

# **The Impact of Third-Party Funding on Mass Tort Litigation: Undue Influence, Interference, and Emerging Regulatory Responses**

## **I. The Rise of the Mass Tort Machine**

Mass tort litigation has grown into a sophisticated industry fueled by outside capital. Plaintiff firms increasingly rely on third-party investors to fund nationwide advertising campaigns, intake operations, medical file acquisition, and expert development. The result is a litigation environment in which claims are often generated through marketing efforts rather than organic legal need. This machine-like system allows firms to quickly build litigation inventories numbering in the tens of thousands, creating substantial leverage against defendants. The commercial incentives driving this process have attracted institutional investors seeking high returns, treating mass torts as an investment class rather than a purely legal enterprise.

## **II. How Traditional Mass Tort Litigation Funding Works**

Traditional mass tort litigation financing has long involved a structured and highly scrutinized process designed to support the costs of complex litigation rather than influence its outcome. Securing funding has never resembled obtaining a routine consumer loan. Instead, it typically requires 30 to 90 days of rigorous due diligence. Funders examine the strength of the liability evidence, the experience and reputation of counsel, the projected damages, and the overall litigation posture. These entities rely on teams of attorneys, former judges, industry specialists, and economists who evaluate cases with the precision of sophisticated investors. Their decisions are based on precedent, risk management, and expected returns, not speculation.

The application process demands substantial documentation, including case files, expert reports, litigation budgets, timelines, and attorney qualifications. Funders expect transparency regarding strategy, anticipated obstacles, jurisdictional nuances, and realistic financial projections. The assessment includes evaluating the evidence of liability, the solvency and resources of defendants, counsel's track record with similar cases, and the comparative advantages of certain jurisdictions. Credibility is essential; unreliable budgets and unrealistic cost estimates signal poor case management and can lead to funding rejection.

Historically, firms relied on several forms of capital infusion. Pre-settlement financing provided cash during ongoing litigation, typically at high interest rates reflecting the risk. Post-settlement fee acceleration allowed firms to receive their fees immediately after a settlement was reached, offering lower costs but requiring an enforceable settlement agreement. Portfolio financing enabled firms to secure resources across multiple cases, spreading risk and often securing more favorable terms. Established firms sometimes obtained lines of credit, maintaining ongoing access to capital through longstanding institutional relationships. In all these models, the purpose of financing was to support litigation—not to influence counsel's strategic judgment.

This balanced ecosystem has shifted dramatically with the advent and explosive growth of modern third-party litigation funding, which operates on a different scale and with different incentives.

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### **III. The Rise of Third-Party Litigation Funding in Mass Torts**

Third-party litigation funding has transformed from a niche practice into a powerful global financial industry with significant influence over mass tort litigation. Instead of merely supporting case costs, many modern funders—often hedge funds, private equity entities, and international investment firms—inject capital into mass tort inventories as speculative financial assets. The expectation is not just reimbursement but substantial returns tied directly to litigation outcomes.

This influx of capital has accelerated the expansion of mass tort dockets. Funding enables massive advertising campaigns, extensive lead generation operations, and rapid client recruitment. Many of the “mass tort machine” dynamics described in recent analyses—the industrialization of case intake, the nationwide advertising blitzes, the assembly-line generation of claims—are fueled by TPLF dollars. The availability of capital encourages the aggregation of thousands of claims, sometimes without adequate vetting, which places extraordinary burdens on defendants and courts.

As TPLF has grown, so has funders’ influence over litigation. Their financial stake gives them leverage over strategic decisions, causing concern that they may push for prolonged litigation or inflated settlement demands. This modern landscape differs sharply from traditional funding models and has created new challenges for fairness, efficiency, and judicial oversight in mass torts.

### **IV. Types of Mass Tort Cases That Attract Third-Party Funding**

Mass tort funders gravitate toward categories of litigation that offer high potential returns, clear liability theories, and defendants with the financial resources to satisfy large judgments or settlements. Product liability actions involving pharmaceuticals and medical devices draw the most substantial funding interest. These cases often rest on robust scientific evidence, involve well-capitalized corporate defendants, and present significant damages due to the severity and permanence of the alleged injuries. The predictability and scale of these cases make them particularly attractive to institutional funders seeking large, portfolio-level investments.

