Legal Backgrounder

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A Litigation Funding Postmortem: Lessons from the Seventh Circuit in *Broiler Chicken*

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Third-party litigation funding can turn a straightforward settlement discussion into a high-stakes contest over who really calls the shots. A recent decision from the U.S. Court of Appeals for the Seventh Circuit arising out of the sprawling *Broiler Chicken* antitrust litigation delivered a win for Burford Capital. But a pointed concurrence by Judge Nancy Maldonado offered a cautionary "postmortem" on how funding arrangements can shape litigation strategy, settlement dynamics, and judicial perceptions. This *Legal Backgrounder* summarizes the court's ruling on settlement contract formation, highlights Judge Maldonado's warnings about funder control and places the decision in the broader context of growing state and federal efforts to regulate (and compel disclosure of) litigation funding agreements.

The Seventh Circuit's *Broiler Chicken* Opinion

The Seventh Circuit's February ruling[1] is one of the latest in the massive, multidistrict *Broiler Chicken* antitrust litigation, which accuses poultry farms and chicken product producers of unlawfully fixing the wholesale price of chickens.[2] In September 2018, food service distributor Sysco Corporation ("Sysco") joined the litigation as a plaintiff. Pilgrim's Pride Corporation ("Pilgrim's"), a producer and supplier of meat products, was named as one of many defendants in both the *Broiler Chicken* litigation and parallel class actions in the pork and beef industries.

Sysco sought litigation funding and eventually entered into a Capital Provision Agreement ("CPA") with Burford under which the financier invested more than $140 million in exchange for a share of proceeds from a favorable settlement or judgment for Sysco in the *Broiler Chicken*, pork, and beef litigation matters. Among other things, the CPA required Sysco to immediately convey to Burford any settlement offers that Sysco received. It also prevented Sysco from accepting a settlement "without [Burford's] prior written consent."[3]

In August 2022, Sysco's Associate General Counsel and Pilgrim's corporate counsel discussed a $50 million global settlement of the antitrust cases. Following that discussion, Pilgrim's counsel sent

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[1] *See In re Broiler Chicken Antitrust Litig.*, No. 25-1110 (7th Cir. Feb. 5, 2026), https://media.ca7.uscourts.gov/cgi-bin/OpinionsWeb/processWebInputExternal.pl?Submit=Display&Path=Y2026/D02-05/C:25-1110:J:Hamilton:aut:T:fnOp:N:3489067:S:0.

[2] *See generally In re Broiler Chicken Antitrust Litig.*, 290 F. Supp. 3d 772, 779–87 (2017) (providing a summary of the litigation and its procedural history).

[3] *See In re Broiler Chicken Antitrust Litigation*, No. 25-1110, at 24 (7th Cir. Feb. 5, 2026) (Maldonado, J., concurring).

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emails "confirming that [Pilgrim's was] offering $50M for a global settlement"—to which Sysco's counsel responded, "We accept." Nonetheless, negotiations between the parties continued on other various provisions of a final settlement agreement.

Months later, Burford objected to the settlement and filed an expedited request for arbitration under the CPA to prevent Sysco from executing an agreement. Then, in December 2022, when Sysco notified Burford that Sysco nonetheless intended to execute the settlement agreement before year-end, Burford moved for and obtained a temporary restraining order and preliminary injunction against Sysco. Eventually, Sysco and Burford settled their disputes about the settlement, and as part of that agreement, Sysco assigned its claims in the antitrust litigations to Burford's affiliate, Carina Ventures.

Meanwhile, Pilgrim's moved to enforce the $50 million settlement in federal district court, requesting that the court hold that Sysco's "we accept" email created a binding agreement that released Sysco's claims against Pilgrim's, notwithstanding the lack of a final, signed agreement. The district court agreed with Pilgrim's that the parties' negotiations had created a binding agreement and subsequently entered summary judgment in Pilgrim's favor.

Carina Ventures, now standing in the place of Sysco, appealed the district court's decision to the Seventh Circuit. Carina Ventures argued summary judgment was improper because the $50 million agreement was not binding and that several material items regarding the agreement remained unresolved. The Seventh Circuit, in an opinion authored by Judge David Hamilton, agreed. The court determined that, since key terms had not been finalized when Sysco sent the "we accept" email, the district court erred in granting summary judgment based on the theory that the parties had settled Sysco's claims.

Judge Maldonado's "Postmortem" Concurrence

Judge Maldonado, in a concurrence that she called a "postmortem of sorts," voiced doubts about how litigation funding contributed to the scenario presented to the appellate court. In particular, Judge Maldonado said the case was an example of "the foremost danger of litigation finance: funders aggressively interfering with, and exerting control over, ongoing litigation, while rejecting the funded party's preferences with the hope of maximizing returns."[4] Judge Maldonado further stated:

> Having turned the courtroom into a trading floor and calculated that continued litigation was more profitable than settlement, Burford wrested total control over the settlement of Sysco's claims. And but for this legal maneuvering, this litigation could have been resolved long ago. This case is a cautionary tale to any party who seeks to fund its litigation through a third party.

