PAYING TO PLAY: INSIDE THE ETHICS AND IMPLICATIONS OF THIRD-PARTY LITIGATION FUNDING

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I. INTRODUCTION

From the United Kingdom and Australia to North America, the emergence of third-party litigation funding companies is dramatically changing the legal landscape for corporate defendants.[1] The practice of funding companies taking stakes in litigation outcomes is very quickly becoming of particular concern to defendants in mass tort and class action lawsuits.[2] As outlined below, states and attorney regulating organizations are currently evaluating the impact of alternative litigation funding models on public policy and the American judicial system, and they are assessing the ethical implications of such arrangements.[3] Because these laws are quickly developing across the United States, lawyers would be well advised to tread carefully.[4] Several of the perils associated with third-party litigation funding are examined below

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[1] Maya Steinitz, *Whose Claim is This Anyway? Third-Party Litigation Funding*, 95 MINN. L. REV. 1268, 1278-82 (2011).

[2] *See generally id.* at 1305-06 (explaining that litigation funding increases the individual plaintiff's and the class' bargaining positions by allowing greater access to justice, economics of scale, advanced intelligence, and expertise).

[3] *See* Nicholas Beydler, *Risky Business: Examining Approaches to Regulating Consumer Litigation Funding*, 80 UMKC L. REV. 1159, 1160-61, 1178-80 (2011).

[4] *See generally* Steinitz, *supra* note 1, at 1323-25 (discussing the complexity of introducing a funder into the equation and its potential impact on the attorney-client relationship).

and, indeed, reveal that lawyers and their clients have good reason to be concerned.

II. BACKGROUND

Third-party litigation funding is a financial product that allows a party unaffiliated with the lawsuit to pay a plaintiff's–or a class of plaintiffs'–upfront costs.[5] The third parties are mainly specialist funding companies or hedge funds that finance the costs of litigation in exchange for a portion of any award or settlement.[6] The percentage a funding company collects varies depending on the level of risk incurred, as well as on the terms of lending agreed to with the client.[7] It is becoming increasingly common in such litigation arrangements for a plaintiff to recover only a small portion of his or her award.[8] While this is a very significant problem created by lawsuit lending, it is but one among several reasons to discourage efforts to expand this practice in American courts.[9]

The practice of litigation funding is not new in jurisdictions such as Australia and the United Kingdom.[10] Indeed, third-party funding companies have been profiting in those jurisdictions with healthy returns on their investments in lawsuits.[11] The practice has begun to develop only in the past few years in the United States–and at an alarming rate.[12] This is partly a result of many states moving away from the historic prohibition on maintenance and champerty.[13] Third-party litigation financing was forbidden at common law under the historic doctrines of maintenance and champerty, which generally proscribed involvement by third

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[5] *Id.* at 1275-77.

[6] *Id.* at 1276.

[7] *See* Beydler, *supra* note 3, at 1163, 1167-70.

[8] *See id.* at 1160.

[9] *See generally* Ryan Guerrero, *Reevaluating Proposals for Tort Claims Markets in a World of Mass Tort Litigation*, 32 REV. LITIG. 299, 310-13 (2013) (discussing commonly cited arguments against the sale of tort claims).

[10] *See* Steinitz, *supra* note 1, at 1279, 1281.

[11] *See* Cassandra Burke Robertson, *The Impact of Third-Party Financing on Transnational Litigation*, 44 CASE W. RES. J. INT'L L. 159, 165 (2011).

[12] *Id.* at 166.

[13] *See* Steinitz, *supra* note 1, at 1290.

parties in lawsuits.[14] Maintenance prohibited supporting the prosecution of another's action.[15] Champerty–a form of maintenance–proscribed supporting a litigant in exchange for a portion of any judgment recovered.[16]

III. WIDESPREAD WORRY – THE DEFENSE BAR IS NOT ALONE

Not surprisingly, and given the potential financial opportunities, litigation funding companies have been busy in the past few years trying to expand their business practices across the United States.[17] In response, an unusual collection of people and groups have raised questions about lawsuit lending.[18]

The business community is concerned that the practice will reduce the opportunity for fair and efficient settlements of disputes.[19] Plaintiffs' attorneys are worried about the effect on attorney-client privilege and interference in critical case decisions, including the decision of whether and when to settle.[20] Consumer groups recognize that the litigation funding industry preys upon the vulnerable, such as the injured tort victim who is pressed for time and unaware of the true cost of these financial products.[21] The industry employs aggressive marketing (on the web and on late-night television) to target the most vulnerable members of our

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[14] *See id.* at 1286-87 (quoting BLACK'S LAW DICTIONARY 262, 1039 (9th ed. 2009)).

