

Application Form

Litigation Funding and Insurance

Important Notes and Disclaimers

Supporting Documents Required

Please note that together with the completed and signed version of this application form, we will require certain supporting documents to be provided in order for us to assess the case and approach litigation funders and/or insurers, with a view to securing terms.

A checklist of suggested supporting documentation can be found at Section 10 below. **Please note that we cannot accept any application for litigation funding and/or insurance without a completed case summary;** please contact us should you require a copy of our case summary template.

Eligibility Criteria/Application Fees

We are not able to accept insurance applications in the following scenarios:

- Applications relating to Commercial litigation requiring a limit of cover of less than \$50,000;
- Applications relating to Clinical Negligence litigation requiring a limit of cover less than \$50,000; and
- Applications relating to Personal Injury litigation requiring a limit of cover less than \$250,000.

We reserve the right to charge an application in relation to your case.

In most cases, we are able to progress the application without charging an application fee. Application fees are typically only payable where a direct approach has been made to funders/insurers or another broker, or where our team believe the chances of securing funding or insurance are less than 50%. This would typically be because of the prospects of success as assessed by the legal team, the proximity to trial, or the economic profile of the claim (i.e. the costs to damages ratio).

Should we require an application fee to be paid, we will advise you of our reasons and will provide you with an invoice in respect of the relevant amount.

If you have any queries about our application fee policy, or would like to discuss whether an application fee is likely to be payable in relation to your case, please contact us on + 1 416 238-6730.

Disclosure

In making this application, you are under a duty to make a “fair presentation” of the risk.

In doing so, you must disclose every material circumstance which you know, or ought to know, or make disclosure which provides the receiving party with sufficient information to put the receiving party on notice that they need to make further enquiries into those material circumstances.

All material facts that are disclosed must be substantially correct and every material representation made in good faith.

If you are not an individual, the scope of what you know or ought to know extends to what is known to individuals who are part of your senior management team, or any parties that are responsible for your insurances.

If you are in any doubt as to whether something constitutes a material fact, you should disclose it.

The funders and insurers which take part in this service will provide indications of terms based upon the information you provide. The funding contract or insurance policy will not be in force until an executed funding agreement or certificate of insurance has been issued. Completion of this form does not mean that funding or insurance is in place.

Failure to comply with your duty to make a fair presentation of the risk can lead to the receiving party avoiding the contract (and retaining any premium), charging a higher premium and treating the contract as having been entered on those terms, or reducing any claim payments proportionally.

Solvency of Funders and Insurers

Please note that TheJudge cannot and does not guarantee the solvency or security of the funders and/or insurers with which it places business.

If you have any queries about the contents of this proposal form, or wish to discuss your case with a broker prior to submitting the application, please contact us on [+1 \(416\) 238-6730](tel:+14162386730)

Once the application form has been completed, please return the same, together with the supporting documentation to ATECanada@TheJudgeGlobal.com

Section 1 – General Details

Name(s) of the proposer(s)	
Address	
Date of birth (if applicable)	
Legal Status (e.g. individual, company, executor etc.)	
Is the proposer the Plaintiff or Defendant in the proceedings?	

Section 2 – Firm Details

Firm name			
Address			
Lawyer name			
Lawyer email		Telephone No.	
Supervisor name, if applicable			
Supervisor email			
Date firm instructed			
Firm case reference			
Name of Trial Counsel (if instructed)			

Section 3 – Case Details

Type of case			
Forum (court, tribunal etc.)			
Jurisdiction (NB. If jurisdiction is disputed please provide details)			
Applicable law (NB. If the applicable law is disputed please provide details)			
Percentage prospects of successful outcome			
Full value of claim (excluding costs)			
Minimum acceptable figure			
Have any offers of settlement been made or received?		Details of offers:	
Details of any non-financial remedy that may be applicable			

Has a Letter of Claim (or equivalent) been sent?		Date filed:	
Have proceedings been commenced?		Date proceedings commenced:	
If proceedings have not been commenced, when will the claim become statute-barred for limitation?			
Have there been any preliminary decisions?			
Are there any preliminary matters to be determined prior to the substantive trial?			
Has a Defence been filed?		Date filed:	
Has a trial date or window been set?		Date of trial/window:	
Are there any upcoming hearings or deadlines?			
Is a counterclaim to be expected? If so, on what basis?			

