



Third-Party Litigation Funding

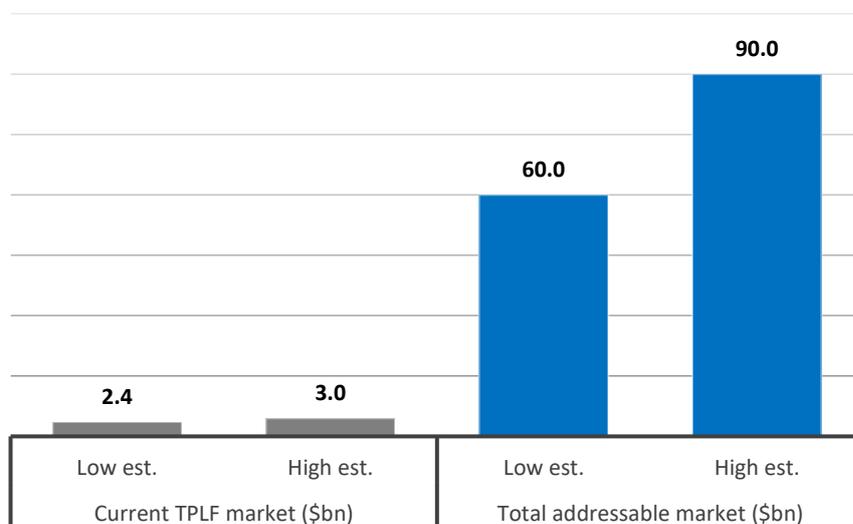
Just how big is this market anyway?

“Critics and proponents alike agree that the rise of litigation finance is the single most important development in civil justice”

Professor Maya Steinitz, College of Law, University of Iowa, 2019

- Third-party litigation funding (TPLF) is considered to be one of, if not the most important developments in the civil justice system in recent times
- In less than ten years, the practice of non-parties funding plaintiff’s litigation has moved from the side-lines to the mainstream as a way of financing access to justice
- Investing in legal claims is increasingly seen as an attractive alternative investment class given above average returns which are uncorrelated with other asset classes
- Despite the interest in litigation financing from both investors and academics, figures on the size of the current and total addressable market remain elusive
- We estimate the current market for third-party funding measured by total annual commitments to be between **USD2.4bn** and **USD3.0bn**
- Using total legal services expenditure data combined with funder level commitments, we estimate the total addressable market to be between **USD60bn** and **USD90bn**
- Relative to our estimates of total expenditure on litigation, third-party funding currently only represents between **1.7%** and **2.1%** of the total litigation market
- Given the low penetration rate and the large addressable market, third-party funding looks set to experience continued strong growth for the foreseeable future

Figure 1: Estimates of the current and the total addressable market for TPLF



Source: SEAL Advisors

Scott Evans
 sevans@london.edu
 +44 (0) 7703 570018

Matt Fletcher



Introduction

TPLF is the hot topic

Litigation finance is viewed as one of the hot, if not the hottest topics in civil litigation. The practice, whereby a third-party finances the legal representation of a party involved in litigation in return for a profit¹ has, in a relatively short space of time become “[the] civil justice systems’ killer app. Unheard of yesterday, it is a mainstay today.”²

From the shadows to mainstream

While the practice is not as new as many writers would suggest, it is certainly true that third-party funding (TPLF), until the beginning of this century was near-universally regarded as a crime³. Even now in certain states of the US, TPLF is interpreted by state legislators as contravening the medieval doctrines of maintenance and champerty⁴. As these anachronistic laws have either been abolished or are no longer rigorously applied, the market is experiencing substantial growth and moving from the shadows of litigation to the mainstream of financing access to justice.

The size of the market is unclear

From small beginnings in Australia, to a rapidly growing industry in the US and UK, TPLF is viewed as big business by lawyers and investors alike. But figures on the actual size of the market remain elusive. The lack of disclosure and the myriad of different approaches towards the eligibility of TPLF in different countries and even within countries (i.e. at a state and province level) makes estimating the actual and, more importantly, potential addressable market a difficult exercise. With these caveats in mind, this research paper attempts to estimate the current and total global addressable market for litigation funding and assess the longer-term opportunities for TPLF.

Methodology

Little analysis available on the size of the market

We start by surveying the academic literature and look for references to current and potential market size. This is followed by an analysis of the main listed providers of TPLF which includes Burford Capital, Omni Bridgeway and Litigation Capital Management. We examine the information in their company accounts and in investor presentations on the actual and/or addressable market.

We use published (and implied) data on annual commitments and fund size to estimate market penetration levels and the implied current market size. We then scale-up our estimates to calculate the total addressable market.

We estimate the market size using a variety of criteria

This is followed by a “top-down” analysis using data on the size of the global legal services industry, cross-referenced with regional and sectoral estimates of the size of the litigation market. From this we derive values for expenditure committed to commercial litigation. Using our estimates from our top-down approach we triangulate the findings with the estimates from our bottom-up analysis and provide a range for the addressable market.

Many aspects will drive growth

In the final section we provide a more qualitative approach to the assessment of TPLF and discuss a number of aspects that are could impact the growth in the actual and addressable market. This includes: an increasing awareness of litigation financing, increasing acceptance of TPLF as a mainstream service as opposed to a minority legal activity, a reduction in the willingness of plaintiffs to forgo litigation due to concerns over cost, an increase in the acceptance of litigation funding as a legitimate alternative asset class, the establishment of a secondary market for claims trading and the opening up of new markets driven by what we term the three “Rs” of litigation funding.

¹ See Sahani (2017), *Reshaping Third-Party Funding*, Tulane Law Review, Vol. 91, 405 (2017)

² Bedi & Marra (2020), *The Shadows of Litigation Finance*, Vanderbilt Law Review

³ Steinitz (2019), *Follow the Money? A Proposed Approach for Disclosure of Litigation Finance Agreements*, UC Davis Law Review

⁴ Maintenance is defined as the support of litigation by a stranger without just cause. Champerty, which is a species of maintenance, is defined as the support of litigation in return for a share of the proceeds (see Velchik and Zhang (2019) for a full explanation)

The Academic's View

Major area of research

Since the publication ten years ago of the highly influential research paper by Professor Jonathan Molot⁵, litigation funding has become a major area of academic research. It is often referred to as a new area of the law, “*that has rapidly become one of the most innovative trends in civil litigation financing today*”.⁶

As recently as 2019, Professor Steinitz (a leading name in this area) refers to litigation finance as, “*the new and fast-growing practice by which a non-party funds a plaintiff's litigation either for-profit or for some other motivation*”⁷. In the same research paper, Steinitz also states that, “*some estimates place[d] the size of the litigation finance market at 50–100 billion dollars.*” This estimate, which has quickly assumed the status of fact, actually derives from a comment from a legal analyst at a US hedge fund reported in an on-line news article interview⁸. As far as we are aware this was just a reasonable guesstimate with no analytical data to substantiate it. This however, has not stopped academics (and many non-academics) referring to it as fact.