[15] Robertson, *supra* note 11, at 164.

[16] *Id.*

[17] Joanna M. Shepherd, *Ideal Versus Reality in Third-Party Litigation Financing*, 8 J.L. ECON. & POL'Y 593, 594 (2012).

[18] *See generally Pro-Consumer Legislation Aims to Address Predatory, Excessive and Unregulated Lawsuit Loans*, CITIZENS AGAINST LAWSUIT ABUSE OF CENT. TEX. (Mar. 18, 2013), www.calactx.com/press_releases/701 [hereinafter *Pro-Consumer Legislation*] (noting that, in Texas, third-party financing has support from "consumer groups, business organizations, civil justice reform groups and many in the legal community").

[19] *See* John P. Barylick & Jenna Wims Hashway, *Litigation Financing: Preying on Plaintiffs*, 59 R.I. B. J. 5, 5, 7 (Mar./Apr. 2011); *see also* Shepherd, *supra* note 17, at 597.

[20] *See* Steinitz, *supra* note 1, at 1323.

[21] *See Pro-Consumer Legislation*, *supra* note 18 (stating that several community groups support Texas legislation designed to regulate litigation financing).

society.[22] One of the most significant dangers of lawsuit loans is that lenders charge sky-high interest rates, oftentimes more than 150% annually.[23] They charge rates so high that when consumers "win" or settle the case, they recover little or no money "because the entire amount of the award or settlement goes to [repay] the plaintiff's attorneys or . . . the lawsuit lender."[24]

Given the anti-consumer nature of these financial products, State Attorneys General have also joined the discussion.[25] They are naturally concerned for all of the reasons outlined above, and most importantly, because they are tasked with enforcing consumer protections.[26] However, the issue is on their radars to varying degrees and a difference of opinion appears to be developing.[27] Some Attorneys General grudgingly accept the contention advanced by the litigation funding industry that their business practices do not fall within the ambit of usury and other predatory lending laws.[28] Lawsuit lenders contend that these transactions are

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[22] *See* Martin Merzer, *Cash-now Promise of Lawsuit Loans Under Fire*, FOX BUS. (Apr. 19, 2013), http://www.foxbusiness.com/personal-finance/2013/03/29/cash-now-promise-lawsuit-loans-under-fire/ (stating that "litigation funding is intended for the desperate").

[23] *See id.*

[24] *Id.*

[25] *See infra* note 31 and accompanying text (discussing action taken by the Colorado Attorney General). *See generally House Committee Passes Bill Regulating Litigation Financing Industry*, KY. CHAMBER OF COM. BLOG (Feb. 16, 2011), http://kychamberblog.com/2011/02/16/house-committee-passes-bill-regulating-litigation-financing-industry/ (stating that the Kentucky Attorney General provided input on legislation that would prohibit the use of loan money to finance lawsuit expenses).

[26] *See generally Consumer Information*, ATT'Y GEN. GEORGIA, http://law.ga.gov/consumer-information, (last visited Oct. 3, 2013) (explaining that the Attorney General's Office enforces the state's consumer protection law); *Protecting Pennsylvania Consumers*, PA. OFF. ATT'Y GEN., http://www.attorneygeneral.gov/consumers.aspx (last visited Oct. 3, 2013) (explaining the work of the Attorney General's Public Protection Division's enforcement of the state's consumer protection law).

[27] *See* Binyamin Appelbaum, *Lawsuit Loans Add New Risk for the Injured*, N.Y. TIMES (Jan. 16, 2011), http://www.nytimes.com/2011/01/17/business/17lawsuit.html?pagewanted=all&_r=0 (stating that states are handling litigation funding in different manners).

