American Property Casualty Insurance Association
INSURING AMERICA apci.org

May 1, 2025

Hon. Clint Bolick, Justice
Arizona Supreme Court
1501 West Washington St.
Phoenix, AZ 85007

Re: Proposed Amendments to Rule 8, Arizona Rules of Civil Procedure

Dear Justice Bolick,

The American Property Casualty Insurance Association ("APCIA") is the primary national trade association for home, auto, and business insurers. In Arizona, our member companies provide approximately 69% percent of the insurance relied upon by families and businesses for their protection.

APCIA supports the proposed amendments to Rule 8, Rules of Civil Procedure, which adds a new subsection (j) to require certain disclosures when litigation is subject to a third-party litigation funding ("TPLF") agreement. Adoption of the proposed amendments would be an important first step in ensuring that Arizona courts and parties are on notice of a litigation funding company's interest in case outcomes and potential conflicts of interest. APCIA also believes that additional, common-sense guardrails around the use of TPLF are needed to facilitate transparency in litigation and help ensure the fair and efficient administration of justice.

APCIA applauds the work of the Task Force on Alternative Business Structures ("Task Force") in examining the ramifications of TPLF. As the Task Force observed in its October 1, 2024, Report and Recommendations to the Arizona Supreme Court ("Report"), major concerns with TPLF include potential third-party control over litigation strategy and decisions, and the risk of funders accessing trade secrets or compromising competitors' economic interests.[1] With TPLF being an estimated $16.1 billion industry in the United States, it is critical that Arizona join the increasing number of states across the country addressing these concerns.[2]

When parties to TPLF agreements are not required to disclose their involvement, defendants and courts are not aware of the presence or identity of the funders as real parties in interest. The economic interests of the funders in these transactions may be enhanced by prolonged litigation and discouraging reasonable settlement of disputes. Further, as noted by the Task Force, defendants have legitimate due process concerns when TPLF is not disclosed, including with respect to whether discovery requests are proportional to the needs of the case, which is closely tied to a plaintiff's resources.[3] It is therefore critical, and we believe only fair, that all parties engaged in the litigation be informed of the existence of TPLF agreements to ensure that both plaintiffs and defendants are equally equipped to pursue justice.

APCIA supports the disclosure requirements in the proposed amendments because they encourage transparency in TPLF. However, APCIA submits that the proposed amendments should not be limited to requiring disclosure of the agreements themselves only in extraordinary circumstances and after an *in camera* review. TPLF agreements should be subject to automatic disclosure. Just as insurance contracts are required to be disclosed pursuant to Arizona Rule 26.1(a)(10) and Federal Rule of Civil Procedure 26(a)(1)(A)(iv), TPLF agreements should be discoverable so that the parties can make realistic and knowing assessments of a case and develop appropriate settlement or litigation strategies. The Task Force suggested that insurance

[1] *Report and Recommendations to the Arizona Supreme Court*, Task Force on Alternative Business Structures, Oct. 1, 2024. *See pgs. 5-6, Section I.C.2.*
[2] Westfleet Advisors, *The Westfleet Insider: 2024 Litigation Finance Market Report*. *Report and Recommendations to the Arizona Supreme Court,* pg. 6, Section I.D. How Other Jurisdictions Have Treated Litigation Funding.
[3] *Report and Recommendations to the Arizona Supreme Court,* pg. 16, Section V.F.

contracts are distinct from TPLF agreements and should be disclosed because they are relevant to settlement negotiations. TPLF agreements are also relevant. For instance, interest rates (or rates of returns promised to investors) can be so high that by the time settlement discussions happen in the normal course the amount owed to the funder exceeds objectively reasonable settlement values, forcing the parties to trial. Transparency regarding the TPLF agreement early in a case may encourage settlement since going through the normal course might make it impossible. At a minimum, APCIA encourages the standard for disclosure of TPLF agreements to be "for good cause" as recommended in the Report, instead of under "extraordinary circumstances", which is a different standard under Arizona law.

In its Report, the Task Force acknowledged that it heard concerns regarding foreign monies being used in TPLF.[4] There have been multiple recent reports of serious national security concerns with TPLF, as it is well known that foreign nations are investing in lawsuits, including in patent litigation.[5] The presence of investments from foreign sovereign wealth funds in TPLF is of significant concern, from an economic and national security perspective. All parties and the courts should know if foreign countries are investing in the U.S. civil justice system for profit, especially given TPLF may be used to undermine the country's interests, gain access to sensitive information, or to evade sanctions. APCIA believes that further consumer protections through regulation of TPLF financiers are necessary.

In summary, APCIA supports the adoption of the proposed amendments to Rule 8, adding a new subsection (j) to require certain TPLF disclosures. APCIA also believes additional measures should be taken to further promote consumer protection and transparency in TPLF, including providing for the discovery of such agreements and regulating funders in the state. Finally, APCIA stands in support of the comments submitted by the U.S. Chamber of Commerce Institute for Legal Reform and requests that they be taken into consideration as well.

Thank you for your ongoing commitment to maintaining a fair, efficient, and transparent civil justice system.

Respectfully,

Molly Lang

Molly Lang
Vice President, Associate General Counsel
American Property Casualty Insurance Association

[4] *Id.* at pg. 15, Section V.E.

[5] https://instituteforlegalreform.com/wp-content/uploads/2022/11/TPLF-Briefly-Oct-2022-RBG-FINAL-1.pdf