

Robertson on Third Party Financing of Transnational Litigation

Cassandra Burke Robertson, who teaches at Case Western Reserve University School of Law, has posted the Impact of Third-Party Financing on Transnational Litigation on SSRN. The abstract reads:

Third-party litigation finance is a growing industry. The practice, also termed “litigation lending,” allows funders with no other connection to the lawsuit to invest in a plaintiff’s claim in exchange for a share of the ultimate recovery. Most funding agreements have focused on domestic litigation in Australia, the United Kingdom, and the United States. However, the industry is poised for growth worldwide, and the recent environmental lawsuit brought by Ecuadorian plaintiffs against Chevron demonstrates that litigation funding is also beginning to play a role in transnational litigation.

This article, prepared for a symposium on “International Law in Crisis,” speculates about how the growing litigation-finance industry may reshape transnational litigation in the coming decades. It argues that the individual economic incentives created by third-party financing will likely increase the number of transnational lawsuits filed, raise the settlement values of those lawsuits, and spread out the lawsuits among a larger number of countries than was typical in the past. It further hypothesizes that these individual choices about transnational litigation will lead countries to reassess their internal balance of litigation and regulation and will create pressure for greater international coordination of litigation procedure, including transnational forum choice and cross-border judgment enforcement.