[28] *See* Merzer, *supra* note 22.

non-recourse and not loans, thus, not subject to state usury laws.[29] Several other Attorneys General disagree with that proposition.[30] At the time of this writing, Colorado was embroiled in a lawsuit over this very disagreement and had won a court decision which held that third-party lenders were subject to that state's lending laws.[31] Other State Attorneys General have also taken notice, including in Maryland and Louisiana, where Attorneys General have taken various actions to bring lawsuit financing within the ambit of state lending laws.[32] Most recently, in Oklahoma, legislation was enacted that will subject lawsuit lenders to meaningful regulation under the State's consumer protection laws.[33]

IV. THE LEGALITY OF LITIGATION LENDING

There are many questions about whether third-party litigation financing is legal or ethical. The ethical implications will be explored in the next section. As outlined above, there is plenty of room for debate about whether the practice is–or should be–prohibited by state laws restricting maintenance and champerty.[34]

In addition, there is room for debate about whether the so-called 'non-recourse' contemporary nature of the litigation financing practice renders it exempt from state consumer lending laws.[35] As contingent and non-recourse funding, litigation loans are generally crafted to pre-determine the financing company's

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[29] *Id.*

[30] *See* Appelbaum, *supra* note 27.

[31] David Migoya, *Colorado Appellate Court Says Lawsuit Loans Should be Regulated*, DENV. POST (June 1, 2013, 12:01 AM), http://www.denverpost.com/ci_23365768/colorado-appellate-court-says-lawsuit-loans-should-be.

[32] *See, e.g.*, Binyamin Appelbaum, *Lobby Battle Over Loans for Lawsuits*, N.Y. TIMES (Mar. 9, 2011), http://www.nytimes.com/2011/03/10/business/10lawsuits.html?pagewanted=all&_r=0 (discussing how Maryland authorities have ruled that companies must comply with lending laws).

[33] 2013 Okla. Sess. Laws 386.

[34] *See supra* text accompanying notes 19-33.

[35] *See, e.g.*, Appelbaum, *supra* note 32; Martin J. Estevao, *The Litigation Financing Industry: Regulation to Protect and Inform Consumers*, 84 U. COLO. L. REV. 467, 480-81 (2013).

percentage of the plaintiff's award.[36] This means that the plaintiff is not held to repay the loan if there is no recovery–hence the industry's argument that these financial products are something other than loans.[37]

Indeed, the lawsuit lending industry is fond of professing that its products are not loans, all without hesitating in employing the word 'loan' for marketing and other purposes.[38] Any simple internet search for the words 'lawsuit loan' will expose hundreds of paid advertisements by the industry.[39] Moreover, many of these financing companies willingly identify themselves as lenders to obtain licenses to operate as businesses within states.[40]

Not surprisingly, given the financial incentives involved, the third-party litigation financing industry has been doing more than just advertising.[41] The industry has lobbied a number of states to introduce bills that would exempt the practice of funding lawsuits from consumer lending laws.[42] For the period of 2010 through 2013, legislatures rejected efforts by the industry to pass legislation that would legitimize the practice eighteen different times.[43]

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[36] *See* Estevao, *supra* note 35, at 479-81.

[37] *Id.* at 469.

[38] *Id.* at 480-81; *see, e.g.*, LAWSUIT LENDING NOW.COM, http://www.lawsuitlendingnow.com (last visited Oct. 4, 2013).

[39] *See, e.g.*, LAWSUIT LENDING NOW.COM, *supra* note 38.

[40] *See, e.g.*, LAWSUIT LENDING, LLC, http://www.lawsuitlending.com/pages.asp?id=2 (last visited Oct. 4, 2013) (indicating that the company is an "Illinois Licensed Consumer Lender").

[41] *See* Estevao, *supra* note 35, at 477.

[42] *See id.*

[43] H.R. 1331, 2010 Reg. Sess. (Md. 2010); H.R. 3052, 86th Leg. (Minn. 2010); S.B. 7891, 2009-10 Gen. Assem. (N.Y. 2010); H.R. 422, 145th Gen. Assemb. (Del. 2010); S. 3322, 98th Gen. Assem. (Ill. 2010); S. 148, 2010 Reg. Sess. (Ky. 2010); H.R. 873, 2011 Reg. Sess. (Md. 2011); Assemb. 465, 76th Leg. (Nev. 2011); Assemb. 4510, 2011-12 Gen. Assemb. (N.Y. 2011); S. 921; 107th Gen. Assemb. (Tenn. 2011); H.R. 156, 2011 Reg. Sess. (Ala. 2011); S. 216, 88th Gen. Assemb. (Ark. 2011); S. 97, 117th Gen. Assemb. (Ind. 2011); H.R. 412, 2011 Reg. Sess. (Ky. 2011); S. 5, 117th Gen. Assemb. (Ind. 2012); S. 2432, 107th Gen. Assemb. (Tenn. 2012); H.R. 1254, 83rd Reg. Sess. (Tex. 2013); H.R. 2301, 98th Gen. Assemb. (Ill. 2013).

