

WEDNESDAY, JUNE 7, 2017

Chamber again aims for disclosure of litigation funders

By Joshua Sebold
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The U.S. Chamber of Commerce continued its campaign against the litigation finance industry by petitioning the U.S. Administrative Office of the Courts, requesting that the agency pass a rule requiring litigation funding by third parties be disclosed in all federal cases.

This is the second time the chamber has made the request, following on an unsuccessful bid to change the rules in 2014.

Lisa A. Rickard, president of the chamber's Institute for Legal Reform, wrote in her proposal that failing to disclose litigation financiers in specific cases is "concealing from the court and other parties in each case the identity of what is effectively a real party in interest."

Conflicts of interest could also be revealed by forcing funders to announce themselves, she said.

"[Litigation financiers] may be either publicly traded companies or companies supported by investment funds whose individual stakeholders may include judges,

attorneys, or jurors," she said.

Allison K. Chock, chief investment officer at litigation funding firm Bentham IMF, said the chamber's real reason for disliking litigation finance is that it levels the playing field for smaller litigants.

Forcing litigants to disclose outside funding would primarily hurt plaintiffs, especially those who don't have funding, she said. Acknowledging a lack of financial resources gives the other side valuable information that could improve their bargaining position, she said.

For those who do have funding, she said, it would give opponents an idea of how big of a war chest they are going up against.

"It's really quite one-sided and draconian," Chock said. "They certainly aren't proposing a reciprocal revealing of their defense budgets."

Rickard wrote in her letter to the court's administrative body that the first time the request was made it was unclear how big litigation finance would become, but that the intervening years have demonstrated it is a rapidly growing industry.

A representative for the Chamber of

Commerce referred to a blog post on its website, in lieu of comment.

The post pointed out that the Northern District of California recently changed its rules, forcing litigants to reveal outside funding in class actions. Major litigation funds like Bentham rarely invest in those types of cases, focusing instead on business-to-business litigation.

The chamber post pointed to a survey by George Mason University in 2014 that found two-thirds of 357 judges polled would prefer to know if litigation funders were involved in cases before them.

Chock said little has changed since the court's administrative office rejected the chamber's initial attempt at forcing litigation financiers to disclose the cases they fund, and she doesn't think even the chamber believes that it will win this battle.

She said the chamber was likely trying to demonstrate to some of its big business constituents that it is making efforts to address the growth in litigation funding.

"We don't think it's likely to gain traction," she said. "It may just be a publicity play on their part."