76]

Progress in Federal Courts

AdvaMed is among a growing number of organizations advocating for an amendment to the Federal Rules of Civil Procedure that would require disclosure of TPLF in civil actions in federal courts. This effort began in 2014.[77] Support grew to thirty organizations with a renewed proposal in 2017.[78] In 2021, this Coalition asked the Committee on Rules of Practice and Procedure to consider implementing a one-year pilot project requiring TPLF disclosure in several federal district courts.[79] Most recently, in May 2023, the

Coalition supporting the disclosure rule brought recent developments to the Committee's attention that show the increased pervasiveness of TPLF and confirm that funders, despite their insistence otherwise, control litigation.[80] Even as such evidence mounts, the rules committee has not acted and suggested it needs more information, which is challenging to obtain without disclosure.

While the rule proposal remains pending, two federal courts have broadly required disclosure of TPLF, New Jersey and Delaware.

The U.S. District Court for the District of New Jersey adopted a local rule in June 2021 that requires all parties to file a statement with the court within 30 days of filing an initial pleading or the case being transferred to the court, including removal from state court, when any person or entity that is not a party is providing funding for some or all of the attorneys' fees and expenses for the litigation on a non-recourse basis in exchange for (1) a contingent financial interest based upon the results of the litigation or (2) a non-monetary result that is not in the nature of a personal or bank loan, or insurance. The statement must identify the funder; whether the funder's approval is necessary for litigation or settlement decisions, and, if so, the nature of the terms and conditions relating to that approval; and briefly describe the funder's financial interest. The order also provides that the parties may "seek additional discovery of the terms of any such agreement upon a showing of good cause that the non-party has authority to make material litigation decisions or settlement decisions, the interests of parties or the class (if applicable) are not being promoted or protected, or conflicts of interest exist, or such other disclosure is necessary to any issue in the case."[81]

The following year, Chief Judge Chief Judge Colm F. Connolly of the U.S. District Court for the District of Delaware adopted a substantively identical TPLF disclosure requirement through issuing a standing order that applies to all cases assigned to him.[82] Potential violations of this order spurred an investigation into suspicions that companies acting as straw men for a patent monetizer (a company that acquires vast amounts of patents for the purpose of bringing lawsuits) had filed dozens of lawsuits in the Delaware federal court without disclosing their interests in the litigation.[83] In November 2023, Judge Colm found that the attorneys involved acted at the direction of entities hidden from the court and defendants, rather than the shell LLCs they purportedly represented, to insulate the real party in interest that owned the patents from the risk of being required to pay sanctions, attorney fees, and costs should there be an adverse decision. The attorneys acted in the interests of their funders, which were their "de facto clients," and treated their actual clients, the plaintiffs, as "mere inventory," according to the court's 102-page ruling. Judge Colm indicated that he would refer the attorneys involved to the U.S. Department of Justice, U.S. Patent & Trademark Office, and state lawyer ethics officials.[84]

> "Despite the absence of a disclosure requirement in the Federal Rules of Civil Procedure, federal judges can and do still obtain information about third-party litigation funding arrangements in cases filed in their courts."
>
> **JUDGE M. CASEY RODGERS**

Separately, the Delaware disclosure order also revealed that a foreign funder with ties to a Chinese electronics giant was financially supporting patent litigation against Samsung.[85]

In addition, the Northern District of California has, for several years, required disclosure of any person or entity that has a financial interest or any other kind of interest that could be substantially affected by the outcome of any proposed class, collective, or representative action.[86]

Disclosure Required in Specific Mass Tort Litigation

Federal judges have also ordered attorneys to disclose TPLF when overseeing mass tort litigation and required them to assure the court that lenders are not influencing the litigation or settlement. This occurred in opioid,[87] Zantac,[88] and, mostly recently, in the 3M Combat Arms Earplug product liability litigation.