V. THE FINANCING COMPANIES ARE NOT THE ONLY RISK-TAKERS

Betting on the outcome of lawsuits is risky for more than just litigation funding companies.[44] Much of the discussion about this emerging practice has focused on the ethical implications for lawyers.[45] The American Bar Association recently sought input on the ethics of third-party litigation funding and a number of state bars have examined the issue with varying outcomes.[46] The New York City Bar has opined on the issue and reasoned that while a lawyer may ethically represent a client who obtains a lawsuit loan, that lawyer must advise the client of the potential ethical issues that may arise, such as the waiver of the attorney-client privilege and the potential impact on the exercise of independent judgment.[47] Specifically, the New York City Bar Ethics decision stated that:

> [T]he growing use of non-recourse litigation financing recently has attracted increased attention, both within and outside the legal profession, in part because the arrangements are largely unregulated, and, in the view of some critics, may require the payment of relatively exorbitant financing fees that appear usurious, create the potential for expanding the volume of litigation, and raise the specter of reviving the historically reviled practice of

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[44] *See infra* notes 45-56 and accompanying text (discussing ethical considerations of third-party litigation financing and various states' responses to the practice).

[45] *See, e.g.*, Jason Lyon, Comment, *Revolution in Progress: Third-Party Funding of American Litigation*, 58 UCLA L. REV. 571, 607-08 (2010).

[46] Letter from ABA Comm'n on Ethics 20/20 Working Grp. on Alt. Litig. Fin. to ABA Entities, Courts, Bar Ass'ns, Law Sch., Individuals, & Entities (Nov. 23, 2010), *available at* http://www.americanbar.org/content/dam/aba/migrated/2011_build/ethics_2020/altl_lit_financing_issuespaper.authcheckdam.pdf (seeking input on a number of issues concerning third-party litigation financing); *see infra* note 53 and accompanying text.

[47] The Ass'n of the Bar of the City of N.Y. Comm. on Prof'l Ethics, Formal Op. 2011-2: Third Party Litigation Financing, *available at* http://www.nycbar.org/index.php/ethics/ethics-opinions-local/2011-opinions/1159-formal-opinion-2011-02 [hereinafter Formal Op. 2011-2].

> champerty, defined broadly as the support of litigation by a stranger in return for a share of the proceeds.[48]

The United States Chamber Institute for Legal Reform has called attention to additional practical concerns introduced by lawsuit lending, such as whether and how a representative plaintiff in a purported class action obtains permission from all potential class members before executing a lending agreement, and whether a party in litigation may challenge the opposing party's funding arrangement via disqualification motion or other procedure (such as abuse of process).[49]

While the opinion of the New York City Bar does not go so far as to avow that litigation financing is unethical per se in all its iterations, it makes clear that engaging in litigation financing is an ethical morass.[50] Indeed, there are many stages where a funded matter could run afoul of ethical rules.[51] In particular, third-party investment in a case transfers control or influence over the litigation and undermines a lawyer's obligation to act as directed by his or her client.[52]

In addition to New York, several state bars have acknowledged the multiplicity of ethical concerns associated with third-party litigation financing and are gradually addressing the issue.[53] Florida was one of the first to formally consider it, and it issued an opinion actively discouraging the practice.[54] In its words:

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[48] *Id.* (footnote omitted).

[49] *See* U.S. CHAMBER INST. FOR LEGAL REFORM, THIRD PARTY FINANCING: ETHICAL & LEGAL RAMIFICATIONS IN COLLECTIVE ACTIONS 16 (2009), *available at* http://www.instituteforlegalreform.com/resource/third-party-financing-ethical-and-legal-ramifications-in-collective-actions/.

[50] Formal Op. 2011-2, *supra* note 47.

[51] *See id.*

[52] *Id.*

[53] *See, e.g.*, State Bar of Nev. Standing Comm. on Prof'l Responsibility, Formal Op. 29 (2003), *available at* http://nvbar.org/sites/default/files/opinion_29.pdf; Prof'l Ethics of the Fla. Bar, Formal Op. 00-3 (2002), *available at* http://www.floridabar.org/tfb/TFBETOpin.nsf/840090c16eedaf0085256b61000928dc/f40a54f76a7da5a585256b800057b541?OpenDocument; Va. Lawyer Registrar., Legal Ethics Op. 1764 (2002), *available at* http://www.vsb.org/docs/valawyermagazine/aug02leo.pdf.

