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BACKGROUNDER

FORCED INVASIONS OF PRIVACY — THE ATTACK ON THIRD-PARTY LITIGATION FINANCING

Attorneys for corporations and trial lawyers for injured people are compensated for their work differently. Corporate and insurance defense lawyers are paid by the hour, so they are guaranteed a fee no matter whether they win or lose, and they receive additional fees the longer it takes (*e.g.*, drag out cases, can double or triple bill).[1] On the other hand, plaintiffs' lawyers are paid on contingency (*i.e.*, a percentage of the judgment, typically one-third), which means they only get paid if they successfully represent their clients. They must front the costs of litigation themselves and are essentially unemployed the entire time they are working on a case. In addition, they take a big risk — if the case is lost, the lawyer is paid nothing. Sometimes, this can amount to thousands or even millions of dollars. There isn't a corporate defense lawyer in the world who would operate with that kind of financial peril over their head.

This is clearly an uneven pay structure. Yet for corporate lawyers, it's never been lopsided enough. Half the states in this country have succumbed to corporate pressure and enacted some type of law dealing with contingency fees, most of which limit them and block victims' abilities to hire their own lawyers.[2] Meanwhile, corporate defendants and their insurance companies have no reciprocal limits on what they can pay their own attorneys, who may charge excessively, leading to higher insurance and overall system costs.[3]

Now the corporate defense bar, along with their lobbying representative, the U.S. Chamber of Commerce, has set their sights on third-party litigation financing ("TPLF"). TPLF is available to both plaintiff and defense lawyers, but it is particularly important to lawyers working on contingency as this financing allows them to bring more expensive and complex cases. For the sick and injured, harmed communities and marginalized populations, TPLF can provide access to justice because the availability of funding ensures that an attorney can properly pursue an expensive case, thus leveling the litigation playing field.

To no one's surprise, corporate wrongdoers and the U.S. Chamber of Commerce would like to ban TPLF. In the alternative, they are trying to force disclosure of private plaintiff TPLF arrangements, and by extension, the absence of TPLF support of a case. In other words, they want one-sided disclosure of sensitive financial information to them — the corporate defendants accused of wrongdoing — with no reciprocal duty for corporate lawyers to disclose similar financial information to the victim.[4] As will be shown in this Backgrounder, this is for one

reason only: to allow corporate defendants to weaponize funding information for their own strategic litigation advantage.

The following Backgrounder answers some key questions and dispels Chamber-generated myths about TPLF. We note a few points at the outset. Our focus is on the types of TPLF that advance funds to lawyers or law firms, or "commercial" TPLF. It is those types of arrangements that the Chamber would like to prevent or weaken. Other types of TPLF advance funds to harmed individuals ("consumer" TPLF), allowing someone suffering an injury the ability to pay their living expenses and not be forced into accepting low-ball offers from insurance companies simply because they can't pay rent. Because predatory firms can easily take advantage of everyday people in these situations, consumers need strong public protections against unfair contracts. But those issues are of no interest to the corporate defense bar. What threatens them are competent and well-funded attorneys against whom they must litigate in court.[5] That is the focus of this Backgrounder.

What is TPLF?

As discussed above, TPLF is financing by an entity other than a party in a case, which provides an attorney with funds to help cover upfront litigation costs and fees that can be quite high.[6] It works in a similar manner to contingency fees: The TPLF firm is paid back as a percentage of a final judgment or settlement, which is worked out ahead of time in a contract between the attorney and the TPLF firm. And like the contingency fee system, the TPLF firm is only paid if the attorney wins the case. If they lose, their investment is lost. That is why it is considered "non-recourse" funding, which is different from a traditional loan where money would have to be paid back no matter the outcome of the case.

Who provides TPLF?

There are many types of TPLF providers. Some are private individuals and private funds, while others are publicly traded companies in which anyone can invest.

Is TPLF a new thing?

