

A Look Beneath The Surface

The dark money and misleading tactics
harming American patients



**WASHINGTON
HEALTH INNOVATION
COUNCIL**

ACKNOWLEDGMENTS

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Dear Reader:

We are excited to have you review the facts, perspectives and policy solutions to a growing problem in our healthcare ecosystem: Third-Party Litigation Funding (TPLF).

In essence, we are talking about behind-the-scenes ways that investors can make money from medical-related legal settlements and jury awards. They do this through building up more and more winning cases with unknowing individuals/patients, in order to tip the odds in their favor—ensuring their investments pay off, and leaving patients harmed and then discarded in the process.

We hope to demystify this predatory cycle of Third-Party Litigation Funding—whether you are a policy leader or a citizen in a different field wanting to better understand the truth behind those late-night ads and high pressure phone calls urging you to make an immediate medical—often surgical—decision.

In this report, you will learn the answers to these **five essential questions**:

1. What is “TPLF” and why is it problematic?
2. What is driving this growing trend?
3. Who are the main players creating the problem?
4. How can I protect myself from misleading and false messages?
5. What is being done on State and Federal levels to help take a stand against misleading tactics and in favor of greater transparency?

Thank you for taking time to learn more about what we and our coalition partners see as an assault on our due process, on innovators and ultimately on the access patients have to innovative medical technology. We hope you find this topic interesting and infuriating and will join the effort to combat this growing trend. If interested, please email Jenni@jkstrat.com and we will share updates.

Best wishes,



Jack Kalavritinos

Founder, Washington Health Innovation Council

Overview:

Understanding the Problem

Since 2010, a growing—and often unchecked—threat to U.S. healthcare is the practice of **Third-Party Litigation Financing (TPLF)**. You’ve seen the late-night advertisements but may not have understood their intent. A television commercial describes a product—often an FDA-cleared medical device—in a way that makes people think they could have been harmed or endangered in some way. The ad concludes by inviting consumers to call and report their experience which can easily be turned into a litigation filing against a company or manufacturer.

Today, mass tort litigation is driven by banks, private equity firms, and hedge funds, who are injecting a huge amount of investment capital into lawsuits. The unfortunate reality is that financiers who target life sciences (as well as other manufacturers) with public accusations against them are often successful at the expense of patients and taxpayers. The funders are also foreign actors that pose a serious national security threat.

These practices simultaneously drive up the cost of care while punishing innovators who are actively investing in research and development for cures.

Third-party litigation funding has exploded into a multi-billion-dollar business. These lawsuits have compromised our civil justice system into a business. Today, most mass tort plaintiffs—which affect all industries—are recruited through well-financed marketing campaigns.

Unless rules are changed, dark-money investors, foreign or domestic, can continue this practice

behind the scenes, pulling the strings because federal law does not regulate third-party litigation financing. Nor does the **federal government regulate when lawyers make false health claims in TV ads to mislead the public.**

By using television ads and digital marketing, trial lawyers can get unsuspecting Americans to do their pre-litigation work for them. Individuals who call in a response to

misleading and deceptive television, internet, and radio advertising allow lawyers to easily collect the filings, regardless of the merit of each claim, into consolidated proceedings and pressure companies into mass “inventory settlements.” This practice is especially harmful when you consider the potential for false health information to patients, and wasted time and money that could have been used to innovate life-saving products. ●

According to the U.S. Government Accountability Office, **THIRD-PARTY LITIGATION FINANCING (TPLF)** is an arrangement in which a funder that is not a party to a lawsuit agrees to provide nonrecourse funding to a litigant or law firm in exchange for an interest in the potential recovery in a lawsuit.

How It All Works.

What is Third-Party Litigation Funding?

Third-party litigation funding (TPLF) is a multi-billion-dollar global industry with many layers which can easily hide intent. The industry allows investors, which could include foreign companies or governments, to invest in lawsuits in exchange for an amount from the potential proceeds of a settlement, judgment, or verdict obtained from the claimant's legal claim. If the lawsuit is successful, the money that was provided by investors will be awarded back to that group, with interest, paid back at the time of recovery. In other words, they invest in the lawsuit—they fund it handsomely to ensure its success—and get paid back with interest. **In TPLF, often, no one—not the defendants, the judge, and sometimes even the plaintiff—knows if a case has outside funding because there are limited requirements in the U.S. to provide that information.** ●

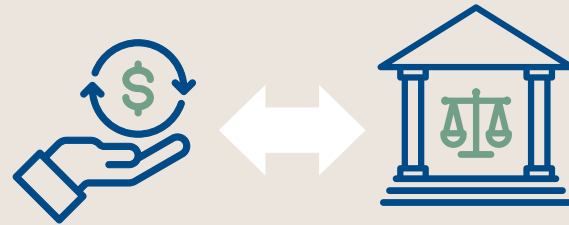


THIRD-PARTY LITIGATION FUNDING HAS BECOME A MULTI-BILLION-DOLLAR BUSINESS IN THE UNITED STATES AND THAT IS BECAUSE INVESTORS ARE REALIZING LARGE RETURNS. THROUGH THIS FUNDING, PLAINTIFFS' COUNSEL NOW HAVE ACCESS TO INCREASED FINANCIAL BACKING, WHICH CAN BE USED TO DRIVE AND FUND EXPENSIVE LITIGATION.

