American Property Casualty Insurance Association℠
INSURING AMERICA apci.org

Statement of the
American Property Casualty Insurance Association (APCIA)

Before the
House Judiciary Subcommittee on
Courts, Intellectual Property, Artifical Intelligence And The Internet

Hearing on "Foreign Abuse of U.S. Courts"

July 22, 2025

Statement of the
American Property Casualty Insurance Association (APCIA)

Before the
House Judiciary Subcommittee on
Courts, Intellectual Property, Artifical Intelligence And The Internet

---

Hearing on "Foreign Abuse of U.S. Courts"

The American Property Casualty Insurance Association (APCIA) is the primary national trade association for auto, home, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back over 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe. Property casualty insurers provide personal and commercial lines insurance contracts that include coverage protecting policyholders against liability claims asserted by allegedly injured parties. Often, those coverages include a defense obligation when claims turn into litigation. APCIA and its member insurers therefore have a strong interest in the role that TPLF plays in fueling the growing number of lawsuits filed in United States courts, particularly to the extent that the third party financier is neither injured nor a legal representative of an injured party, but has only an investment stake and a profit motive driving the outcome of the lawsuit.

We commend Chairman Issa and Congressman Ben Cline for introducing breakthrough legislation that would shine a light on third-party litigation financing (TPLF). TPLF is a practice which provides non-recourse funding to plaintiffs and their lawyers to bring lawsuits in exchange for an investment stake in the outcome of those lawsuits. In other words, TPLF firms and their investors profit from the U.S. justice system even though they have no basis for a lawsuit, the existence of their funding and investment in litigation outcomes is largely unknown, and the financial transactions are not limited by usury laws. The growing practice threatens to transform the third branch of government into a for-profit enterprise targeting our most critical domestic industries. Specifically, Chairman Issa's Litigation Transparency Act of 2025 (**H.R. 1109**) would require disclosure of TPLF in all federal civil litigation. The Protecting Our Courts from Foreign Manipulation Act (**H.R. 2675**) introduced by Congressman Cline would require disclosure of TPLF by foreign persons and prohibit foreign governments and sovereign wealth funds from investing in federal court litigation.

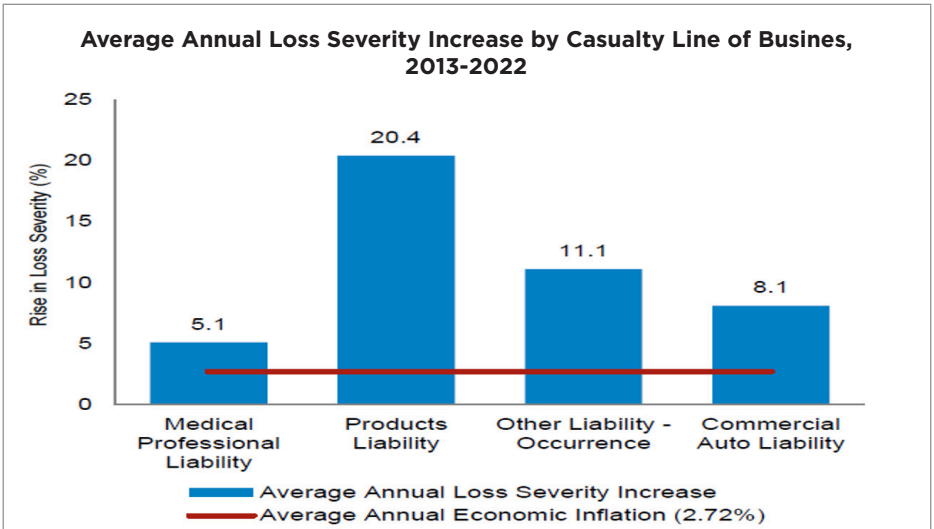
APCIA appreciates Chairman Issa for holding this important hearing to discuss foreign abuse of our nation's court system through third-party litigation financing. As detailed in our statement below, the rapidly growing practice of TPLF inflates the costs of litigation, particularly the growth of non-economic damages, which in turn impacts the cost of living for consumers and businesses, including insurance costs. TPLF allows hedge funds and other financiers, including sovereign wealth funds and foreign interests, to secretly invest in and control lawsuits within the U.S. in exchange for profit by claiming a healthy percentage of any settlement or award, often with the financer required to be paid first.

