



TO THE BAG

THE ONE THAT PROTECTS ALL OTHERS

To the *Bag*:

As a long-time voracious consumer of the *Bag*, I was struck by the reach of Mr. Munford’s recent article,¹ and in particular his suggestion that litigation’s “inherent nature is to cause hurt beyond what anyone might have originally thought reasonable.” Say what?

Putting aside his well-documented and articulate critique of the funding piece – as a defender in the pelvic mesh world who has no doubt seen his share of sharp elbows in MDL practice, I get his point – let’s not throw the baby out with the bathwater. Litigation is a check on the market whose avarice is, in Blackstone’s terminology, an “engine of oppression” to many, many consumers. And as for the litigation privilege, it goes back four centuries and is one of the bases of our adversary system: “A counselor in law retained hath a privilege to enforce any thing which is informed him by his client, and to give it in evidence, it being pertinent to the matter in question, and not to examine whether it be true or false.”²

But more to the point, remember that litigation preserves the Seventh Amendment right to a jury trial, the one that protects all others.

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¹ Luther Munford, *What’s Wrong with Third-party Litigation Funding?*, 25 GREEN BAG 2D 109 (2022).

² *Brook v. Montague*, 79 Eng. Rep. 77, 77 (K.B. 1606).