Research & Strategy

Third-Party Litigation Funding

Frequently Asked Questions

"Third-party litigation funding is no longer a new phenomenon, but rather is a mainstay in global commerce and dispute resolution."

Victoria Shannon Sahani, Professor of Law at the Sandra Day O'Connor College of Law, Arizona State University.

- Litigation financing is one the most significant events to occur in the legal services sector in modern times.
- In just over a decade, funds dedicated to third-party litigation funding have grown more than ten-fold.
- Despite the rapid growth and its general acceptance as a legitimate asset class, litigation finance remains an opaque business.
- Information on funding is scarce, disclosure is limited, and many aspects of the industry are unknown or misunderstood.
- We bring together the work of academics, experienced practitioners, and our own analysis to address some of the most frequently asked questions about litigation finance.
- We cover a number of topics, ranging from the definition of litigation finance to its history, growth, size, and details of the main funders – both past and present.
- We examine the rules of disclosure, the regulatory status and the relationship between third-party funding and common and civil law legal systems.
- Using information on listed funders, we estimate the number of cases and average case size, acceptance and win rates, and the rates of return and average case up-lifts.
- We provide an assessment of the relationship with law firms and describe how the industry has moved from being seen as eating the law firm's lunch to providing it.
- We conclude with an outlook for the sector and outline why we think it has a lot further to go.

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Introduction

15 frequently asked questions

Litigation financing is one of the most significant events to occur in the legal services sector in modern times. In just over a decade, funds dedicated to third-party litigation funding have grown more than ten-fold and it is now viewed as a legitimate alternative asset class. Despite its growth and its move from the side-lines to the mainstream, there are many aspects of litigation financing that remain unclear, unknown, or misunderstood. It is an opaque business where disclosure is limited, its legal status is not always well defined and information is often hard, or sometimes impossible, to find. In this review, we attempt to provide a guide for beginners and experienced practitioners alike by addressing 15 frequently asked questions. We begin by looking at the background, the history, and the development of litigation finance. This is followed by addressing questions on regulation, disclosure, and the role of class actions. We then look at the size of the market, the main funders, win rates, rates of return, and the size of case wins. Our final section covers the relationship between litigation funders and law firms and the possibility of a secondary market. We conclude with a brief overview of the outlook for the sector over the near and medium term.

1. What is litigation finance?

Litigation finance can take many different forms

At its most basic level litigation finance describes the situation when one party funds another party's costs of litigation. It includes contingency fees and conditional fee arrangements (CFA), insurance subrogation, recourse and non-recourse litigation loans, bankruptcy claims trading, before and after-the-event insurance and a host of other arrangements whereby an organisation or person providing finance is not the owner of the claim. Funding can be provided by professional litigation funders, law firms, insurance companies, hedge funds, family offices, specialist debt providers, public interest groups, or private individuals. It can be provided for commercial or consumer litigation, individual claims or class actions and for profit or for philanthropic reasons. It can be provided to plaintiffs or defendants. It has existed in some form or other for a long-time, and according to Velchik & Zhang[1] (2019) can be traced back to the ancient Greeks.

Third-party litigation funding (TPLF) is the practice where an investor unconnected with a legal action finances all or part of a claimant's legal costs with a view to making a profit[2]. In the event the case fails (either prior to judgement or due to adverse judgement), the funder loses its investment and has no entitlement to any payments. In the event the case is successful (either due to an out-of-court settlement or positive judgement), the investor is entitled to a pre-agreed fee. In short, TPLF is where the claimant sells part or all of his or her rights to the claim, in exchange for non-recourse funding.

It is TPLF and in particular, the use of it for funding high-value commercial litigation, that has attracted the most attention. It is this form of litigation financing that has grown from a standing start to a multi-billion-dollar industry in just over a decade.

2. When, where and why did TPLF start?

Champerty and maintenance

It is almost impossible to read anything about the background to TPLF without having to understand the relevance of the ancient doctrines of *maintenance* and *champerty*. These date back to medieval England and refer to the offence of improperly encouraging litigation (*maintenance*) and funding a third-party litigation for profit[3] (*champerty*, a species

[1] Velchik & Zhang (2019), 'Islands of Litigation Finance', *Stanford Journal of Law, Business & Finance*, Vol: 24:1, 2019.
[2] See Veljanovski (2012), 'Third Party Litigation Funding in Europe', *Journal of Law, Economics and Policy*, Vol. 8, 2012.
[3] See Legg et al (2010, *Litigation Funding in Australia*, paper presented by Michael Legg at the Law Society of New South Wales Young Lawyers.

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of maintenance[4]). A related offence was *barratry* which referred to stirring up vexatious claims. All three were enacted in an attempt to stop the rich and powerful "noblemen" of medieval England buying up claims against debtors for their own (usually corrupt) gain. As Velchik and Zhang note *"[the] doctrines of maintenance, champerty, and barratry thus arose in a medieval context where judges lacked independence, jurors were untrustworthy, and litigating claims under the common law system was complicated*. What is surprising is that such civil laws which date back to the 1400s were, until relatively recently, the main reason why TPLF was prohibited in most common-law countries.

Origins in Australia

While the offences of maintenance and champerty were abolished in England & Wales in 1967 with the enactment of the Criminal Law Act[5], TPLF actually has its origins in Australia. It began in the 1990s when a handful of individual states no longer recognised maintenance and champerty as crimes or torts[6]. New South Wales, the most populous state of Australia, went further and formerly abolished the offences with the 1993 Maintenance, Champerty and Barratry Abolition Act. This did not automatically ensure that TPLF was legal, but it did remove one of the major obstacles that had prohibited its use. In the early 1990s, Australian law formerly allowed the use of TPLF in insolvency claims. The rationale behind this was companies that found themselves in the process of going bankrupt and had no financial resources could enter into a formal contract with third-party financers to fund pre-existing claims they could not otherwise afford to pursue. As Sahani (2019) highlights this was effectively the starting point of TPLF and is how the oldest of Australian litigation funders, IMF came into being. IMF later became IMF Bentham which merged with Omni Bridgeway to become the second largest (listed) litigation funder after Burford Capital.

Along with allowing the use of TPLF for insolvency, an important milestone in Australia was the legalisation of class action lawsuits. As we discuss later, an important aspect of the Australian approach to class actions has been the use of "opt-in" as opposed to "opt-out" (as is the case in the US) making it much easier for litigation funders to finance class actions in the country.

Turning point was the funding of class actions

The watershed moment for TPLF, however, was in 2006 with the ruling by Australia's High Court on *Campbells Cash and Carry Pty vs Fostif*.[7] This was the point at which clarity was brought to the legal situation of using third-party funding in the states that had abolished maintenance. Maya Steinitz[8] highlights in a 2011 research paper that one of the noticeable aspects of the Fostif case was, "*The third-party funder actively searched for and propositioned potential plaintiffs in the case. Importantly, the funding agreement permitted the funder to conduct representative proceedings, choose the attorney (who regarded the funder as its client), and settle with the defendants for seventy-five percent of the amount claimed.*"

The court ruled that the funder arrangements were allowable and whilst stating it was necessary to ensure adequate supervision and no breach of ethics given the involvement of the third-party in the case proceedings, the court made it clear it was hesitant to interfere with agreements made by people of "*full age and capacity…untainted by*

[4] Note: champerty is a species of maintenance meaning it cannot exist without the latter.
[5] It is worth noting that while the legislation abolished maintenance and champerty, the details of the law change allowed courts in England and Wales to operate with a great deal of discretion with regard to whether cases were contrary to public policy. This left considerable uncertainty surrounding the legality of third-party financing.
[6] See Sahani (2019), 'A Brief History of Litigation Finance', *The Practice*, Vol. 5, Issue 6, September/October.
[7] Fostif involved a litigation funder who sought to fund a litigation allowing small tobacco retailers to recover license fees from wholesalers.
[8] See Steinitz (2011), 'Whose Claim is This Anyway? Third-Party Litigation Funding', *Minnesota Law Review*, Vol. 95.4, 2011 (first written in 2010).

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infirmity"[9]. Following this ruling, the Australian TPLF market took off. This was closely followed by the UK (or more precisely England and Wales[10]) and more recently Canada.

The US was late to the party

The US was relatively slow to adopt the use of TPLF but has since become the largest market in the world for third-party funding. The slow start was in part due to an already well-established contingency fee system and a tight hold on the financing of litigation by the incumbent law firms. Reticence to adopt to the new form of financing was also a result of a very unsupportive position taken by the influential US Chamber Institute for Legal Reform which viewed (and still does) TPLF as threatening the client-attorney relationship and having no interest in "vindicating a plaintiff's rights"[11]. There was also the added complication that the approach to champerty and maintenance and the legality of TPLF is based on State, rather than Federal law. This has meant the use of TPLF is dependent on the prevailing state laws and its interpretation by the state courts. In general, champerty and maintenance has either been abolished or no longer recognised in the majority of US states and third-party litigation funding has become an increasingly accepted part of the civil litigation system.

Most civil law countries have been slower to embrace TPLF despite the lack of maintenance and champerty laws or related legislation prohibiting its use. We discuss this in more detail in next section, but as it stands the growth in the use of TPLF in civil law countries has tended to have been limited to Austria, Germany, the Netherlands, and Switzerland.

3. What is the relationship between common law, civil law, and litigation finance?

TPLF most developed in common law countries

In the previous section we highlighted the importance of the common law torts of maintenance and champerty and how these, until relatively recently, had restricted the development of TPLF. We also mentioned that in countries that have adopted a civil law legal system (where these doctrines have never applied), TPLF has been slow to develop. This seems counter-intuitive as it would be logical to assume that in regions where the prohibiting factors did not exist, TPLF should have thrived. To understand why this has not been the case it is worthwhile taking a closer look at the differences between the common and civil law systems.