Sean Burke,
Partner Duane Morris, LLP

The Good and the Bad: Two Types of Funding

There are two broad categories of TPLF: **commercial** and **consumer**. **Commercial litigation** funding has become a billion-dollar business. Total assets under management in litigation funding is estimated to be \$15 billion. Since 2019, this form of TPLF has increased by nearly 40 percent, with slowly emerging state and federal guardrails (see page 13). **Consumer litigation** funding is a separate practice from commercial and an essential support for the individual plaintiff. The funder for consumers usually provides an amount, usually from USD \$1,000 to \$10,000, which can be used to pay living or medical expenses while their claim is being processed. ●



COMMERCIAL TPLF arrangements are typically **between a litigation funder and a corporate plaintiff or law firm** and involve commercial claims, such as breach of contract.



CONSUMER TPLF arrangements are **between a funder and a person**, such as the plaintiff in a personal injury case.

“Call Now” ...to Share Your Personal Information

Mass tort plaintiff trial lawyers use third party funds to find clients by airing television commercials that describe a medical product or device in a way that makes people think they could have been harmed or endangered in some way. The ad concludes by inviting consumers to call and report their experiences. Call center operators are waiting to capture callers' personal information and experience, so those potential claims may be turned into mass tort lawsuits. This is how these mass tort lawsuits find clients, by fishing for information that can easily be turned into a litigation filing against a company or manufacturer. Potential plaintiffs are also solicited through texts that then guide them through a process to sign-up to be parties of the litigation.

The ads may pop up as “medical alerts” urging viewers to “call right now” because “you may be entitled to substantial compensation” for a medication, medical device, or other consumer product. Often they falsely claim that the device-in-question is the primary cause of certain symptoms, which are often common illnesses or ailments that may or may not be related to the device or medication. Yet the list is broad enough that it leads many people to say “yes” they have experienced those symptoms—adding another claim to their mass tort lawsuit. It can be easy to be swept up unknowingly into this system; it is important to educate and protect yourself from these false claims.¹ ●



¹American Tort Reform Association, [House Committee on Oversight and Reform Hearing on “Unsuitable Litigation: Oversight of Third-Party Litigation Funding”](#), Accessed January 18, 2025.

5 Tips for Patients to Protect Themselves From False Claims.²



If you see or hear an ad, or receive a call that makes you want to change your health decision or seeks your participation in a lawsuit:

1

Ask yourself, “Who created this ad?”

Is there a chance that this ad is sponsored by a law firm? If you have any doubts about its credibility, or origins disregard the ad. Take no action.

2

Message your known and trusted healthcare provider

Any health decision requires careful consideration and consultation with trusted medical providers. Do some light research online about the source of the claim AND send your physician a message.

3

Do not share personal medical information over the phone with someone you do not know.

Your medical information is confidential. If someone you do not know is calling you and pressuring you to act, pause and ask questions. If they cannot provide sufficient information, hang up and disregard them. Contact your known and trusted health provider if you still feel concerned.

4

Ask who is conducting and funding the survey.

Before you agree to an ad that is asking you to act or complete an online survey, consider WHO is wanting the information. The answers you provide are helping the litigation support for a lawsuit that is probably funded by outside dark money seeking to earn profits off the lawsuit. **If you don't know who is collecting your private information, or how it will be used, don't participate.**

5

Report any suspicious or harassing behavior.

If you have a concern about a false or misleading ad for a medical device, or are being frequently contacted about it by someone other than your doctor, you can **report it to the FDA online** using one of the QR Codes to the right.



Why It's Growing.

The Billion Dollar Trend

Funding agreements between a third-party lender/investor and the plaintiff outline the terms of the agreement, how a funder will be paid, and at what rate and when. Often the investor will be paid before—and much more than—the plaintiff and receive upwards of 20-40 percent³ of the winning fee, with interest paid on the amount that was initially lent, making these investments high-reward endeavors. The scenarios vary, yet it is possible for the plaintiffs themselves—the individuals or patients—to actually lose money on the case after legal fees and their winnings are promised away to the behind-the-scenes investor.

According to the 2023 Global Litigation Funding Investment Market Analysis and Forecast,⁴ 2019-2028, The global litigation funding investment market is estimated at USD 15.8 billion in 2022 and is expected to witness a growth rate of around nine percent during the same forecast period.

