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Commercial Litigation Funding: A Research Bibliography

Foundational and Theoretical Perspectives (2009–2011)

- **Jonathan T. Molot (2009), "A Market in Litigation Risk," *University of Chicago Law Review*.** This seminal article lays the groundwork for litigation finance as a risk-management tool. Molot argues that litigation risk is uniquely difficult to hedge—unlike business risks which firms can spread via insurance or markets—because there was historically "no market in which litigants can trade away litigation risk" [1] . He proposes creating a marketplace for legal claims, allowing outside investors to fund lawsuits and assume the risk, thus relieving companies of costly, unpredictable litigation exposure [2] . Notably, Molot envisions a new role for lawyers as intermediaries or even principals in trading legal risk, partnering with investment funds or banks to monetize lawsuits [3] . This work is foundational in framing litigation finance as a legitimate financial market that can benefit both litigants and society by making lawsuits more about merits than party resources.

- **Maya Steinitz (2011), "Whose Claim Is This Anyway? Third-Party Litigation Funding," *Minnesota Law Review*.** Among the first legal scholarship to examine third-party funding in depth, Steinitz's article analyzes the implications of treating legal claims as assets. She explores questions of control and ethics (e.g. **Champerty** – the doctrine historically forbidding third-party profit from lawsuits) and how modern litigation finance challenges these norms. Steinitz ultimately argues for developing legal frameworks that treat funders as real parties in interest and ensure proper alignment of incentives between funders, claimants, and attorneys (foreshadowing later debates on disclosure and control of litigation strategies) [4] [5] . This work helped shape early academic discourse on who "owns" a claim when outside investors are involved and how to balance access to justice with ethical safeguards.

- **Geoffrey McGovern et al. (2010), *Third-Party Litigation Funding and Claim Transfer: Trends and Implications for the Civil Justice System* (RAND Corporation report).** A think-tank report based on a 2009 UCLA-RAND conference, it provides one of the earliest overviews of the nascent litigation funding industry in the U.S. The report notes that third-party funding was emerging as a novel way to mitigate the high costs and risks of litigation, potentially leveling the playing field for smaller plaintiffs [6] . However, it also voices early concerns: panelists discussed fears that such funding could **increase the volume of litigation** and lead to profiteering from legal claims [7] [8] . The proceedings survey the landscape circa 2009, describing roles of insurers and contingency-fee lawyers, predicting challenges (like ethical issues and champerty doctrines), and calling attention to the need for regulatory consideration as the practice spread [9] [10] . RAND's report thus captures the tentative attitude of the time—recognition of litigation finance's promise (improved access to justice) tempered by caution about its impact on the civil justice system.

Empirical Research and Data-Driven Studies

- **David S. Abrams & Daniel L. Chen (2013), "A Market for Justice: A First Empirical Look at Third-Party Litigation Funding,"** ***University of Pennsylvania Journal of Business Law*****.** This study provides the first rigorous empirical analysis of litigation funding, using data from Australia's largest funder (IMF Bentham) and court records. Abrams and Chen examine 103 cases funded by IMF and find that the introduction of third-party financing correlates with **increased litigation** – courthouses became more congested ("more sclerotic") as funding enabled more cases to be pursued [11] [12]. They also explore case outcomes and returns, observing that funders apply significant due diligence and prefer claims with strong merits (e.g. those likely to survive motions to dismiss) [13] [14]. While noting concerns like potential court delays, the authors suggest litigation funding can be a "market-based solution" to the underproduction of certain claims, improving access to justice. This paper is frequently cited for its data-driven insights, including evidence that funded cases can increase plaintiff success rates but might also strain judicial resources [15] [16].

- **Samuel Antill & Steven R. Grenadier (2023), "Financing the Litigation Arms Race,"** ***Journal of Financial Economics*****.** A recent economic analysis that models the strategic effects of litigation finance on settlements and litigation spending. Antill and Grenadier point out that corporate defendants often use superior resources to "bully" weaker plaintiffs (for example, dragging out cases to exhaust a smaller opponent's budget) [17] [18]. Litigation funding can counter this by giving plaintiffs the war chest to hold out for trial, thereby deterring wasteful defense tactics [19] [20]. The authors famously estimate that in 2019, litigation financiers spent roughly **$2.3 billion on U.S. cases**, about 10% of what large corporations paid for outside litigation counsel that year [21]. Their model finds that while funding can indeed lead to more lawsuits (a negative externality), it can also *increase the joint surplus* of plaintiffs and defendants by discouraging bad-faith defense strategies and prompting earlier settlements [22] [23]. Published in a top finance journal, this study underscores that litigation finance has matured into an important factor in legal strategy, with complex welfare implications.

