Third-party litigation funding: how to invest in court cases

Introduction

Third-party litigation funding is a new emerging investment strategy which aims to profit from the outcome of court cases. In particular, by financing the legal costs and fees of the claimants, investment firms look to obtain a share of the eventual settlement. As the sector experienced strong growth in the past years, large institutional investors are starting to approach this market, as returns from these investments are strongly uncorrelated with the market.

The functioning of Third-party litigation funding

Third-party litigation funding is based on non-recourse financing provided by investment firms to claimants in court cases. The characteristic of being a non-recourse financing distinguishes TPLF from a simple loan, as the claimant does not need to pay interest nor to repay the capital. The investment firm, in fact, typically arranges to receive a predetermined share of the eventual settlement or a fixed amount, for instance 2x or 3x the original capital provided. More complicated structures can also be arranged, whereby the investor not only covers all the legal expenses but also offers access to an anticipated amount of the final settlement.

There is not a specific boundary to the type of court cases that can be financed. The funds undergo severe due diligence before signing the funding agreement, aiming to maximize the chances of obtaining a settlement. Moreover, the investor may finance not only single cases, but also entire class actions or groups of cases.

For the claimant, the advantages of making use of such a structure can be several. On the one hand, the claimant does not need to cover for the legal expenses and fees associated with a court proceeding. This in turn incentivizes individuals and firms to pursue legal action without the worry of undergoing lengthy and expensive trials while uncertain of an effective final payout. Additionally, this structure can also facilitate risk management practices by firms, which can rather focus on their core businesses.

Over the years TPLF has raised concerns about the transparency and possible issues associated with such structures. Potential issues range from the possibility of creating distorted incentives for claimants to international interferences in court cases, hence igniting regulatory interventions.

The regulatory settings

Origin in Australia and Legal Framework

The modern conception of third-party litigation funding originated in Australia, and to this day the country is one of the most sophisticated markets in this practice. It began as a tool for insolvency practitioners to pursue claims on behalf of distressed companies, but since the early 2000s it extended to civil and commercial disputes, as well as arbitration. In 2021, total litigation spending in Australia was estimated at A$4.8 bn, with an addressable third-party funding market of approximately A$2.4bn. TPLF has also been extensively used in class actions: according to estimations from 2018, around 72.5% of class filings were backed by litigation funders, although in recent years this proportion has steadily declined to under 50% of all cases commenced. From an economic perspective, the growth of TPLF can be understood through the lens of a simple demand–supply model, outlined in a 2011 study by the Centre for Law and Economics. Demand for funding depends on the level of returns required by funders, the availability and cost of substitute financing, the costs and risks associated with participation, and the regulatory

framework that governs the industry. Legal rules thus shape both supply and demand. It must be noted that an important structural difference separates Australia from the United States: contingency fees for lawyers are prohibited, with the sole exception of a highly regulated system in the state of Victoria. Lawyers instead may only enter into conditional "no win, no fee" arrangements. The absence of contingency fees reduces the availability of alternative financing options and has therefore amplified the demand for third-party funding.

For much of its legal history, however, Australia had prohibited this practice through the common law doctrines of maintenance and champerty. Maintenance prohibits third parties from interfering in litigation in which they had no legitimate interest, while champerty made it unlawful to fund a claim in exchange for a share of the proceeds. These doctrines, which survived colonisation and federation, remained enforceable well into the twentieth century. Their restrictive scope gave rise to repeated challenges against litigation funding agreements: more than twenty such cases were litigated in the eight years leading up to the High Court's landmark ruling in Campbells Cash and Carry Pty Ltd v. Fostif in 2006. The Court stated that third-party funding of a class action was not an abuse of process, nor was it contrary to public policy, making clear that doctrines of maintenance and champerty could no longer be used to challenge proceedings merely because they were funded. After this ruling, the Australian states of Victoria, South Australia, New South Wales and ACT have abolished them, although an agreement might still be void if contrary to public policy. Regulatory attention then shifted to supervision of funding agreements. In a 2009 court ruling (Multiplex), it was affirmed that funding agreements in class actions amounted to Managed Investment Schemes under the Corporations Act, thereby requiring registration and an Australian Financial Services Licence for third-party funders. Together with other controversial rulings, this prompted the federal government to intervene. In 2012, it introduced regulations exempting funders from the MIS framework provided they maintained conflict-management systems. This position lasted until 2020, when a policy reversal reinstated previously affirmed compliance obligations through new regulations. Two years later, however, the Full Federal Court held that litigation funding was not a Managed Investment Scheme. This decision was followed by new government regulations, passed in 2022, that again excluded litigation funding schemes from having to fulfil MIS requirements.