Section 4 – Opponent Details

Name(s) of the Opponent(s)	
Opponent lawyers	
Opponent insurers	
Can the opponent satisfy any judgment obtained? If so, what evidence is available to support this?	

Section 5 – Pre-Existing Insurance Details

Does your client have benefit of any pre-existing legal expenses insurance which will cover this dispute?	YES/NO
If yes, please confirm the limit of indemnity and the status of any claim submitted to the insurer	
Has your client approached any other funder/broker/insurer in respect of this case?	YES/NO
If yes, please list the entities approached and the stage and/or outcome of your discussions	

Section 6 – Retainer Details

<p>Please confirm:</p> <ul style="list-style-type: none"> (i) the type of retainer <i>you</i> will be acting under (e.g. contingency fee agreement, private fee paying); (ii) the proposed success fee; and (iii) the proportion of your fees which will be at risk under the retainer (if any). 	
<p>Please confirm:</p> <ul style="list-style-type: none"> (i) the type of retainer Counsel will be acting under ((e.g. contingency fee agreement, private fee paying)the proposed success fee; and (ii) the proportion of Counsel Fees which will be at risk under the retainer (if any). 	

Section 7 – Litigation Insurance Requirements

Please Note: If you are submitting a completed copy of TheJudge Case Summary, and/or you have provided a completed costs budget in support of this application, you need not repeat that estimate below however please still confirm the **total** amount of litigation insurance you require.

	Costs to Date	Is Cover Required?	Now to Conclusion	Is Cover Required?
Own lawyers' fees		YES/NO		YES/NO
Own disbursements		YES/NO		YES/NO
Opponent's costs and disbursements		YES/NO		YES/NO
Taking the above into account, please confirm the <u>total</u> amount of cover required (inclusive of tax):			\$	

Section 8 – Litigation Funding Requirements

If your client requires litigation funding in respect of their own legal costs and/or disbursements, please provide details of the requirements below:

	Is Funding Required?	Amount of Funding Required
Own lawyers' fees	YES/NO	\$
Own disbursements	YES/NO	\$
Taking the above into account, please confirm the <u>total</u> amount of funding required (inclusive of tax):		\$

Section 9 – Security for Costs

Is your client facing an application or order for Security for Costs?	YES/NO
If yes, please confirm the amount of security required:	\$
Is your client likely to face an application for Security for Costs?	YES/NO
If yes, please confirm the likely amount of security required:	\$

Section 10 – Documents

Help us to help you. Well-presented cases have a better chance of obtaining funding and/or insurance. Please enclose all relevant documentation you think funders and/or insurers will need to consider the case. If further information is required, completion of the assessment is likely to be considerably delayed.

Examples of the types of documentation required (where available) include:

- **Case summary** (including a commentary on the facts, liability, quantum and enforcement. It must also include your views on the prospects of success;
- **Costs budget** (an itemised schedule of projected costs referring to stage in the litigation, up to and including the hearing);
- **Trial Counsels advice;**
- **Pleadings;**
- **Correspondence with the opponent;**
- **Experts reports;**
- **Witness statements/Depositions;**
- **Evidence of Opponent's financial strength.**

Section 11 – Declaration

- (a) I/We declare that the information contained in this form and accompanying enclosures represents a “fair presentation” of the risk.
- (b) I/We believe that the level of insurance requested in Section 7, and/or the amount of funding requested in Section 8 is sufficient to pursue the claim to the conclusion of a fully contested trial, unless otherwise stated.
- (c) I/We agree to be bound by TheJudge’s Terms of Business, as set out below.