- **U.S. Government Accountability Office (2022), "Third-Party Litigation Financing: Market Characteristics, Data, and Trends."** This GAO report offers a comprehensive government review of the litigation funding market. It confirms that by the late 2010s, third-party litigation finance (TPLF) had gained a foothold in the U.S., particularly on the commercial side (investments in large-scale corporate and tort cases) [24] [25]. Funders interviewed by GAO reported **growing acceptance** of TPLF and significant market growth in recent years [26] [27]. The report highlights persistent **data gaps** – for instance, limited public information on funders' returns and total capital deployed – and discusses policy options like requiring courts to collect funding data (balanced against concerns about burden and confidentiality) [28] [29]. It also catalogs pros and cons: TPLF clearly helps under-resourced plaintiffs pursue claims, but the cost of capital is high and could discourage early settlement since plaintiffs owe a portion of proceeds to funders [30] [31]. On the investor side, GAO notes the allure of high returns comes with the risk of losing the entire investment if the case fails [32] [33]. Finally, the report surveys the regulatory landscape, observing no federal regulation and only patchwork state rules (mostly targeting consumer legal funding), with no broad disclosure requirements in U.S. courts so far [34] [35]. The GAO's non-partisan analysis confirms the dramatic growth of litigation finance and calls attention to the need for greater transparency as the industry evolves.

Market Growth and Industry Trends (2013–2024)

- **The Hedge Fund Journal (2013), "The Emerging Market for Litigation Funding."** Written as litigation finance was first expanding in the U.S., this article (by attorneys at Quinn Emanuel) provides a practical overview of the industry's mechanics and early players. It explains how funders treat legal claims **as an asset class**, performing intensive due diligence on the merits, legal forum, and lawyers before investing [36] [37]. Funders structure portfolios of cases to diversify risk, balancing safer, modest-return cases with riskier, high-upside ones [38] [39]. The piece identifies major entrants circa 2013: e.g. Burford Capital (founded 2009) and Juridica (founded 2007) were then the largest funders, with Juridica reporting an eye-popping ~85% gross IRR on resolved investments as of 2012 [40] [41]. It describes evolving deal structures (single-case versus portfolio funding, lump-sum vs. drip-fed funding) and notes that funders often finance portfolios of claims for law firms or companies, which cross-collateralizes returns and mitigates the risk of any single case failing [42] [43]. The article also touches on the appeal for investors: litigation outcomes are **uncorrelated** with markets and even counter-cyclical (lawsuits can surge after economic downturns), making this a potentially attractive alternative investment [44] [45]. Overall, this piece captures the industry's early growth stage, when total committed capital was in the low hundreds of millions and the concept of *legal claims as investable assets* was just becoming mainstream.

- **The Economist (2018), "Litigation finance offers investors attractive yields."** This high-end media article (subtitled "Appealing returns") signaled that by 2018 litigation funding had moved firmly into the financial mainstream. It reported an influx of capital: *"in the past 18 months some 30 [new] funding ventures have launched; over $2 billion has been raised"*, and established funders were rapidly scaling up (Burford committed $1.3 billion to new cases in 2017, triple its 2016 deployment) [46] [47]. The Economist highlighted key reasons for this surge: law firms are eager to shift risk off their balance sheets, and institutional investors are drawn to the **uncorrelated nature** of litigation returns [48] [49]. Lee Drucker of Lake Whillans (a litigation fund) noted that pension and endowment funds were calling weekly, seeking "assets detached from market swings" [50] [51]. The article also observed a trend toward **portfolio funding** (bundling multiple cases into one investment): by 2017, funders like Burford put the vast majority of their capital into portfolio deals rather than single cases, a shift that spreads risk and offers more stable returns [52] [53]. In sum, this piece portrays an industry in boom – attracting big money and evolving in sophistication – while also reinforcing that payouts to investors tend not to track the stock market, enhancing the appeal for diversification-seeking fund managers.