In practice, funding arrangements are built on a dual structure: the client enters into a contract with their lawyer for legal services and a separate funding agreement with the financier. Funders are typically remunerated by a percentage of settlement proceeds, commonly between 20% and 45%, or through multiples of the capital advanced, fixed sums, or combinations of these. Courts have shown an increasing willingness to examine these commercial terms and, in controversial instances, have intervened to reduce commissions they considered excessive. Disclosure obligations also differ depending on the setting. In class actions, the early disclosure of legal and funding costs is required, while outside the class action framework, mandatory disclosure requirements for TPLF remain limited.

US expansion and Legal Framework

In the United States, the development of TPLF has found a complex professional and regulatory framework. Firstly, the American Bar Association's Model Rules of Professional Conduct, which are designed to ensure that lawyers act in the best interests of their clients, prohibit both fee-splitting between lawyers and nonlawyers and nonlawyer ownership in law firms. Certain TPLF agreements, where funders are compensated with a percentage of legal fees earned by the attorney, go against this provision. The rule also prevents outside investors from acquiring equity in law firms, a limitation that some funders would like to see abolished in order to streamline funding models and integrate capital provision more closely with legal practice. Beyond professional rules, political and national security concerns have increasingly shaped the debate. In December 2022, fourteen state attorneys general wrote to the Department of Justice to raise alarms about foreign-sourced litigation funding, demanding to adopt disclosure requirements for foreign financing. Their worry is that these funding structures could allow other

governments to finance cases against American companies in sensitive sectors such as defence, with the potential to slow down company's operations and gain access to proprietary intellectual property. Despite these concerns, the market has grown rapidly. According to the Government Accountability Office, the commercial TPLF industry in 2021 had an estimated $12.4bn equivalent in assets under management and $2.8bn in new agreements.

Unlike Australia, the US has no federal requirement for disclosure of funding arrangements. Instead, the regulatory landscape is determined at a state level: some federal judges, including in Delaware and California, have issued orders mandating disclosure of such agreements, and more than a dozen state legislatures have introduced or passed legislation aimed at increasing transparency. The doctrines of maintenance and champerty complicate the picture. These common-law prohibitions against profiting from another's lawsuit were carried over from England's legal system, but their survival varies on a state-by-state level. California never recognised champerty, while states such as Massachusetts, Ohio and Minnesota have abolished it in favour of more flexible doctrines. New York and Delaware, by contrast, formally continue to enforce champerty rules, though courts interpret them in ways that generally allow typical TPLF contracts. In fact, the application of these rules has been shaped by case law. In New York, for example, courts have applied champerty in a way that makes it illegal to purchase claims with the sole or main intent to initiate a litigation. Delaware courts have also taken a permissive approach. In the 2016 case Charge Injection Technologies v. DuPont, the Superior Court rejected a challenge to a funding arrangement, holding that the agreement did not constitute champerty or maintenance because the financier lacked any right to control or settle, and the funder had not given rise to litigation that would not otherwise have happened. Florida courts, which also formally recognize champerty and maintenance, have adopted similar reasoning.

