



TEXAS CIVIL JUSTICE LEAGUE

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May 2, 2025

The Honorable James Blacklock
Chief Justice
The Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711

RECEIVED
IN SUPREME COURT
OF TEXAS

MAY 02 2025

BLAKE HAWTHORNE, Clerk
IN SUPREME COURT
OF TEXAS

Dear Chief Justice Blacklock:

In the last 25 years, the growing prevalence of third-party litigation funding (TPLF) has sparked a national debate over the extent to which TPLF agreements should be disclosed, discoverable, or otherwise regulated by the state. In view of the rapid growth of the TPLF industry, it seems likely that the debate will only intensify. On one hand, proponents seek legislative or judicial action either legitimizing their business or keeping other people’s noses out of it. On the other, opponents seek with equal conviction to heavily regulate the industry or at minimum mandate disclosure of TPLF agreements to all parties in the litigation.

To date, at least five states, Wisconsin, Montana, Indiana, Louisiana, and West Virginia, have enacted mandatory disclosure statutes. Several federal district courts have adopted rules requiring disclosure of TPLF agreements to the court, including the Districts of Delaware and New Jersey, the Northern District of Ohio (Eastern Division), and the Northern District of California. More limited disclosure requirements have been adopted in at least three federal MDL cases, while more generally a growing number of other federal district and appellate courts (including the U.S. Court of Appeals for the Third, Fourth, Fifth, Tenth, and Eleventh Circuits) have local rules that require at least some level of disclosure of entities with a financial interest in the outcome of the litigation. Case law in the federal system is somewhat split, with some courts requiring disclosure when specific conditions are met and others denying discovery of TPLF agreements as either irrelevant or protected by attorney work product privilege.¹ Numerous state legal ethics opinions have weighed in on the relation between TPLF and various ethical rules, and the American Bar Association House of Delegates has issued “best practices” guidelines to assist attorneys and third-party funders in navigating the potential legal and ethical pitfalls of TPLF agreements.² No uniform standards exist to guide federal and state courts in determining if, when, to whom, and to what extent TPLF agreements should be disclosed.

¹ See Mark Behrens, Katie Jackson, and Cary Silverman, “Third-Party Litigation Funding: State and Federal Disclosure Rules and Case Law,” https://www.iadclaw.org/assets/1/6/5.1_-_Third-Party_Litigation_Funding_-_State_and_Federal_Disclosure_Rules_and_Case_Law.pdf, last visited May 2, 2025.

² See “ABA Outlines Best Practices for Third-Party Litigation Funding.” <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2020/111a-annual-2020.pdf>, last visited May 2, 2025.

This debate has come to the Texas Legislature as well, most recently in the form of S.B. 2954, which was filed earlier this spring. These proposals called on the Supreme Court to adopt a rule mandating disclosure of TPLF agreements to all parties in a civil action. At the federal level, Rep. Darrell Issa (R-CA 48) has introduced the Litigation Transparency Act to require disclosure of third party litigation funding agreements in all federal civil litigation. Additionally, last year Sen. John Cornyn (R-TX) and Sen. Thom Tillis (R-NC) submitted a letter to the Advisory Committee on Civil Rules, and Rep. James Comer (R-KY 1), Chair of the U.S. House Committee on Oversight and Accountability, did the same to Chief Justice Roberts, calling for uniform national standards requiring the disclosure of TPLF agreements. Clearly, TPLF has fully emerged as a pressing public policy issue that demands attention and action.

That is why, on behalf of the members of the Texas Civil Justice League, we are renewing our request that you refer the issue to the Supreme Court Advisory Committee for promulgation of an amendment to the Texas Rules of Civil Procedure establishing a framework for disclosure and discovery of TPLF agreements under appropriate circumstances. Your predecessor, Chief Justice Hecht, previously submitted this request pursuant to a letter we submitted in November, 2022, but due to a number of intervening circumstances, it remains pending.

We understand and appreciate that sharp disagreement exists among members of the civil trial bar, the business community, the TPLF industry, and other stakeholders regarding both the threshold question of whether the existence of such agreements should be disclosed at all and, if so, just how much information should be provided. The SCAC, with its broad representation of the civil trial plaintiff's and defense bar, the judiciary, and in-house counsel, is the ideal forum for making policy in this area. At the same time, given the intensifying national interest in bringing transparency to an industry with increasingly influential foreign and domestic players, we do not believe that inaction is an option. Texas must lead.

As for TCJL, we support mandatory disclosure of the existence of third-party funding agreements for both consumer and commercial litigation to all parties in the litigation. In our view, a disclosure statement should include at minimum: (1) the name, address, and place of formation of the third-party funder; (2) whether any third-party funder's approval is necessary for litigation or settlement decisions in the action, and, if the answer is yes, the nature of the terms and conditions of such approval; and (3) a brief description of the type of funding provided and whether any attorney's fees that may be awarded in the matter will be subject to assignment to the third-party funder.³ A disclosure statement of this nature would put the court and parties on notice a funding company's interest in the outcome of the case without intruding into the realm of attorney work product, litigation strategy, or the specific amount of funding involved. It would also help illuminate whether certain third-party funding arrangements violate Rule 5.04 of the Texas Disciplinary Rules or Professional Conduct.

If it is the case that a TPLF agreement confers authority on the provider to make or participate in litigation or settlement decisions or to receive an assigned share of attorney's fees, a party could make a discovery request for more information, including the agreement itself, provided that such request meets the relevancy and other requirements of the existing rules. This may well be a rare case, given that to our

³ This proposal closely tracks the Standing Order Regarding Third-Party Litigation Funding Arrangements issued by the Chief Judge of the United States District Court for Delaware.

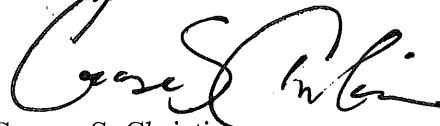
<https://www.ded.uscourts.gov/sites/ded/files/Standing%20Order%20Regarding%20Third-Party%20Litigation%20Funding.pdf>. last visited May 2, 2025.

knowledge most TPLF providers disclaim any involvement in managing or influencing litigation or settlement strategy (although we are not sure of the extent to which fee-splitting between lawyers and non-lawyers may be occurring). But if such influence does exist, the court and other parties should have the tools to assess whether further disclosure should be compelled if it is relevant to identifying potential conflicts-of-interest and protecting the court's and attorneys' respective duties to the judicial system and the litigants they serve.

It is beyond question that the TPLF industry is expanding and that its tentacles are reaching more deeply into our court system. We need to know who is investing in the outcome of litigation in our courts. Judges need to know who is making those investments to ensure compliance with the Code of Judicial Conduct. Lawyers need to know who has a financial interest in the case beyond the opposing parties and their attorneys. The parties need to know what financial resources may be arrayed against them and who may be pulling the strings in the litigation. Most importantly, Texans need to know that the court system they pay for is not being monetized and profited from by foreign hedge funds or any other institutional investor. Judges who dedicate their careers to the bench at great financial sacrifice and jurors who dedicate their time to making sure our citizens receive the justice they deserve should not be exploited by private investors (including foreign entities) looking to make a killing off of *their* public service.

Thank you for your continued commitment to maintaining a fair, efficient, and transparent civil justice system. We deeply appreciate all you are doing and will do on behalf of the citizens of our state.

Sincerely,

A handwritten signature in black ink, appearing to read "George S. Christian". The signature is fluid and cursive, with a large initial "G" and "S".

George S. Christian
Senior Counsel