2013

Recent Developments in Third-Party Funding

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Recommended Citation
Victoria Shannon, *Recent Developments in Third-Party Funding*, 30 J. Int'l Arb. 443 (2013).

Journal of International Arbitration

Wolters Kluwer
Law & Business

Published by *Kluwer Law International*
P.O. Box 316
2400 AH Alphen aan den Rijn
The Netherlands

Sold and distributed in North, Central and South America by *Aspen Publishers, Inc.*
7201 McKinney Circle
Frederick, MD 21704
United States of America

Sold and distributed in all other countries by *Turpin Distribution*
Pegasus Drive
Stratton Business Park, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom

ISSN 0255-8106

This journal should be cited as (2013) 30 J. Int. Arb. 4

The *Journal of International Arbitration* is published six times per year.
Subscription prices for 2013 [Volume 30, Numbers 1 through 6] including postage and handling:
Print subscription prices: EUR 943/USD 1124/GBP 620
Online subscription prices: EUR 781/USD 1041/GBP 574 (covers two concurrent users)

This journal is also available online at www.kluwerlawonline.com.
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The Journal of International Arbitration is indexed/abstracted in the European Legal Journals Index.

Printed on acid-free paper

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ISSN 0255-8106

Mode of citation: 30 J.Int.Arb. 4

Recent Developments in Third-Party Funding

Victoria SHANNON*

This article addresses recent developments in third-party funding that occurred during late 2012 and early 2013 in the three leading jurisdictions: Australia, the United Kingdom and the United States. The most important developments are the following. On 22 April 2013, the Australian Securities and Investment Commission (ASIC) issued regulatory guidelines clarifying the status of funders with respect to ASIC's regulations and detailing how funders should manage conflicts of interest and handle certain provisions of their funding arrangements. In the United Kingdom, the Jackson Reforms took effect on 1 April 2013, bringing sweeping changes to the allowable fee agreements, discovery rules and cost allocations in that jurisdiction. In the United States, at least twenty pieces of legislation have been filed in various state legislatures since the beginning of 2013 aimed at regulating the third-party funding industry in a variety of different ways. Thus, in these three leading third-party funding jurisdictions, it appears that the legislatures – rather than the courts – are seeking to lead the way in shaping the future of the third-party funding industry.

Third-party funding in international arbitration is transforming from the exciting new way to finance one's legal representation to a more commonplace financing method for international arbitration disputes.[1] The future growth and development of the third-party funding industry will largely depend on the direction of the jurisprudence, or lack thereof, in the jurisdictions where the practice is currently thriving or beginning to manifest itself.[2] Much of this jurisprudence relates to the funders' and attorneys' professional and ethical responsibilities, and the procedural safeguards built into the sophisticated judicial systems in economically advanced nations.[3] These rules and safeguards expressly

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1 For a basic introduction to third-party funding, including the mechanics of funding agreements, *see* Lisa Bench Nieuwveld & Victoria Shannon, *Third-Party Funding in International Arbitration* 1–67 (Wolters Kluwer 2012).

2 Sara Randazzo, *Third Party Funding of Lawsuits Gains Ground But Raises Eyebrows,* J. Daily (10 Sep. 2010); Louis M. Solomon, *Perspective: Third-Party Litigation Financing: It's Time to Let Clients Choose*, N.Y.C. L.J. (online), 13 Sep. 2010 (*available at* http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202471825734).

3 Solomon, *supra* n. 2; Maya Steinitz, *Whose Claim Is This Anyway? Third-Party Litigation Funding*, 95 Minn. L. Rev. 1268, 1291–1292 (2011).

Shannon, Victoria. 'Recent Developments in Third-Party Funding'. *Journal of International Arbitration* 30, no. 4 (2013): 443–452.

apply in the context of litigation, and it remains to be seen whether many or few jurisdictions will decide to apply these rules to third-party funding agreements in international arbitration matters.

As the industry matures, key jurisdictions are in the process of deciding whether to further regulate the industry. This article describes a few notable developments in the three jurisdictions with the most activity and jurisprudence relating to third-party funding – Australia, the United Kingdom and the United States – and highlights a few interesting recent cases funded in these jurisdictions.