Chairman Issa and Congressman Cline recognize the major risk TPLF poses to America's civil justice system and its economic and national security, and the need for common sense reforms such as transparency requirements that re-orient the U.S. judicial system towards its original goals providing a forum for dispute resolution that puts the parties' interests first and limits foreign investors from profiting off of victims. Their legislation will help protect the integrity of our judicial system by ensuring that outside financiers, including undisclosed foreign investors, are not secretly directing or profiting from litigation they are funding.

THE NUMBER OF LAWSUITS AND THE SIZE OF DAMAGE AWARDS CONTINUE TO INCREASE, IMPACTING INSURANCE AFFORDABILITY AND AVAILABILITY

Litigation conditions in the U.S. continue to devolve with verdicts, litigation rates and litigation costs rapidly increasing, which erodes the affordability and availability of insurance.[1] The impact of sky-rocketing costs – including crippling costs from legal system abuse – was highlighted by the Wall Street Journal editorial board in an article entitled "A Politically Made Insurance Panic".[2] Liability claims costs rose 16% on average for the last five years, well above average rates of inflation at around 4%.[3] As the following chart demonstrates, the average annual loss severity increases for each major casualty line outpaced inflation for the ten-year period from 2013 to 2022.[4]

Figure 1:



Source: AM Best data and research.

The current rate of liability claims inflation (15% in 2022) is unsustainable.[5] Median personal injury verdict awards have more than tripled in the last decade, nearly a 220% increase from 2010 to 2020.[6]

While the types of claims and injuries remain the same, the size of the monetary awards has skyrocketed. Disproportionally high jury awards often described as "nuclear verdicts" (those above $10 million), are growing in both amount and frequency. Median nuclear verdicts grew 27.5% from 2010 to 2019, far outpacing inflation.[7] A decade ago, there were multi-million-dollar verdicts across the U.S., but now the top verdicts are measured in the billions of dollars. Nuclear verdicts increase claim costs and potentially threaten the affordability of insurance coverage. When a nuclear verdict is awarded, it affects not just the one claim, but also all other open claims and settlements, as plaintiffs' attorneys seek similar verdicts or settlements.[8]

1 What Is Third-Party Litigation Funding and How Does It Affect Insurance Pricing and Affordability? Insurance Information Institute (July 27, 2022).

2 **https://www.wsj.com/articles/insurance-rates-home-auto-elizabeth-warren-federal-insurance-office-952400ba?st=z6gncpjst-0jq3ot&reflink=article_email_share**.

3 **https://www.swissre.com/institute/research/sigma-research/Economic-Insights/us-liability-claims.html**.

4 A.M. Best Report, Social Inflation Remains a Thorn In the Side of Casualty Insurers, May 9, 2024.

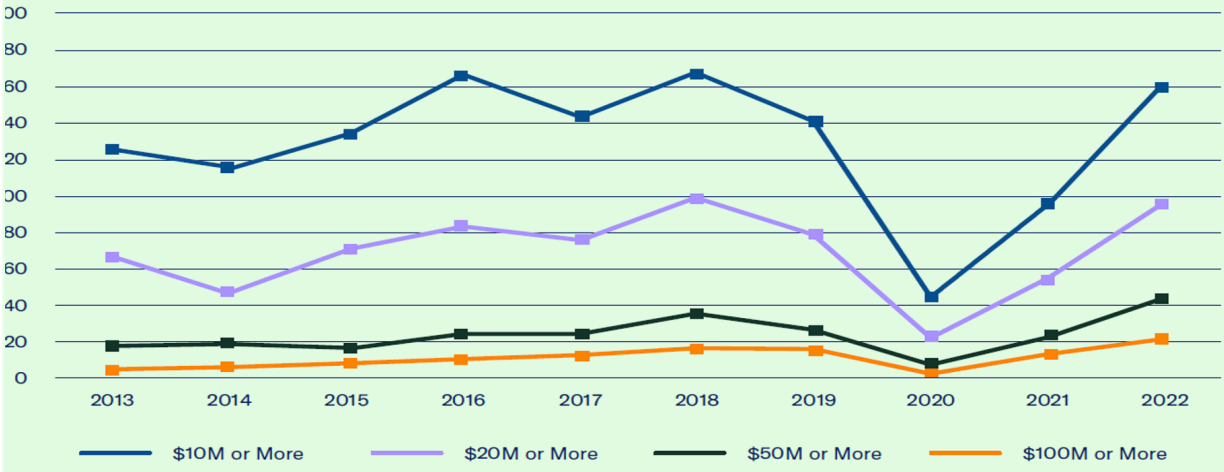
5 *Id*.

