Auto Casualty, Workers' Comp

Third Party Litigation Funding: A Symptom of Deeper Issues in the Legal System

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In the world of civil litigation, a new player has emerged—third-party litigation funders. These deep-pocketed investors are bankrolling lawsuits they have no direct involvement in, fueling a surge in nuclear verdicts (awards exceeding $10 million) and even thermonuclear verdicts (over $100 million). For workers' compensation and auto insurers, this trend is a ticking time bomb that could lead to skyrocketing claims costs.

While third-party litigation funding is a relatively new phenomenon, it is a symptom of deeper issues within the legal system that have been brewing for decades. Historically, the law prohibited outside parties from interjecting themselves into legal disputes or having a financial stake in the outcome. However, these long-standing principles have eroded, opening the floodgates for investors to pour money into lawsuits they have no connection with. The litigation funding industry has grown so lucrative that some funders are now funding other funders in a nested investment model.

Drivers of Third-Party Funding

Critics argue that the legal system has become increasingly skewed in favor of large corporations and insurance companies, making it difficult for individual plaintiffs to obtain fair compensation. Third-party funding is seen by some as a way to level the playing field by providing plaintiffs with the resources to mount a robust legal challenge against well-funded defendants.

The rise of third-party litigation funding can also be attributed to the increasing costs of litigation. Many plaintiffs, particularly those with limited financial resources, struggle to afford the upfront costs of pursuing complex lawsuits. Third-party funders step in to provide the necessary capital, allowing cases to move forward that might otherwise have been financially untenable but valid cases.

Additionally, the widespread use of contingency fee arrangements, where attorneys receive a percentage of any settlement or award, has created an incentive for lawyers to pursue high-value cases. Third-party funding provides a way for law firms to finance these potentially lucrative cases without bearing the full financial risk themselves.

The Risks for Insurers

For insurers, third-party funding could lead to a proliferation of lawsuits that may not have been economically viable for plaintiffs' attorneys otherwise. Reasonable settlements may become harder to reach due to funders' financial incentives to push for higher payouts, even if it undermines the plaintiff's best interests.

The trend of nuclear verdicts has been rapidly increasing, with the median award rising to a staggering $44 million in 2023, up from $21 million in 2020. These massive jury awards are creating major challenges for insurers. Nuclear verdicts can easily exceed the limits of insurance policies, leaving policyholders on the hook for the excess amounts out-of-pocket – a concerning prospect for smaller businesses. Insurers are having to significantly bolster their reserves to absorb these larger losses.

Mitigating the Impact

Overall, the rise of nuclear verdicts is a disruptive force reshaping the insurance market, leading to higher prices, tighter capacity, and more self-insurance as the industry adapts to this growing exposure. While third-party litigation funding is a symptom of deeper systemic issues, there are potential reforms that could help promote a more equitable balance within the legal system:

1. Tort reform measures: Implementing reasonable caps or limits on certain types of damages, such as non-economic damages, could help prevent excessive awards while allowing fair compensation for actual losses.
2. Strengthening evidence standards: Requiring a higher burden of proof, particularly for punitive damages, could ensure awards are based on clear evidence of wrongdoing.
3. Promoting alternative dispute (ADR) resolution: Encouraging mediation, arbitration, or other forms of ADR could resolve cases more efficiently and cost-effectively.
4. Reviewing contingency fee structures: Reforming contingency fees could align incentives and reduce the motivation for pursuing excessive awards.
5. Enhancing transparency: Requiring disclosure of litigation funding agreements and potential conflicts of interest could mitigate undue influence.
6. Improving judicial oversight: Empowering judges to scrutinize and potentially limit problematic third-party funding arrangements.

Comprehensive Tort Reform

Florida and Georgia have been at the forefront of addressing issues surrounding third-party litigation funding and excessive verdicts through comprehensive tort reform packages.

In 2023, Florida passed legislation that mandated disclosure of litigation funding agreements, regulated litigation funders, placed limits on contingency fees, tightened evidentiary standards for punitive damages, restricted venue shopping, and ensured damage awards were based on actual costs incurred. The goal was to promote transparency, accountability, and fairness within the state's civil justice system.

Building on Florida's efforts, Georgia recently introduced during a press conference on January 30, 2025, its own sweeping tort reform package under the leadership of Governor Kemp. This legislation aims to protect consumers, businesses, and the legal system from potential abuses while still allowing legitimate claims to proceed. To view the most recent tort reform bills introduced into Georgia legislation on January 30, 2025, see SB 68 and SB 69.

Key provisions align with many of the reforms implemented in Florida, such as:

- Allowing bifurcation of liability and damages phases for clearer evidence presentation
- Preventing plaintiffs from dismissing and re-filing cases in different venues
- Requiring evidence of actual medical costs paid, not inflated initial bills
- Banning hostile foreign entities from financing lawsuits through unregulated funds
- Mandating registration and guidelines for litigation financers to protect consumers

As Governor Kemp stated, the goal is to create a reasonable and balanced approach that is "not an anti-lawyer bill" nor "a pro-insurance company bill," but rather "a pro-Georgia consumer bill." The package aims to address issues like third-party funding, evidentiary standards, venue rules, and damages calculations.

By taking a comprehensive approach that addresses the underlying systemic issues within the legal system, both Florida and Georgia are positioning themselves as leaders in tort reform efforts. Their legislative packages could serve as models for other states seeking to promote transparency, accountability, and fairness within their civil justice systems.

The Way Forward

As the controversial third-party litigation funding industry continues its rapid growth, workers' compensation and auto insurers must closely monitor its potential impact on claims costs and the ability to resolve lawsuits efficiently. However, increased regulation alone may not be sufficient. Addressing the underlying systemic issues that have fueled the rise of third-party funding and nuclear verdicts is crucial.

By implementing thoughtful reforms that promote fairness, transparency, and accountability within the legal system, while still allowing legitimate claims to proceed, a more balanced approach can be achieved. This would protect the rights of injured parties to receive appropriate compensation, while also safeguarding businesses and insurers from excessive or unwarranted awards driven by profit motives rather than justice.

With Florida and Georgia leading the charge, other states may follow suit by emulating specific provisions or elements of their comprehensive tort reform packages, creating a ripple effect of legal system reforms across the nation. While each state may tailor its approach based on unique priorities and legal landscapes, the overarching goal remains the same: to tackle the root causes, rather than just the symptoms, and forge a more equitable and sustainable path forward. One that serves the interests of all stakeholders and fosters an environment where wrongs can be remedied without enabling exploitation or abuse.

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