1 AUSTRALIA

Australia is, arguably, the most funding-friendly jurisdiction in the world, with its highly sophisticated funders, knowledgeable courts and relatively liberal regulations. Third-party funding has been endorsed at the federal level, and there are at least six or seven major commercial funders based in Australia.[4]

On 12 July 1212, the Parliament enacted the Corporations Amendment Regulation 2012 (No. 6), which exempts litigation funding arrangements from the definition of a 'managed investment scheme' (MIS) in the Corporations Act 2001 (Cth) and litigation funders from the Australian Financial Services License (AFSL) requirements.[5] In August 2012, the Australian Securities and Investment Commission (ASIC) solicited comments from the public on managing conflicts of interest that arise through litigation funding schemes and proof of debt schemes. By the close of the comment submission period in September 2012, the ASIC had received comments from the following five entities, and those comments are publicly available on the ASIC's website:[6]

– the Australian Institute of Company Directors, an organization whose members are directors of a variety of different organizations worldwide;[7]

[4] Bench Nieuwveld & Shannon, *supra* n. 1, at 71–94.

[5] Kit Chellel, '*Wild West' of Lawsuit Funders Supports Divorcees to Soldiers*, Bloomberg News, 8 April 2013 (*available at* http://www.businessweek.com/news/2013-04-08/wild-west-of-lawsuit-funders-supports-divorcees-to-soldiers#p2); Australian Government ComLaw website, http://www.comlaw.gov.au/Details/F2012L01549 (accessed 6 May 2013); Explanatory Statement for the Corporations Amendment Regulation 2012 (No. 6), http://www.comlaw.gov.au/Details/F2012L01549/Explanatory%20Statement/Text (accessed 6 May 2013).

[6] Australian Securities & Investment Commission, *CP 185 Litigation schemes and proof of debt schemes: Managing conflicts of interest – submissions* (*available at* http://www.asic.gov.au/asic/asic.nsf/byheadline/CP-185-Litigation-schemes-and-proof-of-debt-schemes – Managing-conflicts-of-interest – submissions?openDocument).

[7] Australian Institute of Company Directors, *About Us*, http://www.companydirectors.com.au/General/Header/About-Us (accessed 6 May 2013).

- IMF (Australia) Ltd, the dominant litigation funder in Australia;[8]
- the Law Council of Australia, the official representative of the Australian legal profession before the government and other national bodies;[9]
- Maurice Blackburn Lawyers, an Australian law firm that handles class actions on the plaintiff side and partners frequently with litigation funders, including IMF;[10]
- the US Chamber Institute for Legal Reform, an independent organization based in the United States that opposes third-party litigation funding.[11]

On 22 April 2013, the ASIC issued Report 338 in response to those comments, and Regulatory Guide 248 (RG 248) on managing conflicts of interest that arise during third-party funding.[12] RG 248 explains Corporations Amendment Regulation 2012 (No. 6) (the Regulations), as amended by the Corporations Amendment Regulation 2012 (No. 6) Amendment Regulation 2012 (No. 1) (Corporations Amendment Regulations), which took effect on 13 July 2013.[13]

The new regulatory regime establishes that litigation funders are exempt from the definition of 'managed investment scheme' and from the registration requirements under Chapter 7 of the Corporations Act 2001, and that they must implement practices that will adequately manage conflicts of interest that may arise throughout the litigation funding scheme, including maintaining adequate documentation and properly disclosing and handling potential conflicts of interest to protect all parties involved in a funded case.[14] RG 248 gives guidance on

8 Alex Boxsell, *ASIC Warns on Ties Binding Law Firms, Litigation Funders*, Financial Rev. Group, 26 Apr. 2013; IMF (Australia) Ltd., *About Us*, http://www.imf.com.au/about.asp (accessed 6 May 2013).

9 Law Council of Australia, *Our Role*, http://www.lawcouncil.asn.au/about/role.cfm (accessed 6 May 2013).

10 Boxsell, *supra* n. 8; Maurice Blackburn Lawyers, *About the firm,* http://www.mauriceblackburn.com.au/about-the-firm.aspx (accessed 6 May 2013).

11 The U.S. Chamber Inst. Leg. Reform, *About ILR,* http://www.instituteforlegalreform.com/about (accessed 6 May 2013).

12 Australian Securities & Investment Commission, *13-085MR ASIC releases guidance on managing conflicts of interest in litigation schemes and proof of debt schemes*, 22 Apr. 2013 (*available at* http://www.asic.gov.au/asic/asic.nsf/byheadline/13-085MR+ASIC+releases+guidance+on+managing+conflicts+of+interest+in+litigation+schemes+and+proof+of+debt+schemes?openDocument).

