So Sue Me!

After Gawker Media published a scandalous video of the wrestler Hulk Hogan, Hogan sought revenge. He ultimately decided to sue Gawker for violating his right to privacy. Luckily for Hogan though, he was not the only person out for vengeance against Gawker. Years earlier, Gawker had divulged private and sensitive information about Peter Thiel, one of the wealthy founders of PayPal. Upon hearing of Hogan's situation, Thiel secretly invested around 10 million dollars to help Hogan win his lawsuit against Gawker. Thiel engaged in what is called 'litigation financing.' Litigation financing is the funding of litigation by individuals or groups who are not parties to the litigation.

While Thiel may have been motivated to invest for personal reasons, often the payoff for investing in another person's lawsuit is a significant financial gain for the investor. In the case of *Miller UK Ltd. v. Caterpillar Inc.* (2014), for example, the investors on the side of Miller (a small business litigator) against Caterpillar (a big business defendant) stood to earn millions if they won the case. Many worry that the potential for financial gain in litigation financing could lead to further corruption of the already pricey U.S. legal system. With the aim of making a profit from litigation financing, these investment firms are well positioned to perpetuate injustice. Such practices could lead to financiers exploiting potential plaintiffs who are in financial need.

Others don't share these worries. In the end, they argue, legal cases will succeed or fail on account of their merits, regardless of the money involved. Moreover, they contend that citizens should be permitted to sell and commodify their own lawsuits because they have a right to do so, especially if it helps them to cover expensive legal processes. Denying citizens this right out of sheer speculation that it could lead to negative consequences overlooks the fact that litigation financing can lead to positive outcomes in the U.S. legal system. Several case examples reveal how litigation financing has helped many to achieve justice, who could not otherwise afford to put up a legal fight against their opponents. One example, in *NAACP v. Button* (1963), the Supreme Court struck down a Virginia law that prevented the NAACP from funding litigation cases for those subject to unjust racial discrimination. The case of *NAACP v. Button* (1963) reveals how litigation financing can be an important means of achieving justice.

DISCUSSION QUESTIONS

1. Are there moral limits on what individuals have a right to commodify? If not, why not?
2. When, if ever, is it morally wrong to sue someone in a legal court?
3. Should litigators like Hogan be required to disclose the sources of funding for their cases? Or, should litigators be permitted to keep their sources of funding private? Why?