TPLF in its current form is somewhat new. However, there has always been a need for litigation financing, particularly for lawyers paid on contingency. In fact, "some forms of litigation funding dates back to ancient Rome and Greece."[7] But as explained by the American Association for Justice (AAJ), whose members sometimes seek TPLF, "traditional access to financing and capital, particularly post-recession, often was not available to members of the plaintiffs' bar, whose business model was considered too uncertain by traditional banks to extend lines of credits or other types of commercial loans."[8] This led to the rise of TPLF firms that specialize in evaluating litigation risks. Until this TPLF growth, "[w]hether litigation is funded with a party's own funds, or with borrowed funds, or by means of a contingent or alternative fee structure agreed to by the party's attorneys was never the concern of anyone other than the client and its attorneys."[9] Interest in forced disclosure of plaintiffs' private litigation funding information is definitely a new thing.

What are the benefits of TPLF?

It is well-recognized that litigation can be extremely expensive for attorneys, especially those working on contingency who must front all legal costs.[10] So of course, TPLF provides benefits to victims whose attorneys may be unable to pursue a case without TPLF support. As conservative University of Chicago Law School legal scholar M. Todd Henderson put it, TPLF "opens up the justice system to everyone on fairer terms.… In court, perhaps even more so than in the business world, it should be one's case that matters, not the size of one's wallet."[11]

But these arrangements also provide significant benefits to society. Because of the financial risks that TPLF firms take — *i.e.*, they are paid nothing if the plaintiff loses — they cannot afford to support cases that are "frivolous" or without merit. TPLF's intense risk evaluation is similar to the analysis that contingency fee attorneys themselves undertake in deciding whether to represent a client. This universal "screening" function has been accepted by many conservative analysts and even by the insurance industry.[12] As Gary Barnett, Executive Director and General Counsel at International Legal Finance Association, put it, "We bring meritorious cases because the business model requires it. If you're funding not meritorious cases, you're not going to be in business for very long."[13]

Do TPLF firms control the litigation they fund?

No. Not only do TPLF contracts often expressly prohibit control,[14] but also TPLF funders are well aware of ethical rules that establish control as exclusively the responsibility of the attorney and client. Attorneys are well aware of this. As AAJ put it, "The attorney, who is licensed by the state and must follow state ethics rules, is not going to risk censure or the loss of a license by allowing a third party to interfere with the relationship that the attorney has with his or her client."[15]

The work of TPLF firms is about evaluating risk — the strength of a victim's case and the attorney's ability to present the case — before lending money. Precisely because they do not control cases, they will not provide funding unless they are comfortable taking that risk, being confident they can then step back and allow the litigation to proceed.

Corporate lobbyists are pushing legislation and rules to allow corporate defendants to routinely get access to detailed, private TPLF information in every case. Why?

The Chamber has developed a series of talking points about why corporate wrongdoers should have access to private, sensitive TPLF information, feigning concern about protecting plaintiffs, preventing conflicts and ensuring fair settlements. These points are largely addressed throughout this Backgrounder. In addition, bar associations, such as the New York City Bar Association's Working Group on Litigation Funding, have more extensively refuted the Chamber's complaints and their explanations are easily available.[16]

Rather, corporate defendants would like access to TPLF information to give them a strategic advantage during litigation. Disclosure of sensitive details like "the funder's investment

commitment, investment to date, and investment budget" would allow a defendant to "employ tactics designed to exhaust that budget and leverage an uneven playing field through litigation and settlement strategy."[17] By extension, corporate lawyers can clearly "draw an adverse inference about the value of a case from the absence of external financing."[18] As one expert explained,[19]

> Generally speaking, the last thing a party wants an adversary to know is that it cannot afford to prosecute or defend its case or that its case is not strong enough to attract much if any external funding. Adversaries who know this information can try to use it to win not on the merits, as the legal system intends, but instead through a battle of attrition.