Third-party funding is not new

With regard to TPLF being considered as new, this is an important aspect of the market that needs to be taken into consideration when attempting to estimate its size. As Velchik and Zhang⁹ point out, litigation finance (in the general sense) is not new at all and in fact is widespread throughout [the US] legal system. They go on to state that, “*history reveals that litigation finance is as old as the Greeks*”. The point they are making (and relevant to this analysis) is that if you take into account the activities of public interest organisations¹⁰, contingency fee arrangements, insurance subrogation and bankruptcy claims trading, then third-party funding in the area of civil litigation has been in existence for many years. However, what we are interested in is what the Velchik and Zhang refer to as “*Litigation Finance Proper*.” They define this as, “*investments in litigation by a third person not originally a party to the suit.*” It is this definition that we adhere to when assessing the size of the market.

Most research looks at the established markets

With regard to academic research on litigation finance “proper” the majority of the analysis has focused on the early-adopter markets of Australia and the UK, and more recently on the US. Most of the work concentrates on data disclosed by the dedicated TPLF entities such as Burford, IMF Bentham (now merged with Omni Bridgeway), Juridica¹¹ and some private companies and funds such as Harbour, Woodsford, Vannin¹² and Therium. Earlier research by Legg et al¹³, Veljanovski¹⁴, Hodges et al¹⁵, Barker¹⁶ and Kalajdzic et al¹⁷ provide various statistics on funders, case size and commitments, but are vague on overall market size.

⁵ See Molot (2010), *Litigation Finance: A Market Solution to a Procedural Problem*, Georgetown Public Law Research Paper No 11-134, 2010. Professor Molot is also the CIO of Burford Capital.

⁶ See Morpurgo (2012), *A Comparative Legal and Economic Approach to Third-party Litigation Funding*, Cardozo Journal of International and Comparative Law, Vol. 19, pp. 343, 2011

⁷ Steinitz (2019) see footnote 2

⁸ Brian Barker (2018), *In low-yield environment, litigation finance booms*, MarketWatch, August 21.

⁹ Michael K. Velchik and Jeffery Y. Zhang (2019), *Islands of Litigation Finance*, Stanford Journal Law, Business and Finance, Vol 24:1

¹⁰ Public interest organizations use individual instances of litigation to promote policies for the general public (see Velchik & Zhang for more details)

¹¹ Juridica was de-listed from the UK's AIM market in December 2018 and subsequently liquidated.

¹² Acquired by Fortress in 2019

¹³ Legg, Travers, Park & Turner (2010), *Litigation Funding in Australia*, UNSW Law Research Paper No. 2010-12

¹⁴ Veljanovski (2012), *Third Party Litigation Funding in Europe*, Journal of Law, Economics and Policy, Vol. 8, 2012

¹⁵ Hodges, Peysner and Nurse (2012), *Litigation Funding: Status and Issues*, Oxford Legal Studies Research Paper No. 55/2012

¹⁶ Barker (2012), *Third Party Litigation Funding in Australia and Europe*,

¹⁷ Kalajdzic, Cashman and Longmoore (2013), *Justice for Profit: A Comparative Analysis of Australian, Canadian and U.S. Third Party Litigation Funding*, American Journal of Comparative Law, Vol. 61, No. 2, 2013

TPLF estimated in the low billions of dollars

In a more recent paper discussing the size of the market, Russell¹⁸ states that “a *safe estimation would put the amount of litigation financing in the legal market at somewhere in the low billions of dollars*”. Unfortunately for us he provides little data to back up that claim (and it appears the quote is actually attributed to a trade press article by a different author¹⁹). Abrams and Chen²⁰, claim their paper is the first empirical analysis of the litigation market. However, they only focus on Australia and provide no data on the size of the market. Interestingly, they also state that “[w]hile there have been several excellent theoretical discussions on the topic [i.e. litigation funding], there has been little formal work and no empirical work conducted.”

Lack of estimates in the literature

In fact, having searched the entire Social Science Research Network (SSRN) for all research articles (both journals and working papers) we did not find papers written after 2010 that explicitly attempt to estimate the current or potential size of the litigation funding market. This is despite the very large number of research papers dedicated to this topic.

Looking back to the Steinitz (2019) paper where the USD50 to USD100 billion quote came to prominence we should probably not be surprised by this lack of empirical analysis as in a footnote reference to the figures, the author states “*since almost all funders are privately-held, and since substantial numbers of financings are provided by ad hoc funders, not dedicated litigation financiers, definitive numbers are unavailable*”.²¹

While it is easy to criticise the academic world for not having a view on the actual size of a market they confidently state is very large, it is worth noting that in a recent survey conducted by Bloomberg Law²² which asked lawyers and funders for their estimate of the US litigation finance market, 43% of the respondent had no view. Of the remaining 57%, the estimates ranged from less than USD10 billion to more than USD25 billion.

In summary, having trawled through the extensive academic literature on litigation finance, the consensus from the scholars is this is an important, innovative, controversial and fast-growing industry. It is rapidly becoming mainstream, but the current and potential market size is unknown.

The funders' view

Next step is the funders

With little help from the academic world our next port of call is the funders themselves. Our starting point is the dedicated funders (listed and private) and we look for any statistics published relating to the addressable market. For the listed companies (Burford, Omni Bridgeway and Litigation Capital Management) we reviewed their annual reports, investor presentations and their regulatory filings. For the private companies we focused on the largest which includes Harbour, Therium, Parabellum, Augusta and Woodsford. We also checked for available statistics from investment firms D.E. Shaw and Fortress, the latter having acquired Vannin Capital in 2019. Where available we checked their websites, investor brochures and if available their company accounts. In a number of cases we made direct contact with the companies/funds.

Of the private companies, most provided some details on their funds under management but none provided (or if asked, were unwilling or unable to provide) data on what they considered to be the addressable market. In fact, Parabellum explicitly state the current

¹⁸ Russell (2017), *Litigation Financing's Increasing Presence in Biglaw and the Legal Market*, available via the SSRN

¹⁹ Ben Hancock, *Who Rules the World of Litigation Funding*, AM. LAW., March 30, 2017

²⁰ Abrams & Chen (2017), *A Market for Justice: A First Empirical Look at Third Party Litigation Funding*, University of Pennsylvania Journal of Business Law, Vol. 15, P. 1075, 2013

²¹ Steinitz (2019) – see footnote 2

²² Bloomberg Law (2019), Commercial Litigation Finance, Litigation Finance Market Survey

“impossible to put a number on the addressable market”

size of the asset class (i.e. the actual size as opposed to addressable market) is unknown.²³ No information was available from DE Shaw or Fortress.