Signed (client)	Date
Print name	
Signed (lawyer)	Date
Print name	

TheJudge Terms of Business

The following Terms of Business set out what you can expect from us and what we expect from you when agreeing to handle your application for legal insurance and/or third party litigation funding. This document contains important information. Please read it carefully.

References to “we”, “us” and “our” are references to TheJudge Canada Limited. References to “you”, “your” and “yours” are references to you and your legal representative. References to “provider” or “providers” are references to both legal expenses insurers and litigation funding companies. References to “litigation” include arbitration or other legal proceedings.

This document supersedes any agreement with us previously in force in relation to this application, with the exception of any Non-Disclosure Agreement or Confidentiality Agreement signed by us. Please contact us immediately if there is anything in these Terms of Business that you do not understand or with which you disagree.

Our Company

We conduct business through TheJudge Canada Limited, Business No: 70672 4217
Trading address: 120 Adelaide Street West, Suite 2500, Toronto, ON M5H 1T1.
Registered office: 140 King Street West, Suite 210, Toronto ON M5H 3C2.

Our Regulation

TheJudge Canada Limited is authorised and regulated by the Regulated Insurance Brokers of Ontario.

TheJudge Limited is regulated and authorised to provide advice on legal expenses insurance products. Where we provide a personal recommendation in relation to your insurance options, we will provide you with a written statement of our understanding of your insurance demands and needs, based upon the information provided before concluding an insurance contract.

If we recommend an insurance policy to you, we will confirm why we believe the proposed cover to be suitable in satisfying your insurance requirements. It is important that you tell us if any of the information contained within such a statement is incorrect.

TheJudge is not regulated to, and is not purporting to, provide financial advice when broking litigation funding. Therefore, we cannot and do not recommend particular funding products. We aim to obtain offers of funding to enable you to make an informed decision on whether to engage with one or more funders when proceeding with litigation or arbitration.

Our Relationship with You

We are a broker who will act on your behalf to source litigation funding and/or legal expenses insurance (sometimes referred to as After the Event Insurance or ATE insurance within these Terms of Business) to finance and/or insure legal expenses incurred in connection with a legal dispute.

Our Approach to Market

We will tell you which providers we will be approaching. In order to proceed in a timely fashion, we may proceed to contact providers immediately upon receiving these signed Terms of Business and confirm to you the providers which we have approached thereafter. If you require confirmation of the identity of the providers in advance, please inform us by way of the covering correspondence.

If there are any providers that we have not approached with your application, but that you feel should be considered, please let us know as soon as possible.

We will generally seek to simultaneously introduce the proposal to several providers on your behalf. Whilst we may not approach every provider in the market with your application, we will typically consider what we reasonably believe to be a sufficiently large number of products to be representative of the whole market. However, depending on the application and the prospects of obtaining a viable proposal from the market, we may introduce the application to a single provider initially with several others being approached simultaneously thereafter, if an acceptable offer is not presented.

Timescales

In the absence of any specific deadlines or urgency, we would expect to receive initial formal responses from the participating providers within 10 working days of receipt of the application.

Whilst this is our target turnaround time, if the case is particularly complex or requires an unusually high level of capacity, it can take longer for the providers to complete their assessment. If at any stage we believe that the 10 day target is unrealistic, we shall inform you at the earliest opportunity and will provide a more realistic timescale, if possible.

Our Earnings

As your chosen intermediary, we may earn income in a number of ways.

- a) We may charge an application fee at the outset, in order to process the application;
- b) We may earn a commission payment from the selected provider(s); and/or
- c) We may earn a commission from time to time on additional fees charged by providers during the application process. The additional fees may give rise to a conflict of interest between you, us and the provider concerned. We will take care to ensure that such conflicts are properly managed so we can continue to act in your best interests.

You have the right to ask about our remuneration as a result of broking insurance and/or funding on your behalf.

Your Obligation to Disclose Information

During the application process, you are under a duty to make a “fair presentation” of the risk. In doing so, you must disclose every material circumstance which you know, or ought to know, or disclosure which provides the receiving party with sufficient information to put the receiving party on notice that they need to make further enquiries into those material circumstances.

