

Third Party Litigation Funding



Impacts

- Unregulated investment vehicle
- High interest rates loans to plaintiffs reduce their recovery
- Creates conditions for conflicts of interest and interference between funders and litigants
- Creates ethical problems for plaintiff's attorneys
- Potential risks to national security and intellectual property rights as funders may gain access to sensitive information or use litigation to attack an critical industry
- Notable instances of fraud and abuse

Quick TPLF Facts

- TPLF is a growing investment tool that uses the legal system as a source for profit. There are many concerns surrounding conflicts, fraud, and lawsuit abuse.
- Supporting regulatory and legislative efforts such as mandatory disclosure of TPLF in the discovery phase of litigation will help to address these concerns.
- Zurich North America is leading efforts to combat unfair practices that contribute to social inflation.

What is TPLF?

Third Party Litigation Funding or Third Party Litigation Financing (TPLF) "is an arrangement where a funder that is not a party to a lawsuit agrees to provide funding to a litigant (typically a plaintiff) or law firm in exchange for an interest in the potential recovery in a lawsuit."¹

TPLF is non-recourse lending, meaning investors do not get back their funds unless a plaintiff's lawsuit is successful in obtaining a monetary judgment or settlement. TPLF is therefore not subject to state usury laws that can protect loan recipients (such as interest rate caps).

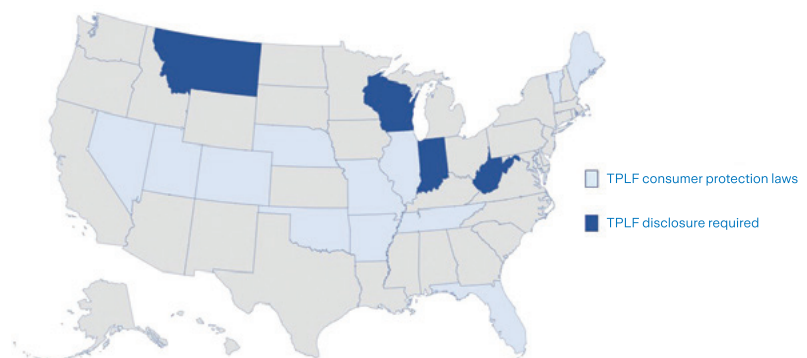
A potentially serious problem with TPLF can occur when no one knows when it is operating. The fairest and most practical solution is to require attorneys and/or plaintiffs to disclose the loans in the discovery phase of litigation. Funders could then be held responsible for investing in fraudulent lawsuits.

Types of TPLF:

- **Commercial funding.** Investors loan money to business litigants used for litigation expenses.
- **Portfolio funding.** Investors loan money to a plaintiff's firm, with a group of the firm's cases used as collateral. Repayment is not contingent on the outcome of any one case.
- **Consumer funding.** Investors loan money directly to individual plaintiffs, often in personal injury cases. Money is loaned at high interest rates and used for living expenses.
- **Medical funding.** Investors fund medical treatment for plaintiffs, with payment for the treatment deferred until the conclusion of litigation. Providers may inflate the value of medical treatment to secure higher settlements or verdicts.

State of the States

TPLF Regulations: States with enacted legislation²



What Both Sides Say

The main argument in favor of TPLF is that it can provide access to justice. Funders say that businesses have resources that overtake the common man's ability to have a fair chance and compare the situation to "David vs. Goliath". Also, funders claim they will not direct litigation.

Those who seek to regulate TPLF note that practice occurs in secret and is undisclosed to the court and parties in the case. There is no federal rule or regulation that requires the existence of this funding be made known to anyone. Given this lack of transparency, some members of Congress, as well as other organizations, have even raised concerns about the potential impact foreign investors may have on national security. Investors can include hedge funds, foreign wealth funds and other entities interested in making money.

Individual plaintiffs do not rely on third party funding to file their case. Plaintiff's attorneys offer their services on a contingency fee basis, which incentivizes the attorney to file legitimate cases and fight zealously. Each funding agreement may be different, but there have been actual lawsuits where the funder has asserted control over the litigation based on their financing contract. While the funders say they are providing a means for the individual plaintiff to have income during the course of litigation, there are known instances where repayment of the loan have has erased whatever recovery the plaintiff might have given the unregulated interest rates.

Businesses must divert resources from research and operations to legal costs to defend against cases. Common-sense regulatory measures to protect the integrity of the judicial system and consumers is vital to a healthy economy. The business community is seeking to create common-sense regulatory measures to protect the integrity of the judicial system and consumers. Everyone benefits from a fair and transparent legal system.

Solutions

Zurich North America initiatives

- Proactively supports legislation and regulations that require disclosure of TPLF in discovery. In 2024, passed TPLF reform in both Indiana and West Virginia.
- Collaborates with insurance carriers and with internal and external stakeholders on lawsuit abuse reform efforts.
- Advocates for lawsuit abuse reform issues impacting Zurich and its customers through its Government & Regulatory Relations (GRR) team.
- Created the insurance industry's first Claims Judicial & Legislative Affairs (Zurich NA Claims Judicial & Legislative Affairs research, 2024 CJLA) unit within the insurance industry as a social inflation task force comprised of a dedicated team to provide education and advocacy support.
- Established and continues to engage in the annual Lawsuit Abuse Reform Symposium with industry coalition members.
- Hosts Zurich Defense Attorney Summit twice a year through CJLA.
- Publishes *Quarterly Digest* and *Regional Recap* to keep industry colleagues informed.

What can you do?

- Support legislation that requires mandatory disclosure of TPLF during the discovery phase of litigation.
- Support lawmakers and civil justice organizations that back TPLF regulation, particularly those who seek to protect consumers against interest rates that exceed state usury law allowances.
- Encourage defense counsel to inquire about TPLF in litigation through the discovery process.
- Document examples of abusive cases for use in support of legislative efforts to regulate TPLF.

To learn how you can get involved, contact Zurich North America's Claims Judicial & Legislative Affairs team at usz.cjla@zurichna.com.



¹ (THIRD-PARTY LITIGATION FINANCING: Market Characteristics, Data, and Trends, GAO-23-105210, December 2022, p. 1.)

² Zurich North America CJLA

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