³ Institute for Legal Reform, *What You Need to Know About Third-Party Litigation Funding*, Accessed November 8, 2024

⁴ *Global Litigation Funding Investment Market Analysis and Forecast*, by Rationalstat, August 9, 2023

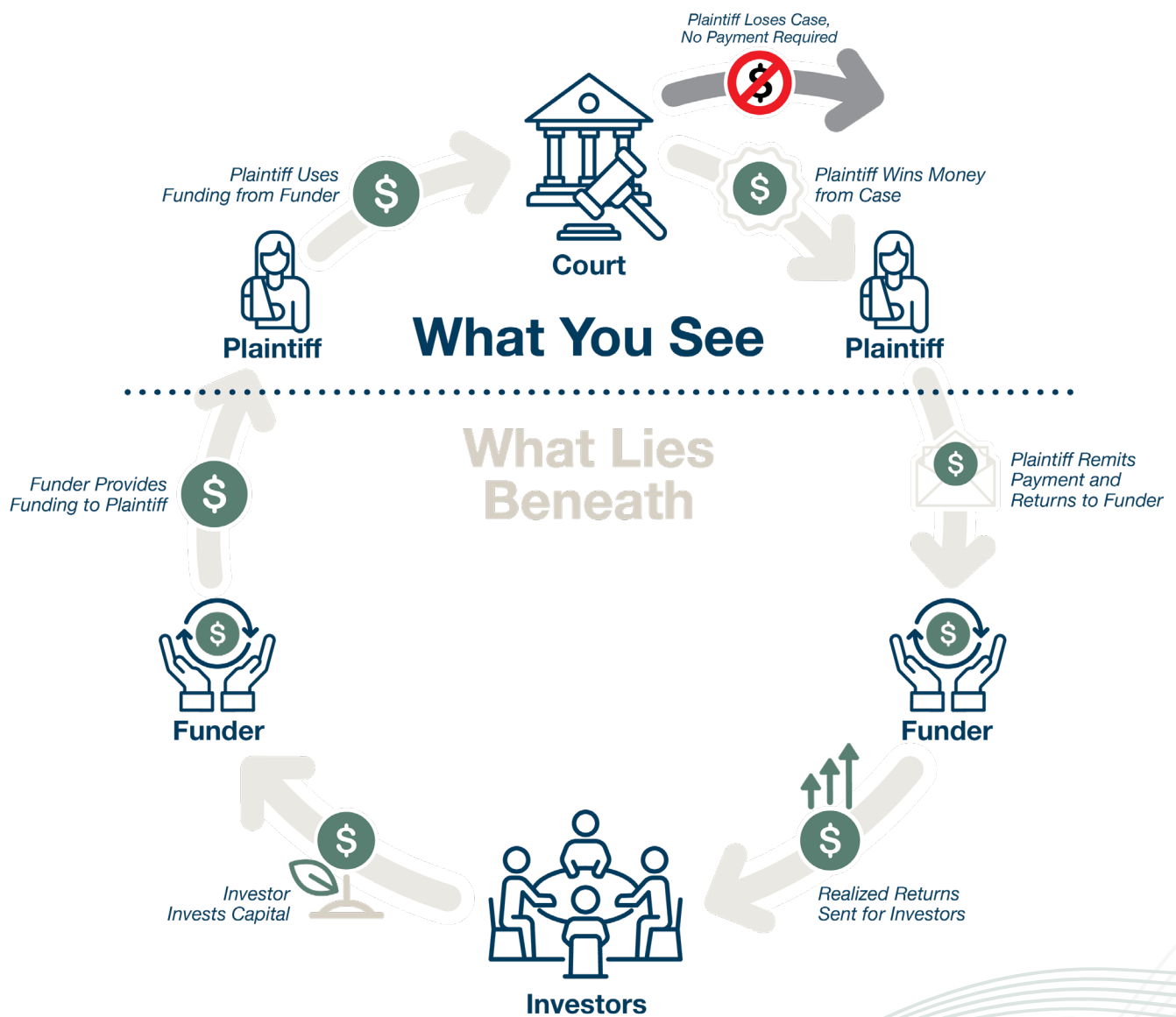
“

THE INFLUX OF BILLIONS OF DOLLARS OF THIRD-PARTY LITIGATION FUNDING HAS FUNDAMENTALLY CHANGED THE DYNAMICS OF MASS TORT LITIGATION. NO LONGER CAN JUDGES OR THE PUBLIC PRESUME THAT A LAWSUIT REPRESENTS A PLAINTIFF'S PERSONAL ALLEGATION THAT HE OR SHE WAS HARMED BY A PRODUCT, SOUGHT NEEDED MEDICAL CARE AND RETAINED A LAWYER TO SEEK REDRESS. THE UNFORTUNATE REALITY IS THAT TODAY, MOST MASS TORT LITIGATION AGAINST MEDICAL DEVICE MANUFACTURERS IS FUELED BY BANKS, PRIVATE EQUITY FIRMS AND HEDGE FUNDS.

Chris White, General Counsel and Chief Policy Officer, AdvaMed

Companies that go through the extraordinary process to innovate and engage in the federal regulatory process in pursuit of breakthroughs in medicine should be provided an even playing field in the U.S. court system. **Without addressing the lack of transparency and disclosure requirements, we are subjecting American companies to bias in our court systems.**

Infographic 1: Example of Third-Party Litigation Financing to Plaintiffs



In December 2024, the Government Accountability Office released an important new report⁵ on third-party litigation funding, this one focusing on patent litigation. The analysis is drawn from interviews with a range of industry stakeholders discussing the impact disclosure requirements could have on conflicts of interest and foreign involvement in the U.S. judicial system. The report highlights the views of a range of stakeholders, and the case they make for the benefits of disclosure requirements, such as to help identify foreign involvement, conflicts of interest, and facilitate case resolution by motivating defendants to pursue settlements, knowing that the plaintiff has ample resources for a lengthy legal battle. The report also outlined some concerns with disclosure requirements, which spanned from third-party funding may not be relevant to all patent litigation and could distract from the merits of a case to disclosure potentially causing bias against defendants who have access to generous financial resources and greater burden on the court system.