A good starting point is the World Bank Legal Resource Centre which provides a background to the history of common and civil law[12]. They describe common law systems as those that tend to be former British colonies or protectorates where the English law system was either adopted or imposed. This includes regions such as the US, Canada, Australia, New Zealand, Hong Kong, and Singapore. The main features of a common law system are: the constitutions are quite often unwritten and/or not based on a set of codified laws, judicial decisions are binding, and there is extensive freedom of contract.

Civil law has its origins in Roman Law

Civil law countries tend to be those that were former French, Dutch, German or Portuguese colonies or protectorates. In terms of the number of countries this is considerably more than common law countries as it includes most of Central and Eastern Europe, most of East Asia and the majority of Central and South America. Compared to common law, the civil law system tends to be codified (i.e., a written constitution) with its origins coming from Roman Law. It is generally more prescriptive than common law and there is little scope for judge-made law as only legislative enactments are considered

[9] High Court of Australia (2006), Gleeson, CJ, Gummow, Kirby, Hayne, Callinan, Heydon and Crennam JJ.
[10] Champerty and maintenance has never been a part of Scottish law and there has not been a prohibition of litigation funding.
[11] US Chamber Institute for Legal Reforms (2009), 'Selling Lawsuits, Buying Trouble. Third-Party Litigation Funding in the United States', October 2009.
[12] World Bank Group, Key features of Common Law or Civil Law Systems.

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binding. There is also less freedom of contract and more limited scope for parties to contract out of certain provisions. One additional difference that applies to certain civil law countries (most notably Germany) is that writings of legal scholars can influence court decisions and are often relied upon in difficult or new situations. In common law countries, the writings of academics have little or no influence over court decisions other than their use as expert witnesses.

Table 1: Key Features of Common Law and Civil Law Systems

	Common Law	Civil Law
Constitution	Generally unwritten	Generally written
Judicial decisions	Binding	No scope for judge-made law
Freedom of contract	Extensive freedom of contract	Limited freedom of contract

Source: World Bank Group

TPLF not permitted in all countries

Table 2 summarises the relationship between the legality of TPLF in both common law and civil law countries. As the table shows, TPLF is permitted in the common law countries of Australia, Canada, most of the states of the US and England & Wales (Scotland is a combination of civil and common law). TPLF is currently prohibited in Ireland, and for the most part in Hong Kong and Singapore. In the latter two countries, TPLF is allowed in cases of arbitration, which is important given they are both major centres for international dispute resolution. India is also a major common law country but the legality of TPLF is unclear. According to the most recent Third-Party Litigation Funder Law Review, India is categorised as a prohibited region for third-party financing. Gaggar and Dang[13] of New Delhi based law firm Gaggar & Partners provide an opposing view and claim it is both allowed and taking place in India. This latter view is confirmed in various articles on litigation funding including a recent article published via Bloomberg Opinion by Cyril Shroff which points to a case in 2015 in which the Indian Supreme Court stated there appeared to be no restriction on third parties funding litigation and getting repaid after the outcome[14]:

Table 2: Major common and civil countries and allowance of TPLF

Legal system	Allowance of TPLF	Countries
Common Law	Permitted	**Australia**, **Canada**, **England & Wales**, India, **United States* (ex Louisiana)**
	Prohibited	Ireland, Hong Kong**, Singapore**
Civil Law	Permitted	France, **Germany**, Italy, **Netherlands,** Poland, Russia, **Switzerland**
	Not prohibited	Argentina, Brazil, China (PRC), Indonesia, Mexico, Spain, South Korea, Turkey, United States (Louisiana)
	Ambiguous	Japan

*Varies by state, **Allowed in cases of arbitration, **Bold indicates regions TPLF is actively used.**
Source: World Bank Group, *Litigation Funding 2020*, *Third Party Litigation Funding Law Review – Edition 3*, Thomson Reuters Practical Law

[13] *Litigation Funding 2020*, published by Law Business Research and sponsored by Woodsford.
[14] Shroff & Katragadda (2019), 'Third-Party Funding Of Litigation In India: An Asset Class In Waiting', Bloomberg, Feb 2019.

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TPLF allowed in most civil law countries

Table 2 also shows that in nearly all the major civil law countries, TPLF is either permitted or is not prohibited by any existing legislation. By *permitted* we mean that TPLF has been used (and disclosed) to fund litigation and has received positive judicial endorsement. *Not prohibited* means that no laws exist that either endorse or deny the use of TPLF, and there have not been any systematic judicial rulings that have limited or denied its use.

Of the major civil law countries where we have identified TPLF as being permitted, the regions where it has been actively used are: Austria, Germany, the Netherlands, and Switzerland.

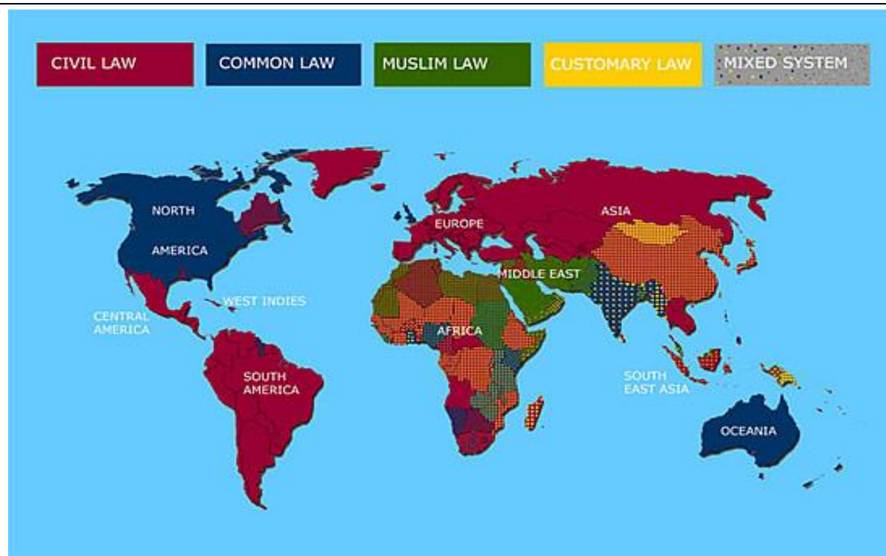
The vast majority of civil law countries, however, are currently in the *Not Prohibited* list. From the larger G20 countries this includes Argentina, China, Indonesia, Mexico, South Korea, Turkey, and the one US state which has adopted a civil law system – Louisiana.

Two G20 countries which do not appear in table 2 but where TPLF is used (albeit only recently) are South Africa and Saudi Arabia. The former uses a hybrid civil and common law system, whereas the latter adheres to Islamic law. As with the vast majority of civil law countries, TPLF is neither officially endorsed nor prohibited in either country.

TPLF has been slow to develop in countries based on civil law

Figure 1 shows civil law countries make up a substantial part of the world's land mass. These countries are home to a sizeable part of the world's population and are countries that make a significant contribution to global GDP. In most of these countries TPLF has either not developed or been very slow to develop. On this subject, Marco De Morpurgo[15] from the University of Milan has attempted to answer why civil law countries have been much slower than common law countries to adopt the use of TPLF. In his view there are both cultural and structural reasons. A structural reason he cites is the significantly

Figure 1: Legal systems around the world



Source: University of Ottawa, JuriGlobe – World Legal Systems

higher costs of litigation in common law as compared to civil law countries. In his view this has had the effect of accelerating the use of TPLF in common law countries while limiting the demand in civil law countries. He also cities the existence of punitive damages in common law countries which are rare within the civil law jurisdictions, which has reduced the attractiveness to funders of these countries.

From a cultural viewpoint, Morpurgo believes that civil law is less "litigious" in its application compared to common law. He explains that, in general, the use of the legal

[15] Morpurgo (2011), 'A Comparative Legal and Economic Approach to Third-party Litigation Funding', *Cardozo Journal of International and Comparative Law*, Vol. 19, 2011.

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system in civil law countries is traditionally more a way for the victim of a wrong to have his or her day in court and receive compensation. This compares to common law countries, in particular the US and UK, where legal systems have been commoditised and where legal services are provided by "*a more entrepreneurial-oriented class of legal professionals*". This combined with a backdrop of contingency fees and legal services advertising has led to the development of a market based on the transferability of property rights which is central to TPLF. This has not been the cultural environment of civil law systems which, given their origin in ancient Rome and Greece, has tended to promote the personal ownership of claims that cannot be assigned to a third party in exchange for money.

This is changing, however. Since Morpurgo's work almost ten years ago there has been a steady expansion in the use of TPLF in a number of civil law countries. In part, this is due to the general increase in the demand for access to justice, but also a reduction in the willingness or ability for litigation to be publicly funded and so private sources of funding have steadily been taking its place.

4. Is the litigation finance industry regulated?

TPLF is largely unregulated

In most common law countries, TPLF is not subject to formal regulation and it has been left largely for the judiciary to decide on what is permissible and if its use contravenes country or state laws. Notable exceptions are Hong Kong and Singapore, where TPLF is only allowed for international arbitration and subject to strict regulation. In these two countries, funders are also subject to capital adequacy requirements which has the effect of limiting the number of funders to the largest and best capitalised.

In Australia, TPLF is subject to regulation only with regard to the management of conflict of interest which is overseen by the Australian Securities and Investment Commission (ASIC). There is also a move to introduce a regulatory regime for funding class actions. This includes a requirement for funders to be licensed and will bring certain class actions under the Managed Investment Scheme (MIS)[16].

In Canada, there is no formal regulatory framework for litigation funding, although judges act as the *de facto* regulators and have determined what is, and what is not allowable when it comes to third party funding. The UK has a voluntary code of conduct but there are no discernible pressures to introduce any formal regulation of the industry. Similarly, the US has no formal regulation of TPLF however, unlike the UK, there are pressures to introduce regulation, in particular when it comes funding consumer litigation.

