

October 2, 2024

H. Thomas Byron III, Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
One Columbus Circle, NE, Room 7-300  
Washington, D.C. 20544

**Re: Procedural Consistency for the Disclosure of Third-Party Litigation Funding**

Dear Mr. Byron:

Our companies, actively engaged in the federal civil justice system as both plaintiffs and defendants, are concerned about the procedural inconsistencies and deficiencies related to disclosure of third-party litigation funding (“TPLF”). As federal judges have become increasingly aware of the reasons why courts and parties need to know about TPLF, they are employing varied and often insufficient means of inquiry. We respectfully ask the Advisory Committee on Civil Rules (“Advisory Committee”) to amend the Federal Rules of Civil Procedure (“FRCP”) to provide a uniform and efficient procedure for disclosure of TPLF agreements in civil cases.

**I. IT IS UNFAIR TO DENY PARTIES INFORMATION ABOUT WHO CONTROLS THE LITIGATION**

We need TPLF disclosure to understand who has control of the case. We know from experience that when TPLF is present in our cases, it fundamentally alters the dynamics and has a major impact on whether the dispute can be resolved through settlement. We cannot make informed decisions without knowing the stakeholders who control the litigation—and we cannot understand the control features of a TPLF agreement without reading the agreement. Without this information, the settlement process often unravels when the nominal plaintiff or its counsel needs to obtain approval from undisclosed non-party funders or uses the non-party as an excuse to retract a commitment to settle. (This is the very reason why courts typically require us to appear with authority and our insurance representatives in settlement conferences and mediations.)

**II. DISCLOSURE OF TPLF AGREEMENTS IS ESSENTIAL TO THE FUNCTION OF KEY FRCP AND WITNESS SAFEGUARDS**

When defendants are kept in the dark about TPLF agreements, they are prevented from utilizing several key FRCP provisions as intended. For example:

- FRCP 26(b)(1) describes “the resources of the parties” as a factor relevant to whether a particular discovery request is proportional to the needs of the case. When courts do not allow us to know if the named parties are funded by TPLF investors, we cannot argue, and the court cannot weigh, how the resources of the parties should factor into decisions about the scope of discovery. This proportionality factor, which was added to the FRCP

in 2015, is meaningless when TPLF agreements providing resources to a party are kept secret.

- Similarly, if we are not allowed to understand the control features and resource provisions of TPLF agreements, we are significantly constrained in making meaningful arguments about allocating costs pursuant to FRCP 26(c)(1)(B) and sanctions under FRCP 37.
- Without TPLF disclosure, we have no ability to expose to the court and jury when witnesses have conflicts of interest caused by their financial relationship with non-party funders, including direct payments as well as the potential that they will financially benefit from the outcome of the case.
- When we do not know who stands to benefit directly from the judgment or settlement in a case, we do not have the protection of FRCP 17(a)(1), which requires that “[a]n action must be prosecuted in the name of the real party in interest.”

### **III. INADEQUATE PRACTICES SUCH AS *EX PARTE* CONVERSATIONS SHOULD NOT BE THE STANDARD MEANS OF INQUIRY ABOUT TPLF**

Some judges ask whether parties are using TPLF during initial scheduling conferences. Other judges engage in *ex parte* discussions with plaintiffs’ counsel in chambers, sometimes reviewing portions of a TPLF agreement *in camera*. Still others have issued written orders requiring counsel to answer questions in writing, *ex parte*, about TPLF agreements but not reviewing the underlying TPLF agreements. Problematically, few judges follow up during the course of litigation to ask whether new TPLF deals have been struck since their initial questions or give any indication that disclosure is an ongoing obligation. And, of course, some judges continue to resist making any sort of inquiry whatsoever. This variety of approaches and inconsistent practices is creating a fragmented and incoherent procedural landscape in the federal courts.

The FRCP should establish a uniform and straightforward procedure for initial TPLF disclosure and continuing notification of changes so courts do not have to devise their own schemes and parties do not have to guess what will be required or allowed from court to court and case to case. A rule is particularly needed to supersede the misplaced reliance on *ex parte* conversations; *ex parte* communications are strongly disfavored by the Code of Conduct for U.S. Judges (Canon 3(A)(4)) because they are both ineffective in educating courts and highly unfair to the parties who are excluded. FRCP guidance is necessary to supplant practices by which courts are entertaining potential factual and legal disagreements – and in effect ruling on them – without the benefit of the other parties’ views and without informing the parties that the court is reaching conclusions on legal questions.