The report clearly lays out the views of mediators and judges on what is so wrong with these arrangements:

Funders and law firms we interviewed said that plaintiffs retain control over the litigation, such as deciding when to ultimately settle a case, even when a third-party funder is involved. However, plaintiffs may be required to consult with their funder before accepting a settlement offer, according to funding agreements we reviewed and funders we interviewed. One mediator said that despite patent owners having control over settlement decisions, it was clear that the funders also had influence that sometimes complicated the discussions. One judge said this influence makes it difficult to conduct meaningful settlement negotiations. Mediators and one law firm also said the presence of a third-party funder can contribute to longer settlement times because patent owners may be unwilling to agree to a settlement offer unless it exceeds their repayment obligations to the third-party funder.⁶

The report also included the views of the funders and the arguments that they make to oppose the efforts that innovators and stakeholders are making although the report said that not all funders oppose all transparency efforts. ●

^{5,6} [Intellectual Property: Information on Third-Party Funding of Patent Litigation GAO-25-107214](#) Published: Dec 05, 2024. Publicly Released: Dec 05, 2024



An Unholy Alliance: Doctors Removing Implants for Illegal Gain⁷

In 2019, a Florida surgeon who admitted to being part of a scheme to get a cut of settlement funds paid to women who had transvaginal mesh implants avoided prison but was ordered to turn over more than \$866,000 in profits at a hearing in Brooklyn federal court.⁸

Dr. Christopher Walker, a urogynecologist from Windermere, Florida, was sentenced to time served after he pleaded guilty to paying bribes and kickbacks in exchange for referrals to operate on women who had the implants, according to a spokesman for the U.S. Attorney's Office in Brooklyn.

Walker was charged along with Detroit-based surgical funding consultant Wesley Barber after prosecutors said the pair were part of a scheme involving transvaginal mesh implants that materialized after a settlement was reached in 2013 in multidistrict litigation over the products.

The scheme involved connecting women who had the implants to medical financiers who would pay for their removal surgery in return for a portion of the women's subsequent settlement funds, according to the indictment.

Prosecutors said the women were misled about the implants' risk and the need for their removal and were told they needed to travel to pre-selected doctors.

Throughout the case, Walker maintained that the surgeries he performed were medically necessary, and Avergun said she told the court that the prosecutors had never presented any evidence to the contrary.

Walker spent just under two months in jail in 2020 after a magistrate judge revoked his bond when prosecutors claimed he asked a witness not to turn over emails and other information to the government.

U.S. District Judge Raymond Dearie ordered Walker to forfeit \$866,787, but the judge has yet to issue a ruling on potential restitution, according to the spokesman and Walker's attorney, Jodi Avergun of Cadwalader, Wickersham & Taft. ●

⁷ *United States v. Barber*, U.S. District Court for the Eastern District of New York, No. 1:19-cr-00239

⁸ Reuters, *Surgeon avoids prison, ordered to pay \$866K after pleading to role in mesh scheme*, January 21, 2022 by Diana Novak Jones

Maintaining Momentum: TPLF Trade Associations

American Legal Finance Association

(ALFA) members include:⁹ Anchor Funding, Arthur Funding, Bridgeway Legal Funding, Broadway Funding Group, Choice Legal Funding, Covered Bridge, Cronus Capital, Dynamic Legal Funding, GoldenPear, Grape Leaf Capital, Inc., Cartiga, Lawfund, Law Street Capital, Legal Assistance Funding, LH Funding, Magnolia Funding, Mighty, MultiFunding, Mustang Funding, Necessity Funding, New Future Legal Funding, Pegasus Funding, Plaintiff Investment Funding, PreSettlement Finance (PSFinance), Prime Case Funding, Signal Funding, Thrivest, Universal Funds, US Claims.

International Legal Finance Association (ILFA) members

include:¹⁰ Arcadia Finance, Balance Legal Capital, Burford Capital, Contingency Capital, DE Shaw & Co, Delta Capital Partners, Fortress, GLS Capital, Harbour Litigation Funding, Innsworth Litigation Funding, IVO Capital Partners, Law Finance Group, Lit Fund, Longford Capital Litigation Finance, Nivalion, Omni Bridgeway, Orchard Global, Parabellum Capital, Pretium, Swiss Legal Finance, Syz Capital, Therium, TRGP Capital, Validity, West U Capital, Winward, Woodsford

Despite a growing list of persons and industries harmed by TPLF, this new business model continues to grow unchecked in its impact and wealth. Recently, the tactics used to expand these efforts have become more sophisticated. American and international trade associations have been formed to represent these mass tort business interests. These associations are formed to help these dark money funders to advocate for policies that help them make more money from innovators in these lawsuits. Their main objective is to keep the money flowing by engaging with legislative, regulatory, and judicial authorities about commercial TPLF at the state, federal and international levels. As of January 2025, the American Legal Finance Association (ALFA) consists of 27 consumer litigation funders operating in the U.S. and the International Legal Finance Association (ILFA) has 15. ●

⁹ *American Legal Finance Association (ALFA) Members, Captured November 7, 2024*

¹⁰ *International Legal Finance Association (ILFA) Members, Captured January 4, 2025*

The Threat of Foreign Financing

In 80% of States, there are no requirements for reporting TPLF, so there is technically nothing that would stop foreign companies or governments from investing money in litigation against American companies.