Pressure to regulate in the US

The difference in the attitudes in the UK and US towards TPLF are highlighted by the very different opinions of the UK's Civil Justice Council and the US Chamber Institute for Legal Reform. Both are influential bodies in their respective countries but have taken opposing views on the need for regulating TPLF. The Civil Justice Council have publicly stated that "*Properly regulated third-party funding should be recognised as an acceptable option for mainstream litigation*[17]. Moreover, the Review of Civil Litigation costs led by Lord Justice Jackson (i.e., The Jackson Report) published its recommendations in 2010 and stated "*in principle, third party funding is beneficial and should be supported*"[18].

The US Chamber Institute for Legal Reform published a report at around the same time as the Jackson Report entitled, 'Selling Lawsuits, Buying Trouble' and stated *"third-party litigation financing [should] be prohibited in the United States".* They maintained this anti-TPLF stance for a number of years and went as far as stating on their website in 2012

[16] See Litigation Capital Management Annual Report 2020, page 20.
[17] Civil Justice Council (2007), Improved Access to Justice – Funding Options & Recommendation 3, 12 (2007), quoted in Veljanovski (2012).
[18] Review of Civil Litigation Costs by the Right Honourable Lord Justice Jackson, December 2009, published January 2010.

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"*Third-party investments in litigation represent a clear and present danger to the impartial and efficient administration of civil justice in the United States*". More recently, however, their focus has shifted towards promoting a greater level of transparency and disclosure rather than an outright ban in the US.

No regulation in civil law countries

In civil law countries, there are very few regulatory requirements specific to TPLF. In most cases this is because the practice is relatively new or focussed on very specific areas which have not raised the attention of the authorities. It has also not been subject to breaching doctrines such as champerty and maintenance as they have not been part of their legal systems. A number of civil countries such as Argentina, Mexico and Turkey do not officially recognise the existence of TPLF as an industry so there has been very little pressure for it to be regulated. In countries such as Japan and South Korea (where expenditure on legal services is very low compared to other major economies), it is the generally held view if TPLF was to become more common it is very likely that the authorities would move to regulate it[19].

In summary, TPLF is largely unregulated in most jurisdictions where it is permitted or not prohibited. Going forward, it seems likely that as TPLF continues to grow as a means for funding litigation it will be accompanied by the development of some form of regulatory framework, in particular when used for consumer litigation.

5. Does the use of third-party funding need to be disclosed?

Very little disclosure

Rules around the disclosure of third-party funding is a hotly debated topic. Those in favour of disclosure believe it is needed to impose a degree of transparency and limit conflict of interest. Those against disclosure believe it potentially goes against the principles of the protection of the work-product doctrine[20]. The latter issue complicates the debate as it impacts whether information provided to the funder should be considered privileged or not. As it stands there appears to be a consensus in favour of the view that information disclosed to the funder is privileged and does not need to be revealed during the discovery process. But there is no consensus on whether the use of third-party financing should, in general, be disclosed at the outset of a litigation case. On this issue Steven Friel and Jonathan Barnes from Woodsford Litigation Funding write:

> "….*it is now commonly accepted that a litigant's communications with litigation funders are protected from disclosure…There is perhaps less uniformity around the world on whether litigants are required to disclose, to opposing parties and to the relevant court or tribunal, the fact that the litigation is funded by a third party...*"[21]

Disclosure required in Australian class actions

In the UK (England & Wales) and Australia there are currently no general requirements for disclosure of whether a litigation finance agreement exists, either from the plaintiff or defendant. They may of course disclose voluntarily, but it is rare for a judge to compel a litigant to disclose details of whether or not they are funded. The one exception in Australia is the requirement for disclosure in class actions taking place in a Federal Court.

In Canada, the requirement to disclose funding arrangements varies between type of funding and between provinces. In single-party commercial litigation cases the court typically does not require approval of a party's funding arrangements and the question is strictly a matter of contract between the funder and the plaintiff[22]. For class actions, most

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[19] See Allen & Kanamaru (2019), *The Third-Party Litigation Funding Law Review – Edition 3*, Dec 2019.
[20] The Work-Product doctrine states that an adverse party generally may not discover or compel disclosure of written or oral materials prepared by or for an attorney in the course of legal representation, especially in preparation for litigation. See the Legal Information Institute, Cornell Law School. law.cornell.edu/wex/attorney_work_product_privilege#.
[21] Friel & Barnes (2020), Introduction. *Litigation Funding 2020.*
[22] Meighen (2019), *Third Party Litigation Funding Law Review – Edition 3*, Canada, Dec 2019.

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provinces require disclosure of a funding agreement, although the extent of the disclosure varies from simply detailing the name of the funder (e.g. in Alberta and Nova Scotia) to full disclosure to the defendant of the details of the TPLF agreement (e.g. Ontario and British Columbia).

Varies by state and province

In the US there are no federal rules requiring disclosure, but as in Canada the requirements vary from state to state and by type of litigation. In commercial litigation, Burford Capital[23] believe that "*49 out of 50 states do not require disclosure*", although judges can require it in certain circumstances. For class actions there is more pressure to disclose the existence and details of funding agreements. On this, Steinitz (2019) notes:

> *"The U.S. Chamber of Commerce, the nation's leading business lobby, which has for years led the battle to eliminate or at least restrict litigation funding, recently renewed for the third time its call that federal courts require parties to disclose all litigation funding agreements — including the identity of the funder and the terms of the funding — at the outset of any case in federal court."*

Disclosure required in arbitration cases

In both Hong Kong and Singapore details of the existence and the provider of funds are required to be disclosed in arbitration cases. This is to ensure no conflicts of interest arise, as for international disputes the opposing parties have a role in appointing arbitrators.

Arbitration is one of the areas where a uniformity of approach to disclosure has arisen, and in most regions there is agreement on the need to disclose the existence of funding and details of the funder[24]:

Table 3: Rules on disclosure of TPLF in various regions

Country	**Disclosure required**	**Case type**
Australia	Yes	In class actions cases
Canada	Province dependent	Most provinces require disclosure
Hong Kong	Yes	In arbitration cases
Germany	No	n/a
Netherlands	No	n/a
Singapore	Yes	In arbitration cases
Switzerland	No	No
UK (Eng & Wales)	No	No
USA	State dependent	Most states do not require disclosure

Source: *Litigation Funding 2020*/Law Business Research, Global Legal Insights, *The Third-Party Litigation Funding Law Review*, Woodsford, Thomson Reuters Practical Law, Burford Capital

Disclosure likely to be required in the future

As the use of TPLF continues to grow, both regionally and by the type of litigation, it is inevitable the debate on disclosure will gather momentum. Where this could be of particular relevance is in the development of a secondary market for TPLF. Here overly onerous disclosure requirements of all funders and every potential conflict of interest, however small, could be an impediment to its development. On this issue Professor Steinitz has written in detail on the potential pitfalls and has highlighted that enforcing

[23] See Burford Capital website 'Are financing arrangements subject to disclosure?'.
[24] See Krug, Morris and Eatock (2020) 'Third-party funding in international arbitration', *Litigation Funding 2020.*

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disclosure is "*fundamentally misguided because it fails to account for the near-infinite variability of funding scenarios, which implicate widely different interests, pose different risks, and affect different constituencies in varying degrees*".

6. How important is TPLF in class actions?

TPLF and class actions varies across regions

Class action is the broad term used for collective action brought by a group or class of claimants against one or more defendants. While class action is a specific form of multi-party litigation, in general it is used interchangeably with other collective actions including group litigation orders and representative actions. The mechanism by which class actions are brought (i.e., what is allowable, whether it is opt-in or opt-out) and the use of TPLF varies greatly across regions. In general, however, they tend to be used in consumer, and more recently in shareholder collective redress actions and the use of TPLF is on the rise.

Most Australian class actions are funded by TPLF

Australia is considered to have one of the best and well-functioning class action procedures in the world[25]. Its growth has undoubtedly been fuelled by the availabity of financing with over 70% of all class actions commenced across all Australian states and federal jurisdiction in 2018/19 being funded by TPLF. As a result of the growth in the use of TPLF, new rules are being introduced which will compel litigation funders wanting to fund class actions to hold an Australian Financial Services license. While this may limit the supply of funding to a smaller, better capitalised group of funders, the growth in third-party funded class actions is not expected to slow.

Canada is another region where class action has become increasingly prevalent and where TPLF is "*publicly known and judicially approved*"[26]. Canada has the slightly unusual situation whereby the courts effectively regulate third-party funding agreements for class actions. In the majority of provinces, it is the court that decides whether the funding agreement is fair and reasonable to the class as a whole. Canadian courts also have the authority to bind absent class members to third-party financing contracts despite the fact they never signed the agreement or did anything other than fail to opt out[27].

Class actions not permitted in some countries

At the other end of the class action spectrum are Hong Kong, South Korea, and Turkey where class actions play little or no part in civil litigation. In mainland China, class actions (i.e., representative actions) are technically allowed and have been used on occasion,[28] but in general are rare as most courts do not proactively employ them to resolve group disputes[29]. In countries like Argentina and Mexico, legalisation exists that allows class action cases to be brought in certain circumstances (such as consumer or environmental) but third-party funding is currently not readily available. In countries such as Indonesia, legalisation allows for class actions, but the law is silent on whether TPLF is allowed and so no third-party funders have so far ventured into the country. In Singapore, certain class actions are allowable but since 2000 there have only been two representative actions brought to court. The use of TPLF is not allowed in the region.