13 *Ibid*.

14 Australian Securities & Investment Commission, *Regulatory Guide 248: Litigation schemes and proof of debt schemes: Managing conflicts of interest*, 22 Apr. 2013 (*available at* http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg248-published-22-April-2013.pdf/$file/rg248-published-22-April-2013.pdf); Australian Securities & Investment Commission, *12-200MR ASIC consults on requirement to manage conflicts of interest in litigation schemes and proof of debt schemes*, 17 Aug. 2012 (*available at* http://www.asic.gov.au/asic/asic.nsf/byheadline/12-200MR+ASIC+consults+on+requirement+to+manage+conflicts+of+interest+in+litigation+schemes+and+proof+of+debt+schemes?openDocument); Boxsell, *supra* n. 8; Australian Securities & Investment Commission, *13-085MR ASIC releases guidance on managing conflicts of interest in litigation schemes and proof of debt schemes, supra* n. 12.

how funders should disclose and manage conflicts of interest, recruit potential class members, manage conflicts of interest when the lawyer is simultaneously acting as counsel for the funder and the class or when the lawyer and funder have a pre-existing business relationship, obtain the terms of the funding agreement, and independent approval of the terms of settlement of a litigation scheme prior to commencement of the proceedings.[15]

This is the culmination of a series of court cases and legislative steps that clarified that litigation funding arrangements are not classified as 'managed investment schemes' under section 9 of the Corporations Act 2001 and are not 'financial products' under Chapter 7 of the Corporations Act 2001, a finding that on its face would seem to exempt third-party funders from the ASIC's licensing, conduct and disclosure requirements.[16] On the contrary, the ASIC intends to administer these new regulations and RG 248 as a framework of accountability for litigation funders who would otherwise be exempt from the ASIC's regulations.[17]

2 UNITED KINGDOM

On 1 April 2013, the Jackson Reforms took effect representing the largest set of sweeping changes to the United Kingdom's litigation costs system since the Civil Procedure Rules were introduced in 1999.[18] Major changes that may affect third-party funding include the following:[19]

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15 Australian Securities & Investment Commission, *13-085MR ASIC releases guidance on managing conflicts of interest in litigation schemes and proof of debt schemes*, *supra* n. 12.

16 *See* Bench Nieuwveld & Shannon, *supra* n. 1, at 83–86, explaining *International Litigation Partners Pte. Ltd. v. Chameleon Mining NL,* [2011] N.S.W.C.A. 50, line of cases and the *Brookfield Multiplex Ltd. v. International Litigation Funding Partners Pte. Ltd.* (2009) 180 F.C.R. 11 and [2009] F.C.A.F.C. 147 and F.C.A.F.C. 182, line of cases that, together, illustrate the issues addressed by this legislation; Australian Securities & Investment Commission, *13-085MR ASIC releases guidance on managing conflicts of interest in litigation schemes and proof of debt schemes, supra* n. 12.

17 Australian Securities & Investment Commission, *13-085MR ASIC releases guidance on managing conflicts of interest in litigation schemes and proof of debt schemes*, *supra* n. 12.

18 Steven Loble, *Changes to the Rules governing litigation in England: The Jackson Reforms*, JD Supra Law News, 19 Mar. 2013 (*available at* http://www.jdsupra.com/legalnews/changes-to-the-rules-governing-litigatio-81867/); Ed Gretton, *Jackson – an overview*, Law Society Gazette, 27 Mar. 2013 (*available at* http://www.lawgazette.co.uk/blogs/blogs/in-business-blog/jackson-overview); Paula MacFarlane, *Jackson reforms to litigation costs and funding*, ABTA Ltd., 18 Apr. 2013 (*available at* http://www.abta.com/news-and-views/news/jackson-reforms-to-litigation-costs-and-funding).