6 Source: APCIA using Jury Verdict Research and Trends In Personal Injury Lawsuits, Insurance Information Institute, 2020.

7 Chamber of Commerce ILR Nuclear Verdicts Report, May 2024.

8 A.M. Best Report: Social Inflation Remains a Thorn in the Side of Casualty Insurers, May 9, 2024.

Figure 2: **Number of Reported Nuclear Verdicts, 2013-2022**



U.S. Chamber of Commerce Institute for Legal Reform

And new research on nuclear verdicts found that 2024 was the biggest year yet, by almost every metric, for supersized verdicts against companies. The findings suggest that as juries trend toward punishing civil defendants for perceived wrongdoing and become desensitized to irrationally large numbers, this wave of litigation remains unlikely to abate. In 2024, 135 lawsuits against a corporate defendant resulted in a nuclear verdict, the largest number of such cases the study had identified in a single year since 2009, and a 52% increase over 2023. The total sum of these verdicts reached $31.3 billion, a 116% increase over 2023.

These excessive tort costs to the U.S. economy result in an annual "tort tax" of more than $2,014 paid by every American and $5,135 paid by every household, which erodes affordability and economic growth.

TPLF CONTRIBUTES TO GROWTH IN LAWSUITS AND COSTS, EXACERBATING THE PROBLEM

By its very nature, TPLF increases litigation costs. Studies demonstrate that TPLF is a leading indicator of social inflation, driving "rising legal costs, such as those resulting from an increase in the number of outsized jury awards and legal proceedings that take longer than reasonably expected to resolve."[12] A.M. Best reported that TPLF not only drives up loss costs for insurers and contributes to worsening loss ratios for excess liability, commercial auto and general liability insurance, but also leads to higher premiums for consumers.[13] Similarly, an analysis by the Swiss Re Institute found that TPLF involvement in a claim will result in higher award amounts and total liability costs.[14] And an empirical study of medical malpractice litigation duration and awards demonstrated that funding was associated with a 60.5% increase in claims payment, a 140% increase in resolution duration, and a 35.7% decrease in the probability of settlement.[15] None of these changes in awards or claims payments benefit the injured party. The increases almost exclusively inure to the benefit of third-party financiers.

9 https://marathonstrategies.com/corporate-verdicts-go-thermonuclear/.
10 https://protectingamericanconsumers.org/wp-content/uploads/2025/04/Perryman-Impact-of-Excess-Tort-Costs-on-Consumers-4-2025.pdf.
11 https://www.forbes.com/sites/waynewinegarden/2023/07/20/tort-reform-offers-a-win-win-stimulus-for-the-economy/.
12 "***What Is Third-Party Litigation Funding and How Does It Affect Insurance Pricing and Affordability?***", Insurance Information Institute, July 27, 2022.
13 A.M. Best, "Social Inflation Remains a Thorn in the Side of Casualty Insurers," May 9, 2024.
14 https://www.swissre.com/institute/research/topics-and-risk-dialogues/casualty-risk/us-litigation-funding-social-inflation.html.
15 Xiao; "***Consumer Litigation Funding and Medical Malpractice Litigation***"; Journal of Empirical Legal Studies, 2017.

Adding to the problem, litigation financiers not only fund lawsuits, but they also generate them. Financiers are injecting huge amounts of unregulated investment capital into leveraging the civil justice system in an attempt to drive liability outcomes regardless of the merits of individual cases. The investments that third-party financiers pump into mass torts typically help pay for the aggressive advertising campaigns and lead generation services that attorneys use to identify possible claimants. Between 2017 and 2021, financiers spent $6.8 billion on 77 million ads, as the number of trial lawyer ads on television, radio and billboards increased by more than 30%.[16]

Financiers are injecting huge amounts of unregulated investment capital into leveraging the civil justice system in an attempt to drive liability outcomes regardless of the merits of individual cases.