The situation in Europe is mixed. In most EU member countries, legalisation is in place that allows for some form of class action and in most countries TPLF is allowed or is not expressly prohibited. The prevalence of class action is on the rise in the UK, the Netherlands and Germany, all three countries having well developed litigation funding markets. Ireland is one of the only European countries where TPLF is expressly prohibited

[25] See Johnston, Briggs & Gaertner (2020), 'Introduction to the class actions framework', *The Law Reviews*, May 2020.
[26] See Stroble & Welikson (2020), 'Third-Party Litigation Funding: A Review of Recent Industry Developments', *Defense Counsel Journal*, Jan 2020.
[27] See Fitzpatrick (2018), 'Can and Should the New Third-Party Litigation Financing Come to Class Actions?', *Theoretical Inquiries in Law*, Vol. 19.1 (2018).
[28] One notable case was in 1986 when a representative action was brought by over a thousand farmers against Yue-and County Seeds Company relating to a purchase and sales agreement.
[29] See Feng & Wang (2018), 'Class/collective actions in China: overview', Thomson Reuters Practical Law.

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in class actions and in any other form of litigation. There are moves at the EU-level to introduce a directive on collective redress as part of the "new deal for consumers". As part of this directive, it is proposed that collective rights for EU consumers will be harmonised across EU member states and will allow a limited version of the US system of collective redress. These new rules were endorsed by the EU in November 2020, although it is likely to take up to two years for the directive to be included into national law[30].

Class actions are more difficult to fund in the US

The US has a more complicated relationship between class action and TPLF. While the use of class action and award of punitive damages has a long history in the US, the rules with regard to what class actions can be funded by third-party financiers varies from state to state. There is also the added complication that the US structure for class actions is based on an "opt-out" system, as opposed to the "opt-in" structure used in Australia and the UK. Essentially this means anyone who meets the class definition is automatically included in the class unless they expressly state they do not wish to be included[31]. This is a reason given for why litigation finance directly to the plaintiff class has not taken off in the United States as potential funders cannot identify all the parties.

On this issue, Fitzpatrick (2017) highlights in his discussion of TPLF and class actions, that despite the prevailing view that it is not possible for financiers to "*buy pieces of class action lawsuits in the United States*"[32], in reality it is taking place. He continues by saying that the use of contingency fees has been a widely used method of financing class actions in the US and the vast majority of collective action has been funded in one form or another. Moreover, despite the opt-out issue, the evidence suggests that TPLF is increasingly used in both consumer and securities related collective litigation and is expected to continue to rise.

Risk of class action highest in Australia, Canada, and the US

This view is reinforced in a recent study published by Allianz[33] in which they look at the impact of litigation finance on collective actions in different regions of the world. Their interest is from the defendant's view (not the plaintiffs) and categorise the potential risks to corporates being subject to class actions in different countries. They categorise regional risks into high, medium, and low and, as table 4 shows, the regions in the highest category are the US, Canada, and Australia. While the study does not directly link the risk of class action being funded by TPLF in each region, it does imply that TPLF is having a major impact on the general level of collective actions in these countries:

Table 4: Risk to corporates of class action by major region

High Risk	Medium Risk	Low Risk
Australia	Germany	Mexico
Canada	Saudi Arabia	Brazil
----------Netherlands----------		Rest of Europe
United States	South Africa	Russia
	UK (England & Wales)	China

Note: All other regions not listed above are considered very low risk.
Source: Allianz

[30] See European Parliament News November 2020, New Rules to allow collective EU consumer action' 24/11/2020.
[31] See Shannon Sahani (2019), 'A Brief History of Litigation Finance', *The Practice*, Vol5, Issue September, 2019.
[32] Fitzpatrick (2017), see footnote 28.
[33] Allianz (2020) – *Collective Actions and Litigation Funding and the Impact on Securities Claims: A Global Snapshot*

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Only the Netherlands considered high risk in Europe

The only European country where the risk of class action is considered high (albeit lower than in the US, Australia, and Canada) is the Netherlands. The use of contingency fees is prohibited for Netherland-based lawyers, although TPLF is allowed. Not surprisingly the number of third-party funders is growing in the region which has been aided by the Dutch Senate's approval of the Act on Redress of Mass Damages in a Collective Action (WAMCA, 2019).

In the medium risk category are the UK, Germany, South Africa, and Saudi Arabia. In the first three countries, collective actions and TPLF have been on the increase for a while. For Saudi Arabia, the "risk" relates to securities claims which was introduced in 2017. The risk is probably overdone as so far only one claim has been brought.

In the low-risk category is the rest of Europe, Mexico, Brazil, China, and Russia. In these regions the mechanisms for class actions are in-place, but to date very few cases have been brought. All other regions are considered very low risk, either because class actions are not allowed or TPLF is not available.

Class actions on the rise

In summary, collective litigation is on the rise in a large number of jurisdictions around the world. TPLF is an important aspect of its growth and the consensus view is that this will continue to increase for the foreseeable future.

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Table 5: Summary of legal systems, third-party litigation, and allowance of class actions in major economies

Country	Legal system	Permitted	Extent of use	Regulated	Disclosure required	Class action permitted
		--------------Third-Party Litigation Funding (TPLF)---------------				
Argentina	Civil Law	Not prohibited	Undeveloped	n/a	n/a	Yes
Australia	Common Law	Permitted	Extensive	Yes[1]	Yes	Yes
Brazil	Civil Law	Not prohibited	Limited	n/a	n/a	Yes
Canada	Common Law	Permitted	Extensive	No[2]	By province	Yes
China (PRC)	Civil Law	Not prohibited	Undeveloped	n/a	n/a	Yes
China (Hong Kong)	Common Law	Prohibited[3]	Arbitration only	Yes	Yes	No
France	Civil Law	Permitted	Limited	No	No	Yes
Germany	Civil Law	Permitted	Growing	No	No	Yes
India	Common Law	Not prohibited	Limited	No	No	Yes
Indonesia	Civil Law	Not prohibited	Undeveloped	n/a	n/a	Yes
Italy	Civil Law	Not prohibited	Undeveloped	n/a	n/a	Yes
Japan	Civil Law	Ambiguous	Undeveloped	n/a	No	Yes
Mexico	Civil Law	Not prohibited	Undeveloped	n/a	n/a	Yes
Netherlands	Civil Law	Permitted	Growing	No	No	Yes
Russia	Civil Law	Permitted	Limited	No	No	Yes
Saudi Arabia	Islamic Law	Permitted[4]	Undeveloped	n/a	No	Yes
Singapore	Common Law	Prohibited[3]	Arbitration only	Yes	Yes	No
South Africa	Hybrid[5]	Permitted	Limited	No	No	Yes
South Korea	Civil Law	Not prohibited	Undeveloped	n/a	n/a	No
Spain	Civil Law	Not prohibited	Limited	No	n/a	No
Switzerland	Civil Law	Permitted	Growing	No	No	No
Turkey	Civil Law	Not prohibited	Undeveloped	n/a	n/a	No
UK (England & Wales)	Common Law	Permitted	Extensive	No	No	Yes
USA (ex-Louisiana)	Common Law	By state	Extensive	No	By state[6]	Yes
USA (Louisiana)	Civil Law	Not prohibited	Limited	No	No	Yes

Notes:

(1) Certain aspects of TPLF are regulated in Australia such as the management of conflict of interest which is regulated by the ASIC.

(2) Canada does not formerly regulate TPLF but courts will often intervene on issues regarding funding of litigation.

(3) TPLF is prohibited in both Hong Kong and Singapore apart from its use in arbitration and certain insolvency cases.

(4) TPLF is technically permissible in Saudi Arabia but needs to comply with Shariah Law which can result in awards not being enforceable.

(5) South Africa is a combination of Roman-Dutch civil law and English common law.

(6) No formal disclosure requirements at a federal level, but certain states may require it depending on the case.

Source: World Bank Legal Resource Center, *Litigation Funding 2020*/Law Business Research, Global Legal Insights, *The Third-Party Litigation Funding Law Review*, Bloomberg, Woodsford, Trading Economics, Litigation Capital Management, Omni Bridgeway, Linklaters, Chambers & Partners, Thomson Reuters Practical Law, Vannin Capital, *The Class Actions Law Review – Edition 4*, Burford Capital

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7. Who are the main funding providers – past and present?

Main funders ten years ago

In three studies published between 2011 and 2013 - (Morpurgo (2011), Veljanovski (2012) and Kalajdzic, Cashman & Longmore (2013) - the main providers of litigation finance operating at the time were listed as; Allianz Litigation, Burford Capital, Calunius Capital, Harbour Litigation, IMF Bentham, Juridica, Law Finance Group, Litigation Lending, LCM Litigation Fund, Therium, Woodsford and Vannin Capital. Many are still active today and a number still rank as some of the largest players in the TPLF market. The oldest at the time was IMF Bentham (previously known as IMF) which was established in 1986 and was one of the few publicly listed funders. IMF has since merged with Omni Bridgeway, taking on the latter's name and has become one of the largest litigation funders in the world.

Of the main funders ten years ago, two that no longer operate are Allianz Litigation and Juridica. The former was a subsidiary of the Allianz Insurance Group, and one of the oldest funders in Europe. Despite being a well-respected and profitable business, it closed its doors to new commitments in 2011 due to conflicts of interest with its core insurance business[34]. Juridica had had been one of the largest of the dedicated litigation funders, which in 2011 had funds under management of USD200m. It was listed as a specialist fund in 2007 but was de-listed in 2018 having run into difficulties and was liquidated.

Difficult to assess market size 10 years ago

Estimating the total value of funds available for TPLF ten years ago is difficult because at the time these studies were carried out the industry was relatively new and details of the funding commitments were not readily available. The study by Veljanovski attempts to provide details of the dedicated funds under management of the European TPLF funders[35]. He estimates it to be in the region of USD750 million. Over two thirds of this was accounted for by Juridica and Burford, with the remainder being made up by funds managed by Calunius, Harbour, Therium, Vannin, and Woodsford.