19 Loble, *supra* n. 18; Gretton, *supra* n. 18; MacFarlane, *supra* n. 18; Rachel Rothwell, *Litigation funding: joining the party*, Law Society Gazette, 29 Nov. 2012 (*available at* http://www.lawgazette.co.uk/features/litigation-funding-joining-party); Chellel, *supra* n. 5; Susanna Khouri & Kate Hurford, *Third party funding in international arbitration: balancing benefits and risks*, PLC Magazine, 28 Jun. 2012 (*available at* http://uslf.practicallaw.com/7-519-6946); Simon James & Susan Poffley, *The Jackson reforms: what they mean for English commercial litigation – Client Briefing, Clifford Chance* (*available at* http://www.cliffordchance.com/publicationviews/publications/2013/03/the_jackson_reformswhattheymeanforenglis.html); Becky Waller-Davies, *Jackson: lawyers welcome implementation of long-awaited reforms*, The Lawyer, 1 Apr. 2013 (*available at* http://www.thelawyer.com/practice-areas/litigation-/-dispute-resolution/

- Damage-based agreements (DBAs), which are functionally equivalent to the pure contingency fee arrangements common in the United States, are now allowed in the United Kingdom with a maximum cap on the lawyers' fees including Value Added Tax (VAT) at 50% of the damages awarded in all cases, except employment claims (capped at 35%) and personal injury claims (capped at 25%).
- The success fee portion of conditional fee arrangements (CFAs) and after-the-event (ATE) insurance premiums are no longer recoverable from a losing defendant for all types of claims, although the effective date of this provision has been delayed for certain types of claims.
- Costs will now be subject to a proportionality test and a 'normal time basis' test to determine the reasonableness of the costs as compared to the claim's amount, complexity, public importance, reputation and other factors. This supplements the existing 'reasonable and necessary' test for costs.
- There are also new provisions relating to streamlining and reducing evidentiary costs, including requiring disclosure reports, regulating discovery of electronic documents, capping the number of witnesses and the length of witness statements, regulating the presentation of expert witnesses and implementing consequences for dilatory tactics.
- Judge-approved budgets will now be required in all courts except the Commercial Court and except in cases involving claims over Great British Pounds (GBP) 2 million in the Chancery and Mercantile Courts. This provision is less likely to affect third-party funding of international arbitration, since the claim amounts in such cases are usually higher.
- There are now cost consequences for failure to accept a settlement offer if the final judgment or award is lower than the settlement offer. However, the penalty is capped at GBP 75,000, so it is unlikely to greatly affect third-party funding settlements or judgments, which tend to be much higher.

In November 2011, several United Kingdom-based funders created the Association of Litigation Funders of England and Wales (ALF) and drafted a self-regulating Code of Conduct for Litigation Funders, which came into effect in November 2012.[20] In late 2012, there was some debate about changing the code from

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jackson-lawyers-welcome-implementation-of-long-awaited-reforms/3003482.article); McDermott Will & Emery, *The Jackson reforms come into effect*, 15 Apr. 2013 (*available at* http://www.lexology.com/library/detail.aspx?g=7fbe9046-2fab-40c4-94ca-5908ef0fbc49); Bridge McFarland Solicitors, *Jackson Reforms: Key Changes in Litigation*, 9 Apr. 2013 (*available at* http://www.bmcf.co.uk/news/jackson-reforms-key-changes-in-litigation).

[20] John Hyde, *CJC member rules out mandatory litigation funding code*, Law Society Gazette, 29 Nov. 2012 (*available at* http://www.lawgazette.co.uk/news/cjc-member-rules-out-mandatory-litigation-funding-code); Khouri & Hurford, *supra* n. 19.

voluntary to mandatory by statute, but instead the Civil Justice Council decided to leave enforcement to judicial oversight.[21]

3 UNITED STATES

In the United States, recent efforts have focused on proposed regulation primarily aimed at consumer-side third-party funding, since third-party funding is currently unregulated in most states.[22] There are no federal laws directly relating to third-party funding, and the Federal Arbitration Act does not mention third-party funding. Thus, potential users of third-party funding must investigate case law and statutes on a state-by-state basis.[23] Furthermore, nearly all of the case law and statutes address domestic litigation, not international arbitration. Thus, one may not be able to draw definitive conclusions about the status of third-party funding of international arbitration in the United States simply by looking at the state litigation funding laws and precedents.