In other words, "preserving financial privacy for litigants protects not only parties whose cases attract external litigation finance, but also (and perhaps even more importantly) those whose cases do not."[20]

Moreover, a rule allowing a defendant to seek private TPLF information from the plaintiff gives defendants new opportunities to delay and drag out cases. As the New York City Bar put it, "Disclosure could open the door to unnecessary, lengthy, and costly motion practice and sideshow litigation concerning the details of litigation funding arrangements and communications between funded parties and funding sources," all of which are "unnecessary and irrelevant.… The result is added expense and delay to litigation, as well as increasing the burden on judicial resources."[21]

Even though invading the financial privacy of victims and their attorneys may harm plaintiffs and tilt the playing field in the defendant's direction, do corporate defendants have the legal right to this information?

Absolutely not. Any party would love to know strategic information about their opponent's funds. What corporation would not want to know a TPLF firm's views of the merits of a case against them? That does not mean they have the right to it. Far from it. From a legal perspective, courts have held that details about such arrangements are completely irrelevant to the merits of a case and may be privileged. [22] As one court explained,[23]

> Defendants' argument that they are entitled to understand the litigation funder's "ability to intervene" and "dictate the legal strategies or settlement decisions" is just a series of conclusory and irrelevant assertions. A defendant is not entitled to learn any of these things in any case, absent some special need or showing. One party to litigation is not entitled—absent some contractual or other relationship like an indemnification agreement—to know why the adverse party chooses to make certain strategic decisions in a case or avoid settlement. Many such considerations are privileged; and if they are not, they are irrelevant and outside the scope of what a party needs to defend or prosecute its case. If a court were to accept Defendants' premise, all defendants would be permitted to conduct discovery of all individuals who have spoken to the plaintiff to ask them if they counseled plaintiff to reject a settlement offer or if plaintiff ever expressed doubts or uncertainties in his case. Those matters certainly involve the case; they are, after all, discussions about the matter at hand. That, however, does not make them discoverable.

And as one expert asked rhetorically, "It is doubtlessly true that any party in litigation would appreciate the opportunity to better 'evaluate settlement prospects' and 'calibrate settlement initiatives.' But since when has this ever been a legal entitlement?"[24] It isn't.

If an insurance company litigates a case on a corporate defendant's behalf, rules require that they must disclose insurance information. Does this mean TPLF should be disclosed as well?

No. The two situations are completely different. Insurance companies have the right to take over and control the defense and settlement of a case on behalf of a policyholder accused of wrongdoing. In addition, the availability of insurance is relevant to a defendant's ability to satisfy a judgment. That is why some rules require disclosure of the insurer's role.[25] The role of TPLF funders is not comparable, as courts have held. For example, in one case,[26]

> [T]he court rejected the argument that a funding agreement is analogous to an insurance agreement because the funder is not a real party in interest and, in contrast to an insurer, has no right of subrogation, meaning the funder cannot satisfy a claim or take control of a litigation. Other courts have rejected disclosure for similar reasons.

Does the availability of TPLF delay settlements?

No, quite the opposite. Contingency fee attorneys and their TPLF funders are outcome-focused. The interests of both contingency fee counsel and TPLF funders, who are paid from a judgment or settlement, are completely aligned with the plaintiff to work efficiently and productively towards a final resolution as swiftly as possible. As one expert put it, "It should be self-evident that tort plaintiffs themselves have no interest in delay; their interests lie in being made whole as soon as possible."[27] On the other hand, defense counsel who are paid by the hour have every incentive to drag out litigation and delay settlement.

Are there safeguards within the system to protect against conflicts of interest, abusive TPLF contracts or other matters?