The strategy is very simple: using the U.S. court system, they become tied up in court and forced to use money and resources to defend their company, giving the foreign investor a competitive advantage and access to American intellectual property in the process. When it comes to sensitive technology important to our national security, **there are serious security implications if funders are not required to be listed** to the public and/or other parties involved in the litigation. As a matter of ethical practice, who is funding a lawsuit should be publicly accessible.

For example, a recent Bloomberg Law investigation uncovered that an investment firm funded by Russian billionaires with ties to Vladimir Putin has launched TPLF-type litigation globally to evade international sanctions.¹¹ Bloomberg Law has also reported about a Chinese firm Purplevine IP launching four intellectual property lawsuits against Samsung

Electronics Co. and its Florida-based subsidiary Staton Capital.¹² **These practices are deeply troubling**, and these are just the ones that have been reported on. **There are likely more that are not yet known.**

In December 2022, fourteen state Attorney Generals sent a letter the Department of Justice, U.S. Attorney General Merrick Garland about international threats posed by third-party litigation funding. The state attorney generals of 14 states (Alabama, Arkansas, Georgia, Indiana, Ohio, Kansas, Kentucky, Montana, Nebraska, South Carolina, Tennessee, Utah, Virginia, and West Virginia) each co-signed the letter in an effort to raise awareness and bring about change at a federal level. These letters represent a significant movement from the chief law enforcement officers to highlight the seriousness of these underreported issues.

In recent years the business model of foreign investing in American lawsuits has only gained momentum and market share, yet is not in keeping with how Americans believe the legal system should work. ●

¹¹ Bloomberg Law by Emily R. Siegel and John Holland, March 28, 2024, *Putin's Billionaires Dodge Sanctions by Financing Lawsuits*

¹² Bloomberg Law by Emily R. Siegel, November 6, 2023, *China Firm Funds US Suits Amid Push to Disclose Foreign ties (2)*

What Can Be Done?

An Urgent Need for Transparency Laws

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FUNDERS GIVE LOANS TO LAW FIRMS—FOR A SUIT OR SUITE OF SUITS AT 24% INTEREST. THERE IS ZERO TRANSPARENCY. WE NEED TRANSPARENCY AND REGULATION IN THIS SPACE.

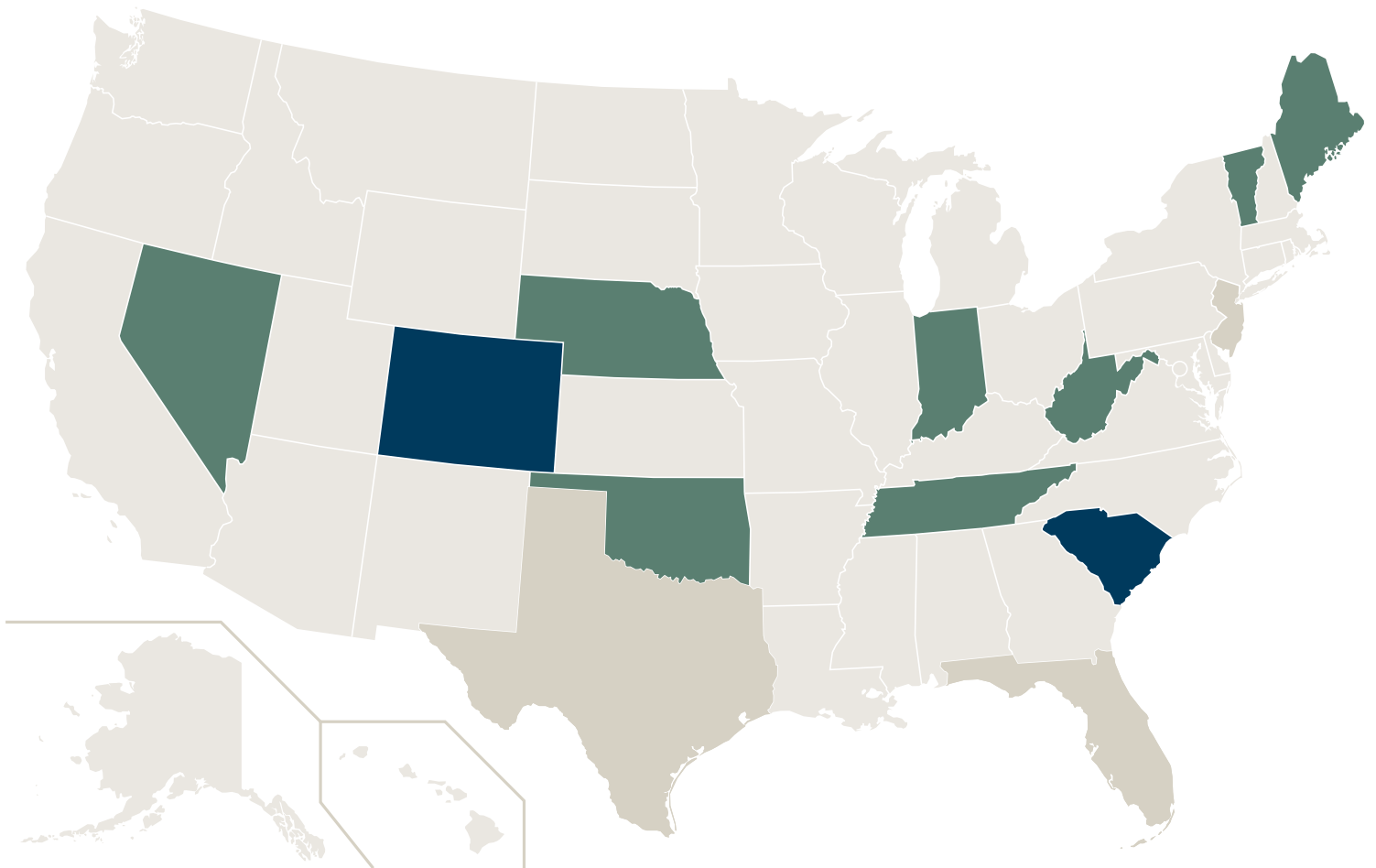
Aviva Wein,
Assistant General Counsel,
Johnson & Johnson