Domestically, there is a growing consensus that consumer-side third-party funding is beginning to injure vulnerable consumers in similar ways to predatory lending due to the lack of regulation and excessive interest rates that, at their worst, may even exceed 100% per year.[24] In the first quarter of 2013, at least twenty proposed bills to regulate the third-party funding industry were filed in state legislatures.[25] At least twelve states are considering passing laws to cap the returns on consumer-side third-party funding at around 35%.[26] Companies, lawyers and lobbyists in favour of the industry have indicated a willingness to accept some regulation, advocating for states to establish licensing and disclosure

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21 Hyde, *supra* n. 20.

22 Binyamin Appelbaum, *Lawsuit Loans Add New Risk for the Injured*, N.Y. Times, 16 Jan. 2011 (*available at* http://www.nytimes.com/2011/01/17/business/17lawsuit.html?pagewanted=all&_r=2&).

23 Bench Nieuwveld & Shannon, *supra* n. 1, at 117–159, including a fifty-one-jurisdiction survey of state laws in the United States.

24 Appelbaum, *supra* n. 22; Ashby Jones, *Loan & Order: States Object to 'Payday' Lawsuit Lending*, Wall St. J. 28 Apr. 2013 (*available at* http://finance.yahoo.com/news/loan-order-states-object-payday-232400139.html); Chellel, *supra* n. 5.

25 Martin Merzer, *Cash-now promise of lawsuit loans under fire: 10 states consider laws to hem in new high-fee loan industry* (*available at* http://www.creditcards.com/credit-card-news/lawsuit-loans-under-fire-1282.php); Bobby Blanchard, *Lawsuit Lenders Facing Regulation*, KUT News, 18 Mar. 2013 (*available at* http://www.kutnews.org/post/lawsuit-lenders-facing-regulation); Bethany Krajelis, *Thapedi introduces legislation on hourly billing rates, lawsuit lending*, Madison-St. Clair Record, 5 Mar. 2013 (*available at* http://madisonrecord.com/news/253302-thapedi-introduces-legislation-on-hourly-billing-rates-lawsuit-lending); Appelbaum, *supra* n. 22; Jones, *supra* n. 24; Bethany Krajelis, *Committee discusses lawsuit lending legislation*, Madison-St. Clair Record, April 15, 2013 (*available at* http://madisonrecord.com/issues/311-tort-reform/254856-committee-discusses-lawsuit-lending-legislation).

26 Kyle Barnett, *Lawsuit lending bill aimed at putting caps on predatory lenders passes state Senate*, Louisiana Record, 7 May 2013 (*available at* http://louisianarecord.com/news/251330-lawsuit-lending-bill-aimed-at-putting-caps-on-predatory-lenders-passes-state-senate).

requirements but to avoid price caps.[27] Maine, Ohio and Nebraska are the only three states that currently have ratified legislation regulating the industry, and all three states have taken a funding-friendly approach and have exempted funding from the limitations that apply to regular loans.[28] It is possible that the passage of these bills could affect an international arbitration award during a proceeding to recognize, enforce, annul or vacate an arbitration award in state court.

Table 1 summarizes the legislation that was recently introduced in various state legislatures.

Table 1: Flurry of Legislation Filed on Lawsuit Loans
Since the start of 2013, at least twenty bills have been filed in ten states to regulate lawsuit loans, the new, high-fee fast-cash product offered to people awaiting lawsuit settlements.

State	*Bill(s)*	*Introduced*	*What the bill would do*
Iowa	HSB 218	January 8	Calls the product of lawsuit funding a loan subject to a rate cap of 12% and requires disclosure to the court that the consumer received legal funding.
Illinois	HB 2300	February 19	Caps at 36% the interest rate that can be charged. The bill also requires disclosure to the court that the consumer received legal funding.
	HB 2301	February 19	An attempt to enshrine and modestly regulate the industry. It is based on the bill that was passed and enacted in 2010 in Nebraska.
Indiana	S 378	January 8	The bill defines lawsuit funding as a loan, making it subject to the usury rate cap of 21%. The contract must be disclosed to the court. The bill was never heard in committee and died as a result.
	H 1558	January 22	Originally substituted for a Senate measure that would have defined lawsuit funding as a loan and subjected it to a 21% interest rate cap, the bill now refers the entire matter of consumer lawsuit lending to a legislative study committee. Moving toward passage.

[27] Appelbaum, *supra* n. 22.
[28] Bench Nieuwveld & Shannon, *supra* n. 1, at 117–159, including a fifty-one-jurisdiction survey of state laws in the United States; Appelbaum, *supra* n. 22; Merzer, *supra* n. 25.

