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U.S. court in California to require third-party class action funding disclosure

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(Reuters) - The federal court in San Francisco has become the first in the nation to require the automatic disclosure of third-party funding agreements for proposed class action lawsuits.

The U.S. District Court for the Northern District of California announced changes to its standing orders for all its judges, who also sit in Oakland, San Jose and Eureka, California. Under the amended order, third parties funding a proposed class action will have to disclose their involvement in the lawsuit in a joint case management statement.

This marks the first time a U.S. court has mandated litigation funding agreements be disclosed to the court. The Judicial Conference Advisory Committee on Civil Rules considered third-party financing disclosure proposals for all federal courts in October 2014 and April 2016, but did not take action either time.

The Northern District of California is colloquially known to product liability attorneys as the "food court," as it is a popular venue for food labeling proposed class action lawsuits.

Third-party litigation financing is a growing concern for companies facing litigation in U.S. courts, according to Tripp Haston, a corporate product liability attorney at Bradley in Birmingham, Alabama. While lawyers have to adhere to ethical standards for their financial arrangements with clients, third-party litigation financers are "completely unregulated" and their involvement in the suit may be unclear, Haston said.

"These are dark, dark pools of money that we know little about," Haston said.

The amendment in Northern California is a pared-down version of the initial draft revision, which would have required similar automatic disclosures in all lawsuits. Commercial litigation funders Bentham IMF and Burford Capital both opposed the broader rule, claiming it would be unnecessary and discriminatory.

In comments to the court in July, Bentham investment manager and legal counsel Matthew Harrison wrote on behalf of the company that the proposed rule would have little effect, as they believed less than a dozen commercial cases had been funded in the district in the past five years.

Harrison said the proposed rule could create unnecessary discovery "sideshows" and give defendants an unfair advantage by unveiling which plaintiffs could withstand a lengthy legal battle.

Burford said on Tuesday it was pleased at the court's "incremental approach" toward disclosure policy, and that class actions are a very small part of its business.

The U.S. Chamber of Commerce's Institute of Legal Reform executive vice president Harold Kim also praised the amendment, saying class action members particularly need this kind of protection from third-party interests.

"Investors who get a contingent fee based on the outcomes of lawsuits should not be allowed to operate in the shadows nor control litigation, especially in class actions, where they can more easily put their own interests before class members," Kim said.

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