To protect the life sciences industry and a range of other types of businesses, leaders have spearheaded efforts at the state level to reign in the deceptive practices of third-party litigation funding. Some of these legislative efforts require litigation funders to disclose information in their funding contracts, such as the amount that must be repaid and/or the annual percentage rate. Other states have imposed requirements to register as a third party and report on the amount of funding used for advertisements, or limiting the interest rates and/or fees that litigation funders can charge.

Disclosure requirements are key to increasing transparency about the intent and process of third-party litigation funding. If funders are required to disclose their involvement, and the amount of money invested in advertising, then conflicts can be revealed, the right parties in interest can come to the table, and defendants can understand who really controls the litigations.

Texas, Tennessee, West Virginia and Indiana have enacted legislation to curtail deceptive attorney advertising, while Wisconsin, West Virginia and New Jersey have taken action to promote transparency in court. Some states are now poised to allow non-lawyer ownership of law firms, which would only extend the reach of unscrupulous investors. ●

Infographic 2: State Laws Addressing Third-Party Litigation Funding



- Reports Funders
- Banking and Loan Regulations
- Makes the Financial Interest Clear

80%
of States **DO NOT**
have requirements for
Third-Party Litigation

Federal Policy Recommendations

In the U.S., there are no federal rules that explicitly require the disclosure of TPLF funders. Making significant progress curtailing TPLF will require a multi-pronged approach: action on the federal level, in state legislatures, and the judiciary.



Report and Regulate Funders

At the federal level, Congress should support a proposed amendment to the federal rules that would (1) require disclosure of third-party litigation funding (or enact legislation to the same effect) and (2) enact legislation that regulates third-party litigation funding. Full disclosure of individuals and entities who provide funding for litigation in exchange for a stake in the outcome of a case should be disclosed to the plaintiffs in the lawsuits and return our judicial system to a system of fairness and justice.



Protect Americans

Congress should also consider providing safeguards for unknowing Americans from misleading lawsuit advertising. Both law and marketing firms should not be allowed to use federal government logos in their advertisements, use private advertisements as medical alerts, or use the term recall when referring to a product that has not been recalled under the law. By enacting these changes our civil justice system will return to the fair practices that protect consumers and businesses alike. ●

State Policy Recommendations

While there is currently no federal requirement to disclose third-party litigation funding, however, recently some states **have taken steps to regulate disclosure in TPLF, focusing primarily on consumer protection.** For instance:

Reporting Funders

Indiana, Maine, Nebraska, Nevada, Oklahoma, Tennessee, Vermont, and **West Virginia** require some form of TPLF registration or licensure. Ohio mandates that funders disclose certain contractual terms and information to the consumer. Arkansas, Indiana, Nevada, Tennessee, and West Virginia have enacted laws regulating TPLF interest rates or fees.

1 in 5
states have laws regulating TPLF, and more states are following their example.

Banking and Loan Regulations

Colorado state's Supreme Court held, in part, that a TPLF company agreeing to advance money to tort plaintiffs in exchange for future litigation proceeds, is the equivalent of making a loan and is therefore subject to regulation under Colorado's Uniform Consumer Credit Code.

South Carolina's Department of Consumer Affairs issued a ruling that entities funding litigation in exchange for a portion of the recovery proceeds are providing loans, and therefore, are subject to compliance under South Carolina's laws governing lending.