State	*Bill(s)*	*Introduced*	*What the bill would do*
Kansas	SB 233	March 14	Classifies lawsuit funding as a loan.
Missouri	HB 853, SB 440	February 28	Bans lawsuit loans.
Mississippi	HB 503, SB 2378	January 21	The bills essentially mirror the modest regulations in effect in Nebraska, but caps interest rates at 25%, a feature opposed by the lawsuit funding industry.
Nevada	SB 361	March 18	Voids legal funding contracts and makes it a crime to conduct such business in the state.
Oklahoma	SB 1016	February 4	Defines legal funding as loans and subjects them to a state usury cap of 10%.
Rhode Island	H 5599, S 351	February 27, February 13	Defines legal funding as loans and subjects them to a usury cap of 21%.
Tennessee	HB 1242, SB 1360	February 14	Regulates the industry and enforces interest rate caps.
Texas	HB 1254, SB 1283	February 13	Introduced on behalf of the industry as a bill to modestly regulate it.
	HB 1595, SB 927	February 20	Defines lawsuit funding as a loan, imposes an interest rate cap of 10% and requires disclosure to the court of any such agreement.

Sources: Oasis Legal Finance LLC and research by CreditCards.com, as of 28 March 2013.

Table 1 is reprinted from Martin Merzer, *Cash-now promise of lawsuit loans under fire: 10 states consider laws to hem in new high-fee loan industry,* 29 March 2013, (*available at* http://www.creditcards.com/credit-card-news/lawsuit-loans-under-fire-1282.php#lawsuit-loan-legislation).

The United States Congress may also be considering regulating the industry in the future as evidenced by the fact that the United States House of Representatives Committee on the Judiciary's Subcommittee on the Constitution and Civil Justice held a hearing about litigation abuses on 13 March 2013 and heard testimony from four witnesses regarding third-party funding.[29]

[29] United States House of Representatives Committee on the Judiciary, *Hearing Information: Subject: Examination of Litigation Abuses,* http://judiciary.house.gov/hearings/113th/hear_03132013.html

4 INTERESTING RECENT CASES FUNDED IN AUSTRALIA, THE UNITED KINGDOM AND THE UNITED STATES

(i) The latest development in the famous (or infamous) environmental dispute between Chevron and a group of Ecuadorian plaintiffs is that Burford Group recently renounced its funding interest in the case, made a deal with Chevron, and accused the Ecuadorian plaintiffs and their lawyers of obtaining Burford's third-party financial backing through fraudulent means.[30] Furthermore, Chevron is now arguing that the Ecuadorian court judgment itself was obtained by fraud as well.[31]

(ii) United Kingdom-based Calunius Capital is backing Elvis Presley's estate in its suit against RCA Records (now owned by Sony) alleging that RCA 'unjustly exploited' the legendary star and owes his estate millions of dollars of royalties from decades of worldwide sales.[32]

(iii) A litigation funder in the famous liquid crystal display (LCD screen) class action case filed suit on 26 April 2013 against the plaintiff's class counsel disputing payments owed pursuant to their fee splitting arrangement.[33] This suggests that class action funding in the United States may be more common than scholars believe, because the structure may involve the funder lending to the plaintiff-side law firm rather than lending directly to the plaintiff class members.[34]

(iv) A small group of private investors, including hedge funds and individuals, is funding a company called Stan Lee Media in a multi-billion dollar copyright infringement lawsuit against The Walt Disney Company. Stan Lee Media disputes Disney's assertion that it acquired ownership rights

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(accessed 6 May 2013); testimony published in Congressional Quarterly, Congressional Testimony, 13 Mar. 2013.

30 Roger Parloff, *Investment fund: We were defrauded in suit against Chevron*, Fortune, 10 Jan. 2013 (*available at* http://finance.fortune.cnn.com/2013/01/10/burford-capital-chevron-ecuador/); *UK litigation financer renounces interest in Chevron-Ecuador case*, Chemical News & Intelligence, 17 Apr. 2013; Jan Wolfe, *Burford Inks Deal with Chevron, Says Patton Boggs Hid Truth About Ecuadorian Plaintiffs*, The American Lawyer (online), 17 Apr. 2013.