Of the listed companies, all three provide a variety of industry statistics and details of their own commitments. Burford, which has a portfolio size of USD4.2bn, making it by far the largest of the litigation funders, state in their annual report (2019) that “*it is impossible to put a number on Burford’s addressable market*”²⁴. The same is true for Litigation Capital Management who provide a great deal of qualitative information on potential growth in all major (and emerging) markets, but they do not provide any guidance on the size of their addressable market. Of all the funders we checked only Omni Bridgeway provided details on what they consider to be the addressable market.

Forecasts from Omni Bridgeway

Their approach is to consider the total addressable market (TAM) as a subset of the estimated litigation portion of total legal spend, which itself is a subset of total market legal spend (litigation and non-litigation combined). Table 1 below summarises their estimates. Using a straight split of 50% of the proportion of litigation expenditure in each major region their estimates suggest the TAM is approximately USD70bn (AUD100bn).

Table 1: Omni Bridgeway’s estimate of the litigation funding TAM

Region	Estimates (USD bn)		
	Total legal spend	Proportion on litigation	Addressable market
US	330.1	118.8	59.4
UK	40.9	10.8	5.4
Australia	14.6	2.9	1.5
Canada	19.4	2.7	1.3
Asia	ND	ND	2.7
Total			70.3

Source: Omni Bridgeway, January 2020 investor presentation (figures have been converted from AUD to USD at a rate of 0.70)

US is estimated to be 85%

Assuming these estimates are broadly correct, the most striking feature (although not entirely surprising) is the proportion attributed to the US. On their estimates the US accounts for 85% of the addressable market compared to just circa 10% for the UK and Australia combined.

How realistic these estimates are is the subject of a recent journalist article published in Bloomberg Law with the title “Nobody Knows Litigation Finance Size, but It’s Not \$85 Billion”²⁵. The journalist questions these figures on the basis that they bear no relation to the actual US market size which he quotes from a recent survey from Westfleet Advisors²⁶ as being USD2.3bn (2.7% of the \$85bn estimate). A couple of points to highlight; firstly, Omni Bridgeway estimated the addressable market in the US to be AUD85 not USD85, a 30% difference. Secondly, the USD2.3bn estimate of the actual US market originates from surveys of funds under management from listed and private litigation funders, a number of which do not supply any information to their survey.

²³ The Third Party Litigation Funding Law Review – Edition 3, *United States*, Dec 2019

²⁴ Burford Capital, Annual Report 2019, page 14

²⁵ Roy Strom (2020), *Nobody Knows Litigation Finance Size, but It’s Not \$85 Billion*, *Bloomberg Law*, Jun 11, 2020

²⁶ See WestFleet Advisors (2019), *Litigation Finance Buyer’s Guide*

So, from our searching for guidance on the TAM we have one just estimate from the academics of between USD50 to USD100bn, one estimate of USD70bn from a funder and a highly sceptical journalist that disputes all these numbers. Clearly, the next step is to take the plunge and make our own estimates.

Our view

We start by estimating the current market size

The starting point for us was to estimate the current market size in terms of the annual commitments from the main providers of litigation funding. As with the addressable market there are no precise figures available, although we can observe commitments from the listed funders. Most of the dedicated unlisted funders (as opposed to occasional/ad hoc funders such as hedge funds, family offices and private investors) provide data on total funds under management and we make an estimate of the relationship between total funds and annual commitments²⁷. For the listed funders, Table 2 compares the latest year-end commitments. With the caveat that Burford's numbers are for a slightly earlier period (year-end Dec 2019) than Omni Bridgeway and Litigation Capital Management, the estimated current market size relating to the listed funders is just under USD2bn.

Table 2: Annual commitments by the listed funders (disclosed amounts)

Funder	Year-end	USD (mn)
Burford	Dec 2019	\$1,573
Omni Bridgeway	June 2020	\$222
Litigation Capital Management	June 2020	\$104
Total		\$1,900

Source: Company reports and presentations

Low estimate USD2.4bn

To take account of the private funders there are two approaches we can pursue. Firstly, if we assume that Burford accounted for circa 65% of total industry commitments (in 2019/2020) this would entail the equivalent total annual commitment of **USD2.4bn** (i.e. $1,573/0.65$). This would leave the proportion of unlisted companies/funds of total annual commitments to be USD520m. The second approach is to look at the proportion of funds under management (FUM) for both the listed and unlisted companies and assume the relationship between FUM and commitments is broadly similar for the two groups.

High estimate USD3bn

Table 3 provides a summary of the estimated funds under management for listed and unlisted funders, the sum of which is USD9.2bn. This is split 63% relating to the listed group and 37% to the private funders. Applying these proportions to the total commitments in table 2 we arrive at total current market of just over **USD3bn** (i.e. $1900/0.63$). This provides a range of the current market of between USD2.4bn and USD3bn. This estimated range compares relatively closely to the study by Westfleet Advisors. They focus on the US market and survey 41 companies they have identified as providing litigation financing. They estimate a total FUM figure of USD9.5bn and total commitments of USD2.33bn. If we assume around 85% of the commitments in our estimated market figures relate to the US (i.e. based on information provided by the listed companies on their regional exposures and Omni Bridgeway's assessment of the addressable market) we estimate that the **US represents between USD2bn and USD2.6bn**. Westfleet's figure being exactly in the mid-point of this range.

²⁷ It is the committed capital that relates to the actual market as opposed to funds under management, a proportion of which may be uncommitted

Table 3: Estimated funds under management of the listed and unlisted funders

Group	Funders	USD (mn)
Listed companies	Burford*, Omni Bridgeway, Litigation Capital Management	5,800
Private companies	Augusta, Harbour, Longford, Parabellum, Therium, Woodsford	3,400
Total		9,200

*Burford includes balance sheet investments
Source: Omni Bridgeway, Westfleet Advisors, SEAL Advisors, company accounts & filings

Current market size between USD2.4bn and USD3bn

Table 4: Estimated size range of the current litigation funding market

Estimate	Main Assumptions	Size
Low estimate	Listed funders = 78% of annual commitments, Burford = 65% of total annual commitments	\$2.4bn
High estimate	Proportions of funds under management for listed private cos = 63%/37%	\$3.0bn

*Source: Omni Bridgeway, Westfleet Advisors, SEAL Advisors, company accounts

Estimating the TAM on the basis of penetration rates

Having estimated the current market size to be between USD2.4bn and USD3bn one approach to estimating the TAM is to apply a market penetration rate of litigation funding to these current market figures. Compared to the figures for total legal spend estimated by Omni Bridgeway (given in Table 2) the penetration rate even at the high end of the range (i.e. USD3bn) is very small.