Yes. In addition to countless ethics rules that are already on the books regarding conflicts of interest, attorney/client relationships and confidentiality, judges have the power to handle individual issues that may arise. A judge can ask to look at a TPLF agreement, *in camera* and on an *ex parte* basis. For example, in the multidistrict opioid litigation, the judge "required the attorneys to disclose [TPLF] to the Court and provide information, for *in camera* review, confirming that the funder was not controlling the litigation, influencing counsel's judgment, or creating a conflict of interest."[28] Disclosure to the court can even be "truncated, provided it is accompanied by an appropriate attorney affirmation that no financial conflict of interest will affect or control a settlement."[29]

The Chamber suggests that the existence of TPLF raises issues about possible conflicts of interest by a judge (or a juror or witness) since some TPLF firms have public investors or are publicly traded. Of course, unless TPLF privacy is breached, these individuals would have no knowledge of a particular TPLF firm's involvement. But in addition, as the New York City Bar

points out, "litigation funders are typically bound by confidentiality, and therefore do not disclose the matters they fund even to their investors." Yet even if this information should become known during the course of litigation, "*in camera* review should suffice"[30] to resolve any particular concerns. So while these judicial inquiries are sometimes needed, they should be used "only in such narrow circumstances and not as a blanket rule mandating disclosure in all cases, including the vast majority where no ethical impropriety ever occurs or is even alleged."[31]

What about the issue of "foreign" control of TPLF firms creating a so-called "national security threat"?

This is a made-up issue by the U.S. Chamber of Commerce. It is nothing more than fear-mongering.[32] Not only has the Chamber *never* provided any evidence of such a thing, but it also assumes no ethical safeguards are in place to prevent TPLF firms or their outside "investors" from controlling litigation. When asked about the U.S. Chamber's alarmist and unsubstantiated "study" of this fabricated problem, Gary Barnett, Executive Director and General Counsel at International Legal Finance Association, said,[33]

> That whole paper that they put out is absurd. And it is all speculation. They have not identified a single instance where any of the concerns that they raised actually exist…The investors are not deciding which cases will be invested in. The investors don't have an ability to control any aspect of the litigation.

Ironically, if there is any foreign influence in litigation, it is on the corporate defense side. Insurance companies for corporate wrongdoers purchase reinsurance to spread their risk. Reinsurers have a substantial amount of economic power over primary insurers. The top five global reinsurance companies are foreign companies.[34] China Re ranks eighth. Yet there is no meaningful oversight of reinsurance companies in the United States by either U.S. or state law. They are unlicensed and unregulated.[35] We have no idea what sort of influence they may have in any particular case. Perhaps it's time to take a look.

The Chamber is reportedly focusing on a recent case involving giant companies Sysco and Burford Capital in its anti-TPLF lobbying campaign. What are the facts?

Sysco, the world's largest food distribution company, has an antitrust case against chicken, pork and beef producers over price-fixing. Because it has a strong but expensive case to litigate, Sysco obtained TPLF from Burford Capital. Control of the case expressly remained with Sysco, which the company admits.[36] However, at some point Sysco significantly breached its agreement with Burford.[37]

To protect itself from further breaches, Burford asked to renegotiate its contract with Sysco and Sysco agreed. The new contract kept control of the case with Sysco but provided that Sysco would not agree to unreasonable settlements. If a dispute arose regarding a settlement, the issue would be resolved through neutral third-party arbitration. Eventually, a settlement disagreement arose under this provision, so it was sent to arbitration as provided in the contract. The arbitration panel agreed with Burford. Now, Sysco is complaining.

Independent experts say Burford's position is the correct one, not Sysco's. Tom Baker, a professor at the University of Pennsylvania Carey Law School who is considered "an expert on litigation finance in mass torts," said that the arbitration decision in Burford's favor "suggests to him that Burford has a strong case on the merits," that the publicity around the case appears to be "an effort to put pressure on Burford in the court of public opinion" and that the contract to which Sysco agreed involved "sophisticated parties who made a business deal that Sysco now regrets."[38]

It seems Sysco may be trying to "position its case as a matter of public policy."[39] But the facts are clear that this is a one-off situation. Sysco is a giant company which got itself into unique circumstances because it breached its contract. It is nothing more than that. And on June 28, 2023, Sysco dismissed its case against Burford.[40]