Environmental contamination cases also command strong attention from litigation finance entities because they often involve thousands of plaintiffs harmed by a common source, creating broad claims of significant public interest. The Camp Lejeune water contamination litigation and the Flint water crisis are examples of cases that drew funder interest due to their scale, the involvement of government or quasi-government defendants, and the long-term nature of the alleged harms. The volume of claimants and the potential for statutory or regulatory remedies make these cases financially appealing for outside investors.

Funders also frequently support consumer protection cases involving major corporations where class certification is either unavailable or unlikely. In such situations, individual cases may proceed separately, but litigation funding enables firms to aggregate claim portfolios efficiently. This model preserves individualized damages calculations while providing the economies of

scale that funders find desirable. The result is a hybrid structure that blends the advantages of class actions with the flexibility of individual mass tort claims.

Recent and emerging litigations underscore how rapidly new funded mass torts can develop. The Tepezza hearing loss litigation—focused on claims that the thyroid eye disease drug caused permanent auditory damage—expanded quickly once early signals of causation emerged, drawing significant financing that allowed firms to mobilize rapidly. Similarly, the hair relaxer cancer litigation surged in 2023, with funding enabling firms to engage in extensive advertising, client outreach, and scientific development in a short period of time. This litigation targets major consumer brands with substantial financial resources, making it a high-interest category for investors.

Another developing area is the Suboxone dental damage litigation, which centers on allegations that the medication caused severe and undisclosed tooth loss and dental deterioration. Funding has allowed attorneys to pursue these cases against pharmaceutical manufacturers by covering the costs of expert evaluations, medical record acquisition, and broader litigation infrastructure. As with many pharmaceutical actions, the combination of emerging science, widespread use of the product, and the presence of large defendant companies makes this an attractive arena for TPLF-backed firms.

## **V. The Concerns: Undue Influence, Interference, and Distortion of the Litigation Process**

### **A. Control Over Strategy and Settlement**

A central concern with modern third-party funding is the potential for funders to influence litigation strategy. Because funders are investors seeking high returns, they may encourage counsel to reject reasonable settlements or pursue riskier litigation strategies that better serve the funder's financial interests than those of plaintiffs. In mass torts, where aggregate settlements rely on coordination and cooperation among plaintiffs' firms, funder influence can delay resolution, inflate settlement expectations, and distort negotiations.

### **B. Advertising-Driven Case Generation**

TPLF has become closely tied to large-scale attorney advertising, often creating the appearance of widespread harm and prompting the rapid formation of multidistrict litigations. Funders benefit from volume, and the financial model rewards the acquisition of large inventories of claims. The result is an influx of cases of varying quality, including claims with limited or no factual foundation. This dynamic burdens courts, dilutes the pool of legitimate claims, and complicates settlement evaluations.

### **C. Lack of Transparency**

Most jurisdictions do not require disclosure of TPLF agreements, leaving courts and opposing parties unaware of the financial entities influencing litigation. This lack of transparency raises significant ethical and procedural concerns. Judges cannot fully evaluate conflicts of interest, assess settlement fairness, or understand the motivations behind strategic decisions if the

existence and terms of funding agreements remain hidden. Defendants, likewise, enter settlement negotiations without knowing whether plaintiffs' counsel is constrained by financial obligations to outside investors.

## **VI. Emerging Judicial and Legislative Responses**

Federal Rule of Civil Procedure 7.1 requires nongovernmental corporate parties to disclose their corporate parents and any publicly held companies owning 10% or more of their stock. This disclosure is designed to promote transparency, prevent conflicts of interest, and safeguard judicial impartiality. By revealing corporate ownership, judges can identify potential financial interests that might necessitate recusal, ensuring fairness in the litigation process. The rule's intent is clear: litigants must disclose relationships that could influence a judge's objectivity, maintaining both the reality and appearance of impartial justice.