As we show later in this analysis, if we include Asia, Middle East and the rest of the world, the global legal services market in 2018 is estimated to have been USD670bn²⁸ increasing to just over USD700bn by end 2019. This includes all aspects of legal spend, on all categories with only a proportion of that value being litigation spend. If we make the assumptions that around 30%²⁹ of US legal expenditure is on litigation, falling to between 10% and 25% for other major legal services market we arrive at an estimate of global litigation spend in 2019 of just over USD140bn³⁰.

This value for the global litigation market would indicate that on our estimates the market penetration rate is between 1.7% and 2.1%. This is a lower figure than the implied penetration rate of the US of 3.9% using data from Omni Bridgeway and Westfleet Advisors, but is more in-line with other commentators (e.g. AxiaFunder and Litigation Capital Management) who have indicated a US penetration rate of around 2%³¹.

Large range in the potential TAM

Table 5 estimates the TAM based on penetration rates (2% to 4%) and current market size based on total annual commitments (USD2.4bn to USD3bn).

²⁸ Source: Market line

²⁹ Omni Bridgeway's estimates in table 2 indicate 36% of total US legal spend is on litigation. This compares to around 27% as estimated by Grand View Research (see US legal services market size, by services 2014 to 2025 www.grandviewresearch.com)

³⁰ See table 8 in this publication

³¹ See Litigation Capital Management Ltd FY19 Results Presentation, September 2019. Note that AxiaFunder cites a US penetration rate of third-party litigation funding of 2% - see www.axiafunder.com/guide-to-litigation-funding

Table 5: Implied total addressable market (TAM) based on penetration rates

Market size (Current)	Market penetration rate (current)				
	2.0%	2.5%	3.0%	3.5%	4.0%
	Total addressable market (potential)				
\$2.4bn	\$120bn	\$96bn	\$80bn	\$69bn	\$60bn
\$2.6bn	\$130bn	\$104bn	\$87bn	\$74bn	\$65bn
\$2.8bn	\$140bn	\$112bn	\$93bn	\$80bn	\$70bn
\$3.0bn	\$150bn	\$120bn	\$100bn	\$86bn	\$75bn

Source: Market Line, SEAL Advisors

Mid-point range gives a TAM of USD90bn

As Table 5 shows, the addressable market is very sensitive to the assumed penetration rate. At the low end (i.e. 2% penetration) the addressable market ranges from \$120bn to \$150bn. At the high end (i.e. 4% penetration) it ranges between \$60bn and \$75bn. **The mid-point range being \$90bn (i.e. USD2.7bn current market and 3% penetration rate).**

Acceptance rates

An alternative to using penetration rates is to use acceptance or case rejection rates. The rationale behind this approach is that in a relatively new market with a limited number of participants, the suppliers of funds will naturally focus on larger claims and those promising the best risk-adjusted returns. Apart from the desire to invest in claims which have the largest asymmetries in terms of potential pay-offs (i.e. highest investment-to-pay out ratios), the larger claims can be better scaled relative to opex of the funders.

Between 93% and 97% of cases are rejected

Industry acceptance rates typically range between 3% and 7% of claims considered for funding. In other words, **between 93% and 97% of cases are rejected.**³² A number of cases will be rejected because they are not suitable for funding given case quality issues such as ill-defined legal precedents, unreliable evidence, lack of disclosure or are just far too speculative. In other words, they are considered meritless from the outset. Some will be rejected because of a low calculated probability of success based on historic cases, while others will be not be pursued because of lack of recoverability in the event of a win (i.e. the defendant has gone bankrupt).

While we have very little data on why cases are rejected, many industry commentators suggest that a large proportion of potentially valid claims are not pursued simply because of size. Writing in the *Litigation Finance Journal*, Tets Ishikawa of LionFish (a subsidiary of UK listed legal services firm RBG Holdings) states:

There is a consensus that [the] “mid-value” spectrum (call it the £250k to £5m claim mark) remains “untapped” because of the natural barriers to entry of most funders. They have issues with scalability. Pricing remains another major obstacle because a share of the award is economically unviable. On a practical level, the time and resource spent arranging funding for mid-value claims doesn’t make sense for them or the lawyers they so rely on. But as this mid-value market

³² Burford 2019 acceptance rate is 7%; Omni Bridgeway FY20 conversion rate is 3-5%; Litigation Capital Management FY 2020 acceptance rate is 3.5%.

also represents the mass market, this conundrum needs resolving for the market to truly develop.³³

Adjusting for meritless claims

Whatever the reason for rejection, what is clear is that with acceptance rates as low as 3% there are a very large number of cases going unfunded. To derive an addressable market based on acceptance rates we need to make a number of assumptions. Firstly, we assume a quarter of all claims, regardless of size are without merit (this could be higher or lower but a quarter seems a reasonable estimate to start with). From the “raw” acceptance rate range of 3 to 7%, the adjusted acceptance rate would be in the range of 4.0% to 9.3% (i.e. $3/(1-0.25)$ to $7/(1-0.25)$)

Focusing on the US market, if we applied these adjusted acceptance rates to our estimated range of the current US market size (i.e. USD2bn to USD2.6bn) the implied addressable US market ranges are as shown in table 6. As the table shows, varying the acceptance rate has a large impact on the implied addressable market. Using the low value for the current market of USD2bn and a high estimate for acceptance rate of 9.3%, the implied addressable market for the US is just \$21bn. At the other end of the range, assuming the current US market is worth £2.6bn and the adjusted acceptance rate is 4%, then the implied US addressable market rises to USD65bn.

Table 6: Implied US addressable market based on adjusted acceptance rates

Current US market (est.)	Adjusted acceptance rates*	
	9.3%	4.0%
\$2bn	\$21bn	\$50bn
\$2.6bn	\$28bn	\$65bn

*adjusted for the assumption of 25% of all claims are rejected for being without merit
Source: SEAL Advisors

Adjusting for size

We also need to take into account that funders tend to focus on the largest cases, meaning that there is likely to be a substantial difference between the proportion of claims accepted on a numerical basis and the proportion of claims accepted on a value basis. This means we should further adjust the acceptance rate for a size factor.

Given the lack of data on the proportion of claims rejected on the basis of size, we adjust the acceptance rates by a sizing factor of 1.5. While this may be an arbitrary number, it has the effect of lowering the rejection rate and taking into account that a number of claims will not enter the addressable market as they are too small. This results in a size-adjusted (and meritless claim adjusted) acceptance rate range of between 6% and 14%. Again, applying these acceptance rates to the US market we get a range of implied addressable market values for the US of a low of USD14bn and a high of USD43bn.

