Third-Party Litigation Funding (TPLF)

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Introduction

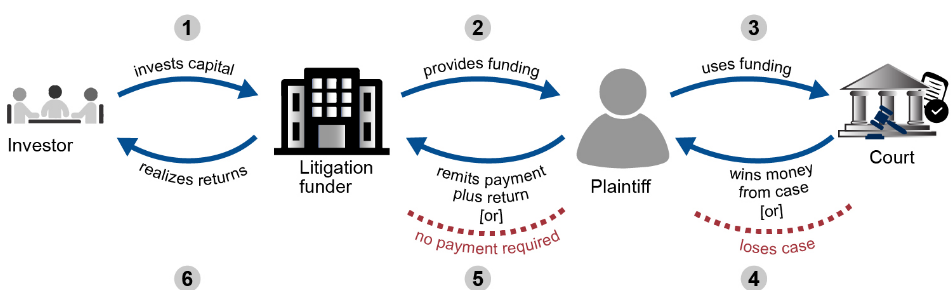
There are two types of litigation, criminal and civil. Within a civil lawsuit, the legal system "provides civil remedies for harm caused by others in the form of monetary damages and penalties." These civil suits are torts.

Problem

Costs associated with a tort case have risen faster than inflation over the last seven years, rising by a yearly average of 7.1. The current annual economic losses from excess tort costs in Oklahoma are estimated at more than $3.7 billion a year in gross product.

A reason tort costs continue to increase are nuclear verdicts due in part because of third-party litigation funding. When a lawsuit is filed, the parties can reasonably expect that the funding for the litigation is coming from the other party. But, a rising $15.2 billion industry is taking that assumption out of litigation. This phenomenon is called third-party litigation funding (TPLF) and it is increasing the costs of doing business across the nation.

TPLF occurs when the litigation costs like attorney and court fees are paid for by neither the defendant nor the plaintiff, but rather an outside entity. Typically, third-party litigation funding is utilized by trial attorneys representing plaintiffs. These funders take a percentage of the awarded damages if the party funded wins.



Source: GAO. | GAO-23-105210

Since the funder's payout depends solely on the outcome of the case, the funders want more control in the litigation than typical for a non-party. The agreements may allow the funder to make strategic decisions in the litigation. This is alarming because these funders will have no fiduciary duty to the party like attorneys will, so funders are not looking out for the best interest of the party to the litigation, just the bottom line.

Solution

Funders are not required to disclose their investment to the court. This means the parties and the court are unaware of who is funding the litigation. This is a national security concern. There is growing evidence indicating that foreign governments, including adversaries, are manipulating the U.S. court system through funding various lawsuits.

The lack of transparency for these agreements can be solved by requiring parties to disclose any TPLF agreements to the court and the other parties. States are attempting this through both court rules or legislation.

The Texas Supreme Court is assessing rules to create transparency. While, Indiana, Louisiana, Montana, and West Virginia have passed transparency laws around third-party funding.

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