Notes

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[1] Even conservative U.S. Supreme Court Justice Antonin Scalia observed that an hourly-fee compensation leads to over-billing, *i.e.*, it "give[s] lawyers incentives to run up hours unnecessarily, which can lead to overcompensation." *See* Elihu Inselbuch, "Contingent Fees and Tort Reform: A Reassessment and Reality Check," 64 *Law & Contemp. Probs.* 175 (Spring 2001), http://scholarship.law.duke.edu/lcp/vol64/iss2/9/ (citing *City of Burlington v. Dagu*, 505 U.S. 557, 566 (1992), discussing fee awards to prevailing counsel under federal fee-shifting statutes).

[2] *See* Center for Justice & Democracy, "Study: Courthouse Cornerstone: Contingency Fees and Their Importance for Everyday Americans" (January 2013), https://centerjd.org/content/courthouse-cornerstone

[3] Center for Justice & Democracy, "Fact Sheet: To Rein in Costs, Get Insurance Defense Lawyers Under Control!" (July 2021), https://centerjd.org/content/fact-sheet-rein-costs-get-insurance-defense-lawyers-under-control

[4] As noted by the American Association for Justice, the Chamber's proposal would force disclosure only where attorneys are paid by a contingency fee, which is "completely one-sided. It only applies to the plaintiffs' bar, even though the biggest funding companies provide funding for both plaintiffs and defendants." Letter from Kathleen L. Nastri, President, American Association for Justice, to Ms. Rebecca A. Womeldorf, Secretary of the Committee on Rules of Practice and Procedure, "Re: Third-Party Litigation Funding," January 18, 2018.

[5] The attack on litigation funding is part of a "growing drumbeat of corporate reports and articles hyper-focused on plaintiffs' lawyers, with coordinated industry whining about how plaintiffs' lawyers are more effectively representing their clients and outsmarting them in court. By extension, this line of attack only highlights their own ineptitude. It is an odd and embarrassing development." Center for Justice & Democracy, "Backgrounder: How Corporate Groups Are Humiliating Their Own Attorneys," December 16, 2022, https://centerjd.org/content/backgrounder-how-corporate-groups-are-humiliating-their-own-attorneys

[6] *See, e.g.,* Binyamin Appelbaum, "Investors Put Money on Lawsuits to Get Payouts," *New York Times*, November 14, 2010, https://www.nytimes.com/2010/11/15/business/15lawsuit.html ("Cases involving scientific evidence, like medical malpractice claims, often cost more than $100,000.")

[7] New York City Bar Association Working Group on Litigation Funding, *Report To The President*, February 28, 2020, http://documents.nycbar.org/files/Report_to_the_President_by_Litigation_Funding_Working_Group.pdf

[8] Letter from Kathleen L. Nastri, President, American Association for Justice, to Ms. Rebecca A. Womeldorf, Secretary of the Committee on Rules of Practice and Procedure, "Re: Third-Party Litigation Funding," January 18, 2018, citing Maya Steinitz, "Whose Claim Is This Anyway? Third-Party Litigation Funding," 95 *Minn. L. Rev*. 1268, 1275-1285 (2010-2011).

[9] Keith Sharfman, "The Economic Case Against Forced Disclosure of Third Party Litigation Funding," New York State Bar Association, February 11, 2022, https://nysba.org/the-economic-case-against-forced-disclosure-of-third-party-litigation-funding/

[10] *See also*, Binyamin Appelbaum, "Investors Put Money on Lawsuits to Get Payouts," *New York Times*, November 14, 2010, https://www.nytimes.com/2010/11/15/business/15lawsuit.html ("Cases involving scientific evidence, like medical malpractice claims, often cost more than $100,000. Some people cannot afford to pursue claims; others are overwhelmed by corporate defendants with deeper pockets. A review by The New York Times and the Center for Public Integrity shows that the inflow of money [from TPLF] is giving more people a day in court and arming them

with well-paid experts and elaborate evidence. It is helping to ensure that cases are decided by merit rather than resources, echoing and expanding a shift a century ago when lawyers started fronting money for clients' lawsuits.")