All material facts that are disclosed must be substantially correct and every material representation made in good faith.

If you are not an individual, the scope of what you know or ought to know extends to what is known to individuals who are part of your senior management team, or any parties that are responsible for your insurances.

If you are in doubt as to whether something constitutes a material fact, you should disclose it.

If you fail to disclose a material fact, it may affect how claims are settled under the insurance policy or may render it invalid and/or breach the litigation funding agreement.

Reporting to the provider

Once an ATE policy and/or litigation funding agreement is in place, there will be an ongoing obligation to report certain events to the providers and/or obtain the providers’ consent prior to undertaking certain steps in the litigation, including but not limited to commencing proceedings or rejecting/making an offer of settlement.

We strongly recommend that you take time to familiarise yourself with the relevant policy/agreement’s reporting requirements.

Please ensure that all reporting is made directly to the provider to avoid

delay. Insurance Policies

The relationship between you and an insurer is governed by the insurance policy. It is imperative that you read and fully understand the terms and conditions of the insurance policy and accompanying literature.

Claims under ATE insurance policies

Any claim or circumstances which may give rise to a claim should be notified directly to the insurance company without delay. Failing to comply with claims notification procedures may result in the insurer refusing to admit the claim. The policy terms and conditions will describe the claims notification procedures in detail. If you are unsure about any aspect, please contact us immediately.

Funding Agreements

The relationship between you and a funder is governed by the Litigation Funding Agreement (‘LFA’). It is imperative that you read and fully understand the terms and conditions of the LFA. It is often appropriate for you to receive independent financial and/or legal advice before entering into the LFA.

The LFA may contain obligations on you to provide complete and accurate information to the funder when the LFA is entered into and throughout the course of the LFA. It is important that all statements made on the application form and within the accompanying documentation are full and accurate to the best of your knowledge.

Pre-LFA agreements

Pre-LFA agreements are sometimes executed between clients and funders in advance of signing the final LFA. These are sometimes referred to as Conditional LFAs or Heads of Terms and these may also contain continuous disclosure obligations preceding the execution of the LFA.

Non-Circumvention and Non-Disclosure of Quotations

You are entitled to approach, whether directly or by another broker/agency, any provider whom we have not approached on your behalf.

Where we have approached providers in relation to your application, you agree to our exclusive instruction in relation to that provider. You will not approach or instruct any other broker/agency to approach the same provider, or approach that provider directly, without our consent unless our instruction has been terminated in accordance with the termination provisions within this agreement.

You will not disclose information about the offers produced by providers we have approached on your behalf to any third parties without our consent. In some cases, such disclosure may constitute a breach of the provider’s own terms and conditions.

Insurer Security

Wherever we broker an insurance policy, we cannot and do not guarantee the solvency of the insurance company or insurance intermediary, nor do we rate, assess or approve financial security. However, we do try to ensure that all insurers or insurance intermediaries that we approach are recognised as being reputable providers of ATE insurance.

We use both Canadian and overseas insurers to obtain suitable quotations for our clients. It should be noted that a different legal and regulatory regime may apply to non-Canadian insurers so your ability to enforce your legal rights or seek compensation may vary.

If you have any concerns about the insurers we are approaching to provide cover, please contact us immediately.

Funder Security

We cannot and do not guarantee the solvency of any third party funder. We do not rate, assess or approve the financial security of any funders albeit the funder may be regulated by ALF for capital adequacy purposes. ALF's Code of Conduct requires their members to maintain at all times adequate financial resources to meet their obligations to fund all of the disputes that they have agreed to fund, and in particular maintain the capacity:

- (i) to pay all debts when they become due and payable; and
- (ii) to cover aggregate funding liabilities under all of the funder's litigation funding agreements for a minimum period of 36 months.

Please note that we may approach funders who are not members of ALF. If an offer of funding is made, we will inform you as to whether or not that funder is a member or whether they have committed to comply with the Code of Conduct, even if they are not members of ALF.