Major mass tort cases illustrate the scale of this investment activity. According to Morning Investments, a service provider for alternative investments including litigation financing, funders invested $16.9 billion in mass tort claims last year, which is almost 20% of its 2023 market size.[17] High-profile lawsuits, including Roundup claims against Bayer AG and talc lawsuits against Johnson & Johnson, have attracted substantial backing from investment funds, including funding from Fortress Investment Group, which is predominantly owned by an Abu Dhabi sovereign wealth fund.[18] And Camp Lejeune toxic water claims are "saturated" with TPLF, with estimates of $2 billion having been invested by litigation financers.[19] Loan proceeds are used, not only to fund a law firm's pursuit of cases, but also for claims acquisition.[20]

Moreover, foreign investors are able to treat their lawsuit investment profits as capital gains, which means they don't normally have to pay U.S. taxes on those earnings. Meanwhile, the actual plaintiffs in lawsuits are required to pay at the ordinary income rate. Momentum is growing to shine a light on the impacts of TPLF and address this unfairness in the tax code. Companion bills introduced by Congressman Kevin Hern (R-OK), and by Senator Thom Tillis (R-NC), the Tackling Predatory Litigation Funding Act (**H.R. 3512**/**S. 1821**), would end this unjust preferential treatment for litigation financers.

THE LACK OF TRANSPARENCY PREVENTS KNOWLEDGE OF THE TRUE IMPACT OF TPLF ON JUDICIAL SYSTEM OUTCOMES AND COSTS

Very little is known about this shadowy segment of the financial sector because in most states and federal courts, TPLF firms are not required to disclose their activities, even in the very cases they are funding. However, from the limited information available, it's clear that TPLF activity is growing, and the increased outside investment is not improving recovery for plaintiffs, while it is prolonging lawsuits at the expense of settlements.[21]

---

16 American Tort Reform Association, "Legal Services Advertising Spending – 2017-2021," Feb. 22, 2022. **https://www.atra.org/2022/02/22/study-trial-lawyers-spent-1-4-billion-on-advertising-in-2021/**.

17 *Id*.

18 https://hern.house.gov/news/documentsingle.aspx?DocumentID=3111.

19 ***Litigation Funders Bet Billions on Veterans' Toxic Water Claims***, US Law Week, July 20, 2023, **https://news.bloomberglaw.com/us-law-week/litigation-funders-bet-billions-on-veterans-toxic-water-claims**.

20 *Id*.

21 Third party medical financing (TPMF), another form of TPLF, also currently operates with virtually no oversight. While not the subject of the hearing, disclosure and regulation should similarly be required of the medical funding industry. Although the specific structure and form of TPMF varies, in general these opaque arrangements involve a third-party entity assuming responsibility for payment of medical services outside of traditional health insurance in personal injury and mass torts lawsuits. In exchange, the injured party transfers their right to recover the medical bills to the third-party funder in the form of a medical "lien." Issues associated with TPMF can include artificially inflated medical bills, questionable procedures, and a complex web of relationships between referral sources, medical providers and third-party funders that may result from efforts to maximize an "investment" in the outcome of the lawsuit.

A recent examination of TPLF found that it "outperform[s] returns on risky asset classes such as venture capital and private equity" and is "largely uncorrelated with macroeconomic risks."[22] Westfleet Advisors, a litigation finance advisory firm which the GAO (Government Accountability Office) relied upon for its estimates, found investments in U.S. litigation financing rising to $16.1 billion in 2024.[23] This growth is expected to continue as demand for litigation financing persists. New capital commitments to law firms and their clients grew by nearly 16% in 2022, the largest year-over-year growth rate in at least four years, when Westfleet began reporting on these metrics.[24] The leading financier of litigation has seen its assets increase 355% over the last several years, including the addition of nearly $1 billion by *an unknown, foreign sovereign wealth fund*. Seeing these opportunities, even Harvard University made a commitment of $500 million to one financier.[26]

Worse still, as the Swiss Re Institute study *Litigation Funding and Social Inflation found*, litigation financing reduces the recovery for claimants themselves.[27] Analysts estimated that "plaintiff compensation decreases by 21% relative to the same award in a case without TPLF."[28] The Swiss Re Institute study concluded similarly that TPLF involvement tended to increase costs, which largely benefited the financiers, not the plaintiffs: "*We find TPLF contributes to higher awards, longer cases, and greater legal expenses. Longer cases increase claim costs, on average, due to higher legal expenses and compound interest on the litigation finance. TPLF also diverts a greater share of legal awards to the funder rather than the plaintiff. We estimate that in US TPLF cases, up to 57% of legal costs and compensation go to lawyers, funders, and others, compared with an average of 45%* in typical tort liability cases (emphasis added)."