TAM range USD14bn to USD43bn

Table 7: Implied US addressable market based on adjusted acceptance rates

Current US market (est.)	Size adjusted acceptance rates*	
	14%	6.0%
\$2bn	\$14bn	\$33bn
\$2.6bn	\$19bn	\$43bn

*adjusted for the assumption of 25% of all claims are rejected for being without merit & adjusted for size of accepted claims
Source: SEAL Advisors

³³ Tets Ishikawa, 'A Dynamic Decade', article originally appeared in Litigation Finance Journal and posted on the website of Sparkle Capital at www.sparklecapital.co.uk/2018/08/31/ten-years-litigation-funding-market.

On the assumption that the US market accounts for just under 85% of current litigation funding, using the size adjusted rate implies a global addressable market range from USD16.5bn to USD50.6bn.

Too many assumptions

While using an acceptance rate as an implied estimator of the addressable market is a attractive approach in theory, in practice it is rather problematic. We need to make a number of assumptions on how many claims are completely without merit as well as the relative size of claims that are rejected/accepted. Moreover, when estimating the implied addressable market across multiple regions it is likely that we need to further adjust both the meritless claim proportions and the size factor per region.

Unreliable method

In reality, there are just too many unknowns for us to calculate implied estimates for the addressable market with any degree of confidence. However, we can take some important observations from this exercise. Firstly, the addressable market is very sensitive to acceptance rates. Secondly, as the market matures and more funders enter the market, it is very likely that acceptance rates will increase from the current low levels. While this may have an impact on the quality of cases funded, it seems more likely that rather than reducing quality and lowering the win-rate, funders will be more willing to fund smaller cases and accept lower ex-ante probabilities of success.

The top-down approach

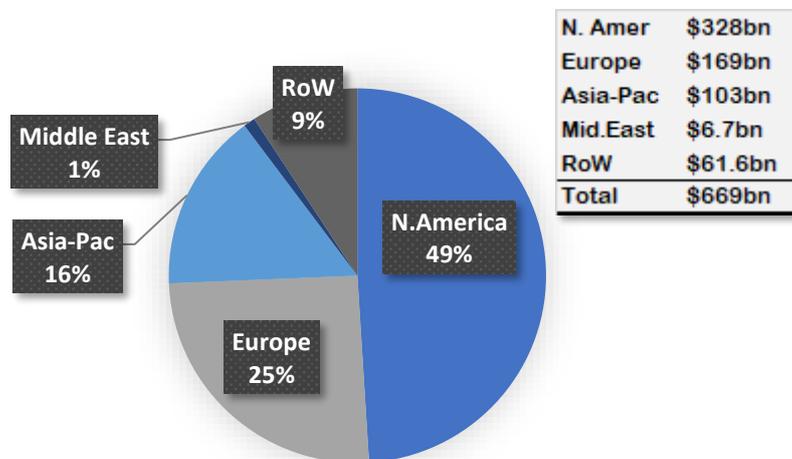
Starting at the top

Our analysis based on penetration and acceptance rates implicitly takes a bottom-up approach by summing up commitments of the individual funders and using the rates to scale-up to a total addressable market. Our final approach is to start at the other end and use data on the total legal services market, estimate the proportion of litigation by region and calculate the proportion of litigation expenditure that can be addressed by third-party funders.

Size of the global market

We start by comparing a number of data sources. This included Market Line, IBIS World, Statista, Grand View Research and various regional legal data providers. In the main we found most sources provided broadly similar results, although Grand View was consistently higher than the others. Figure 2 provides a snapshot of the global legal services market and shows the extent to which North America (96% of which being the US) dominates the market. The whole of Europe amounts to a quarter of the global total and Asia-Pac just 16%.

Figure 2: Size of the global legal services market (2018)

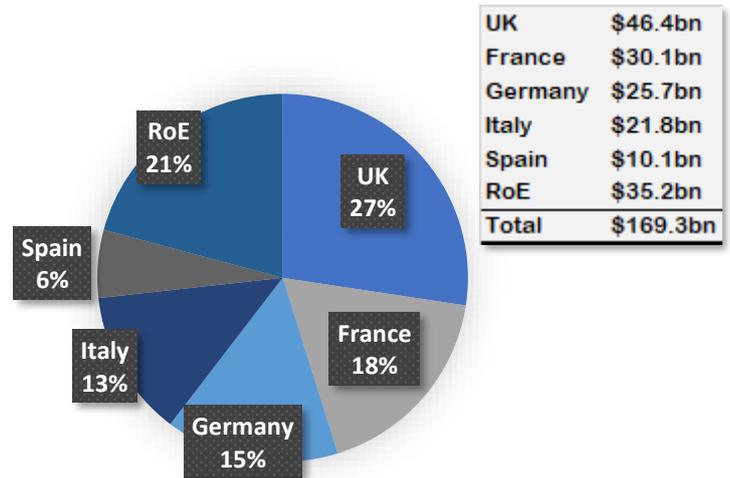


Source: Market Line, Statista, IBIS World, SEAL Advisors

Figures 3 and 4 provide a further breakdown of Europe and Asia-Pac. Within Europe, the UK leads the way accounting for 27% of total legal services, followed by France with 18% and Germany with 15%. Within Asia-Pac, China is listed as the dominant market followed by Australia.

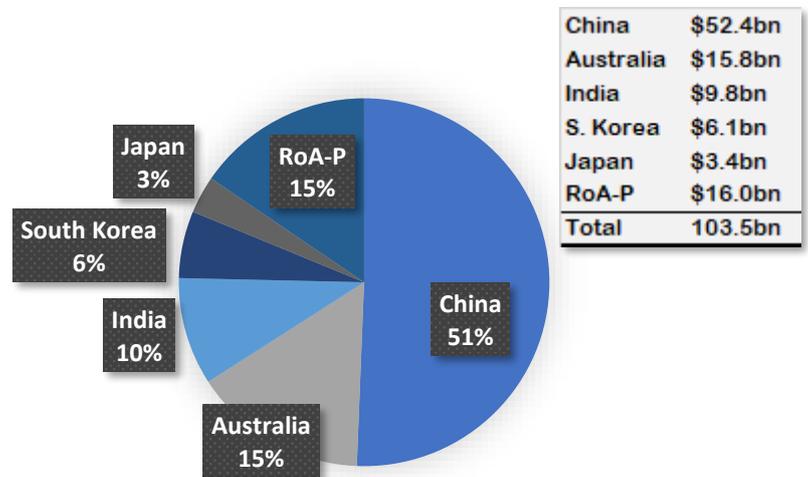
Large variation in data for China

Figure 3: Size of the European legal services market (2018)