Make the Financial Interest Clear

"In June 2021, the **District of New Jersey** adopted a rule requiring litigants who have certain TPLF arrangements to file a statement that (1) identifies the funder, (2) describes whether the funder's approval is needed for litigation or settlement decisions, and if so, the nature of the terms and conditions of that approval, and (3) provides a brief description of the nature of the funder's financial interest."¹³

Proposed legislation in both **Texas** and **Florida** requires disclosure of TPLF agreements in suits, and more states should follow. ●

¹³ U.S. District Court for the District of New Jersey, Local Civ. Rule 7.1.1, Disclosure of Third-Party Litigation Funding. A statement is required if any person or entity that is not a party provides 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. See Local Civ. Rule 7.1.1(a).

Recent Attempts to Legislate

On February 7, 2025, Congressman Darrell Issa, Chairman of the House Judiciary Subcommittee on Courts, Intellectual Property, Artificial Intelligence and the Internet, and others introduced HR 1109—The Litigation Transparency Act of 2025.

This legislation that will require the disclosure of parties receiving payment in civil lawsuits.

“Our legislation targets serious and continuing abuses in our litigation system that distort our system of justice by obscuring public detection and exploiting loopholes in the law for financial gain. Our approach will achieve a far better standard of transparency in the courts that people deserve, and our standard of law requires,” said Rep. Issa. “We fundamentally believe that if a third-party investor is financing a lawsuit in federal court, it should be disclosed rather than hidden from the world and left absent from the facts of a case.” Between 2017 and 2021, members of Congress repeatedly introduced a TPLF disclosure bill in the 117th Congress H.R. 2025 “The Litigation Funding Transparency Act”,¹⁴ which did not pass.

In September 2023, the U.S. House of Representatives 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.” 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.”**

In the 118th Congress, Senators Joe Manchin (I-WV) and John Kennedy (R-LA) have introduced a bill addressing TPLF, the “Protecting Our Courts from Foreign Manipulation Act,” The House bill, H.R. 5488,¹⁵ is sponsored by House 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. ●



THE FEDERAL RULES REQUIRE CORPORATIONS TO DISCLOSE PARENT COMPANIES AND OWNERSHIP INTERESTS FOR CONFLICT AND TRANSPARENCY PURPOSES. CORPORATIONS ARE ALSO REQUIRED TO PROVIDE INSURANCE COVERAGE INFORMATION SO PARTIES KNOW WHO MAY CONTROL OR OTHERWISE INFLUENCE THE POTENTIAL OUTCOME. IN MOST JURISDICTIONS, HOWEVER, PLAINTIFFS ARE NOT REQUIRED TO DO THE SAME AND INFORMATION REGARDING ANY FUNDING OR FINANCIAL BACKING COUNSEL MAY RECEIVE IS UNDISCOVERABLE. THIS PUTS DEFENDANTS AT A DISTINCT DISADVANTAGE AS THERE IS NO TRANSPARENCY AS TO WHO MAY BE DRIVING THE LITIGATION. WITHOUT SUCH INFORMATION, DEFENDANTS MAY BE LIMITED IN THEIR ABILITY TO DISCOVER RELEVANT ISSUES SUCH AS BIAS OR OTHERWISE UNDERSTAND WHO MAY HAVE INFLUENCE OVER THE LITIGATION.

Sean Burke, Partner Duane Morris, LLP

Existing Judicial Rules That Could Help

The United States Courts have established an Advisory Committee on Civil Rules (“Committee”) and its Rule 7.1 Subcommittee (“Subcommittee”).

The Subcommittee is considering changes to Rule 7.1 and interested parties who believe that more transparency and disclosure is better should send a comment to the US Courts (below). On March 14, 2024 the US Chamber’s Institute for Legal Reform and the Lawyers for Civil Justice submitted comments last year.¹⁶

As the joint letter pointed out: “Amending Rule 7.1 to include non-party disclosures would not only provide judges with much needed information informing the duty to recuse, but also would be consistent with the Chief Justice’s highly public call for “greater attention to promoting a culture of compliance” in the federal judiciary, which was inspired by the Wall Street Journal’s reporting of 685 instances of conflicts of interest.” According to rules included in a report by the New York City Bar Association, judges could consider implementing rules requiring litigants to disclose the identity of outside parties with a financial interest in the outcome of a litigation.

Federal Rules of Practice and Procedure (FRCP) rules 16.1 and 17 relate to discovery, pretrial conferences, and subpoenas, however are not directly applied to all third-party litigation cases. The Federal Judiciary Rules Committee enacted a new Rule 16.1 to address the management of multi-district litigation (MDL) that often result from this mass of claims.

The purpose of Federal Rule of Civil Procedure 17 is to ensure that lawsuits are brought by the correct parties, which helps to achieve fairness in the judicial process and states ‘Every action shall be prosecuted in the name of the real party in interest.’ ●



ADVANCED MEMBERS HAVE CONTINUOUSLY ADVOCATED FOR CLEAR GUIDANCE AND PREDICTABILITY THAT WILL ASSIST COURTS WITH VETTING CLAIMS. IF EMPLOYED PROPERLY, THE NEW RULE WILL HELP WITH WEEDING OUT MERITLESS CLAIMS. A RULES-BASED APPROACH TO MULTIDISTRICT LITIGATION (MDL) WILL HELP WITH TRANSPARENCY AT THE EARLIEST STAGES OF LITIGATION.