Moreover, litigation financing on a broad scale redistributes money from those seeking justice into the pockets of wealthy financiers. As noted in a recent Insurance Information Institute (III) report, it is "no longer about David vs. Goliath, but about speculative investors getting richer as they focus on cases more likely to win the big settlements."[29] And as New York Assemblyman William Magnarelli observed, "Some of the fees being charged by the [funding] companies were so high that whatever the verdict was, the victims ended up getting very little or close to nothing."[30]

Another major concern is that, unlike attorneys who have an ethical duty to act in the interests of their clients, funders are solely motivated by their own financial interests.[31] Strategic legal decisions — for example, choosing whether to accept a settlement agreement – may be driven by the profit motive of the financier. A funder may direct attorneys to reject reasonable settlement offers that may be in a plaintiff's best interest and hold out for a higher potential payment that maximizes investment return.[32] In this way, TPLF subverts client-centered objectives.[33]

---

22 Swiss Re Institute, "*US Litigation Funding and Social Inflation,*" at 4, 8 (Dec. 2021) (Litigation Funding and Social Inflation) at **https://www.swissre.com/institute/research/topics-and-risk-dialogues/casualty-risk/us-litigation-funding-social-inflation.html**.

23 WestFleet Insider, 2024 Litigation Finance Market Report, at **Westfleet Insider: 2024 Litigation Finance Report - Westfleet Advisors**.

24 **https://www.westfleetadvisors.com/publications/2022-litigation-finance-report**.

25 Neil Rose, "*Burford unveils $1bn investment from sovereign wealth fund*", Litigation Futures (December 1, 2018) at **https://www.litigationfutures.com/news/burford-unveils-1bn-investment-from-sovereign-wealth-fund**.

26 M. McDonald, "*Harvard Invests in Litigation Strategy That Posted Big Gains*," *Bloomberg.com*, June 26, 2019.

27 *Litigation Funding and Social Inflation*, at **https://www.swissre.com/institute/research/topics-and-risk-dialogues/casualty-risk/us-litigation-funding-soci al-inflation.html**.

28 *Id*.

29 **https://www.iii.org/sites/default/files/docs/pdf/triple_i_third_party_litigation_wp_07272022.pdf**.

30 Sams; "*Litigation Funding Bills Crop Up in State Houses Across the Country*"; Claims Journal, 2020.

31 **https://finance.yahoo.com/news/litigation-funder-burford-sues-sysco-182500350.html?guccounter=1**.

32 *See* Sysco Corp. v. Glaz LLC et al. (N.D. Ill. Case No. 23-C-1451).

33 As Allison Chock, the Chief Investment Officer with Omni Bridgeway f/k/a Bentham IMF, candidly admitted, "*We make it harder and more expensive to settle cases.*" J. Gershman, "Lawsuit Funding, Long Hidden in the Shadows, Faces Calls for More Sunlight," *Wall Street Journal*, March 21, 2018.

Litigation financiers claim to exercise no control over the litigation or its resolution but ask that this unsupported claim be taken only on faith instead of providing transparency. Despite the industry's assurances otherwise, situations have been revealed in which lenders influenced a party's choice of counsel or vetoed settlements as too low. For example, the largest third-party litigation financier, Burford Capital, invested $140 million in Sysco's antitrust lawsuits against meat suppliers. However, when Sysco wanted to settle those lawsuits, Burford blocked the settlements and forced Sysco to keep litigating. Sysco sued Burford over this interference. After settling Sysco's lawsuit against it, Burford (through a subsidiary), took complete control of the existing claims and was also filing new suits against meat producers despite no initial connection to the claim.[34]

In early 2024, a Minnesota judge, in a strongly worded opinion, rejected one of Burford's attempts to replace Sysco as the plaintiff and highlighted Burford's economic incentives in the litigation, stating that Burford's "private interests" in maximizing future profits could not "overcome the strong public policy in favor of settling lawsuits," that the "litigation burden caused by Burford's effort to maximize [ROI] has been enormous," and that the substitution would "contravene the important public policy granting control of litigation to the parties who claim to have actually suffered injury[.]"[35]

THE THREAT OF FOREIGN INVESTMENT INCLUDING IN INTELLECTUAL PROPERTY LITIGATION

A significant vulnerability that TPLF introduces into the U.S. legal system is a potential backdoor for adverse foreign powers to access sensitive information that arises from a lawsuit. Given the lack of laws or court rules requiring TPLF disclosure, the extent of the role foreign investors play in U.S. litigation is largely unknown. The potential involvement of hostile foreign actors is a strong justification for regulating disclosure when third-party money is behind a case.