While Australia was the most established market for TPLF in 2010 it is worth noting that as recently as 2015 IMF Bentham accounted for close to 70% of all litigation funding in the region[36]. To put this in perspective, IMF's total new commitments in 2015 were AUD54m (USD42m). For earlier years, IMF does not disclose the annual commitments, but we know they had significantly less funding available as they financed litigation via their own balance sheet (rather than via funds). As at June 2011 they had a total of 33 outstanding claims, which in value terms would have been the majority of the Australian market. On this basis it is safe to say that the size of the Australian market was relatively small in financial terms and unlikely to have been much above USD250m.

We estimate total TPLF funds in 2011 were around $1bn

Using the information listed in these academic studies we estimate the total dedicated funds available across the US, Europe and Australia were in the region of $1 billion. Fast forwarding ten years, Table 6 lists our estimates of the major TPLF funders operating in 2020. Outside of the three listed companies (Burford, Litigation Capital Management and Omni Bridgeway), most of the litigation funders do not disclose their fund sizes or provide updates to the value or level of commitments of funds launched in earlier years. We have therefore estimated their fund sizes using a variety of sources, including press releases, investor publications, CEO interviews, the funders' web sites, and third-party agencies such as WestFleet Advisors. If no up-to-date information is available on funds under management or commitments, we have excluded the funder from the table below. Two notable excluded funds are Vannin and DE Shaw. Both are members of International

[34] For further details and assessment of the reasons why Allianz exited the litigation finance industry see a release published by Christian Stuerwald of Calunius Capital entitled 'An Analysis of Allianz' decision to discontinue its litigation funding business' January 2012.
[35] European operators refers to either those based in Europe or investing in Europe.
[36] See IMF Bentham, Litigation Funding Masterclass, October 2015 page 9.

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Legal Finance Association (ILFA) and we know are active in the litigation funding industry. Vannin was acquired by Fortress in 2019 and currently does not make any disclosures of the value of its funds or commitments. However, we do know that from a report provided by the Australian Legal Finance Association (ALFA) in June 2020 that Vannin has been active in the Australian funding market and is listed as one the top funders in class actions[37]. Similarly, we are aware that DE Shaw has been funding litigation but, to the best of our knowledge, does not disclose any information on committed funds or details of past investments. One other new entrant that has been excluded from our list is GLS Capital. At the time of writing, they had raised USD400m but no information is available on whether these funds have yet to be committed to any form of financing of litigation:

Table 6: Major litigation finance companies in 2020

Funder	Founded	Countries of operation	Status	Est. Funds & Commitments[1]
Augusta Ventures	2013	UK, Australia	Private	**£245m**
Burford Capital	2009	US, Europe, Asia	Public	**$4.2bn[2]**
Calunius	2006	International	Private	**£200m**
Harbour	2007	UK, US, Australia, Canada	Private	**$1.1bn**
Litigation Capital Management	1998	Australia, Asia, UK	Public	**AUD250m**
Longford Capital	2013	US	Private	$550m[3]
Omni Bridgeway	1986	UK, Australia, US, Canada, Asia, EMEA	Public	**AUD2.2bn**
Parabellum	2006	US	Private	$450m[4]
Therium Capital	2009	UK, Australia, US	Private	$1.0bn[5]
Woodsford	2010	UK Australia, US, Asia	Private	$200m[6]

Notes:
[1] Bold means disclosed by the funder. USD rate as of 1/12/2020.
[2] Total portfolio including balance sheet commitments.
[3] Refers primarily to Longford Capital Fund II, total AUM of company is stated to be $1bn.
[4] Refers to new fund raised in 2020.
[5] Taken from CEO interview in *Litigation Finance Journal*, 2019.
[6] Estimated from various media sources.

Source: Association of Litigation Funders, Association of Litigation Funders Australia, company websites and presentations, International Legal Finance Association, Omni Bridgeway, WestFleet Advisors

[37] See Association of Litigation Funders of Australia, Submission to the Parliamentary Joint Committee on Corporations and Financial Services, June 2020.

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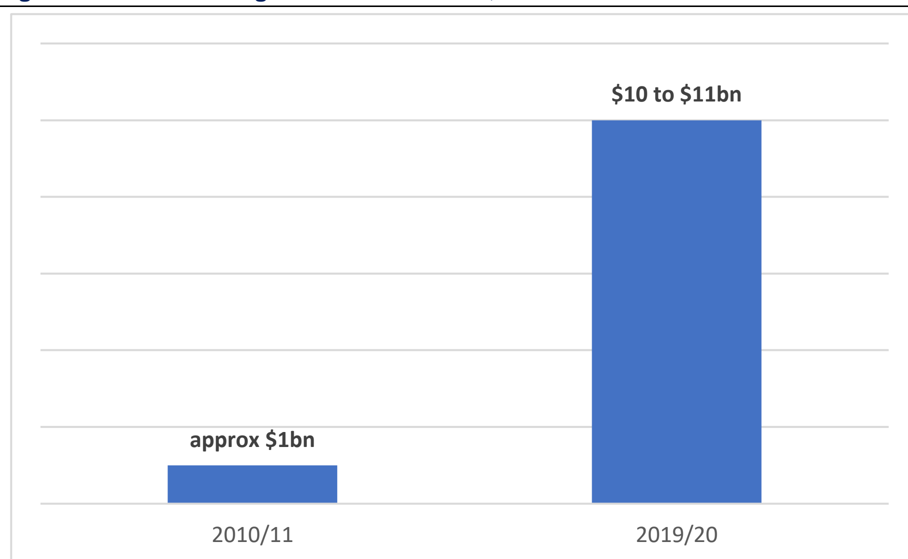
Other funders such as Balance Legal Capital, Innsworth, Ironbark Law Finance, Litigation Lending and Nivalion do not provide any information on funding but we know are active in the market. The size of their funds are unknown.

Figure 2: Dedicated litigation finance funds; 2010/11 vs 2019/20



Source: SEAL Advisors

Total value of TPLF funds estimated to be $10bn - $11bn

The sum of the funds listed in Table 6 comes to just under USD10 billion. Most of the funds are committed and so not available for new cases and some will be returned to investors when case investments are realised. However, if we assume that funders such as Vannin, DE Shaw and GLS are active investors in litigation, along with the plethora of smaller funders, then a considered estimate of the size of the funding market in terms of total funds is between USD10billion and USD11 billion. As Figure 2 shows, in ten years, the value of the dedicated funds has increased by more than ten times.

8. What are the case numbers and average case size?

Information on case size is very limited

Given the growth in the size of the funding market a question often asked is how many cases are funded each year and what is the average case size. These are simple questions to ask but, unfortunately like many aspects of the litigation funding market, are not easy questions to answer. One of the main problems is lack of disclosure. As we have highlighted previously, the approach to disclosure of funding varies across regions. It also varies across states and provinces and even varies with type of case. Also, the majority of funders provide very little information on their investments and so estimating number of cases and case size across the industry is not possible.

Only available for listed funders

The listed funders do provide a certain amount of data, although they each have their own approach to what data they disclose and how they measure case size. Omni Bridgeway tends to disclose their investments in terms of Estimated Portfolio Value (EPV) rather than commitment. The former is usually an order of magnitude larger than the latter and can give a very misleading assessment of the size of case investment. Burford and Litigation Capital Management report separate numbers depending on whether the investments are direct (i.e., balance sheet) or via their litigation funds.

For all three, average investment can be quite different depending on whether it is calculated on the total portfolio (concluded and/or on-going) or new commitments. With these caveats in mind, Table 7 provides a summary of number of cases, average case size as well as average case duration for the three listed funders. While we are not able to provide the same information for the private funders, we know from our previous

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analysis of the addressable market the listed funders account for a significant proportion of the total value of commitments in 2019/2020. They therefore should provide a good representation of the funding industry:

Table 7: Number of commitments (cases), size and duration

Funder	Number of cases[1]	Average case size[1]	Average case duration[2]
Burford	99	USD16m	2.3 years[3]
Litigation Capital Management	57	USD3.1m[4]	2.2 years
Omni Bridgeway	52	USD4.2m	2.6 years

Notes:
[1] Based on most recent disclosures of current commitments (2019/2020).
[2] Based on the portfolio (completed).
[3] Based on Weighted Average Life (WAL) as per Annual report page 39.
[4] Based on the average across LCM's Direct Investment and Global Alternative Returns Fund.
Source: Company Annual Reports and Investor Presentations

Case size ranges between $3.1m and $16m

To estimate average case size, we have used information on the number of new commitments in the last financial year and the value of the commitments made over the same period. This has been calculated on a group wide basis so includes cases directly funded via their balance sheets or via their litigation funds. We have compared new commitments as opposed to the average of the portfolio as this gives a better representation of the average size of claims being funded in the market today, as opposed to the average from previous years. For Omni Bridgeway and Burford Capital this is important as their portfolios have undergone significant change in recent years as a result of corporate actions[38].

As Table 7 shows, Burford Capital made 99 commitments over the period with an average size of USD16m. This compares to 52 for Omni Bridgeway with an average case size of USD4.2m and 57 for Litigation Capital Management with an average size of USD3.1m.

Average case length between 2.2 and 2.6 years

Table 7 also compares the average case duration for the three funders. This is based on the portfolio since inception and so is calculated over differing time periods given the different launch years for the three funders. Despite this, all three are relatively close with the range being only 0.4 of a year (i.e. just under five months).

9. What are the rates of acceptance, success, and return?

From an investor's point of view, one of the most important aspects of the litigation finance business is the success rate and rate of return on investment. As with average case size, this data is only available for the listed funders. Table 8 compares the case acceptance rates, win rates and rates of return based on their current portfolios. Where possible we have attempted to use a standardised measure.