Pat Fogarty,

Deputy General Counsel and Senior Vice President of Legal, AdvaMed

¹⁴ 117th Congress H.R. 2025 Litigation Funding Transparency Act of 2021

¹⁵ 118th Congress House Resolution 5488 Protecting Our Courts from Foreign Manipulation Act of 2023

¹⁶ Institute for Legal Reform, LCJ and ILR Comment on Rule 7.1. Accessed February 8, 2025

Conclusion:

Where Do We Go From Here?

Ultimately these secretive, expensive and time consuming lawsuits are draining resources that could otherwise be used on innovations in the health industry, and harming patients both directly and indirectly. Directly patients are being harmed through false messaging coercing individuals to undergo unnecessary medical procedures, and indirectly by stalling life saving innovations as resources are drained in court.

Innovators should be allowed to innovate in their industry without having to dedicate precious time, money, and other resources to defending themselves against nameless and sometimes baseless attacks on their products. Americans should have a right to properly use and be protected by the judicial system, and defendants have a right to know who the plaintiffs are and who the invested financial backers are. Nonparties to a lawsuit—including foreign entities—funding a lawsuit is problematic for the American people and should be scrutinized and regulated. Transparency around TPLF is essential.

Based on the findings presented in this report, **the following recommendations provide the essential next steps for much needed reform and regulation**—on state and federal levels—of third-party litigation funding:

- Full transparency for judges, defendants and the public regarding who is funding litigation in the United States.
- Financial and legal repercussions for entities that engage in unethical practices designed to gain a competitive advantage or profit off well-meaning private businesses, whether they are based in the United States or abroad.

As an individual concerned citizen, here is how you can make an impact in the fight against TPLF for patients and access to health innovations:



- **Report any suspicious ads or phone calls** seeking medical information or action to the FDA. [Fill out this easy to use online form.](#)



- **Write to your local and state representatives** about this issue and your concerns. If TPLF has impacted you or a family member it is particularly important for decision makers to hear from you. [Find your representatives and their contact information online by just entering your zip code.](#)



- **Contact the Rule 7.1 Subcommittee of the US Court's Advisory Council Civil Rules** and whether you are a lawyer or not, [consider contacting the subcommittee to take the opportunity to create more transparency for judges, juries and defendants.](#)

Only through more education and engagement can progress be made. This includes more guardrails, fewer mass tort lawsuits, more transparency, and eliminating misleading ad campaigns. Such progress will likely open up some very positive outcomes for American citizens and healthcare innovations:

- Improvement to the US civil justice system
- Patients will be better positioned to make informed decisions and reduce confusion.
- Innovators who have received aggressive attacks from dark-money-funded lawsuits will be better positioned to continue innovating and creating more life saving technologies for patients in the US and around the world. ●

FOR MORE INFORMATION, PLEASE VISIT:



The US Chamber of Commerce:
[What You Need to Know About Third Party Litigation Funding—ILR](#)



AdvaMed Report: [Dark Money: Undisclosed Third Party Litigation Funding and Its Impact on Medical Technology](#)

Glossary

CHAMPERTY An old English law doctrine that prohibits third parties from providing financial assistance to a claimant for a financial interest in the outcome of a dispute. While this doctrine is limited in some states, it does remain in multiple jurisdictions.

DISCLOSURE Typically done in one of two ways: in camera (i.e., disclosed only to the judge) or between the parties (i.e., disclosed to the opposing party). Disclosure allows the court and parties to know the identity of the litigation funder and may help determine whether the funders are exercising undue influence, violating any ethical rules, or whether conflicts of interest exist.

LITIGATION FUNDERS Entities that advance money to plaintiffs or law firms to cover litigation or other costs on a non-recourse basis contingent on the outcome of the case. According to the Government Accountability Office, many are private institutions that specialize in TPLF, some are publicly traded, some are hedge funds and many receive capital from various sources such as sovereign wealth funds, pension funds and endowments. They are not parties to the lawsuit.

LITIGATION FUNDING AGREEMENT The contract that sets forth the terms of the funding arrangement. Generally, these documents are not required to be disclosed. Still, some courts and states have implemented disclosure requirements either through adopting a court rule or passing legislation (e.g., the Federal District of New Jersey, Northern District of California for class actions, Federal District of Delaware, and Wisconsin).

MAINTENANCE Prohibits a third party from “intermeddling” with another’s lawsuit. Like champerty, it has been limited in some states but remains in others.

MASS TORT LITIGATION A legal process where multiple people who have been injured sue a business or corporation for damages caused by a common event, practice, or product.

NON-RECOURSE This means that if no recovery is made from the dispute, the borrower is not obligated to repay the funder.

PLAINTIFF A person who brings a case against another in a court of law.

PORTFOLIO FUNDING Litigation funders finance multiple cases belonging to a lawyer or law firm, with the return on invested capital coming from the settlement or judgment of any individuals or group of cases. Portfolio funding allows the litigation funder to essentially bankroll all or a portion of a law firm’s case in exchange for a cut of any proceeds. This practice makes litigation funding less risky by allowing funders to spread their risk over multiple cases.

REGULATION An authoritative rule. Specifically, a rule or order issued by a government agency and often having the force of law.



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