

September 12, 2023

The Honorable James Comer  
Chairman  
Committee on Oversight and Accountability  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Jamie Raskin  
Ranking Member  
Committee on Oversight and Accountability  
U.S. House of Representatives  
Washington, D.C. 20515

Re: Committee Hearing on “Unsuitable Litigation: Oversight of Third-Party Litigation Funding,” September 13, 2023

Dear Chairman Comer, Ranking Member Raskin, and Members of the Committee:

The Pharmaceutical Research and Manufacturers of America (PhRMA) commends the Committee for examining the increasing use of third-party litigation funding (TPLF). The rise of outside investment in generating and pursuing lawsuits has significant implications not only for our nation’s civil justice system, but also for public health.

PhRMA represents the country’s leading innovative biopharmaceutical research companies, which are devoted to discovering and developing medicines that enable patients to live longer, healthier, and more productive lives. Over the last decade, PhRMA member companies have more than doubled their annual investment in the search for new cures and treatments, including nearly \$101 billion in 2022 alone.

TPLF includes arrangements in which a person or entity that is not a party to a lawsuit provides funding to a litigant or law firm with the understanding that they will be paid a portion of any settlement or judgment. As a recent Government Accounting Office (GAO) analysis found, TPLF gained a foothold in the United States in 2010, as courts relaxed longstanding common law doctrines that prohibited strangers to a case from assisting others to pursue litigation or having a financial stake in the outcome—principles that were intended to avoid the stirring up of frivolous or speculative litigation. Those prohibitions fell by the wayside and, now, private entities that specialize in TPLF, hedge funds, institutional investors, and others are pouring billions into funding lawsuits with the goal of obtaining a substantial return on their investment. As the GAO observes, TPLF has substantially increased since 2017, and litigation funders expect to further expand their business in the years ahead.

Not coincidentally, during the same period, mass tort litigation exploded in the United States. For example, in 2012, there were approximately 60,000 cases in federal multidistrict litigation, representing 29% of the federal civil caseload. As of the end of fiscal year 2022, an astounding 73% of the federal civil caseload (392,374 cases out of 536,651 federal civil cases), resides in MDLs. Most MDLs are product liability cases, many of which target medications that the U.S. Food and Drug Administration closely regulates.

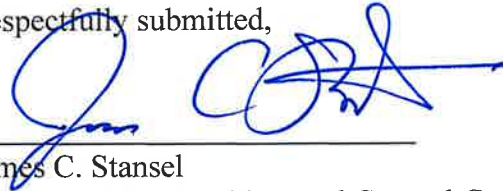
PhRMA Letter to Chairman Comer & Ranking Member Raskin  
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As you no doubt have seen, lawyers and “lead generation” companies run nonstop television commercials to identify individuals to bring lawsuits against pharmaceutical companies, paired with social media, robocalls, and other ads. As the American Medical Association, the Federal Trade Commission, and others have found, these ads may exaggerate the risks of an approved, beneficial product and scare patients from either obtaining treatment or, worse, discontinuing a prescribed medication without speaking with their physician. The purpose of these ads is to rapidly generate as many lawsuits as possible to pressure a pharmaceutical company into a massive settlement, even when the claims are not backed by sound science or are otherwise unsupportable.

Since litigants do not disclose their use of TPLF, it is impossible to fully evaluate how pervasive outside funding has become in generating mass tort litigation. Requiring transparency would allow Congress and the courts to further examine the impact of TPLF on our civil justice system. Disclosure of these arrangements in litigation is also likely to lead courts to more carefully scrutinize cases that are pursued to obtain a windfall for investors, and it will enable judges to identify conflicts of interest that may arise when profit is placed before public health.

Thank you for your attention to this important issue and for the opportunity to share our concerns.

Respectfully submitted,



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James C. Stansel  
Executive Vice President and General Counsel