Source: Market Line, Statista, IBIS World, SEAL Advisors

Figure 4: Size of the Asia-Pac legal services market (2018)



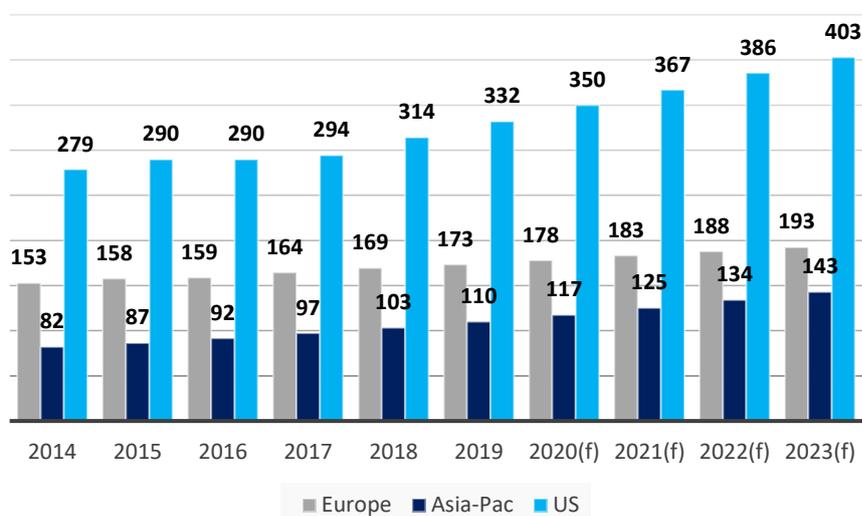
Source: Market Line, Statista, IBIS World, SEAL Advisors

Large variation in data for China

It is worth noting that while our data sources report similar numbers for Europe and North America, we found large differences when looking at China. Whereas Market Line estimates a value of \$52bn (as shown in Figure 3), IBIS World estimates a much lower number at \$12.9bn. Both data sources include the region of Hong Kong, but from what we understand IBIS World only includes the activities of independent attorneys operating in China and excludes in-house corporate law services, foreign entities (operating in China) and has little or no representation from China based litigation. While litigation funding is not illegal in China it is not a market that has attracted much interest from a TPLF perspective and from what we understand is unlikely to do so in the near future. Apart from Australia, the region within Asia-Pac that has attracted the most interest (albeit

in the last 3 years) is Singapore. Like Australia, Singapore is a common law country, although unlike Australia third-party funding is allowed only in specific cases such as international arbitration. While this does limit the growth in TPLF in the region, as we highlight in our section on future prospects, the main funders have started to view Singapore as a good entry point from which to develop litigation funding in Asia. Looking at the trends in the growth in legal services, figure 5 shows that for all three of the major regions the market has maintained steady growth since 2014. In Europe the compound annual growth rate (CAGR) between 2014 and 2019 was 2.5%. This was higher in the US (albeit the growth in Canada has been relatively flat) with CAGR of 3.6%. The fastest growing region has been Asia-Pac with a CAGR over the same period of 6%. The global legal services market has grown more or less line with the US at 3.7%, which is to be expected given the dominance of the US in the legal services market.

Figure 5: Growth in legal services by international regions (\$bn)



Source: Market Line, SEAL Advisors

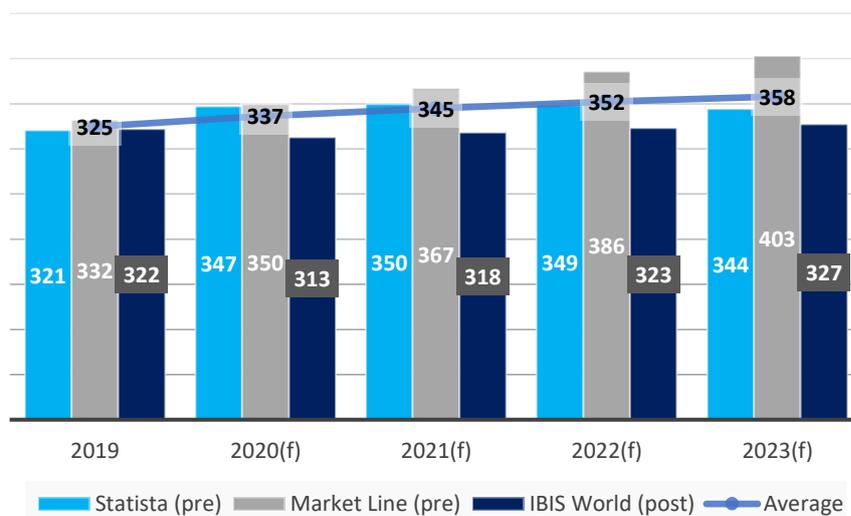
Steady growth in legal services

As well as historic data, Figure 6 also includes forecasts for the legal services market from 2020 to 2023. At the time of forecasting (mid 2019) the US was expected to see an acceleration in growth with a forecast CAGR between 2019 and 2023 of 5%. The same was true for Asia-Pac with a CAGR of 6.8%, although Europe was expected to generate a more pedestrian growth rate of 2.7%. These forecasts were made pre-Covid and would have not have taken into account the significant hit to economic growth, particularly in Europe and the US.

Forecasts made pre-covid

Given the importance of the US for the legal service market, Figure 6 compares forecasts for the region made by our three data sources; Statista, Market Line and IBIS World. As the figure shows, there is a close consensus for 2019 with the average being USD325bn³⁴ with little variation around that number. Both Market Line and Statista show steady growth for the US for 2020 to 2023, but both of these sources will have been made pre-Covid. IBIS World forecasts were updated in mid-2020 and show a more sober picture for outlook with a decline for the next two years. Inevitably, the legal services market will have been impacted during the crisis and the effects will linger for a few years. However, there is an argument to be made that as we face more difficult economic conditions, the litigation market could increase as a proportion of total legal spend, in particular in insolvency and breach of contract cases.

³⁴ For Statista and Market Line, 2019 figures will be part actual and part forecast

Figure 6: Comparison of forecasts for the US legal market pre & post Covid (\$bn)

Source: Market Line, SEAL Advisors

Litigation spending per region

Our next step was to calculate the proportion of total legal services in each broad region which relates to litigation spend. For country and region data we used Market Line, IBIS World and Statista. For the calculation of the proportion spent on litigation (column three in Table 8) and for the proportion that is relevant to TPLF (column five) we used multiple sources. This included information provided by IBIS World, Grand View, Omni Bridgeway, Burford, Litigation Capital Management, The Third-party Litigation Funding Review (The Law Review), various law journals and review articles, as well as data published by regional law associations.