Maintenance (Champerty)

The third party funding market is relatively new and has emerged following case law which has restricted the application of the doctrine of maintenance (and champerty) which had previously prevented funders with no prior connection to the litigation from funding legal costs, without exposing themselves to unlimited adverse costs.

However, the doctrine of maintenance still exists and TheJudge cannot provide any assurance that any particular funding agreement will not contravene the doctrine of maintenance either now or in the future.

This is still a developing area of law and it is possible that test cases will be brought in the future which could affect the legality of any specific litigation funding agreements.

One important factor for the courts to consider when determining whether a funder has breached the doctrine of maintenance is the level of control which the funder exerts over the litigation. It is important that you retain ultimate control of the decisions in the litigation albeit the funder will want to be informed of developments and settlement discussions.

The LFA may contain a provision for the funder to withdraw funding if the case does not progress favourably, in order to minimise the funder's loss.

Confidentiality

All information about you provided in support of this application will be treated as private and confidential.

Privilege

Arranging ATE insurance and/or litigation funding will necessarily involve information being provided to us which is subject to litigation privilege and/or legal professional privilege. We will in turn share this information with the providers which we have selected for inclusion in our active search of the market.

Whilst this information will be shared with participating providers on the expectation that it will remain privileged from disclosure, we cannot guarantee that this will be the case and therefore if you have any concerns regarding this issue, please contact us.

Please note it is possible for the opponent to successfully apply to the court for disclosure of the ATE insurance policy or litigation funding agreement albeit the courts have demonstrated sensitivity towards ordering disclosure of prejudicial aspects of these documents during live proceedings.

Data Protection

The only personal information about you which we will retain will be that provided by you in the course of seeking insurance and/or funding. If you have any queries, please do not hesitate to contact us.

Termination

This agreement can be terminated by either one of us giving 3 days' written notice to the other.

If an insurance policy and/or litigation funding arrangement has been executed prior to termination of this agreement, we reserve the right to retain any fees, brokerage or entitlement to fees or brokerage which may become payable following termination. All obligations to pay us brokerage on deferred insurance premiums or contingent third party funding success fees in accordance with the "Our Earnings" section of this document will survive the termination of this agreement.

If an insurance policy and/or litigation funding arrangement has not been executed prior to termination of this agreement, but you later execute an insurance policy and/or litigation funding arrangement with a provider that we have approached on your behalf, we reserve the right to charge a reasonable fee for introductory services which might equate to the full brokerage due had this agreement not been terminated.

Complaints

We aim to provide the highest level of customer service possible, at all times. That said, if you wish to make a complaint about our services, we do have a formal complaints procedure. In the first instance, you should contact us directly either in writing or by telephone. If you are contacting us in writing, please address your complaint to:

The Complaints Office,
TheJudge Canada Limited
120 Adelaide Street West,

Suite 2500, Toronto,
Ontario, M5H 1T1

Or, alternatively, you can call us on +1 416 238-6730

If you make a complaint, we will acknowledge it promptly, explain how we will handle your complaint, explain what you need to do (if anything) and update you as to how your complaint is progressing.

If we cannot resolve your complaint straight away, we will acknowledge its receipt promptly and arrange for a senior representative to investigate the matter and provide you with a response.

If the complaint relates to our role as an insurance intermediary and we are unable to resolve the issue, you may be entitled to refer the matter to the Financial Ombudsman Service ('FOS'). If you are eligible, we will provide you with details of how to refer to the FOS when we send you our final written response or at 8 weeks after receipt of your complaint (whichever is the earliest).

Limitation of TheJudge Liability

We will not be liable to you for any direct or indirect losses, damages or costs or expenses incurred or suffered by you as a result of or in connection with any service that we provide to you hereunder unless directly caused by or attributable to our negligence, wilful deceit or fraud (or that of our directors, officers or employees).

Governing Law and Jurisdiction

These Terms of Business and any dispute or claim arising out of or in connection with the same or the subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Canadian national and provincial law.

The parties irrevocably agree that the courts of Canada, and the courts of the province of the applicants' residence, shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).