Parallel to these judicial developments, legislative reforms in several states have attempted to bring clarity to the law regulating TPLF. Indiana introduced one of the most comprehensive frameworks, mandating disclosure of funding arrangements, prohibiting funders from accessing proprietary data, and banning them from exercising control over litigation. The legislation was shaped in part by incidents such as Sysco v. Burford, in which the funder was reported to have vetoed a settlement decision. West Virginia has since adopted similar measures, and Louisiana has gone even further, enacting a bill that also limits foreign-sourced litigation funding.

Europe and EU Legislation

In Europe, the development of third-party litigation funding has followed two distinct paths: the common law tradition in the United Kingdom, and the more cautious civil law jurisdictions on the continent. In England and Wales, the use of TPLF could grow rapidly as the historic obstacles of maintenance and champerty had been removed. They were abolished as offences under the Criminal Law Act 1967, although the statute preserved the principle that funding contracts could still be voided if found contrary to public policy.

By contrast, the diffusion in continental Europe has historically been much more limited. As of 2011, litigation funding in civil law countries was largely absent outside Germany, Austria, and Switzerland, with Germany being the most significant jurisdiction on the continent. As the phenomenon is on the rise, the debate over TPLF has moved to an EU level. In September 2022, the European Parliament passed a resolution asking the Commission to establish minimum common standards for commercial litigation funding. In March 2025, the Commission published its research report "Mapping Third Party Litigation Funding in the European Union", a comprehensive survey of Member State practices and views. The report revealed considerable uncertainty created by the absence of harmonised rules and noted that a majority of respondents called for EU-level regulation. The Commission concluded that Member States can expect EU legislation on this matter in the upcoming years.

We present some relevant examples of EU States, whose divergent policies show the lack of a unified position on TPLF by the EU. Ireland is currently the most restrictive jurisdiction, having fully maintained the prohibitions of maintenance and champerty, thus making TPLF illegal. Yet there may be room for change, as a review was launched in 2023 and is expected to publish recommendations that could form the basis for reform. Meanwhile, Ireland excluded international commercial arbitration from the maintenance and champerty prohibitions, allowing TPLF in that context. Germany represents a very different approach, as litigation funding is in principle permitted and subject only to a limited number of specific rules. The most notable intervention in the country came in 2023, when they capped the share of proceeds available to funders at 10 per cent in actions. Italy, by contrast, remains at an earlier stage of development. TPLF is neither prohibited nor explicitly regulated by a dedicated legal regime but is instead recognised as an "atypical" contract under the Civil Code. Italian law does not require disclosure of funding agreements or lawyer fee arrangements.

Main players and recent court cases

Across regions, a handful of specialists dominate third-party litigation funding. In the U.S., scale players like Burford Capital lead the market, with an active bench that includes Longford Capital, Parabellum Capital, GLS Capital, Bench Walk Advisors, and others regularly recognized in industry rankings and Westfleet's market reports. In the UK/Europe, established platforms such as Therium, Harbour Litigation Funding, Woodsford, Augusta, and shareholder-recovery specialist Deminor are the main players, alongside continental players like Nivalion. In Australia, historically a cradle of class-action funding, Omni Bridgeway (ASX-listed) and LCM remain prominent, reflecting the depth of that market.

Burford and the YPF minority claim against Argentina

One of the most prominent examples of third-party litigation funding is the Burford claim against Argentina for its re-nationalization of YPF – major Argentinian Oil & Gas company.

The origins of the dispute go back to the privatization of YPF in the 1990s and its subsequent acquisition by Spain's Repsol. In 2007, the Petersen Group, through two Spanish holding companies, acquired a 25% stake from Repsol in a transaction financed almost entirely by loans from banks and Repsol itself. The financing structure depended on dividend distributions from YPF to service the debt.

In 2012, under President Cristina Fernández de Kirchner, Argentina expropriated 51% of YPF's shares from Repsol. At the same time, dividend payments were suspended. This left the Petersen companies unable to meet their obligations, leading to their insolvency and the sale of their litigation rights in Spanish bankruptcy proceedings. Burford Capital acquired these rights in 2015, later joined by hedge fund Eton Park.

