

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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