### **IV. DEFENDANTS NEED TPLF DISCLOSURE FOR THE SAME REASONS THE FRCP PROVIDE PLAINTIFFS WITH OUR INSURANCE AGREEMENTS**

Our companies need to know about TPLF when we are sued for the same reasons that the Advisory Committee promulgated FRCP 26(a)(1)(A)(iv) to require defendants to disclose our insurance agreements. The Advisory Committee explained in 1970 that disclosure of insurance contracts “will enable counsel for both sides to make the same realistic appraisal of the case, so that settlement and litigation strategy are based on knowledge and not speculation.” The Advisory Committee’s reasoning applies equally to TPLF agreements because we need to be

aware of key factors to make realistic and knowing assessments of the case and to develop appropriate litigation strategies. Without this information, we are at a major disadvantage in determining whether there are non-parties with a direct interest in, and influence or control over, the outcome of the case and in understanding whether the case can be resolved through settlement.

## CONCLUSION

We urge the Advisory Committee to propose a straightforward, uniform rule for TPLF disclosure to remedy the current imbalanced and inconsistent litigation dynamic that is prejudicial and frustrates civil justice. The FRCP should require disclosure of TPLF agreements that provide non-parties a direct interest in the outcome of the case. Absent such a rule, the continued uncertainty and court-endorsed secrecy of non-party funding in our cases will further unfairly skew federal civil litigation.

Thank you for your consideration.

Sincerely,

James L. Parnell  
President & CEO  
Alfa Insurance

Kelly Doherty-Schaffner  
Executive Vice President  
Allied World Insurance Company

Christine DeBiase  
Executive Vice President, Chief Legal Officer and General Counsel  
The Allstate Corporation

Brad Dantic  
Chief Legal Officer  
ALPS Corporation

Geoffrey J. Michael  
Senior Vice President & Associate General Counsel  
Altria Client Services, LLC

Andrew DeVore  
Vice President & Associate General Counsel  
Amazon.com, Inc.

Steve Donnelly  
Chief Claims Officer  
Amerisure Insurance Company

Jennifer A. Morrison  
Senior Vice President and General Counsel  
Amica Mutual Insurance Company

John Bruno  
EVP, General Counsel, Secretary and Human Resources  
The Auto Club Group

Bart A. Whitley  
Senior Vice President  
Head Global Litigation  
Bayer U.S.

Michelle T. Quinn, Esq.  
EVP and General Counsel  
Becton Dickinson and Company

Marie-Helene Cantin  
Senior Legal Counsel  
Bombardier Recreational Products Inc.

Melanie Irvin  
VP, Head of Legal & Government Affairs  
Branch Insurance Exchange

Robert F. Glass, CPCU, ARM, MBA  
President and CEO  
Brethren Mutual Insurance Company

Donald C. Le Gower  
Vice President, Head of Litigation and Government Investigations  
Bristol Myers Squibb

Joseph Wayland  
General Counsel  
Chubb

Thomas C. Hogan, Esq.  
Executive Vice President  
Chief Legal Officer  
The Cincinnati Insurance Company

Sarita Venkat  
VP & Deputy General Counsel, Litigation & Competition  
Cisco

Susan A. Stone  
Executive Vice President and General Counsel  
CNA

Erin Bagley  
EVP, Chief Legal Officer & Corporate Secretary  
Coaction Specialty Insurance Group

Lisa M. Floro  
VP, General Counsel  
Global Litigation  
Group Legal, IP & Business Ethics  
Coloplast Corp

Thomas J. Reid  
Chief Legal Officer and Secretary  
Comcast Corporation

Thomas Warnock, Sr.  
Vice President and Deputy General Counsel, Head of Litigation  
Corteva Agriscience

James M. Jacobs  
Chief Executive Officer  
COUNTRY Financial®

TJ England  
Chief Legal Officer  
C.R. England, Inc.

Curtis Ruwe  
Vice President and General Counsel  
Crete Carrier Corporation and Hunt Transportation, Inc.

David M. Toolan  
Vice President & General Counsel  
CRH Americas, Inc.

Lisa A. Stephenson  
VP - General Counsel  
CRST The Transportation Solution, Inc.

