



May 20, 2022

Secretary of the Committee on Rules of Practice
and Procedure of the Administrative Office of the
United States Courts
One Columbus Circle, NE
Washington, D.C. 20544

RE: Proposed Fed. R. Civ. P. 26(a)(1)(A)(v)

Dear Secretary:

I am writing to apprise the Advisory Committee on Civil Rules (“Committee”) of a recent development potentially relevant to its consideration of Proposal 17-CV-O, which would amend the Federal Rules of Civil Procedure to require disclosure of third party litigation funding (“TPLF”) agreements. Recently, Chief Judge Colm Connolly of the U.S. District Court of the District of Delaware issued a standing order (copy attached) requiring litigants to disclose whether their cases are being financed by TPLF, and whether there are any conditions tied to that funding (i.e., whether a funder’s approval for any litigation or settlement decisions is required). This recent development comes on the heels of the local rule adopted earlier this year by the U.S. District Court for the District of New Jersey (previously submitted to the Committee) requiring certain TPLF-related disclosures in all civil cases. Chief Judge Connolly’s standing order reflects the reality that TPLF is becoming an increasingly common feature of litigation in our federal courts, underscores the importance of TPLF disclosure and lends further support to the proposal currently pending before the Committee.

As always, the Committee’s examination of our proposal to amend Fed. R. Civ. P. 26(a)(1)(A) is greatly appreciated.

Sincerely,

Harold Kim
President, Institute for Legal Reform
Chief Legal Officer and EVP, U.S. Chamber of Commerce

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STANDING ORDER REGARDING
THIRD-PARTY LITIGATION FUNDING ARRANGEMENTS

At Wilmington on this Eighteenth day of April in 2022, it is HEREBY ORDERED in all cases assigned to Chief Judge Connolly where a party has made arrangements to receive from a person or entity that is not a party (a “Third-Party Funder”) funding for some or all of the party’s attorney fees and/or expenses to litigate this action on a non-recourse basis in exchange for (1) a financial interest that is contingent upon the results of the litigation or (2) a non-monetary result that is not in the nature of a personal loan, bank loan, or insurance:

1. Within the later of 45 days of this Order or 30 days of the filing of an initial pleading or transfer of the matter to this District, including the removal of a state action, the party receiving such funding shall file a statement (separate from any pleading) containing the following information:

a. The identity, address, and, if a legal entity, place of formation of the Third-Party Funder(s);

b. Whether any Third-Party Funder’s approval is necessary for litigation or settlement decisions in the action, and if the answer is in the

affirmative, the nature of the terms and conditions relating to that approval;
and

c. A brief description of the nature of the financial interest of the
Third-Party Funder(s).

2. Parties may seek additional discovery of the terms of a party's
arrangement with any Third-Party Funder upon a showing that the Third-Party
Funder has authority to make material litigation decisions or settlement decisions,
the interests of any funded parties or the class (if applicable) are not being
promoted or protected by the arrangement, conflicts of interest exist as a result of
the arrangement, or other such good cause exists.

3. Nothing herein precludes the Court from ordering such other relief as
may be appropriate.



Chief Judge