



## Congressional Civil Justice Caucus Academy Third-Party Financing of Litigation

### Defined

Third-party financing of litigation (TPFL) is the practice of providing money to a party to pursue a potential or filed lawsuit in return for a share of any damages award or settlement. The third-party financier is not a party to the lawsuit nor is the financier an attorney representing one of the parties. The third party financier provides funds for litigation costs, including attorneys' fees, court fees, and expert witness fees. While funding arrangements vary widely, they may include living expenses while the litigation is ongoing. If the litigation recovers nothing, then the financier generally also receives no compensation.

### Legal Landscape

The legality of TPFL is rooted in a jurisdiction's laws on the common law doctrines of maintenance and champerty. Maintenance is the "provision of support for a lawsuit to which one is not a party." Champerty is a form of maintenance, which involves an individual acquiring an interest in the financial recovery of the lawsuit.

A survey of jurisdictions in 2010 found that, "[t]wenty-eight of fifty-one United States jurisdictions (including the District of Columbia) explicitly permit champerty, albeit with varying limitations." The survey also found that, "Of the twenty-eight states that permit maintenance in some form, sixteen explicitly permit maintenance for profit. The remaining states probably permit champerty—it is just that they do not explicitly cite the investment by contract into a stranger's suit as a permissible form of maintenance."

### Potential Market

- The estimated market for TPFL in the U.S. could be as high as \$33 billion, but just \$4 billion was invested in the market as of 2009.
- Investment firms that focus on TPFL invest anywhere from \$10,000 to \$15 million in a case.

### Debate on the Economic Effects of TPFL

Professor Anthony J. Sebok argues that the TPFL financing model will increase access to justice and the U.S. civil justice system, counteracting the rising costs associated with litigation. Sebok contends that the mere fact that a third-party involved him or herself in the suit is not proof that the suit is against public policy. Further, Sebok does not believe there is any danger that TPFL would encourage attorneys to deviate from their professional responsibilities.

Professor Jeremy Kidd asserts that TPFL will introduce frivolous litigation and the third-party financier will not be receptive to reasonable settlement offers. Kidd notes that litigation-financing models such as TPFL lower the price of litigation, which therefore results in an increase in litigation. Due to this, society will face increased costs, both in resources expended by litigants in pursuit of justice and in resources expended by society in order to provide a forum for the claims. Kidd has expressed concern that conflicts of interest and confidentiality issues will be more prevalent under TPFL.

***For more resources, please visit us at [www.MasonLEC.org/third-party-financing-of-litigation](http://www.MasonLEC.org/third-party-financing-of-litigation)***