Michael P. McTigue  
Chief Legal Officer  
Crum & Forster

Nichole M. Tennyson  
Chief Legal Officer  
Daimler Truck North America, LLC

Rick J. Hecker, Esq.  
Vice President, General Counsel  
Donegal Mutual Insurance Company

Taras G. Szmagala  
EVP & Chief Legal Officer  
Eaton Corporation

Jill Jacobson  
General Counsel  
Electrolux North America, Inc.

Anat Hakim  
Executive Vice President, General Counsel and Secretary  
Eli Lilly and Company

Rich Appel  
Senior Vice President and Senior Counsel  
Endurance Assurance Corporation

James Nealon III  
Senior Vice President, Law  
Erie Insurance Group

Janice W. Beacham  
SR Director, Risk Management  
Estes Express Lines

Ricardo Anzaldua  
EVP and General Counsel  
Everest Insurance

Jeffrey A. Taylor  
General Counsel and Secretary  
Exxon Mobil Corporation

Daniel D. Pitcher  
CEO  
Farm Bureau Financial Services

Lisa Conley  
SVP, General Counsel  
FCCI Insurance Group

Cary Blancett  
Senior Vice President, Litigation and Business Transactions  
Federal Express Corporation

Nick Lower  
President & CEO  
Federated Mutual Insurance Company

Sarahannah McMurtry  
EVP, General Counsel  
First Acceptance Insurance Company

Rory Brecker  
General Counsel  
Flatiron Health, Inc.

Robert Brunelli  
Staff Senior Vice President  
Litigation Division Manager & Assistant General Counsel  
FM

Doug Lampe  
Counsel  
Ford Motor Company

Winnie Swan  
General Counsel  
Foundation Medicine, Inc.

Fox Corporation

Andrew Knudsen  
President & COO  
Frankenmuth Insurance

Felicia V. Manno  
Global Chief Counsel, Litigation & Investigations  
GE HealthCare

Katherine Nolan-Stevaux, Ph.D., J.D.  
Head, General Litigation Group  
Genentech, Inc.

Grant Dixon  
Executive Vice President, Chief Legal, Public Policy Officer & Corporate Secretary  
General Motors Company

Alvina Hou  
Associate General Counsel, Litigation and Investigations  
Gilead Sciences, Inc.

Halimah DeLaine Prado  
General Counsel  
Google LLC

Brian Allen  
VP, Chief Risk Officer  
Grange Insurance Association

Aaron B. Latto  
Senior Vice President  
Great American Insurance Company

James Ford  
Senior Vice President and Group General Counsel, Legal and Compliance  
GSK LLC

Tony Corleto  
Chief Legal Officer  
HAI Group

Dennis Kerrigan  
Executive Vice President and Chief Legal Officer  
The Hanover Insurance Group

Don Hunt  
Executive Vice President & General Counsel  
The Hartford

Mary-Alice Barrett  
Assistant Secretary  
Hoffmann-La Roche Inc.

Dina Daskalakis  
Executive Vice President & General Counsel  
Hudson Insurance Group



Tom Vanderford  
Associate General Counsel  
Executive Director, Litigation  
Hyundai Motor America

Intel Corporation

Erik Haas  
Worldwide Vice President, Litigation  
Johnson & Johnson

Jonathan R. Murphy  
Managing Counsel  
Kawasaki Motors Corp., U.S.A.

C. Thomas Evans, Jr.  
Executive Vice President, Secretary and General Counsel  
Kemper Corporation

Tracey Van Dillen  
Head of Litigation & Employment Law  
Kenvue

Brett Sant  
Senior Vice President  
Knight Swift Transportation Holdings, Inc.

Damon Hart  
Executive Vice President, Chief Legal Officer & Secretary  
Liberty Mutual Insurance

Robin Russo CPCU, ARM, ASLI  
Executive Vice President  
Markel

Ivan Fong  
Executive Vice President, General Counsel and Secretary  
Medtronic

Robert Ragan  
Chief Financial Officer  
Melton Truck Lines, Inc.

James Holston  
Associate Vice President, Global Litigation  
Merck & Co., Inc.

Scott Tucker  
Vice President & Deputy General Counsel, Global Litigation  
Meta Platforms, Inc.

Jonathan M. Palmer  
General Counsel & Corporate Vice President  
Microsoft Corporation

Roger S. Pecher  
Director of Claims  
Missouri Farm Bureau

Richard Alleyne  
Chief Legal Officer for Munich Re US P&C Companies  
Munich Re Services America, Inc.