The legal claim was based on Article 7 of YPF's bylaws, which requires any shareholder acquiring more than 15% of the company's shares to launch a tender offer for all remaining shares. The plaintiffs argued that Argentina, as the acquiring shareholder through expropriation, breached this provision by failing to make such an offer. Because YPF shares were listed on the New York Stock Exchange, the case was brought before the Southern District of New York.

In March 2023, Judge Loretta Preska found Argentina liable for violating YPF's bylaws, while ruling that YPF itself was not responsible for enforcing the provision. In September 2023, she quantified damages at US$16.1 billion. In June 2025, she ordered Argentina to transfer its controlling 51% stake in YPF to a trustee as partial satisfaction of

the judgment. Argentina's request to suspend the order was denied at first instance but provisionally granted by the Second Circuit Court of Appeals in July 2025, pending review.

For Burford, which had acquired the rights at a distressed valuation, the case represents the potential for a multi-billion-dollar recovery, and its share price rose sharply after the 2023 ruling. At the same time, the litigation highlights the challenges of enforcing judgments against sovereigns, including lengthy appeals, political resistance, and the practical difficulties of asset seizure.

The YPF case therefore illustrates both the scale of potential returns in litigation funding and the risks that accompany sovereign disputes. It shows how a distressed claim can be transformed into a high-value asset, but also how ultimate realization of value depends on enforcement strategy and legal outcomes that may take years to conclude.

Woodsford and the Westpac shareholder claims in Australia

Another example is the class action against Westpac Banking Corporation, one of Australia's "big four" banks. The case started in late 2019, when AUSTRAC, Australia's financial intelligence regulator, opened proceedings against Westpac for systemic breaches of the Anti-Money Laundering and Counter-Terrorism Financing Act.

AUSTRAC's case concluded in 2020 with Westpac admitting to multiple failings and agreeing to pay a A$1.3 billion penalty, the largest civil penalty ever imposed by the Australian regulator. The breaches included failing to report more than 19.5 million international fund transfer instructions, inadequate monitoring of high-risk transactions, and insufficient due diligence on suspicious accounts, including those linked to possible child exploitation.

In December 2019, following AUSTRAC's action, a shareholder of Westpac filed a class action in the Federal Court of Australia, funded by Woodsford and represented by the law firm Phi Finney McDonald. The claim alleges that Westpac breached its continuous disclosure obligations by failing to inform the market of its systemic non-compliance and potential exposure to regulatory action. It also alleges misleading and deceptive conduct, on the basis that Westpac represented to investors that its compliance systems were effective when they were not. The class encompasses investors who acquired shares, ADRs, or equity swaps between December 2013 and November 2019, who are said to have suffered losses by purchasing securities at artificially inflated prices.

The action is being conducted under a Litigation Funding Agreement with Woodsford, which pays the legal costs and assumes the adverse cost risk. In return, Woodsford will receive a success fee in the event of a settlement or judgment. Any resolution must be approved by the Federal Court to ensure it is fair and reasonable for group members, and the court retains discretion to review and adjust commission rates.

For Woodsford, the case represents an opportunity to back one of the largest shareholder class actions ever brought in Australia, in a regulatory and judicial environment where third-party funding has become an essential mechanism for investor redress. For Westpac, the litigation adds to the financial and reputational consequences of AUSTRAC's enforcement.

Conclusions

Taken together, the YPF and Westpac cases show how third-party litigation funding operates across very different contexts, from sovereign expropriation disputes to large shareholder class actions. They illustrate the dual nature of the model: it can generate significant recoveries and broaden access to justice, but outcomes remain shaped by jurisdictional rules, enforcement challenges, and the scrutiny of courts and regulators.

Overall, TPLF remains a developing sector, which is attracting interest from institutional investors as well. The regulatory interventions will shape the structure of the investments going forward, but it remains an attractive opportunity.

TAGS: Court cases, Litigation funding, Hedge funds, Investments, Lawsuit