Yet, a glaring inconsistency arises in the context of mass tort litigation: plaintiffs are not required to disclose the involvement of third-party funders, even though these funders often have significant control over litigation strategy, settlement decisions, and case management. These funders may provide substantial capital in exchange for a portion of any recovery, giving them a clear financial interest in the outcome of the case—exactly the type of interest FRCP 7.1 seeks to identify in corporate parties.

The irony is striking. While courts rigorously enforce disclosure to prevent potential judicial bias stemming from corporate ownership, they allow plaintiffs to conceal funders whose financial stake may influence litigation in profound ways. These undisclosed funders can shape case strategy, press for settlements, or even encourage extended litigation for maximum return, all without any transparency to the court or opposing parties. This lack of disclosure undermines the same principles that FRCP 7.1 is intended to protect: fairness, transparency, and the avoidance of conflicts of interest.

In essence, the rule underscores a legal hypocrisy. Judges are empowered to recuse themselves when a corporate party's ownership might create a bias, yet they remain blind to third-party funders whose interests can equally—but more subtly—affect the litigation they are tasked to oversee. To uphold the integrity of our judicial system, courts should consider applying the same principles underlying FRCP 7.1 to the disclosure of third-party litigation funders. Transparency is not merely procedural; it is a safeguard of impartiality, fairness, and public trust in the judicial process.

### **A. The October 10, 2024 Action by the U.S. Judicial Conference**

A major shift occurred on October 10, 2024, when the U.S. Judicial Conference's Advisory Committee on Civil Rules agreed to form a subcommittee to study whether the Federal Rules of Civil Procedure should require disclosure of third-party funding arrangements. The decision was prompted by a letter signed by more than 120 companies calling for a uniform rule that would promote transparency. These companies expressed concerns that undisclosed funding arrangements create imbalanced disclosure obligations and distort settlement negotiations. In

parallel, Congress is considering the Litigation Transparency Act of 2024, which would require nationwide disclosure of litigation financing agreements.

## **B. Likely Rulemaking Timeline**

Based on the timelines for previous federal rulemaking efforts, any new disclosure rule is unlikely to take effect quickly. The development of Federal Rule 16.1, governing multidistrict litigation, illustrates the pace of reform. The MDL Subcommittee was formed in 2017, and after extensive meetings, public comment, and revisions, the rule gained final approval in 2024 and is expected to take effect at the end of 2025. Similarly, the 2015 amendment to Rule 26(b)(1), which introduced the proportionality standard, took several years from first draft to final approval. These examples suggest that any TPLF disclosure rule will take multiple years to develop, refine, and implement.

## **C. Local and State-Level Developments**

Some courts have already implemented localized disclosure requirements, particularly in mass tort and MDL settings. These early efforts reflect increasing judicial unease with undisclosed financial interests steering litigation. They also indicate a growing willingness among courts to seek transparency measures even before federal action is finalized.

## **VII. Proposed Reforms and the Path Forward**

A range of reforms is being considered to address the challenges posed by third-party-funded mass tort litigation. The most frequently discussed solution is mandatory disclosure of funding agreements so that courts and opposing parties can evaluate potential conflicts, understand financial pressures shaping negotiations, and fairly assess settlement dynamics. Other proposals include restricting funder involvement in strategic decisions, requiring explicit client consent regarding funding arrangements, and increasing judicial oversight of funder influence in MDLs. These reforms aim to restore balance, ensure ethical representation, and protect the integrity of the civil justice system.

## **VIII. Conclusion**

Third-party litigation funding has reshaped the mass tort landscape in profound ways, offering valuable resources for complex litigation while simultaneously introducing new risks involving transparency, influence, and fairness. The recent actions by the U.S. Judicial Conference and the growing interest of legislators reflect the rising urgency of addressing these concerns. As the legal community awaits the work of the new subcommittee and the possible development of nationwide disclosure rules, practitioners must remain alert to the evolving role of TPLF and prepared for the significant procedural and ethical changes likely to emerge in the years ahead.