

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

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

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"Privilege Issues and Discoverability of Agreements"