Given the lack of laws or court rules requiring TPLF disclosure, the extent of the role foreign investors play in U.S. litigation is largely unknown.

Foreign actors could use TPLF to unfairly gain a competitive advantage over the U.S. by encouraging or exploiting dubious lawsuits against U.S. businesses in the national defense and other highly sensitive sectors.[36] In one uncovered example, a foreign energy and mining-magnate is seemingly backing litigation against Exxon Mobil in an attempt to undermine competition and benefit his foreign energy ventures.[37] This example was only uncovered through enforcement of the Foreign Agents Registration Act (FARA) section of the U.S. Department of Justice, but broader disclosure is necessary to determine if other foreign entities are financing lawsuits to undermine American competitiveness.

The U.S. Chamber of Commerce Institute for Legal Reform, among others, has highlighted that litigation financing could allow foreign competitors to advance their strategic interests against individuals, companies, and whole industries, using the U.S. judicial system.[38] Indeed, foreign competitors, like China, have sent strong signals that they are increasing their focus on intellectual property.[39]

---

34 **https://www.reuters.com/legal/litigation/column-sysco-cedes-antitrust-claims-litigation-funder-burford-two-sides-drop-2023-06-29/**.

35 *See In Re: Pork, Cattle and Beef*, 2024 WL 511890, (D. Minn. Feb. 9, 2024). See also, "*Judge's order deals blow to Sysco, Burford Capital in pork suits*": *Bloomberg Law*, Feb. 14, 2024.

36 **https://news.bloomberglaw.com/us-law-week/some-third-party-litigation-funders-pose-a-threat-to-us-security**.

37 **https://instituteforlegalreform.com/blog/the-exxonmobil-lawsuit-foreign-entities-are-funding-lawsuits-to-target-american-businesses/**.

38 **https://instituteforlegalreform.com/research/ilr-briefly-a-new-threat-the-national-security-risk-of-third-party-litigation-funding/**.

39 **https://news.bloomberglaw.com/us-law-week/some-third-party-litigation-funders-pose-a-threat-to-us-security**.

Billions of dollars are being wagered in this manner by foreign sovereign wealth funds and foreign individuals. For instance, Fortress Investment Group recently disclosed it is managing $6.8 billion in investments devoted to litigation finance.[40] Last year, the *Financial Times* reported that Fortress is now owned by one of the United Arab Emirates' sovereign wealth funds, Mubadala Investment Company.[41] According to Mubadala's website, it works "to generate sustainable financial returns for its shareholder, the Government of Abu Dhabi."[42]

Perhaps even more troubling, *Bloomberg Law* last year reported that Russians close to President Vladimir Putin used TPLF to evade sanctions leveled at them by both the U.S. and Great Britain following the invasion of Ukraine.[43] Former Treasury Deputy Secretary Wally Adeyemo during an oversight hearing last June called for TPLF transparency, so the government and the American people understand who funds lawsuits.[44] He also noted the sophistication with which Russian oligarchs have worked to avoid U.S. sanctions and confirmed TPLF is one way they seek to do so.[45]

Litigation finance firms like Burford Capital, Fortress Investment Group, IMF Bentham and Therium Capital Management announced publicly that they received sovereign wealth fund investments. The issues relating to sovereign wealth investment in litigation finance have been noted by multiple outside experts.

Importantly, intellectual property litigation in the U.S. is increasingly being targeted by third party litigation funders in exchange for some of the proceeds.[46] This practice was nearly nonexistent as recently as 2010, but industry reports now show that patent litigation accounts for over 32% of all new commitments by funders in 2024, the largest category of funded matters.[47] Neither the government nor the courts know who pays for or controls these lawsuits. That could allow foreign adversaries to profit from our legal system and threaten U.S. national security.

Neither the government nor the courts know who pays for or controls these lawsuits. That could allow foreign adversaries to profit from our legal system and threaten U.S. national security.