Rejection rates are very high

Across the industry, acceptance rates are typically low. In general, most funders reject more than 90% of cases brought to them as they will only fund when there is a very high chance of success. As Table 8 shows, Burford Capital and Omni Bridgeway's acceptance rate is only 7% and Litigation Capital Management's rate is even lower at 3.5%. For Burford this is based on the last financial year when they reported accepting 99 out 1,414 inquiries. As not all commitments end up being funded the actual acceptance rate for Burford is likely to be lower. For Omni Bridgeway and Litigation Capital Management the

[38] This refers to the merger of IMF Bentham and Omni Bridgeway in 2019, and Burford's acquisition of Gerchen Keller Capital in 2016.

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acceptance rate is based on ratio of total inquiries to commitments since they have been listed:

Table 8: Acceptance, win and rates of return of listed funders

	Acceptance rate	Win rate	ROIC
Burford	7%[1]	89%[2]	93%[3]
Litigation Capital Management	3.5%	95%[4]	134%
Omni Bridgeway	7%	89%[5]	128%

Notes:
[1] Based on 99 commitments out of 1,414 inquiries (Annual report 2019 page 18).
[2] Based on adjudicated and settlement wins (Investor presentation FY 2019 page 8, B/S only).
[3] Based Core Litigation business only.
[4] Based on 11 losses out of 226 separate cases (source: LCM Annual Report 2020 page 16).
[5] Combined IMF Bentham & legacy Omni Bridgeway.

Source: Company Annual Reports and Investor Presentations

Win rate between 89% and 95%

Given the low acceptance rates it is not surprising that win rates for the three funders are high, ranging from 89% for Burford & Omni Bridgeway to 95% for Litigation Capital Management. For investors, the ROIC is a key factor and given this is a risk-based business the returns would be expected to be relatively high. All three have generated ROIC's over 90%.

10. What and where do investors finance litigation?

Commercial litigation is the most funded

The main litigation funders focus on commercial as opposed to consumer litigation. Commercial is something of a catch-all category and there are a number of sub-categories such as patent infringement, breach of contract, arbitration and insolvency. Most funders also provide capital to law firms both for single case and portfolio cases. In jurisdictions where class actions are permitted, financing collective litigation has also been a significant part of the litigation finance industry.

Class action and arbitrations are commonly funded

Using data from the listed funders, Table 9 provides a snapshot of the litigation being funded as of their latest market updates. Each of the funders has a different approach to categorising their exposures and so the data summarised in the table is only intended to provide a broad overview of the type of cases that are being funded. Omni Bridgeway and Litigation Capital Management both have a significant exposure to class action funding which accounts for 21%[39] and 36% of their portfolios respectively. This reflects their Australian heritage. Ironically, Burford which does not provide funding for class actions was subject to a class action itself as part of a shareholders claim of making false and/or misleading statements on its returns. The litigation was subsequently dropped.

Portfolio funding on the increase

Burford Capital does not categorise its investment in to general commercial, although the majority of what it funds would fall under that heading. Arbitration is also a significant category for all three, whereas the more traditional TPLF category of insolvency is now relatively small for the largest funders. Industry data suggests that portfolio funding is becoming an increasingly important part of the TPLF industry. This is borne out by the data on the listed funders who report exposures to portfolio funding of 28%, 10% and 7% for Burford, Omni Bridgeway, and Litigation Capital Management respectively:

[39] Measured by EPV for Omni Bridgeway.

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Table 9: Case type as percentage of portfolio of listed TPLF providers

Burford Capital		Omni Bridgeway		Litigation Capital Management	
Case type	%[1]	Case type	%[2]	Case type	%[3]
Mixed Portfolio	28%	Commercial	27%	Class Action	36%
Antitrust	15%	Class Action	21%	Arbitration	24%
IP	12%	Arbitration	13%	Commercial	24%
Arbitration	10%	OBE Group[4]	13%	Insolvency	9%
Contract	10%	Patent	11%	Portfolio	7%
Securities	6%	Law Firm[5]	10%		
Asset Recovery	5%	Insolvency	2%		
Federal Statutory	5%	Other	3%		
Bankruptcy	3%				
Other	6%				

Notes:
[1] Based on group wide commitments.
[2] Based on Estimated Portfolio Value (EPV).
[3] Based on commitments of both Direct Investments and LCM Global Alternative Returns Fund.
[4] OBE Group refers to Omni Bridgeway Holding B.V., an un-listed company headquartered in the Netherlands.
[5] Refers to investment in law firm portfolios.

Source: Burford Annual Report 2019, Litigation Capital Management Annual Report 2020 & Market Update June 2020, Omni Bridgeway Investor Presentation December 2020

North America has the greatest exposure to TPLF

Regional exposures to funding are summarised in Table 10. For Burford and Omni Bridgeway, the greatest exposures are to North America, the majority of which is the US. This is followed by EMEA for Burford and Asia-Pac for Omni Bridgeway, the majority of the Asia-Pac exposure for the latter being Australia. Litigation Capital Management is focused on Asia-Pac (mostly Australia) and EMEA (mostly the UK). Burford also provides an additional category of "global" which is defined as litigation funding which has no defined single region. From what we understand a large part of this is related to the US in some form or other:

Table 10: Main regional exposures of publicly listed TPLF providers

	Burford Capital[1]	Omni Bridgeway[2]	Litigation Capital[3]
North America	42%	49%	0%
EMEA	30%	23%	49%
Asia-Pac	4%	28%	51%
Global	23%[4]	n/a	n/a

Notes:
[1] Based on group wide commitments.
[2] Based on Estimated Portfolio Value (EPV).
[3] Based on commitments of Direct Investments only.
[4] Defined by Burford as unable to classify a single jurisdiction in which the case is pending (see page 45 of Annual Report 2019 for full definition).

Source: Burford Annual Report 2019, Litigation Capital Management Annual Report 2020 & Market Update June 2020, Omni Bridgeway Investor Presentation December 2020

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It is worth noting that the regional data for the listed funders may give a slightly misleading picture of regional importance of litigation finance. As we discuss in our analysis of the addressable market, the US is by far the dominant region for litigation funding. Omni Bridgeway and Litigation Capital were founded in Australia, hence their exposure to Asia-Pac, much of which is Australia. In our view, if we took the regional exposures of the private funders into account, it is very likely the exposure to the North American market would be a lot higher.

11. What is the size of the litigation finance market?

Problems with definition and measurement

Any discussion on the size of the market for TPLF faces the two issues of definition and measurement. The definitional issue does not relate to what comes under the scope of TPLF but relates to what is meant by the size of the market. To highlight this issue, a report published in 2017 by Aspen Re[40] states "[*litigation] funding is a billion-dollar industry that is reshaping litigation around the world*". In the same year David Russell of litigation specialist lawyers, Arnold & Porter writing on TPLF states "*a safe estimation would put the amount of the litigation financing in the legal market as somewhere in the low billions of dollars*"[41]. Two years later in 2019, Professor Maya Steinitz, a leading name in the TPLF world, writes "*some estimates of the size of this global industry now place its market capitalization at $50-$100 billion*". This is closely followed by Joseph Stroble and Laura Welikson writing in the *Defense Counsel Journal* that "*the litigation finance industry is a five-billion-dollar market in the United States alone*"[42]. Westlake Advisors, referring to the same period state that the size of the US market for TPLF was $2.3bn. As it happens, they may all be correct, and the difference relates to what definition is used. We discuss in detail the size of the market for TPLF in our accompanying paper[43] on the Total Addressable Market (TAM) which provides various ways in which the market size can be measured. Here we will provide just a brief summary of the issues.

We estimate the TAM to be between $60 & $90bn

In our analysis, we estimated the total litigation spend in 2019 was approximately $142bn, circa 20% of the total global legal services market in the same year. Of that, we estimated around $60bn to $90bn could have been financed by some form of third-party funding. This is the value that Professor Steinitz refers to, i.e., the notional/potential addressable market.

The much lower $1bn to $5bn refers to the actual market size, rather than the TAM but, again this can be quite different depending on the definition used. Here we have to differentiate between the value of the funds that are available for TPLF and the funds that are actually committed to funding. For example, Burford Capital which is the largest of the independent litigation finance companies had a total portfolio of $4.2bn[44]. In the period up to end of 2019, they made total commitments of $1.57bn. Similarly, Omni Bridgeway, the second largest of the listed litigation funders, had a portfolio value of $1.5bn and made total commitments of $220m. Westfleet Advisors estimates that the total fund size of the litigation funders was approximately $9.5bn in 2019. The $2.3bn referred to earlier is what they estimated was committed to TPLF over the period. In other words, the $2.3bn is the flow into financing over the year from the stock of $9.5bn of funds.

We estimate total commitments in 2019 of between $2.4bn & $3bn

In our research, we estimated the cumulative figure for total commitments over the 2019/2020 annual period was between $2.4bn and $3bn. That is how much actual case funding was made and it is that value we believe is the actual market (this compares to the $2.3bn estimate for the US by Westfleet Advisors). In our previous analysis we estimated the dedicated TPLF funds amounted to approximately $9.2bn. We have since

[40] Aspen Re (2017), *Litigation funding, global trends and outlook.*
[41] Russell (2017), *ibid.*
[42] Strobel & Welikson (2020), *ibid.*
[43] See Evans & Fletcher (2020), *ibid.*
[44] This was the stated value as its year end in Dec 2019.

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revised this estimate for the current market (i.e. end 2020) to total dedicated funds of between $10bn and $11bn.

Two other points worth noting with regard to market size are acceptance rates and commercial versus consumer litigation. On the former, we know from the three listed operators they accept between 3% and 7% of cases. In other words, they reject between 93% and 97% of all cases put forward for funding. As we highlight in our analysis of the TAM, a relatively small change in the acceptance rate could have a relatively large impact on the addressable market. With regard to commercial versus consumer litigation funding, the vast majority of cases funded is for commercial cases. This is essentially due to the economics of litigation funding as commercial is generally a lot larger and the potential returns a lot higher.