[54] Prof'l Ethics of the Fla. Bar, *supra* note 53.

> The Florida Bar discourages the use of non-recourse advance funding companies. The terms of the funding agreements offered to clients may not serve the client's best interests in many instances. The Committee continues to have concerns . . . of the problems that can arise when a client obtains financial assistance from a third-party, such as the client's lack of incentive to cooperate. This Committee can conceive of only limited circumstances under which it would be in a client's best interests for an attorney to provide clients with information about funding companies that offer non-recourse advance funding or other financial assistance to clients in exchange for an assignment of an interest in the case.[55]

Given the vast–and increasingly obvious–concerns about the legality and ethical implications of lawsuit lending, it is not surprising that opponents of the practice have been successful across the country in preventing the passage of legislation that is designed to legitimize this nascent industry.[56]

VI. THE PUBLIC INTEREST – THIS IS ABOUT MORE THAN LAWYERS AND LAWSUIT LENDERS

Setting aside questions about legality and ethics, a question remains as to whether any role at all remains for the practice of lawsuit lending.[57] Supporters of the practice call attention to the very real and pressing financial burdens faced by litigants.[58] In

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[55] *Id*.

[56] *See* Merzer, *supra* note 22.

[57] *See generally* Ben Hallman & Caitlin Ginley, *States Are Battleground in Drive to Regulate Lawsuit Funding*, CENTER FOR PUB. INTEGRITY (Feb. 2, 2011), http://www.publicintegrity.org/2011/02/02/2160/states-are-battleground-drive-regulate-lawsuit-funding (explaining that some states have passed legislation to allow lawsuit lending after courts have declared the practice illegal).

[58] *See id.*

fact, consumers who turn to litigation funding companies are likely vulnerable and have very few options available to them.[59]

In early 2011, the New York Times published an article about a Georgia man who was debilitated by a stroke while using a medication.[60] Because he was legally blind and in need of regular dialysis, his wife stopped working to care for him.[61] As the family's savings diminished, they faced eviction and could not wait for the impending settlement of a class action lawsuit against the drug-maker, so he borrowed $9,150 from a lawsuit lender.[62] By the time he received his initial settlement payment, 18 months later, in the amount of $27,000, he owed the finance company nearly the entirety of the amount: $23,588.[63]

Consumers such as the Georgia couple are the very type of customers targeted by predatory lending, and the very reason the community of Attorneys General is applying such exacting scrutiny to the practice of lawsuit lending.[64] There are many questions to be addressed: How much interest is too much in lawsuit lending?[65] If a plaintiff gets a loan for 20% of any award or settlement, and owes his or her attorney a 35% contingency fee, can the lawsuit lender take everything that remains if interest has been accumulating?[66]

As it stands now in many jurisdictions in the United States, third-party litigation funding companies can do just that.[67] A different New York Times story offers another instructive case in point.[68] The article chronicled the situation of a Philadelphia

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[59] *Id.*; *see, e.g.*, Appelbaum, *supra* note 27 (describing a plaintiff's need for immediate money in order to avoid eviction).

[60] Appelbaum, *supra* note 27.

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *See id.*

[65] *See generally id.* (stating that the interest rates charged by lawsuit lenders is often over 100% per year).

[66] *See* Appelbaum, *supra* note 27.

[67] *See id.*

[68] Binyamin Appelbaum, *Investors Put Money on Lawsuits to Get Payouts*, N.Y. TIMES (Nov. 14, 2010), http://www.nytimes.com/2010/11/15/business/15lawsuit.html?pagewanted=all.

woman who was injured in a car accident.[69] Both she and her lawyer borrowed money for a lawsuit, and by the time she recovered $169,000, she was indebted to the lawsuit lender in the amount of $221,000.[70]

These stories are compelling and clearly indicate that any rush to pass laws exempting the third-party litigation financing industry from vital consumer lending protections should be deterred.[71] If these products are not loans and the practices are not predatory, why is there such an effort underway by this growing industry to legitimize the practice?[72]

Indeed, the public policy debate is shifting and there is a renewed focus on whether there is any public interest served by the practice of third parties taking stakes in plaintiffs' lawsuits.[73]

VII. LITIGATION FUNDING IN CLASS ACTIONS

Third-party investment in lawsuits raise even more concerns in the context of class actions, including that it mixes two practices that are already prone to abuse.[74] First, lawsuit financing in class action litigation exacerbates a problem that already characterizes class actions–that claimants do not have any real role in the case.[75] Second, third-party financing eats into the already-minuscule recoveries that plaintiffs obtain in most "successful" class actions.[76]

Furthermore, class actions pose unique ethical problems because there is no practical way for the representative (named)

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[69] *Id.*

[70] *Id.*

[71] *See id.*; Appelbaum, *supra* note 27.