In the earplug litigation, Judge M. Casey Rodgers was particularly concerned that predatory lenders would entice plaintiffs to take loans with exorbitant fees and rates of interests while they awaited a share of a $6 billion global settlement, which the judge had approved the previous day.[89] She noted that predatory lending practices can "deter plaintiffs from accepting a settlement offer because they may want to make up the amount they will be forced to repay the funder."[90] As Judge Rodgers observed, "Despite the absence of a disclosure requirement in the Federal Rules of Civil Procedure, federal judges can and do still obtain information about third-party litigation funding arrangements in cases filed in their courts."[91] The court required all attorneys in the litigation to disclose all TPLF agreements entered into by any plaintiff they represent, pledging to review each contract "with a high degree of scrutiny" and, going forward, prohibited new TPLF agreements in the litigation without prior court approval.[92]

Federal Legislation & Congressional Oversight

Between 2017 and 2021, members of Congress repeatedly introduced a TPLF disclosure bill, "The Litigation Funding Transparency Act." It did not advance. While that legislation is not currently pending, Congress has continued to show interest in the issue. In September 2023, the House Oversight Committee held a hearing entitled, "Unsuitable Litigation: Oversight of Third-Party Litigation Funding."

At that hearing, Johnson & Johnson Assistant General Counsel Aviva Wein testified that "the outside money and control fueling modern-day mass tort litigation have little to do with vindicating rights or compensating purportedly aggrieved consumers."[93] She highlighted a survey finding that only 16.6% of plaintiffs in MDLs had ever even spoken with their lawyer on the phone and less than half could name their attorney.[94] Only "a trifling 1.8 percent felt like their lawsuit accomplished what they hoped it would." Ms. Wein concluded, "Today, the primary beneficiaries of our mass tort regime are the attorneys and their investors. The losers are the courts, American businesses, consumers and allegedly aggrieved claimants."[95]

In addition, Senators Joe Manchin and John Kennedy have introduced a new bill addressing TPLF, the "Protecting Our Courts from Foreign Manipulation Act," S. 2806. The House bill, H.R. 5488, is sponsored by the new Speaker, Mike Johnson. This legislation, however, is limited to requiring disclosure of foreign persons or entities, and banning sovereign wealth funds and foreign governments from funding litigation.

Progress in the States

State legislatures have required disclosure of TPLF in recent years. Wisconsin became the first state to statutorily require automatic disclosure of "any agreement under which any person, other than an attorney permitted to charge a contingent fee representing a party, has a right to receive compensation that is contingent on and sourced from any proceeds of the civil action, by settlement, judgment, or otherwise" in 2018.[96]

In 2023, Montana enacted broad TPLF disclosure legislation that not only requires disclosure of commercial and consumer TPLF contracts, but also subjects the industry to state licensing and regulation.[97] The Montana law limits the share of recovery that a lender can receive and maximum interest rate it can charge. It also prohibits litigation funders from influencing litigation or settlements, and provides that funders are jointly responsible for any award or court order imposing costs or penalties on a plaintiff, among other safeguards.

Indiana and West Virginia require disclosure of consumer lawsuit lending arrangements,[98] but their statutes do not apply to commercial lawsuit lending.

Several other state legislatures have considered TPLF disclosure bills and are likely to adopt such proposals in the years ahead. In addition, transparency proponents may request that state judiciaries amend their rules of civil procedure to require TPLF disclosure. The Texas Civil Justice League submitted such a proposal, for example, to the Texas Supreme Court in late 2022.[99]

Conclusion

Third party litigation funding has become widespread in the civil justice system. The growing use of TPLF to generate mass tort litigation, particularly against manufacturers of medical technology, misuses the civil justice system, adversely affects public health, chills innovation, and harms patients.

Given TPLF's use in a broad range of litigation, including by businesses and major law firms, the genie is not likely to go back into the bottle. What can and should be done as a basic first step is to require transparency when outside entities have a financial interest in litigation. All parties and the court should be aware that a commercial funder, hedge fund, individual or business that does not appear on the docket may have motivated the lawsuit, and could be pulling the litigation strings and complicating the ability to resolve the litigation.

In addition to automatic disclosure of TPLF agreements and subjecting these arrangements to discovery, other safeguards may be helpful, such as those recently enacted in Montana. These may include:

- Licensing and regulating litigation funders;
- Setting a maximum percentage of recovery or interest rate that lenders can siphon from a settlement or judgment;
- Prohibiting lenders from controlling the litigation or settlement;
- Establishing a fiduciary duty between lenders and funded parties, so that lenders cannot place their own interest in maximizing their profits over an injured party's interest in promptly receiving fair compensation; and
- Subjecting lenders to joint liability for any sanctions imposed for litigation that they enabled.

Disclosure of TPLF and other safeguards are critical to ensuring that hidden outside investors are not misusing the civil justice system for their own profit at the expense of patients, innovation, and fairness.

