



May 10, 2024

The Honorable Tom DiNapoli
York State Comptroller
110 State Street
Albany, NY 12236

The Honorable Brad Lander New
York City Comptroller
One Centre Street
New York, NY 10007

Dear Comptroller DiNapoli and Comptroller Lander:

We are writing to urge you to take immediate action related to the exposure of New York City and New York State pension funds to third-party litigation funding (TPLF). This industry's pernicious business model employs usurious interest rates to prey on injured New Yorkers – and our cities and towns, schools and hospitals, and other public entities are footing the bill.

We recommend a thorough examination of New York's pension exposure to these predatory practices, followed by appropriate fiduciary actions related to this exposure, potentially including a full divestment of the pension funds from TPLF funders.

TPLF operates in a legal limbo in which lenders are not subject to existing consumer lending protections. These companies – often backed by hedge funds and foreign investors - pay plaintiffs in exchange for a significant share of any proceeds realized as the result of litigation, charging interest rates that often vastly exceed the rate of civil and criminal usury.

With no regulatory framework or disclosure requirements, TPLF is a substantial threat to the state's civil justice system and consumers. The offer by lenders to plaintiffs of easy, up-front cash increases the occurrence of filing of dubious claims, including against local and state governments. TPLF also deters a rational settlement process; compromises the attorney-client

relationship by prioritizing their own profits over plaintiffs' best interest; and contributes to skyrocketing insurance premiums¹.

Alarming, a 2022 report by the federal Government Accountability Office found that the occurrences of TPLF in the United States are increasing substantially², with lenders making an enormous profit at the expense of vulnerable individuals.

TPLF arrangements are comparable to payday loans. Illegal in New York State, predatory lenders target vulnerable consumers, often with exorbitant fees and interest rates. Many TPLF structures use similarly predatory tactics. One New York City-based lawsuit lender reportedly charged clients interest rates as high as 124%³. A former NYPD officer, Elmer Santiago, was sued by a major lawsuit lender for refusing to pay 66% interest on a predatory loan as he awaited payment from the federally funded Ground Zero Victims Compensation Fund⁴.

These loans often leave plaintiffs with a pittance after paying their lawyers. Some even end up in debt.

TPLF has also allowed foreign adversaries to infiltrate the civil justice system, creating substantial national economic and security risks. Recent stories reveal that Russian oligarchs use TPLF investment to escape U.S. sanctions. TPLF also allows a foreign government to "exert control over the strategy and outcome of a U.S. civil dispute," access a "treasure trove of... sensitive data," or "fund litigation in the United States in an attempt to influence domestic U.S. politics," according to a recent report⁵.

As the trustees of the New York City and New York State pension funds, respectively, you must act in the interest of your beneficiaries. TPLF's detrimental effect on the state's civil justice system, on vulnerable consumers, and on our national security pose a clear and present danger to the wellbeing of all New Yorkers. We urge you to immediately investigate the pension funds' exposure to third-party litigation funds and take decisive action, including a potential full divestment. We stand ready to serve as a resource as you undertake this important endeavor.

Thank you in advance for your time and consideration.

¹ "Litigation Is Driving up U.S. Commercial Auto Insurance Costs, Study Finds | III," n.d., <https://www.iii.org/press-release/litigation-is-driving-up-us-commercial-auto-insurance-costs-study-finds-020822>.

² United States Government Accountability Office. "THIRD-PARTY LITIGATION FINANCING Market Characteristics, Data, and Trends," December 2022. <https://www.gao.gov/assets/gao-23-105210.pdf>.

³ Cohen, Shawn, Julia Marsh, Rich Calder, and Bruce Golding. "Inside the Cottage Industry That's Fleecing NYC Taxpayers." *New York Post*, January 3, 2018.

<https://nypost.com/2018/01/02/how-firms-are-getting-rich-on-the-surest-money-grab-in-nyc/>.

⁴ Marsh, Julia. "Retired 9/11 Cop Being Sued for Refusing to Pay \$500K Fee." *New York Post*, April 8, 2016.

<https://nypost.com/2016/04/07/retired-911-cop-being-sued-for-refusing-to-pay-500k-fee/>.

⁵ Michael E. Leiter et al., "A New Threat: The National Security Risk of Third Party Litigation Funding," 2022, <https://institutelegalreform.com/wp-content/uploads/2022/11/TPLF-Briefly-Oct-2022-RBG-FINAL-1.pdf>.

Sincerely,

Associated Builders and Contractors of New York State, Empire State Chapter

Big I New York

The Business Council of New York State

Dutchess County Chamber of Commerce

Lawsuit Reform Alliance of New York

Medical Professional Liability Association

New York Conference of Mayors

Trucking Association of New York