Table 8 summarises the analysis. We start with a 2019 estimate for total legal services expenditure by country and broad region. This amounts to a total value of USD700bn. We then estimate the proportion spent on litigation, which in total sums to USD142bn (which happens to be 20% of the total). This varies by country/region with the US being the highest and the Rest of World category being the lowest. For the latter category we simply

Table 8: Implied addressable market (TAM) from top-down analysis of global legal services expenditure

USD	Total spend*	Litigation Spend**		TPLF addressable market**	
Country/Region	Value (\$bn)	% of total	Value (\$bn)	% addressable	Value (\$bn)
US	332	30%	99.5	45%	44.8
UK	48	25%	11.9	45%	5.3
Australia	16	20%	3.2	45%	1.4
Canada	14	15%	2.1	45%	0.9
Europe ex UK	126	10%	12.6	35%	4.4
Asia-Pac ex Australia	94	10%	9.4	25%	2.3
Rest of World	72	5%	3.6	20%	0.7
Total	701		142.2		60.0

*Source Market Line, IBIS World and Statista. 2019 figures

**Multiple sources. Percentages and values estimated by SEAL Advisors.

Litigation spend varies by region

assign a value of 5% as we have no way of knowing what the true value is. We then assign a percentage of the litigation amount that is relevant to TPLF. In Omni Bridgeway’s analysis they simply assign a value of 50% across the board. In our view this is too high given restrictions on when TPLF can be used and the fact that we are really only interested in commercial litigation and for plaintiffs (TPLF is practically non-existent for defendants), hence we use a value of 45% for the established markets such as the US, UK, Australia and Canada and a lower value for regions such as Europe ex UK and Asia-Pac ex Australia.

Top down TAM estimated at USD60bn

Using our estimated values for litigation spend and the proportion relevant to TPLF³⁵, the final column in Table 8 provides an estimate of the addressable market size for each of the regions/countries. The sum of the regional/country addressable market’s gives an estimate of the **total addressable market of USD60bn**.

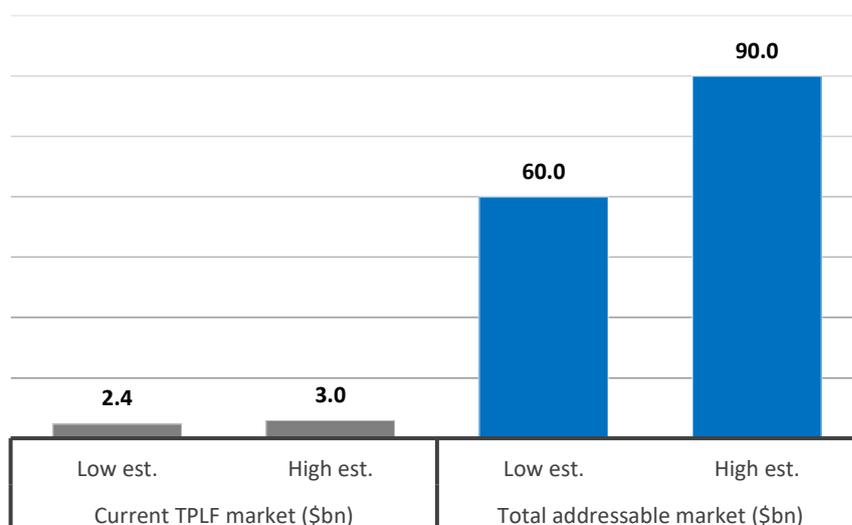
Summing up the TAM

We have presented a number of potential ways and a number of estimates for the total addressable market for litigation funding. It is not an exact science and does require assumptions to be made whether starting from the level of the funder and scaling up, or starting at the top and scaling down. While attempting to estimate the TAM via the acceptance/rejection rate is an attractive concept in theory, in practice there are just too many unknowns and so we have not incorporated the results in to our estimates of the TAM. The market penetration approach is sensitive to the rate chosen, but nonetheless relies on fewer unknowns. Similarly, the top down approach using macro level data necessitates some broad assumptions, but results in sensible estimates.

TAM range USD60bn to USD90bn

Rather than give a point estimate of the global TAM, we present a range based on analysis in this report. At the top end we take the mid-point of the penetration rate analysis i.e. a current market estimate of USD2.7bn and a penetration rate of 3%. **This gives a TAM of USD90bn**. At the bottom of the range we use the estimate from our **top down analysis which is USD60bn**. Relative to the global legal services markets in 2019 these estimates represent 9% and 13% for low and high point of the range respectively.

Figure 7: Estimates of the current and potential addressable market for TPLF



Source: SEAL Advisors

³⁵ We take a number of factors into account to calculate the % addressable market including, restriction on where TPLF can be used, the types of litigation that are prevalent in each region and level of awareness of TPLF.

Figure 7 plots the high and low estimates for current TPLF market and our estimated range for the addressable market. From the figure it is quite clear that there exists a significant opportunity for third-party funding and that this has a long way to go address the potentially unmatched demand.

Further aspects to consider

Number of aspects affecting the future market

As the litigation market moves from the sidelines to the mainstream of the legal services industry, there are a number of additional aspects that can be considered when assessing the potential growth of the addressable market. Such aspects include:

1. An increasing awareness and understanding of litigation financing, especially within the corporate sector
2. An increasing acceptance of litigation funding as a mainstream service as opposed to a minority legal activity
3. A reduction in the willingness of plaintiffs to forgo litigation due to concerns over cost
4. An increase in the acceptance of litigation funding as a legitimate alternative asset class
5. The establishment of a secondary market to provide the potential to trade investments in claims
6. The opening up of new markets driven by the three “Rs” of Region, Regulation and Recipient

All of the above are research papers in their own right, so here we just briefly summarise the developments and/or the potential of each.

Awareness growing but further to go

With regard to points 1 and 2, Burford Capital 2019 Legal Finance Report shows there has been a steady increase in the awareness and acceptance of litigation finance as an important tool for lawyers. They also show relative to their 2018 survey there has been a significant rise in practitioners who regard themselves as very familiar with litigation finance (as opposed to vaguely familiar or unfamiliar). They also show that among the legal profession in the main TPLF regions (i.e. US, UK, Australia and Canada) there remains a significant proportion of lawyers (i.e. 30%) who do not consider themselves very familiar with TPLF. As Burford point out, while there have been great strides in the understanding and acceptance of TPLF, “[c]ontinuing education is needed—even among lawyers who claim awareness of legal finance”. What this means is there is steady progress in the understanding and awareness of TPLF, but there is still further to go.