Endnotes

[1] Matthew Goldstein & Jessica Silver-Greenberg, *How Profiteers Lure Women Into Often-Unneeded Surgery*, N.Y. Times, Apr. 14, 2018.

[2] *See, e.g*., Bloomberg Law, Litigation Finance Survey 2022.

[3] Lake Whillans, 2023 Litigation Finance Survey Report.

[4] Westfleet Advisors, The Westfleet Insider: 2022 Litigation Finance Market Report, at 4 (2023).

[5] *See* Maurice MacSweeney, Op-ed, *Litigation Finance Spurs Innovation by Moving Past Single Cases*, Bloomberg Law, Mar. 16, 2023.

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[7] Westfleet Advisors, The Westfleet Insider: 2022 Litigation Finance Market Report, at 5 (2023).

[8] *See* Leslie Stahl, *Litigation Funding: A Multibillion-dollar Industry for Investments in Lawsuits with Little Oversight*, 60 Minute / CBS News, Dec. 18, 2022 (interview Burford CEO Christopher Bogart).

[9] *Id.* (quoting Mr. Bogart, "Clients are free to run their litigations as they see fit. They're free to work with their lawyers as they see fit. And we don't interfere with that relationship.").

[10] *See, e.g*., Steven Mufson, *Patton Boggs Becomes Mired in an Epic Legal Battle with Chevron Over Jungle Oil Pits*, Wash. Post, June 29, 2013 (reporting that before Burford would invest in litigation seeking to collect an $18.2 billion judgment of an Ecuadorian court in the United States (which was later revealed to be secured through bribery and fraud), Burford wanted a particular Patton Boggs partner involved).

[11] *See, e.g*., Emily R. Siegel, *'Everybody Wins' as Sysco Hands Burford Control of Lawsuits*, Bloomberg, July 3, 2023 (reporting settlement of litigation between a food producer, Sysco Corp., and litigation funder Burford Capital, in which Sysco alleged that Burford had blocked settlements of funded price-fixing cases that it deemed "too low"); *see also* Mike Leonard & Justin Wise, *Sysco Accuses Burford Capital of Meddling in Antitrust Deals*, Bloomberg Law, Mar. 9, 2023.

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[14] *See, e.g*., Testimony of Eric Schuller, President, The Alliance for Responsible Consumer Legal Funding (ARC), Before the Kansas House Committee on Judiciary, H.B. 2694, Feb. 15, 2022.

[15] *See Boling v. Prospect Funding Holdings*, LLC, 771 Fed. Appx 562 (6th Cir. 2019).

[16] *See* Leslie Stahl, *Litigation Funding: A Multibillion-dollar Industry for Investments in Lawsuits with Little Oversight*, 60 Minute / CBS News, Dec. 18, 2022 (reporting the case of NYPD officer Donald Sefcik, who took a $25,000 lawsuit loan while awaiting a $90,000 victims' compensation fund payment, and had to pay the lender $64,800 of his recovery).

[17] Ken Belsen, *Widespread Deceptive Practices May Reduce Payouts in N.F.L. Concussion Settlement*, N.Y. Times, Sept. 19, 2017 (quoting plaintiffs' attorney Christopher Seeger); Mike Scarcella, *Litigation Funder Thrivest Loses Challenge Over NFL Concussion Payouts*, Reuters, Oct. 27, 2023; Ken Belsen, *N.F.L. Concussion Payouts Have Lenders Circling*, N.Y. Times, May 9, 2016.

[18] Case Management Order No. 61 (Third Party Litigation Funding), *In re: 3M Combat Arms Earplug Prods. Liab. Litig*., No. 3:19-md-02885 (N.D. Fla. Aug. 29, 2023).

[19] *Id*. at 1.

[20] *Id*. at 2 (quoting GAO report).

[21] *Id*. at 2-5. Similar concerns regarding predatory lawsuit lending were raised by the judiciary during the settlement of litigation brought against the National Football League by former football players based on concussion-related injuries. *See In re: Nat'l Football League Players' Concussion Injury Litig*., 923 F.3d 96 (3d Cir. 2019).

[22] *See, e.g., Boling v. Prospect Funding Holdings, LLC*, 771 Fed. Appx 562 (6th Cir. 2019) (applying Kentucky law); *Legal Financial Group, LLC v. Coffman*, 361 P.3d 400, 410 (Colo. 2015).