Estimates exclude recoveries

One final issue is that, in all estimations of the size of the industry, the actual and addressable market excludes the impact of recoveries (i.e. the awards from out-of-court settlements or favourable court judgments). Recoveries or awards, particularly in the case of class actions, can run into billions of dollars. To highlight this point, in Burford Capital's 2019 annual report they cite data on the 100 largest settlements, judgements and awards in the US which totalled a combined $14.7bn in 2018[45]. Since the litigation funder commonly receives 15-40% of such awards[46] (depending on the type of funding arrangement in place), this represents a potentially large revenue stream that is not captured in TAM calculations based on the litigation portion of total legal spend.

12. What are the average gains on case wins?

No industry data available

To the best of our knowledge there is no industry data on the sizes of award settlement and none of the private funders make public their win rates and/or the magnitude of case wins relative to capital deployed. This leaves only the listed funders who provide some data on case "uplifts", albeit with varying degrees of disclosure.

For Burford, using information provided in their 2020 full year presentation on capital deployed and recoveries for settled and won (or adjudicated) cases, we find that gains (or up-lifts) ranged from 1.5x (for settled) to 3.5x (for won cases).

For Omni Bridgeway, we use historic results for IMF Bentham for 2019 and 2018 (the former being the last year in which they provide a breakdown of the mix between won, settled and lost cases). We then estimated the rates of settlement, wins and losses and associated costs. We calculate the gains/up-lifts range from 2.6x (settled) to 4x (adjudicated wins).

Litigation Capital Market, the smallest of the listed funders provide very little in the way of information on gains other than a single case target return of 4x of invested capital, which we assume to refer to a win on adjudication.

For the listed funders we estimate uplifts to be between 1.5x & 4x

While our estimates are based on relatively limited data, Burford and Omni Bridgeway are the world's largest funders. As such we estimate that uplifts for the industry range from **1.5x for settled cases to 4x for adjudicated wins**. We should also note that the return on settled cases is also dependent on expected duration. Lower duration (i.e., higher probability) cases are most likely to achieve a lower gain on settlement. This factor may explain the relatively wide range of gains in settled cases as opposed to cases won on adjudication.

[45] Burford's 2019 Annual Report; the figure is the 'Total value of the largest 100 US verdicts in 2018' citing data by ALM VerdictSearch.
[46] See 'Bankrolling Justice' by Emma Ryan and Aleks Vickovich in *LawyersWeekly*, May 2018

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13. What is the relationship between TPLF and law firms?

In the early adopter markets of the UK and Australia, the litigation financing industry and traditional law firms co-existed relatively well. In part this is due to TPLF initially being used in only limited situations (e.g., insolvency) but also due to contingency fees being banned in both jurisdictions. In the US where contingency fees have been an integral part of the litigation market for some time, the growth in TPLF was initially viewed with suspicion by law firms and seen as a potential threat to their business models. These days the situation has changed, and litigation finance is no longer viewed as eating the lawyer's lunch but is increasingly viewed as providing it.

TPLF is a positive for law firms

To explain why, David Russell[47] of the law firm Arnold & Porter, published a paper in which he discusses the view that "Biglaw" has benefitted from the rise of TPLF as it has allowed the industry to move back to its preferred model of hourly billing. On this, he explains large law firms are inherently unstable business models. This is because traditionally they have relied on long-standing relationships with clients who do not shop around and were willing to accept billable hours. Post the financial crash, clients became increasingly unwilling to accept the billable hour model as they became far more conscious of costs. This pressured law firms to offer alternative fee arrangements (AFA) such as mixed hourly billing, performance bonuses, contingent and flat fees, and law firm equity in clients. At the same time there was the rise of the in-house counsel which had the effect of eroding the asymmetry of information[48] that had existed between law firm and client and had perpetuated the stickiness of relationship and acceptance of billable hours.

TPLF allows the use of billable hours

Russell explains that following the move away from billable hours, law firms, in particular Biglaw, became increasingly financially unstable. The rise of litigation financing has in-part reversed this trend and has benefited both the plaintiff and law firms alike. He explains this by way of example in which a company (the plaintiff) engages in litigation and uses litigation financing which means they do not have to pay the law firm out of their own pocket. Instead, the litigation funder assumes the risk and pays the law firm using the traditional billable hour model. Moreover, the law firm gets paid a guaranteed payment and is not at risk of the plaintiff not paying its fees. As Russell states, for law firms "*litigation-financing AFAs are better than the hourly billing model. With hourly billing, there is always a risk that the client will either be slow to pay or will not pay at all*". Not surprisingly, law firms now routinely include litigation financing in their pitch to their clients.

Not all aspects of the relationship between law firms and third-party funders is considered positive. As Giesel (2015) highlights "[w]ith *ALF* [Alternative Litigation Funding] *arrangements becoming more commonplace at all levels of litigation, questions have emerged about the effect the involvement of an ALF entity in a litigation matter has on the work-product doctrine and the attorney-client privilege*.

Concerns over attorney-client privilege and…..

With regard to attorney-client privilege, the issue relates to what is disclosed to the funder and at what stage. The funder will want as much information as possible in order to assess the likeliness of winning, and so funding the case. Voluntary disclosure of privileged information to a third party other than counsel can result in the waiver of the privilege. In turn this potentially makes the information discoverable.

…..the work-product doctrine

Similarly, the work-product doctrine (highlighted in the section above on disclosure), Glover (2016) explains "*has long been understood as protecting the values and functions*

[47] See David Russell (2017), *ibid.*
[48] Russell explains that Biglaw's business model is foundationally based on an informational asymmetry between lawyers and clients. He cites Ribstein (2010) who explains that "it is hard for clients to shop for the most skilled and trustworthy lawyer because as non-experts they may not be able to accurately judge the quality of the lawyer's services even long after they are rendered."

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of the adversarial system" and "*has traditionally and most frequently been invoked to protect materials created by attorneys in the course of readying a case for trial…*" The issue that has arisen for courts is they are increasingly being required to decide on whether materials created in the course of obtaining and making use of third-party funding in litigation qualify for work-product protection.

Attorney-client privilege and the work-product doctrine are subjects of substantial debate among academics and practitioners. For this review, suffice to say, that along with discussions on the ethics of using TPLF they are often cited as areas of conflict of interest between funders and lawyers and reasons why the growth of TPLF should be subject to some degree of regulation.

14. Is there a secondary market?

Likeliness of a secondary market highlighted in 2011

In a research paper published almost ten years ago, Professor Maya Steinitz wrote the following on the secondary market:

> *The last couple of years have also ushered in a secondary market in legal claims. Predominantly, this secondary market takes the form of litigation funding firms going public - selling shares to the public and listing on stock exchanges. But it is possible that in the foreseeable future we will also be witnessing the creation of a new form of securities - legal-claims-backed securities … The existence of a secondary market in litigation claims, which is poised to grow, is the key feature distinguishing not only the second wave of litigation funding from the first, but also, as we shall see, third-party funding from attorney-funding of litigation (the contingency fee)*[49]*.*

Primary market has developed

Since the publication of Professor Steinitz's paper, the primary market has grown rapidly. It has attracted many investors from a variety of different backgrounds and funds dedicated to litigation finance have grown ten-fold. The secondary market, however, has not developed other than a few small platforms such as AxiaFunder (in the UK) and Lex Shares (in the US) and indirectly via investing in the shares of listed funding companies.

Secondary market has not

As it stands, litigation funders have very little access to a secondary market in legal cases. Once they have committed, they either have to see it through to settlement or adjudication or cease funding the case. Similarly, those investing in litigation funds are effectively making a private equity type of investment and are committed for the duration of the fund. Legal-claims-backed securities as envisaged by Professor Steinitz which could be traded on a secondary market has yet to develop. Searching the academic literature, we have found very little written on the potential benefits of a secondary market, or why such a market has not yet developed. Any indirect comments on this issue tend to focus on the relative nascent status of the industry or concerns over ethics of trading in "other peoples" claims.

Market has been too small

To date, one aspect of the industry that is likely to have been the limiting factor on the establishment of a secondary market is its size. As we have previously highlighted annual commitments to litigation funding in 2019 were between $2.4bn and $3bn and the total addressable market is estimated by us to be between $60bn and $90bn. This means even if all commitments were securitized and traded (at least once), it would remain a niche market.

TPLF as an asset class will need a secondary market

Going forward, as TPLF further establishes its status as a legitimate asset class and dedicated funds continue to grow, we would expect mainstream asset managers to develop their own open- and closed ended funds that specialise in litigation finance. This

[49] Steinitz, Maya (2011), *Whose Claim Is This Anyway? Third Party Litigation Funding*, Minnesota Law Review, Vol. 95, No. 4, 2011.

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could take the form of direct funding of cases or investing in litigation funds or companies. In many respects this is just a hybrid of Burford and Juridica,[50] but could be offered as part of a suite of investment funds managed by mainstream managers, rather than a more speculative investment in a single funder.

An alternative approach is to follow Steinitz's idea and securitize legal claims which could be traded in a secondary market. These could be traded while "in-play" or following adjudication during the asset recovery phase. One of the potential limiting factors is access to information and the confidentiality of privileged information that would be required to assess an investment in the secondary market. This may require a rating of the security by a specialist agency as well as the development of a specialist trading platform or venue for legal claims. Despite these issues, it seems inevitable that as TPLF grows some form of secondary market will develop.

15. What's the outlook for TPLF?

From periphery to mainstay

In just over a decade, TPLF has transitioned from the periphery to the mainstay of the legal services market. In countries such as the US and UK, law firms routinely include access to litigation financing as a central component in pitches to their clients. But despite its growth, TPLF remains a relatively small part of total global expenditure on litigation. In some regions, notably Asia, TPLF has made very little headway and is either ignored or, as in Hong Kong and Singapore, its use is restricted by law.

