

# Litigation Funding Agreements

Relevance

Discoverability

Best Practices

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## Litigation Funding – What is it?

- ◇ Contracting to obtain financial assistance from third-party funders in exchange for an interest in the potential recovery.
- ◇ A third-party *investor* helps to finance the lawsuit.
- ◇ Jayme Herschkopf, *Third Party Litigation Finance* (Federal Judicial Center 2017)

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# Litigation Funding – Sources of \$\$\$?

## ◇ Widely Varied

- ◇ Insurance
- ◇ Capital Markets
- ◇ Private funds

## ◇ Typically Structured as Non-Recourse Investment

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# Litigation Funding – How Prevalent?

## ◇ Global litigation funding investment market”

- ◇ 2018: ~\$10 Billion
- ◇ 2027: ~\$22 Billion\*
- ◇ Absolute Market Insights: *Lawsuit Financing Market*

## ◇ “Exponential Growth in third-party litigation funding”

- ◇ *American Bar Association Best Practices for Third-Party Litigation Funding* (2020)
- ◇ <https://www.americanbar.org/content/dam/aba/administrative/news/2020/08/2020-am-resolutions/111a.pdf>

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# Litigation Funding – Is it Allowed (in Texas)?

- ◇ Texas Disciplinary Rules of Professional Conduct
  - ◇ Rule 1.08(e) – compensation from non-client
  - ◇ Rule 1.05 – confidentiality
  - ◇ Rule 5.04 – sharing legal fees

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# Litigation Funding – Is it Allowed (in Texas)?

- ◇ Texas Ethics Opinions
  - ◇ 481
  - ◇ 558
  - ◇ 559
  - ◇ 576

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25<sup>th</sup> Annual Advanced Patent Law Institute session  
"Privilege Issues and Discoverability of Agreements"