Legal claims forgone

On plaintiff’s forgoing litigation, the recent Burford survey has some very interesting responses from in-house lawyers on this issue. They report that 72% of those surveyed have failed to pursue meritorious legal claims on the basis of cost. In other words, concerns over the potential impact to the bottom-line leads them to “leave recoveries on the table”. More revealing is the assertion that 65% of in-house lawyers report that their companies have unenforced judgments or uncollected awards of USD20m or more. Against a backdrop of a greater awareness and understanding of litigation finance, it seems inevitable that the willingness to forgo pursuable claims will diminish. In turn, this could have a sizeable impact on the use of TPLF.

Becoming a major asset class

As an asset class, TPLF has grown from almost nothing ten years ago to an industry with over USD9bn in dedicated funds. If we include hedge funds, family offices and other specialist investors, who do not disclose their investments (in litigation cases) the total value invested in the asset class is likely to be quite a bit higher. As the likes of Burford and Omni Bridgeway have shown, TPLF investment offers the potential for significant

returns. In a Bloomberg article in 2018 ³⁶ the author reports (based on analysis by Goldman Sachs) that over the medium term, litigation funding had on average outperformed private equity, real estate, credit and hedge fund investments. TPLF also has the major advantage of being uncorrelated with other asset classes, making it ideal for portfolio diversification.

Secondary market is next step

As TPLF grows as an asset class, the establishment of a secondary market becomes increasingly important. Currently, there is no centralised venue for the trading of litigation investments. In fact, there is practically no secondary market in claims trading other than investing directly in the shares of the listed funders. While the establishment of a secondary market is not without controversy and/or challenges, it seems a logical next step for this rapidly growing market. Among the academic writers there has been a few papers published which discuss the benefits of establishing markets for claims trading (e.g. Molot³⁷, and Goral³⁸), but the majority have focussed on the primary market and when discussing the potential for secondary trading have tended to focus on the ethical and regulatory issues.

Significant potential from trading legal claims

From our perspective, a secondary market could have a significant impact on the industry as the provision of liquidity leads to an expansion of the investor base as well encouraging new primary funders. With increased fund flows into the market, the knock-on effect could be a lowering of the case rejection rate, the lowering of the probability of success hurdles, increasing the penetration rate of legal services expenditure and the expansion of the total addressable market. While it is difficult to estimate the potential size of a secondary market in litigation claims, we can look to the insurance and reinsurance markets for clues. As with the insurance/re-insurance market, litigation finance is intrinsically a market in risk and has a number of similarities in the way it could operate. It is estimated that around 20-25% of insurance risk/gross written premium (P & C, non-life) is reinsured annually³⁹. With a current market estimate of between USD2.4 and USD3.0bn in annual TPLF commitments, we could easily see a secondary market developing with a value of USD500m to USD750m. If we applied this to the total addressable market, this could be valued at between USD12bn to USD22bn.

The three “Rs”

And finally, what about new markets? As it stands today, new markets can be categorised as the three “Rs” of litigation finance; Region, Regulatory and Recipient.

Regions

Within the regional category the use of some form of litigation funding is being seen in an increasing number of markets as its use steadily expands outside the core countries of Australia, the UK and the US. Given the size of the Chinese market, on paper it looks to offer an attractive prospect. In reality it is not (yet) considered a potential growth market. Within the Asia-Pac region however, Singapore is viewed as a more attractive opportunity near-term. Having only recently allowed the use of TPLF in international arbitration, there is a view that the city-state could become a new hub for TPLF given the size of major arbitration cases.

Regulatory

With regard to regulation, TPLF in the main markets of Australia, UK and the US is largely unregulated. This does not mean that it can be allowed in all aspects of litigation, but like most aspects of common law its adoption is by precedent. In the US, the doctrines of champerty and maintenance are still in force in some states and prohibits, or at least significantly restricts the use of TPLF. In these situations, a change in state regulations and a harmonisation of the state approach to TPLF could lead to the opening of additional

³⁶ Emily Cadman – Bloomberg News (2018), For the Worlds Super Rich, Litigation Funding Is the New Black”, Bloomberg, 27 August 2018.

³⁷ Molot (2014), *The Feasibility of Litigation Markets*, Indiana Law Journal 171-1794 (2014)

³⁸ Goral (2015), *Justice Dealers: The Ecosystem of American Litigation Finance*, *tanford Journal of Law, Business, and Finance*

³⁹ S & P Global/Intelligent Insurer, Global Reinsurance Highlights 2019, p.20

markets. There is also the issue of the use of TPLF in class actions. Australia has led the way on this and has allowed third-parties to fund collective litigation for a number of years⁴⁰. This has been facilitated by the region's "opt-in" approach to class action as opposed to the "opt-out" approach in the US. In the latter, the use of TPLF is not currently possible⁴¹. Within Europe (including the UK) where class actions are not supported by the current legal system, there is a movement (albeit slow) to adopt legislation to facilitate class actions where it has not previously been possible. At some stage, it seems that regulatory/legislative change will allow the use of TPLF to fund class actions in an increasing number of regions. Although, in line with recent changes in Australia, it is also likely to become more regulated. Regulation is a substantial topic and outside of the scope of this research, but is suffice to say that regulatory change will bring some new opportunities, and perhaps some additional restrictions.

Recipients

By recipients we mean those is in receipt of legal funding; i.e. the plaintiff or the defendant. As it stands today nearly all (commercial) litigation funding is for the plaintiff. While the funding of defendants is unlikely to become a major market in its own right, it could nonetheless provide a decent boost to the total market for legal claims funding in the future.

Concluding remarks

Conclusions

To sum up, in this report we publish an analysis of the current size and the potential addressable market for TPLF. We estimate that the current market (i.e. calculated as annual commitments) is worth between USD2.4bn and USD3.0bn, globally. This we estimate to be only 1.7% to 2.1% of the total litigation market. Our estimated range for the total addressable market is between USD60bn and USD90bn. Given the low penetration rate and the relatively high addressable market, the outlook for the growth in TPLF looks very positive.

⁴⁰ Recently there have been changes to the regulatory approach in Australia with regard to class actions. This includes the requirement for litigation financiers to obtain a license if they wish to fund class actions and bringing certain class actions under the control of the Management Investment Scheme in Australia.

⁴¹ Fitzpatrick (2018) points out that this is not strictly true and technically TPLF can be used in US class actions despite the opt-out approach.

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About the authors

Scott Evans is the founder of SEAL Advisors and has a research position at London Business School (LBS). Prior to LBS, he held academic positions at the University of Oxford, University of Birmingham, Brunel University London and The Institute for Fiscal Studies. Scott previously worked in research at a number of major investment banks.

Matt Fletcher is the founder of Arrowmaker Consulting Ltd. He divides his time between London and Athens, Greece. His former roles include; Equity Analyst for Eclectica Asset Management, Pioneer Investments, Merrill Lynch and Fund Manager for Legal & General Investment Management.

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