31 *Chevron Battles Ecuadorian Judgment*, Dow Jones Global News Select, 22 Apr. 2013; *Ecuadorean Environmental Claims Disavowed Under Oath by Plaintiffs' Own Experts*, Business Wire, 12 Apr. 2013; *Chevron Flips Some Legal Adversaries as It Battles Ecuadorian Judgment*, Dow Jones News Service, 21 Apr. 2013.

32 Owen Bowcott, *Elvis Presley case highlights growth of third party funding to back legal claims: Small and risk-averse companies turn to litigation businesses to pursue claims in the courtroom,* The Guardian, 30 Nov. 2012 (*available at* http://www.guardian.co.uk/law/2012/nov/30/elvis-presley-third-party-legal-claims).

33 Alison Frankel, *Funder sues plaintiffs' lawyer for $28 mln in LCD class action fees*, Thomson Reuters News & Insight, 29 Apr. 2013 (*available at* http://newsandinsight.thomsonreuters.com/Legal/News/ViewNews.aspx?id=75857&terms=@ReutersTopicCodes+CONTAINS+'ANV&#039).

34 Bench Nieuwveld & Shannon, *supra* n. 1, at 120–121.

to the superhero comic book characters created by Stan Lee (such as Spider-Man, X-Men, The Incredible Hulk and The Fantastic Four) when Disney acquired the characters from Marvel Entertainment. [35]

(v) IMF (Australia) Ltd. is funding an Australian Dollar (AUD) 100 million class action against Standard & Poor's credit rating agency alleging that the agency misled small investors by saying that its top-notch credit ratings on complex products were independent.[36]

(vi) A three-year, AUD 250 million bank fees class action funded by IMF (Australia) Ltd. against twelve major Australian banks is expected to reach completion in June 2014.[37]

5 CONCLUSION

In its infancy, the third-party funding industry was shaped by the court system in various jurisdictions worldwide. However, in the years since then, many jurisdictions have come to realize that conflicting court decisions can lead to further confusion in the growth and direction of the industry. Thus, as the industry reaches maturity in these three leading third-party funding jurisdictions, it appears that the legislatures – rather than the courts – are seeking to lead the way in shaping the future of the third-party funding industry.

[35] Nathan Vardi, *Hedge Fund Elliott Management Is Backing Stan Lee Media's Spider-Man Lawsuit Against Disney*, Forbes, 1 Feb. 2013 (*available at* http://www.forbes.com/sites/nathanvardi/2013/02/01/hedge-fund-elliott-management-is-backing-stan-lee-medias-spider-man-lawsuit-against-disney-2/).

[36] Clancy Yeates, *S&P faces $100m class action*, Sydney Morning Herald, 17 Apr. 2013 (*available at* http://www.smh.com.au/business/sp-faces-100m-class-action-20130416-2hyey.html).

[37] IMF (Australia) Ltd., *Bank Fees Class Actions*, http://www.imf.com.au/cases/detail/bank-fees-class-actions (accessed 18 July 2013); *Class action against banks catches out instigators*, Australian Fin. Rev., 15 Apr. 2013 (*available at* http://www.afr.com/p/national/legal_affairs/class_action_against_banks_catches_ZLPo0ju8IqzRZHV8655whM).

Author Guide

[A] Aim of the Journal

Since its 1984 launch, the Journal of International Arbitration has established itself as a thought provoking, ground breaking journal aimed at the specific requirements of those involved in international arbitration. Each issue contains in depth investigations of the most important current issues in international arbitration, focusing on business, investment, and economic disputes between private corporations, State controlled entities, and States. The new Notes and Current Developments sections contain concise and critical commentary on new developments. The journal's worldwide coverage and bimonthly circulation give it even more immediacy as a forum for original thinking, penetrating analysis and lively discussion of international arbitration issues from around the globe.

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[7] For guidance on style, see the House Style Guide available on this website: http://www.kluwerlaw.com/ContactUs/

[D] Review Process

[1] After review by the Editor, manuscripts may be returned to authors with suggestions related to substance and/or style.
[2] The author will also receive PDF proofs of the article, and any corrections should be returned within the scheduled dates.

[E] Publication Process

[1] For accepted articles, authors will be expected to execute a Consent to Publish form.
[2] Each author of an accepted article will receive a free hard copy of the journal issue in which the article is published, plus an electronic version of the article.