

LCJ, ILR Urge Advisory Committee on Civil Rules to Shine Light On Third-Party Litigation Funding

Groups propose three steps to advance long-delayed examination of \$9 billion-plus litigation finance industry

WASHINGTON, D.C. – January 11, 2021 – Lawyers for Civil Justice (LCJ) and the U.S. Chamber Institute for Legal Reform (ILR) are [urging](#) the Advisory Committee on Civil Rules to take concrete steps to shine a light on the rapidly expanding, \$9 billion-plus third-party litigation finance (TPLF) industry. Despite six years of discussion, the Committee has yet to take action necessary to gather the information required to answer critical questions about the potential control and/or influence wielded by third party funders in federal civil litigation throughout the country.

“Disclosing relevant information to all parties, including financial details, is a fundamental tenet of our civil litigation system. Yet, the massive and rapidly growing third-party litigation finance industry, which has the potential to exercise substantial influence in civil litigation, has been allowed to effectively operate in the shadows without even the most basic and uniform requirements to disclose their influence and relationships to all parties involved in the cases they bankroll,” LCJ Executive Director Andrea Looney said.

“Third party litigation funding allows outside influences to gamble with other people’s lawsuits. This is a serious issue that requires attention from the Committee to ensure that our courtrooms aren’t turned into casinos,” added ILR President Harold Kim.

The TPLF industry has grown exponentially since LCJ and ILR [first asked the Committee to consider a rule requiring disclosure](#) in 2014. A [2020 report](#) from Burford Capital, the world’s largest litigation finance firm, found that **reported use of legal finance has grown by 105% since 2017**. A representative of Westfleet Advisors [recently indicated](#) that there is currently **more than \$9 billion in the U.S. litigation funding market, with more than \$2 billion being put into the market each year**. In an implicit recognition of their outsized influence on the American and global legal systems, several prominent commercial litigation finance firms [launched a trade group this fall](#) to represent the industry in the face of anticipated scrutiny from legislators, government agencies and the legal community around the world.

“TPLF is now a pervasive feature of civil litigation, affecting thousands of federal court cases each year. As the Committee has noted, however, many judges remain unaware of its presence—and so are many litigants. Courts rarely inquire about the existence of TPLF, and even less frequently require any type of disclosure to parties,” LCJ and ILR write in their [letter to the Committee](#). “The suggestion that the FRCP should provide transparency to courts and parties about TPLF has been on the Committee’s radar for almost seven years. During that time, despite its significant work to learn about the TPLF industry, the Committee has on several occasions expressed a need for further information about specific issues.”

“There is no empirical evidence that a TPLF disclosure rule would somehow alter or change the now-mature multi-billion-dollar TPLF industry. The Committee is highly unlikely to obtain answers to the questions it has posed simply by collecting materials that come its way. In fact, the very absence of a disclosure requirement is hampering the Committee’s—and the judiciary’s and litigants’—understanding of TPLF.”

LCJ and ILR propose three actions that are necessary for the Committee to take to achieve its stated desire to learn more about TPLF prior to acting on a proposal to require disclosure, which will help to address the judiciary’s blind spot in understanding the significance and pervasiveness of TPLF:

1. Send a mini questionnaire to litigation funding entities for the purpose of obtaining answers to questions previously posed by the Committee;
2. Ask the Federal Judicial Center to update its 2017 report about TPLF to ensure it reflects the most current information; and
3. Develop a “sketch” rule for discussion purposes, which would serve to focus Committee attention on important drafting issues

“Despite our confidence that the case for a uniform disclosure rule has already been made, we urge that the Committee take the aforementioned three actions because the information elicited is certain to aid the Committee in its consideration of the pending disclosure proposal,” LCJ and ILR conclude in the letter.

To read the full letter to the Committee, [click here](#).