Global trend of demand for access to justice

While the adoption and growth in TPLF varies greatly from region to region, one trend that is occurring worldwide is the demand for access to justice. This is occurring at both the commercial and consumer level and is a trend that is unlikely to be reversed. In the near term, the growth in TPLF will continue to be focussed on the common law countries of the US, UK, Australia, and Canada. Certain civil law countries such the Netherlands, Germany, Austria, and Switzerland are also likely to see continued growth, albeit at a slower pace. This leaves a significant part of the land mass and population of the world where TPLF has the potential to fund access to justice. In South America, some limited use of TPLF has already been seen in Brazil but remains largely undeveloped in the rest of the continent. In Africa, TPLF has so far only been adopted in South Africa. In the Middle East TPLF has been used in the UAE and was allowed for the first time in Saudi Arabia in 2017, after which no other cases have been recorded. India has experienced a limited growth in the use of TPLF, although it is debateable whether its use is legal or not. TPLF is unused in mainland China and most commentators do not believe it will be adopted any time soon. However, unlike Hong Kong, TPLF is not illegal in the PRC and only a small penetration of Chinese litigation market would have a significant impact on its growth.

Litigation will continue to grow

While it is clear the demand to pursue litigation claims will continue to grow, the limiting factor for the growth in TPLF is whether the supply of funds will keep pace. In our discussions on the actual current size and total addressable market for TPLF we have based our estimates on current commitments and the current amount of total litigation that could be addressable by third party funding. As we know, the supply of funds mainly comes from dedicated funders, hedge funds, a limited number of family offices and high net worth individuals. Mainstream asset managers and pension funds have yet to enter this market in any meaningful way. But given the acceptance of TPLF as a legitimate asset class it seems inevitable that a significant investment in the sector could come from the investment behemoths.

To put this in perspective, a report published in 2019 by the Economic Development division of the United Nations estimated that by end 2017 the total global AUM of the

[50] Juridica was a closed-ended investment company until it delisted in 2018.

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asset management industry was around $77 trillion. Out of the total they estimated assets devoted to alternatives to be around $12 trillion. Going forward a report by PwC[51] estimated that global AUM was predicted to grow to $145 trillion by end 2025, with alternatives accounting for 21% ($30 trillion).

In summary, TPLF is a market that has a lot further to go. It will be fuelled by the global growth in litigation claims and the recognition of litigation funding as a legitimate alternative asset class.

[51] PWC (2017), *Asset & Wealth Management Revolution: Embracing Exponential Change*, 2017.

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References & suggested reading

Abramowicz, Michael (2019), *Screening Legal Claims Based on Third-Party Litigation Finance Agreements and Other Signals of Quality,* GWU Law School Public Law Research Paper No. 2019-19

Abrams, David & Daniel 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

Allianz Global Corporate & Speciality SE (2020), 'Collective Actions and Litigation Funding and the Impact on Securities Claims: A Global Snapshot', July 2020

Aspen Re (2017), *Litigation Funding. Global Trends and Outlook*

Avraham, Ronen, Lynn Baker & Anthony J Sebok (2020*),* *The Anatomy of Consumer Legal Funding*, Cardozo Legal Studies Research Paper No. 618

Ayranci, Zehra Betul (2017), *Legal Ethics and Professional Responsibility Concerns Related to Alternative Litigation Financing*, Professional Ethics and Alternative and New Law Business Structures Joint Committee News, Newsletter of the International Bar Association Section on Public and Professional Interest (2017)

Barker, George Robert (2011), *Third Party Litigation Funding in Australia and Europe*, Australian National University; Law and Economics Consulting Associates Ltd

Bedi, Suneal & William Marra (2020), 'The Shadows of Litigation Finance', Vanderbilt Law Review, Forthcoming.

Buesnel, Clive et al (2019), *This time is different: Six trends that will determine the future of global non-life reinsurance*, Deloitte, 2019

Bloomberg Law – Commercial Litigation Finance (2019)

Burford Capital – Annual Reports, 2018, 2019, 2020; 2018 Litigation Finance Survey; 2019 Legal Finance Report: Survey of In-House and Law Firm Lawyers; Capital Markets Day 2018 Investor Presentation.

Couture, Wendy Gerwick (2013), *Securities Regulation of Alternative Litigation Finance*, Securities Regulation Law Journal, Vol. 42, p. 5, 2014

Cadman, Emily (2018), *For the World's Super Rich, Litigation Funding Is the New Black*, Bloomberg News

Epstein, G (2019), *The asset management industry in the United States, Financing for Development, series*, No. 271 (LC/TS.2019/81), Santiago, Economic Commission for Latin America and the Caribbean (ECLAC), 2019.

Evans, Scott & Matt Fletcher (2020), 'Third-Party Litigation Funding: What is the size of the market anyway?' SEAL Advisors, Nov 2020

Faure, Michael G & Jef P.B. De Mot (2019), *Third-Party Financing and Litigation Expenditures*, New York University Journal of Law & Business, 2016, Vol. 12(3), 751-778.

Fitzpatrick, Brian T (2018), *Can and Should the New Third-Party Litigation Financing Come to Class Actions?* Theoretical Inquiries in Law, Vol. 19.1 (2018)

Giesel, Grace M. (2012), *Alternative Litigation Finance and the Work-Product Doctrine*, Wake Forest Law Review, Vol. 47, No. 5, 2012

Giesel, Grace M. (2015), *Alternative Litigation Finance and the Attorney-Client Privilege*, Denver University Law Review, Vol. 92, No. 1, 2015

Copyright © SEAL Advisors 2021. All rights reserved

Glover, Maria (2016), *Alternative Litigation Finance and the Limits of the Work-Product Doctrine*, New York University Journal of Law and Business, Vol. 12, No. 3, 2016

Gomez, Manuel A. (2015), *Crowdfunded Justice: On the Potential Benefits and Challenges of Crowdfunding as a Litigation Financing Tool*, University of San Francisco Law Review, Vol. 49, 2015

Goral, Radek (2015), *Justice Dealers: The Ecosystem of American Litigation Finance,* Stanford Journal of Law, Business, and Finance.

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

Huang, Bert I.(2012), *Litigation Finance: What Do Judges Need to Know?* Columbia Journal of Law and Social Problems 45:525 (2012)

Kalajdzic, Jasminka, Peter Kenneth Cashman & Alana 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

Kidd, Jeremy (2020), *To Fund or Not to Fund: The Need for Second Best Solutions to the Litigation Finance Dilemma*, George Mason Law & Economics Research Paper No. 12-22

Knight, Jared (2016), *Of Conflicts and Corporations: Analyzing Corporate Forms for Future Litigation Finance Firms*, Journal of Corporation Law, Vol.41, No.4

Legg, Michael (2017), *Class Actions, Litigation Funding and Access to Justice*, UNSW Law Research Paper No. 17-57

Legg, Michael, Louisa Travers, Edmond Park & Nicholas Turner (2010), 'Litigation Funding in Australia', paper presented by Michael Legg at the Law Society of New South Wales Young Lawyers

Litigation Capital Management – Annual Reports 2019 & 2020

Molot, Jonathan T.(2010), *Litigation Finance: A Market Solution to a Procedural Problem*, Georgetown Law Journal, Vol. 99, 2010

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

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

Omni Bridgeway (IMF Bentham) – Investor Presentation, January 2020, Business Plan, 17 November 2020, Annual Report 2020

PWC (2017), *Asset & Wealth Management Revolution: Embracing Exponential Change*, 2017

Ribstein, Larry (2010), *The Death of Biglaw*, Wisconsin Law Review, Vol. 2010, No. 3, 2010.

Russell, David (2017), *Litigation Financing's Increasing Presence in Biglaw and the Legal Market*, Available at SSRN 2945742, 2017

Sahani, Victoria (2013), *Recent Developments in Third-Party Funding*, Journal of International Arbitration, Vol. 30, Issue 4, pp. 443-452, 2013

Shroff, Cyril & Amita Katragadda (2019), *Third-Party Funding of Litigation In India: An Asset Class In Waiting***,** Bloomberg, Feb 2019

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Shannon, Victoria (2015), *Harmonizing Third-Party Litigation Funding Regulation***,** 36 Cardozo Law Review. 36:861 (2015)

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

Shepherd, Joanna & Judd E. Stone (2014), *Economic Conundrums in Search of a Solution:* The Functions of Third-Party Litigation Finance, Available at SSRN 2432610.

Silver, Charles (2013), *Litigation Funding Versus Liability Insurance: What's the Difference?* University of Texas Law, Law and Econ Research Paper No. 441

Steinitz, Maya (2011), 'Whose Claim Is This Anyway? Third Party Litigation Funding', Minnesota Law Review, Vol. 95, No. 4, 2011

Steinitz, Maya (2012), *The Litigation Finance Contract*, William & Mary Law Review, 455 (2012)

Steinitz, Maya (2019), *Follow the Money? A Proposed Approach for Disclosure of Litigation Finance Agreements*, UC Davis Law Review, 2019 (also featured in The Practice, Litigation Finance, Volume 5, Issue 6)

Steinitz, Maya & Abigail Field (2014), 'A Model Litigation Finance Contract', Iowa Law Review. 711 (2014)

Stroble, Jospeh, J & Laura Welikson (2020), *Third-Party Litigation Funding: A Review of Recent Industry Developments*, Defence Counsel Journal, January 2020.

Strom, Roy (2020), *Nobody Knows Litigation Finance Size, but It's Not $85 Billion*, June 11, 2020, Bloomberg News

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

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

Westfleet Advisors (2019 & 2020)– Litigation Finance Buyer's Guide, Charles Agee & Gretchen Lowe

Woodsford (2019), Global trends in litigation funding, Woodsford.

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