The potential for foreign governments to leverage their investment to obtain valuable intellectual property information from the companies being sued is deeply concerning.[48] "The lack of transparency potentially gives nefarious actors undue exposure to sensitive information belonging to U.S. firms that is critical to national security," the Center for Strategic and International studies says in an analysis.[49]

---

40 **https://www.fortress.com/what-we-do/asset-backed-finance/legal-assets**.
41 **https://www.ft.com/content/3b29763e-62e1-4b23-907d-7da36676fc6b**.
42 **https://www.mubadala.com/en/who-we-are/about-mubadala**.
43 **https://news.bloomberglaw.com/litigation-finance/putins-billionaires-sidestep-sanctions-by-financing-lawsuits**, March 28, 2024.
44 The Honorable Adewale O. Adeyemo, Deputy Secretary, United States Department of the Treasury, An Update from the Treasury Department: Countering Illicit Finance, Terrorism and Sanctions Evasion, Hearing before the United States Senate Committee on Banking, Housing and Urban Affairs (April 9, 2024) at **https://www.banking.senate.gov/hearings/an-update-from-the-treasury-department-countering-illicit-finance-terrorism-and-sanctions-evasion**.
45 *Id*.
46 **https://www.wsj.com/articles/patent-lawsuits-are-a-national-security-threat-secretly-funded-litigation-f3cd5bd4**.
47 **https://www.westfleetadvisors.com/wp-content/uploads/2025/03/WestfleetInsider-2024-Litigation-Finance-Report.pdf**.
48 **https://www.legaldive.com/news/bloomberg-law-report-could-fuel-litigation-finance-disclosure-push/711654/**.
49 **https://www.csis.org/analysis/third-party-litigation-financing-national-security-problem**.

In April 2022, the Chief Judge for the Delaware Federal District Court, Colm Connolly, instituted standing orders requiring disclosure of third-party litigation financing in cases being heard in his courtroom. Despite objections to his orders,[50] they were eventually successful in revealing not only third-party litigation financing but foreign investment, including that a China-based investment entity, PurpleVine IP, was financing an intellectual property case in his court against Samsung Electronics Co. Daniel Staton, the majority owner of the tech firm Staton Techiya, voluntarily disclosed PurpleVine's role in three other cases filed in a federal court in Texas after a reporter contacted him about the case in Connolly's U.S. District Court. According to the former acting director of the U.S. Patent and Trademark Office Joe Matal, "The disclosure of a litigation funder tied to China is our worst fears confirmed. Anything China does is concerning because nothing over there is really independent."[51]

Since the issuance of Judge Connolly's disclosure order, plaintiffs' lawyers have pulled their cases from Judge Connolly's docket rather than reveal their third-party investors.[52] In one high-profile case, *VLSI Technology LLC v. Intel Corporation*, VLSI walked away from a potential $1.8 billion judgment rather than reveal their funding sources for the litigation when the court ordered VLSI to disclose who was funding the litigation.[53] This was an extraordinary act. VLSI had pursued its lawsuit against Intel for several years. Nearly 1,000 filings had been entered in the case, and the company reportedly spent millions on the proceedings. Yet VSLI preferred to dismiss its lawsuit although it continues to file and litigate, including against Intel, in other jurisdictions such as the Western District of Texas, where TPLF disclosure is not required.[54]

VLSI has also revealed that its investors include "sovereign wealth funds"—i.e., foreign governments. China, for example, operates such a sovereign wealth fund, the China Investment Corp. Beijing also files patent lawsuits in the U.S. through entities such as PurpleVine IP, which doesn't disclose in court who controls it unless it is forced to do so.

The potential for states like Russia and China to use TPLF as a conduit for economic espionage, especially in critical technology sectors such as AI, pharmaceuticals, and chip manufacturing, presents a real threat to U.S. strategic interests.

---

50 **https://www.reuters.com/legal/government/delaware-judge-justifies-litigation-funding-inquisition-thriller-order-2022-12-02/**.
51 **https://news.bloomberglaw.com/business-and-practice/china-firm-funds-us-lawsuits-amid-push-to-disclose-foreign-ties**.
52 **https://www.wsj.com/articles/delaware-judge-targets-secret-funding-of-lawsuits-b0fe608b?mod=hp_lead_pos4**.
53 *Id*.
54 See e.g., **https://patentlyo.com/patent/2023/02/litigation-disclosure-executive.html**.

WHAT SHOULD BE DONE: A NEED FOR TRANSPARENCY

Given its growing presence and impact, an increasing number of states and courts are taking steps to require disclosure of TPLF in litigation. Transparency would help prevent hidden agendas from influencing legal proceedings and protect judicial integrity.

Given its growing presence and impact, an increasing number of states and courts are taking steps to require disclosure of TPLF in litigation.

The states of Arizona, Colorado, Indiana, Georgia, Kansas, Louisiana, Montana, Oklahoma, West Virginia, and Wisconsin have enacted legislation requiring some forms of disclosure and financer limitations. Moreover, U.S. District Courts in Northern California, Delaware, and New Jersey have adopted disclosure requirements in litigation.