[23] Matthew Goldstein & Jessica Silver-Greenberg, *How Profiteers Lure Women Into Often-Unneeded Surgery*, N.Y. Times, Apr. 14, 2018.

[24] *See* U.S. Dep't of Justice, Eastern Dist. of N.Y., Press Release, *Surgical Funding Facilitator and Physician Charged in Alleged Nationwide Scheme to Defraud Women in Connection with Transvaginal Mesh Litigation*, May 24, 2019.

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Neumeister, *Feds Say $31M Manhattan Trip-and-Fall Scam Used Homeless People as Pawns*, Ins. J., Aug. 30, 2021; Barbara Grzincic, *Two N.Y. Lawyers Accused in $31 Mln Insurance Scam*, Reuters, Aug. 25, 2021.

[27] *See* U.S. Attorney's Office, Southern District of New York, Press Release, *New York Litigation Funder Convicted in Trip-and-Fall Fraud Scheme Sentenced to 36 Months in Prison*, Apr. 2023.

[28] U.S. Government Accounting Office, Third-Party Litigation Financing: Market Characteristics, Data, and Trends, at 11-12, GAO-23-105210 (Dec. 2022) (citing Westfleet Advisors, *The Westfleet Insider*).

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[30] Westfleet Advisors, The Westfleet Insider: 2022 Litigation Finance Market Report, at 2-3 (2023).

[31] *See* Swiss Re Institute, US Litigation Funding and Social Inflation 8 (Dec. 2021).

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[35] Jimmy Hoover, *Ex-Supreme Court Clerks Find Big Money Opportunities in Litigation Finance*, Law.com, Oct. 23, 2023.

[36] *See* Matt Wirz, *The 26-Year-Old Dropout Lapping the Hedge-Fund Field*, Wall St. J., Apr. 16, 2022.

[37] *See* Leslie Stahl, *Litigation Funding: A Multibillion-dollar Industry for Investments in Lawsuits with Little Oversight*, 60 Minute / CBS News, Dec. 18, 2022.

[38] *See* generally Cary Silverman, Bad for Your Health: Lawsuit Advertising Implications and Solutions 10-17 (U.S. Chamber Inst. for Legal Reform, Oct. 2017) (documenting such misleading practices).

[39] *See* Matthew Goldstein & Jessica Silver-Greenberg, *How Profiteers Lure Women Into Often-Unneeded Surgery*, N.Y. Times, Apr. 14, 2018.

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[41] *Id*.

[42] *Id*.

[43] X Ante, Medical Device Mass Tort Television Advertising Q2 2023 (April – June), at 2 (July 31, 2023) (examining data from January 2021 to May 2023).

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[48] *See* Rules for MDLs, Press Release*, 73% of Federal Civil Cases Are in MDLs as of Fiscal Year 2022*, Apr. 27, 2023 (reporting that 392,374 civil cases out of 536,651 civil cases in federal courts, excluding Social Security and prisoner cases, reside in MDLs as of the end of FY22).

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[51] Advisory Committee on Civil Rules, Agenda Book, Nov. 1, 2018, at 142.

[52] Judge M. Casey Rodgers, *Vetting the Wether: One Shepherds View*, 89 UMKC L. Rev. 873, 873 (2021).

[53] *Id*.

[54] *In re Mentor Corp. Obtape Transobturator Sling Prods. Liab. Litig*., 2016 WL 4705827, at *1 n.2 (M.D. Ga. Sept. 7, 2016).

[55] *Id*. at *2.

[56] *Id*.

[57] *See, e.g*., Pedro A. Serrano et al., *Effect of Truvada Lawsuit Advertising on Preexposure Prophylaxis Attitudes and Decisions Among Sexual and Gender Minority Youth and Young Adults at Risk for HIV*, 35 AIDS 131-39 (2021) (finding, based on a study of 1,500 at-risk youth and young adults who were candidates for HIV preventative medication, that half of this population had seen lawsuit ads asserting that use of the drug can lead to kidney or bone injuries and nearly one in five of those who were aware of the lawsuits attributed not initiating or stopping use of the drug to the advertisements).

[58] *See, e.g*., Mohamed Mohamoud et al., *Discontinuation of Direct Oral Anticoagulants in Response to Attorney Advertisements: Data From the FDA Adverse Event Reporting System*, Annals of Pharmacotherapy, vol. 53, issue 9, at 962-63 (Sept. 2019) (identifying 66 reports of patients who discontinued their anticoagulant after viewing a lawsuit ad; half of these patients experienced a stroke, seven people died, and 24 people experienced other serious injuries).