[11] M. Todd Henderson, "The Justice Case for Litigation Finance," *Litigation* (Fall 2022).

[12] Center for Justice & Democracy, "Courthouse Cornerstone: Contingency Fees and Their Importance for Everyday Americans" (January 2013), https://centerjd.org/content/courthouse-cornerstone

[13] "Talking Litigation Funding; Suing the SEC Over Market Rules; Small but 'Sophisticated' Investors; Republicans Go After China Capitol Account," *Capitol Account*, February 11, 2023, https://www.capitolaccountdc.com/p/talking-litigation-funding-suing. *See also*, Ronen Avraham and Anthony Sebok, "An Empirical Investigation of Third Party Consumer Litigant Funding," 104 *Cornell L. Rev.* 1133 (2019), https://scholarship.law.cornell.edu/clr/vol104/iss5/1 ("First, we show that consumer litigant funding is based on underwriting criteria that result in a significant number of applications being screened out and rejected.… As a matter of economics, it would make sense for a funder to take steps to screen potential lawsuit investments in favor of those they reasonably believe are stronger, both because they profit from screening better cases and because they can further profit from credibly signaling to adverse parties that the lawsuit they face is credible. The fact that, in our sample set, the funder rejected more than half of the cases presented to it is consistent with this prediction.… The tort reform argument has not held up well under serious academic scrutiny.")

[14] New York City Bar Association Working Group on Litigation Funding, *Report To The President*, February 28, 2020, http://documents.nycbar.org/files/Report_to_the_President_by_Litigation_Funding_Working_Group.pdf ("The attempt to exercise control by a commercial litigation funder … would not be permitted in a funding contract with attorneys. Control is normally disclaimed, and funders receive returns based on the purchase of claim proceeds, rather than assignment of the claims themselves.")

[15] Letter from Kathleen L. Nastri, President, American Association for Justice, to Ms. Rebecca A. Womeldorf, Secretary of the Committee on Rules of Practice and Procedure, "Re: Third-Party Litigation Funding," January 18, 2018.

[16] New York City Bar Association Working Group on Litigation Funding, *Report To The President*, February 28, 2020, http://documents.nycbar.org/files/Report_to_the_President_by_Litigation_Funding_Working_Group.pdf

[17] Ibid.

[18] Keith Sharfman, "The Economic Case Against Forced Disclosure of Third Party Litigation Funding," New York State Bar Association, February 11, 2022, https://nysba.org/the-economic-case-against-forced-disclosure-of-third-party-litigation-funding/

[19] Ibid.

[20] Ibid.

[21] New York City Bar Association Working Group on Litigation Funding, *Report To The President*, February 28, 2020, http://documents.nycbar.org/files/Report_to_the_President_by_Litigation_Funding_Working_Group.pdf

[22] Ibid.

[23] *Benitez v. Lopez*, 2019 WL 1578167, 17-CV-3827-SJ-SJB (E.D.N.Y. March 14, 2019), cited in New York City Bar Association Working Group on Litigation Funding, *Report To The President*, February 28, 2020, http://documents.nycbar.org/files/Report_to_the_President_by_Litigation_Funding_Working_Group.pdf. "Subject to limited exceptions, the federal work product doctrine, as well as state analogues, generally protects from disclosure information prepared by or for a party in anticipation of litigation. A party may discover a document otherwise protected as work product if it can demonstrate a substantial need." New York City Bar Association Working Group on Litigation Funding, *Report To The President*, February 28, 2020, http://documents.nycbar.org/files/Report_to_the_President_by_Litigation_Funding_Working_Group.pdf

[24] Keith Sharfman, "The Economic Case Against Forced Disclosure of Third Party Litigation Funding," New York State Bar Association, February 11, 2022 https://nysba.org/the-economic-case-against-forced-disclosure-of-third-party-litigation-funding/

[25] *See, e.g.,* Fed. R. Civ. P. 26(a)(1)(A).