That said, Judge Maldonado concurred in the court's judgment and made clear that she found "nothing technically wrong with the majority opinion's approach."[5]

Growing Debates Regarding Regulation of Litigation Funding

Although Judge Maldonado's reservations regarding the role of litigation funding did not influence the outcome—her "postmortem" was issued as a concurrence rather than a dissent—the points raised in her opinion echo ongoing debates about the regulation and oversight of litigation funding. While litigation funding continues to experience rapid growth, its growing influence has engendered increasing efforts—both at the state and federal levels—to prevent potential abuses. Indeed, states are

[4] *See id.* at 26.

[5] *Id.* at 24.

increasingly adopting regulations governing litigation funding, including disclosure requirements[6] and restrictions on the structure of litigation funding agreements.

As one recent example, New York's Consumer Litigation Funding Act—which is poised to take effect on June 17, 2026—attempts to comprehensively regulate "consumers'" use of litigation funding. Among other things, the law requires that litigation funders register with the state; mandates funding contracts with consumers include various disclosures regarding fees, repayment terms, and a plaintiff's rights; caps a funder's recovery at 25% of the consumer's gross litigation recovery; restricts funders from influencing case strategy and settlement decisions; and bars referral fees related to funding arrangements.[7] This law comes on the heels of the New York appellate court's decision in *Lituma v. Liberty Coca-Cola Beverages LLC*, which made clear that in New York, parties can obtain discovery into third-party litigation funding arrangements.[8]

While New York's law is narrowly written to apply to only "consumer" litigation funding,[9] there have been recent efforts to regulate litigation funding more broadly, including at the federal level.[10] In addition, there have been efforts to revise the Federal Rules of Civil Procedure to require disclosure of third-party litigation funding contracts.[11] It is very likely that these initiatives will continue, and perhaps intensify, as litigation funding continues to expand.

Given courts' and regulatory bodies' increasing focus on litigation funding, parties should—in addition to evaluating the existing, patchwork regulatory and legal framework governing litigation funding—consider how courts will view the optics of litigation funding arrangements in ruling on key disputes in the case. Although the Seventh Circuit did not ultimately consider Burford's involvement relevant to whether the parties had formed a binding settlement agreement, there is no guarantee that a more skeptical court would take the same position. Regardless, parties considering litigation funding should be aware that courts are now beginning to evaluate such arrangements, focusing on the potential impacts they may have on the rights of parties as well as the ultimate resolution of the litigation.

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[6] *See generally* E. Zolner, C. Fronk, and E. Hall, *Beneath the Surface: A Deeper Dive Into Third-Party Litigation Funding*, Washington Legal Foundation (Aug. 4, 2025), https://www.wlf.org/2025/08/04/publishing/beneath-the-surface-a-deeper-dive-into-third-party-litigation-funding/.

[7] *See* N.Y. Legis. Assemb. A-804C. Reg. Sess. 2025-2026 (2025), https://www.nysenate.gov/legislation/bills/2025/A804/amendment/C.

[8] *Lituma v. Liberty Coca-Cola Beverages LLC*, 243 A.D.3d 504 (2025) ("The court providently exercised its discretion in allowing defendants to seek materials related to the funding of plaintiffs' litigation. . . . Defendants established that the demanded information is material and necessary by explaining that it could reveal a financial motive for fabricating the accident.").

[9] *See id.* (defining "consumer" as a "natural person who has a pending legal claim and who resides or is domiciled in New York" and "consumer litigation funding company" or "company" as "a person or entity who enters into a consumer litigation funding contract of no more than five hundred thousand dollars with a consumer").

[10] For example, in early 2025, Senator Tillis introduced S.1821, the "Tackling Predatory Litigation Funding Act," which would have imposed a tax rate of 40.8% on "qualified litigation proceeds" received by third-party litigation funders. *See* Tackling Predatory Litigation Funding Act, S. 1821, 119th Cong. (2025), https://www.congress.gov/bill/119th-congress/senate-bill/1821/text. While the proposed tax was included in a version of President Trump's "big, beautiful" bill, it was eventually removed by the Senate parliamentarian after extensive lobbying from litigation funders.

[11] For example, on September 3, 2025, Lawyers for Civil Justice submitted a proposal to the Advisory Committee on Civil Rules and its Subcommittee on Third-Party Litigation Funding, advocating for the inclusion of a rule requiring disclosure of third-party litigation funding agreements in federal cases. *See* Lawyers for Civil Justice, *Rules Suggestion: Uniform Disclosure of TPLF Contracts is Necessary to Inform Judges' and Parties' Case Management Decisions*, https://www.lfcj.com/document-directory/lcj-rules-suggestion-uniform-disclosure-of-tplf-contracts-is-necessary-to-inform-judges-and-parties-case-management-decisions.