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[63] *Id*. at 330.

[64] *Id*.

[65] Am. Med. Ass'n, House of Delegates, Resolution 208 (A-16) (2016); Am. Med. Ass'n, Attorney Ads on Drug Side Effects, Policy H-105.985 (2016).

[66] Am. Med. Ass'n, House of Delegates, Resolution 222 (A-19) (2019).

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[72] Litigation Finance Survey 2022, Bloomberg Law, at 3.

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[74] *See id.* at 6-7 (compiling local federal appellate rules).

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[76] *See generally* Behrens, *supra*, at 7-14 (compiling and summarizing court rulings permitting and denying attempts to obtain TPLF information through discovery).

[77] Letter to Mr. Jonathan C. Rose, Secretary of the Committee on Rules of Practice and Procedure of the Administrative Office of the United States Courts, Apr. 9, 2014 (Proposed Amendment to Fed. R. Civ. P. 26(a)(1)(A)).

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[82] Standing Order Regarding Third-Party Litigation Funding Arrangements (D. Del. Apr. 18, 2022)

[83] *See* Blake Brittain, *US Patent Plaintiff Drops Media Lawsuits After Funding-disclosure Fight*, Reuters, Oct. 27, 2023; Jacob Gershman, *Delaware Judge Targets Secret Funding of Lawsuits*, Wall St. J., May 22, 2023; Jasmin Boyce, *Delaware Judge Won't Backtrack On Patent Funding Concerns*, Law360, May 4, 2023.

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[85] *See* Emily R. Siegel, *China Firm Funds US Suits Amid Push to Disclose Foreign Ties*, Bloomberg Law, Nov. 6, 2023.

[86] Standing Order for All Judges of the North District of California, Contents of Joint Case Management Statement (N.D. Cal. Jan. 17, 2023).

[87] Order Regarding Third-Party Contingent Litigation Financing, *In re Nat'l Prescription Opiate Litig*., No. 1:17-MD-2804, 2018 WL 2127807 (N.D. Ohio May 7, 2018) (ordering counsel in the MDL with TPLF to submit to the court, a letter identifying and describing the litigation financing and sworn affidavits from counsel and any third-party litigation funders attesting that the financing does not create a conflict of interest for counsel, undermine counsel's obligation of vigorous advocacy, affect counsel's independent professional judgment, give the funder control over litigation strategy or settlement decisions, or affect party control of settlement).

[88] Pretrial Order #15, *In re Zantac (Ranitidine) Prods. Liab. Litig*., MDL No. 2924, 2020 WL 1669444, at *5-6 (S.D. Fla. Apr. 3, 2020) (requiring each applicant for leadership in the MDL to was directed to indicate whether the attorney or law firm has financing that is contingent upon the litigation and, if so, to respond as to: (1) whether the litigation funder has control over the decision to file or the content of any motions or briefs, or any input into the decision to accept a settlement offer; (2) whether the financing creates a conflict of interest for counsel, undermine counsels' obligation of vigorous advocacy, affect counsel's independent judgment, gives to the lender control over litigation strategy or settlement decisions, or affects party control of settlement; (3) the nature of the financing, the amount of the financing, and submit a copy of the documentation to the Special Master; and (4) disclose any other relationship or fact that

counsel believes, if known, would be material to the court with respect to either an actual conflict of interest or the appearance of a conflict of interest).

[89] Case Management Order No. 61 (Third Party Litigation Funding), *In re: 3M Combat Arms Earplug Prods. Liab. Litig*., No. 3:19-md-02885 (N.D. Fla. Aug. 29, 2023).

[90] *Id*. at 2 (quoting GAO report).

[91] *Id*. at 2.

[92] *Id*. at 3.

[93] Testimony of Aviva Wein, Before the U.S. House of Representatives Committee on Oversight and Accountability, “Unsuitable Litigation: Oversight of Third-Party Litigation Funding,” Sept. 13, 2023, at 5.

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[97] S.B. 269 (Mont. 2023).

[98] H.B. 1124 (Ind. 2023) (to be codified at Ind. Code § 24-12-4-2); W. Va. Code Ann. § 46A-6N-6.

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