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Third-Party Litigation Funding Contracts Feature Significant Control Mechanisms Despite Funders' Contrary Claims

LCJ Letter to Advisory Committee on Civil Rules Reveals Numerous Control Provisions in Nearly a Dozen Contracts, Including Agreements Involving Top Litigation Funders

WASHINGTON, D.C. – September 3, 2025 – While third-party litigation funders regularly proclaim that they don't control the litigation they fund in comments to judges and in various public settings, a new [Lawyers for Civil Justice \(LCJ\) comment letter to the Advisory Committee on Civil Rules of the United States Courts](#) reveals for the first time that funding contracts contain numerous provisions that give funders the authority to do just that. The LCJ analysis concludes that TPLF contracts give funders significant direct and indirect control over the cases they invest in through numerous control provisions that empower them to direct case management, make decisions regarding settlement, choose and direct the lawyers—and even continue the litigation after the actual parties choose to settle (dubbed “[zombie litigation](#)”).

The LCJ letter comes as the Advisory Committee is considering whether to adopt a rule requiring the disclosure of TPLF contracts in federal civil cases. The analysis includes the contracts of some of the world's largest funders, including those ranked as “Band 1” by Chambers and Partners (UK-based Burford Capital), as well as a funder affiliated with Fortress Legal Assets.

Alex Dahl, LCJ's General Counsel said: “Litigation funders tell judges, policymakers, the media, and litigants that they are merely passive investors with no control over the litigation from which they hope to earn a big return. However, their contracts tell a very different story. Even if funders claim they don't exercise these control provisions in most cases, the fact that they have the right to reject settlements, choose and instruct counsel, or even take over litigation entirely is sufficient grounds to require the disclosure of their funding agreements so that the court and all parties can make a realistic appraisal of the case. The Federal Rules of Civil Procedure should ensure that these contracts are disclosed so courts and parties are aware of who's in the courtroom making decisions.”

Many funders have claimed publicly that they do not wield control over litigation decisions in cases they fund. A Burford representative stated that “we don't control settlement” at the Sixteenth Annual Judicial Symposium on Civil Justice Issues, and Burford's website explicitly states that “legal finance providers are passive investors and do not control the legal assets in which they invest...” Parabellum Capital and Statera Capital, for example, also claim that they “do not exercise control” over litigation they fund and that “clients and their lawyers control their cases,” respectively.

These statements from funders are undermined by the mechanisms of control uncovered by LCJ's analysis, which include:

- **Case management Control** – Several contracts analyzed included explicit language allowing the funder – not the litigant – to choose and control counsel. Some expressly prohibit plaintiffs from replacing counsel without the funder's consent. A contract by International Litigation Partners Ltd. (ILP) stated "ILP will give day-to-day instructions to the Lawyers on all matters concerning the Claims and the Proceedings and may give binding instructions to the Lawyers and make binding decisions on behalf of the Plaintiff in relation to the Claims..."
- **Control over Settlements** – Some contracts include provisions requiring funding recipients to seek consent from funders before entering into a settlement. A contract which Burford Capital signed with Sysco states the funding recipient "shall not accept a settlement offer without the Capital Providers' prior written consent."
- **Authorization of Zombie Litigation** – In some high-profile cases, it has been observed that funders pursue litigation even after the funded party to a case no longer wants to proceed with their claims, a phenomenon dubbed "zombie litigation" by a noted legal scholar. Some contracts go even further, allowing the funder to litigate the party's claims even if the party terminates the contract. LCJ's found that an agreement between Litigation Management and Financial Services LLC and a funded party, states that: "Following termination of this agreement by [plaintiff], [funder] ... may continue the proceedings without the participation of [plaintiff]" and "shall be entitled to require [plaintiff] to continue proceedings if [funder] does not wish to continue proceedings in its own name and if [funder] does not wish to disclose the fact that the proceedings are being funded."

Last year, 124 companies, including industry leaders in healthcare, technology, financial services, insurance, energy, transportation, automotive and other sectors [sent a letter to the Advisory Committee on Civil Rules urging](#) creation of a new rule that would require a uniform process for the disclosure of TPLF contracts in federal cases nationwide. Shortly thereafter, in October 2024, the Advisory Committee established a TPLF subcommittee to study the possibility of writing such a rule.

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Lawyers for Civil Justice (LCJ) is a national coalition of defense trial lawyer organizations, law firms, and corporations that promotes excellence and fairness in the civil justice system to secure the just, speedy, and inexpensive determination of civil cases. In 2024, LCJ launched the Ask About TPLF initiative in support of a Federal Rule of Civil Procedure requiring disclosure of TPLF contracts in America's courts.