Just as insurance contracts protecting civil defendant consumers and businesses must be disclosed in nearly all jurisdictions and in U.S. district courts,[55] it is peculiar that entities backing litigation financially and profiting from successful verdicts are not similarly obligated to disclose their involvement. Chairman Issa's Litigation Transparency Act would provide a uniform rule that applies to all federal cases, including class actions and multi-district proceedings. It would require counsel to disclose in writing to the court and to all named parties in the case the identity of any commercial enterprise that has a right to receive payment that is contingent on the receipt of monetary relief in the case. Among the arguments made by financers against disclosure is that discovery could potentially reveal sensitive "trade secrets," such as insight into strategy. However, that is entirely different from refusal to produce a copy of the agreement and it ignores the fact that any details in the agreement that may reveal how a financier may have valued the case will almost certainly be protected, just as insurance reserves are protected even though insurance agreements are required to be produced in civil litigation. The financier has purchased part of the claim and paid for a contingent interest in the outcome of the litigation and owns part of the case, yet they are not visible before the court or the parties in any way and not accountable to the court. If for some reason a TPLF agreement happens to contain information regarding business strategy as opposed to documenting a business transaction, precedent demonstrates that arguments regarding appropriate safeguards can always be made to the court, and the court has the opportunity to require that such information be redacted or shielded.

Financial and conflict of interest transparency and disclosure is not a novel reform measure. Rather, as is well understood, the concept of shining a light on outside money used to influence governmental outcomes is already a bedrock principle for the executive and legislative branches. In terms of the executive branch, federal statutes, as well as codes of conduct make this a principal part of a federal regulatory scheme intended to prevent officials from benefiting personally from their offices. To make conflicts of interest between officials' public duties and private financial interests transparent, Congress enacted mandatory disclosure requirements to "promote the integrity of public officials and institutions."[56]

---

55 Currently, 48 states allow discovery of insurance policies and insurance coverage information and New Hampshire permits discovery of this information for settlement purposes in cases in which the insurer is joined as a party. *See Thomas v. Oldfield, 279 S.W.3d 259, 263–64 (Tenn. 2009)*. Moreover, in 1993, the Federal Rules of Civil Procedure were further amended to make insurance agreements subject to mandatory initial disclosure. Fed.R.Civ.P. 26(a)(1)(A)(iv) (2008).

56 **https://crsreports.congress.gov/product/pdf/LSB/LSB10949#:~:text=The%20Ethics%20in%20Government%20Act,Justices%20of%20the%20Supreme%20Court**.

Also, the Lobbying Disclosure Act (LDA)[57] requires transparency of outside financial interests. The purpose of the LDA is to make public the federal lobbying activities of business entities, nonprofit organizations, and paid lobbyists. The LDA requires an organization that employs at least one "lobbyist" to register with the Senate and House of Representatives if the organization's spending on lobbying activities during a quarterly period reaches a certain level. A registrant must file reports that disclose approximately how much it has spent on lobbying activities and describe the lobbying activities undertaken and which lobbyists participated in them. The activities of third-party litigation financiers are quite similar – they provide capital to the party whose position they are backing to obtain a favorable outcome in the judicial branch of government. Consequently, the public policy rationale behind the LDA should also apply to litigation funders, and Congress should require a similar degree of disclosure.

In summary, federal action is needed to address the use of outside money, including from foreign countries of concern, to influence the judicial branch of government. When outside money is used to influence the executive or legislative branches of government, disclosure and reporting requirements help ensure transparency. Similar requirements are needed here. Specifically, Chairman Issa's litigation transparency legislation (H.R. 1109) and Congressman Cline's bill (H.R. 2675) to require disclosure and prohibit foreign governments and sovereign wealth funds from investing in TPLF should be passed by Congress. These bills are necessary to allow courts to consider potential conflicts of interest, address ethical violations, consider improper motives underlying litigation, and respond to predatory arrangements that exploit plaintiffs.

Again, we want to thank Chairman Issa and Congressman Cline, as well as the Committee for examining this important subject. Our shared goals are to preserve the integrity of the U.S. judicial system and protect our nation's economic and national security. The bills under consideration by this Committee would accomplish these goals, and we urge Congress to consider these bills without delay.

57 2 U.S.C. § 1601 *et seq.*