Natalie T. Furniss  
SVP, Corporate Operations & Litigation Legal  
Office of Chief Legal Officer  
Nationwide

Kate Ro  
Senior Vice President & General Counsel  
New Jersey Manufacturers Insurance Company

Chris Reed  
Chief Risk Officer and General Counsel  
Nonprofits Insurance Alliance

Robert Sikellis  
Global Head of Litigation and Investigations  
Novartis

Barak Ben-Arye  
General Counsel  
NovoCure Limited

Marc E. Fishman  
VP, Deputy General Counsel - Head of Litigation North America  
Novo Nordisk Inc.

Steven L. Patterson  
President and CEO  
Oregon Mutual Insurance Group

Gerard M. Devlin, Jr.  
Vice President - IP, Investigations, Litigation & Employment Law  
Organon & Co.

Doug Lankler  
General Counsel and Executive Vice President  
Pfizer Inc.

Robert Spadafora  
General Counsel  
Philips North America

Susan Street Whaley  
Chief Legal Officer and Secretary  
The Procter & Gamble Company

Eric Santoro  
Head of Global Litigation and Investigations  
Reckitt

Ginamarie Alvino  
Vice President/Director  
Riverstone Claims Management LLC

Whitney J. Johnson  
Vice President, General Counsel & Secretary  
Roche Diagnostics Corporation

Michael D. Lisi  
Head of Legal  
Roche Diagnostics Solutions

Samsung Electronics America, Inc.

Samsung Electronics Co., Ltd.

Susan A. (Sam) Manardo  
Head, N.A. Litigation & Investigations  
Legal, Ethics, Business Integrity & Global Security  
Sanofi US

Thomas Jackson  
Executive Vice President, Government and Regulatory Affairs, and General Counsel  
Schneider National, Inc.

Marisa Trasatti  
General Counsel  
Sciton, Inc.

Daniel P. Ferris  
Senior Vice President, Chief Legal Officer & Corporate Secretary  
SECURA Insurance Companies

Michael H. Lanza  
EVP & General Counsel  
Selective Insurance Group, Inc.

Jeanne E. Walker  
Associate General Counsel  
Shell USA, Inc.

Brian Waller, JD  
Vice President, Government Relations  
Shelter Insurance Companies

Mary L. Garceau  
Senior Vice President, Chief Legal Officer and Secretary  
The Sherwin-Williams Company

Heather Friedl, Esq  
Assistant General Counsel & Assistant Corporate Secretary  
Society Insurance

Robert Shaughnessy, SCLA, AIC  
Vice President of Claims  
Southern Pioneer Property & Casualty Insurance Company

Edgar R. Ocampo  
General Counsel & Senior Director of Risk Management  
Stan Koch & Sons Trucking, Inc.

Keesha-Lu Mitra  
Senior Vice President and General Counsel  
State Farm Mutual Automobile Insurance Company

Michael J. Jarrett  
Vice President, Legal & Compliance  
Texas Farm Bureau Insurance Companies

Lawrence J. La Sala  
V.P. & Deputy General Counsel - Litigation  
Textron Inc.

Elizabeth B. Gibson  
Deputy General Counsel/Vice President  
Toyota Motor North America, Inc.

Christine Kalla  
EVP and General Counsel  
Travelers

Scott Ewing  
Executive Vice President and Chief Legal Officer  
Trinity Industries, Inc.

John H. Fenner  
Vice President/Corporate General Counsel  
Turner Industries Group

John R. Lytle  
Director of Products Litigation  
U-Haul International, Inc.

Sarah E Madsen  
SVP, Chief Legal Officer & Corporate Secretary  
United Fire Group, Inc.

Jill Termini  
Associate General Counsel - Litigation  
United Parcel Service, Inc.

Vandana Venkatesh  
Executive Vice President Public Policy & Chief Legal Officer  
Verizon

Douglas Miner  
General Counsel, North America  
Viatis Inc.

Nathan Meisgeier  
President and Chief Legal Officer  
Werner Enterprises, Inc.

John Buckley, Esq., CPCU  
Senior Vice President  
Western National Insurance Company

Jennifer Souza  
General Counsel  
Westfield

Chad Phipps  
Senior Vice President, General Counsel and Secretary  
Zimmer Biomet

Deirdre Manna  
SVP, Head of Government & Regulatory Relations  
Zurich North America