[26] *Miller UK Ltd. v. Caterpillar, Inc.*, 17 F. Supp. 3d 711, 723–4 (N.D. Ill. 2014), cited in New York City Bar Association Working Group on Litigation Funding, *Report To The President*, February 28, 2020, http://documents.nycbar.org/files/Report_to_the_President_by_Litigation_Funding_Working_Group.pdf (citations omitted).

[27] Elihu Inselbuch, "Contingent Fees and Tort Reform: A Reassessment and Reality Check," 64 *Law & Contemp. Probs.* 175 (Spring 2001), http://scholarship.law.duke.edu/lcp/vol64/iss2/9/

[28] New York City Bar Association Working Group on Litigation Funding, *Report To The President*, February 28, 2020, http://documents.nycbar.org/files/Report_to_the_President_by_Litigation_Funding_Working_Group.pdf

[29] Ibid.
[30] Ibid.
[31] Keith Sharfman, "The Economic Case Against Forced Disclosure of Third Party Litigation Funding," New York State Bar Association, February 11, 2022 https://nysba.org/the-economic-case-against-forced-disclosure-of-third-party-litigation-funding/
[32] *See*, *e.g.,* M. Todd Henderson, "Don't fear foreign investment in lawsuits," *The Hill*, January 28, 2023, https://thehill.com/opinion/judiciary/3834412-dont-fear-foreign-investment-in-lawsuits ("Recent commentary served as the latest example in a long line of xenophobic scare tactics by claiming that 'foreign adversaries' are funding 'frivolous litigation' to 'weaken critical industries' or to obtain trade secrets or intellectual property. Then, as now, the fearmongering should be seen for what it is.")
[33] "Talking Litigation Funding; Suing the SEC Over Market Rules; Small but 'Sophisticated' Investors; Republicans Go After China Capitol Account," *Capitol Account*, Feb 11, 2023, https://www.capitolaccountdc.com/p/talking-litigation-funding-suing
[34] They are: Munich Re (German), Swiss Re (Switzerland), Hanover Re (Germany), Canada Life Re (Canada) and SCOR (France). Only two U.S. companies are in the top 10: Berkshire Hathaway and Reinsurance Group of America. Lloyd's of London ranks seventh. China Re ranks eighth. Mark Rosanes, "Revealed – the world's 50 largest reinsurance companies," *Insurance Business America*, August 26, 2022, https://www.insurancebusinessmag.com/us/news/breaking-news/revealed--the-worlds-50-largest-reinsurance-companies-418331.aspx
[35] See more at Center for Justice & Democracy, "Fact Sheet: Reinsurance: A Secretive Foreign Industry That Can Cause Great Harm In The United States," November 6, 2022, https://centerjd.org/content/reinsurance-secretive-foreign-industry-can-cause-great-harm-united-states
[36] Hailey Konnath, "Sysco Says Litigation Funder Burford Is Blocking Settlements," *Law 360*, March 9, 2023, https://www.law360.com/personal-injury-medical-malpractice/articles/1584474
[37] Ibid. The breach was significant, involving "assigning a not-insignificant portion of its antitrust claims to its customers," which Sysco had expressly promised not to do.
[38] Hannah Albarazi, "When A Litigation Funder Is Accused Of Taking Over The Case," *Law 360*, March 15, 2023, https://www.law360.com/publicpolicy/articles/1584860
[39] Alison Frankel, "Sysco sues litigation funder Burford, blasts Boies Schiller over $140 million soured deal," *Reuters*, March 9, 2023, https://www.reuters.com/legal/legalindustry/sysco-sues-litigation-funder-burford-blasts-boies-schiller-over-140-million-2023-03-09/
[40] Hailey Konnath, "Burford, Sysco Agree To Drop Litigation Funding Suits," *Law 360*, June 28, 2023, https://www.law360.com/consumerprotection/articles/1694223