[72] *See* Appelbaum, *supra* note 68.

[73] *See generally id.* (discussing that money is needed in order to sue in the civil justice system, therefore, third-party financing is also needed).

[74] *See id.*

[75] *Id.*

[76] *See generally Frequently Asked Questions*, MINI-WHEATS CLASS ACTION SETTLEMENT, http://www.cerealsettlement.com (last visited Oct. 6, 2013) (explaining that each class member of this settlement can only receive $15, and that if an investor took any percentage, it would decrease the little amount each member were to receive).

plaintiff to obtain permission from all the potential class members before executing a lawsuit financing agreement.[77]

The recent and well-known case against Chevron Corporation, regarding the company's operations in Ecuador, provides a revealing example of the ethical implications of commercializing litigation.[78] In that case, forty-seven members of an Amazonian tribe sued Chevron.[79] During discovery, it became evident that the lawsuit was being financed by third-party investors.[80] These investors only became involved after the lead law firm removed itself from the case because the risks were too high and four United States courts had already found the Ecuadorian proceedings were tainted by fraud.[81] Pursuant to a seventy-five page financing agreement, the investors would be paid in full before any plaintiff saw a single dime.[82] Furthermore, it is unclear whether the plaintiffs knew what they were agreeing to in signing the agreement.[83] The case is ongoing, including international arbitration in the Hague.[84]

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[77] *See generally* Maya Steinitz, *The Litigation Finance Contract*, 54 WM. & MARY L. REV. 455, 468 n.34 (2012) (demonstrating that the class size makes it difficult to get all members to sign the agreement).

[78] *See generally* Steve Mufson, *Why Chevron is Suing One of D.C.'s Most Powerful Lobbying Firms Over . . . the Amazon Jungle?*, WASH. POST (July 2, 2013, 2:47 PM), http://www.washingtonpost.com/blogs/wonkblog/wp/2013/07/02/why-chevron-is-suing-one-of-d-c-s-most-powerful-lobbying-firms-over-the-amazon-jungle/ (explaining the history of the Chevron case in Ecuador and the alleged misconducts).

[79] *Id*.

[80] *See id.*

[81] *See generally id*. (implying that the tactics taken by an attorney led to a higher risk of lawsuit).

[82] *See* Roger Parloff, *Have You Got a Piece of this Lawsuit?*, CNN MONEY (June 28, 2011) http://features.blogs.fortune.cnn.com/2011/06/28/have-you-got-a-piece-of-this-lawsuit-2/.

[83] *See generally id*. (stating that the plaintiffs are uneducated Ecuadorian natives that signed with fingerprints, and would most likely not understand the documents they were agreeing too).

[84] Mufson, *supra* note 78.

VIII. CONCLUSION

The risks associated with incentivizing third-party litigation funding are real.[85] To the extent state legislatures wish to permit lawsuit lending, lenders should–at the very least–be subject to state usury, truth-in-lending, and other consumer protection laws.[86] Until this practice is universally regulated in this country, financial incentives (which are necessarily what entice lawsuit lenders into this business) will lead to an increase in abusive lawsuits in an already overburdened court system, without any corresponding public policy benefit.[87] The proliferation of this practice is a slippery slope that eventually does more harm than good to consumers and to America's system of jurisprudence.[88] Let the buyer beware!

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[85] *See generally supra* text accompanying notes 19-24 (demonstrating the risks of third-party lawsuit funding).

[86] *See generally supra* text accompanying notes 35-43, 57-73 (establishing the potential problems if the mentioned laws are not imposed).

[87] *See generally supra* text accompanying notes 57-73 (explaining the problems created with the system).

[88] *See generally id.* (explaining the harm that can be caused to plaintiffs when they owe more to an investor than they bring in when they win a case).