

# Litigation Funding Agreements

Relevance

Discoverability

Best Practices

November 5, 2020

Kevin Kudlac (CONNOR KUDLAC LEE PLLC)

1

## 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)

2

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

## ◊ Widely Varied

- ◊ Insurance
- ◊ Capital Markets
- ◊ Private funds

## ◊ Typically Structured as Non-Recourse Investment

# 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>

# 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

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

## ◇ Texas Ethics Opinions

- ◇ 481
- ◇ 558
- ◇ 559
- ◇ 576

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Litigating Funding Agreements

Also available as part of the eCourse

[2020 Advanced Patent Law \(Austin\) eConference](#)

First appeared as part of the conference materials for the

25<sup>th</sup> Annual Advanced Patent Law Institute session

"Privilege Issues and Discoverability of Agreements"