- **Financier Worldwide (Sept 2021), "Private equity and litigation finance: a maturing market."** A report targeting the PE/investor community, it chronicles how litigation finance evolved from a niche boutique product into a desirable **alternative asset class**. The author explains that modern litigation finance funds are often structured like private equity or hedge funds, raising pools of capital from institutional LPs and deploying it into legal claims [54] [55]. By 2021, **billion-dollar** funding vehicles were no longer rare, and many funders managed several hundred million each, enabling them to move beyond one-off case deals to large portfolio investments [56] [57]. Key selling points for investors are listed: (1) **Attractive returns** – industry averages around 30% IRR, with some funders reporting double that [58] [59]; (2) **Shorter duration** – cases typically resolve in 2–3 years, so capital isn't tied up for a decade as in traditional buyout funds [60] [61]; (3) **Lower volatility and zero market correlation** – outcomes depend on case merits, not economic cycles [61] [62]. The article also details the rise of law firm portfolio deals and **cross-collateralized structures** that protect investors (e.g. spreading risk across multiple cases, sometimes even providing credit lines secured by a basket of cases) [63] [64]. It advises that thorough due diligence on funders' legal talent is crucial, since "picking winners" in lawsuits requires specialized expertise unlike conventional investing [65] [66]. By concluding that litigation finance is now a mainstream investment with staying power – the question for institutions is no longer *whether* to invest, but *with whom* and *how much* [67] [68] – this piece underscores the industry's coming of age in the eyes of sophisticated capital allocators.

- **Westfleet Advisors (2023–24) – *Litigation Finance Market Reports* (as cited by Bloomberg Law and Legal.io).** Westfleet, a leading U.S. litigation finance consultancy, publishes annual surveys that detail the size and trends of the commercial market. Recent findings show the industry's rapid expansion leveled off slightly amid economic headwinds. As of 2024, there were 42 active funders managing a combined **$16.1 billion** in assets under management (AUM) for U.S. commercial legal investments [69]. However, new deal activity slowed: funders committed about $2.3 billion to new U.S. deals in 2024, down 16% from 2023 and roughly 30% below the 2022 peak, reflecting a **tighter capital environment** [70] [71]. Higher interest rates, inflation, and longer case cycles (tying up capital) made funders more cautious, and some struggled to raise new funds [72] [73]. Despite the pullback in deal flow, the average deal size *grew* to $8 million (with portfolio deals averaging $16.5M, much larger than single-case deals at $6.6M) [74] [75]. **Portfolio financing** now dominates – two-thirds of capital committed in 2023 went into multi-case portfolios, a sign of funders' preference for spreading risk [74] [76]. Notably, patent litigation has surged as a focus area: it comprised 32% of all new funding commitments (up from 19% a year prior), driven in large part by big investors like Fortress Investment Group pouring money into patent assertion campaigns [77]. The Westfleet data also highlight the growing role of **insurance** in the industry – roughly 19% of funded capital was insured or used insurance to back financing, indicating funders hedging their downside risk [78]. Big Law firms continue to embrace outside financing as well, accounting for ~37% of new funded matters in 2023 [79]. In summary, the latest market reports depict a maturing but cyclical industry: even as fundraising has become challenging in a tight money climate, litigation finance remains a multi-billion-dollar market entrenched in high-stakes commercial litigation, with sophisticated risk management (portfolios, insurance) now standard.

- **Swiss Re Institute (2021), "U.S. Litigation Funding and Social Inflation."** This white paper from a major reinsurance company provides a global and insurance-industry perspective on litigation finance. Swiss Re estimates that **$17 billion** was invested in litigation funding globally in 2020 – more than double the level a few years prior – with the United States accounting for about 52% of that activity [80] [81]. The report links the growth of TPLF to rising insurance losses, arguing that third-party funding is a driver of **"social inflation"**, i.e. higher claims costs and larger verdicts. By bankrolling lawsuits, funders may incentivize plaintiffs and lawyers to initiate more cases and hold out for larger settlements or judgments, which in turn can push up liability insurance premiums and costs for businesses [82] [83]. Swiss Re's data show that funded litigation in 2021 skewed toward massive aggregate lawsuits: 38% of TPLF capital went into mass torts (e.g. product liability or pharma cases), 37% into other large commercial litigation, and about 25% into individual personal injury suits [84]. They also cite evidence that the **median size of verdicts** has grown significantly (general liability jury awards up ~26% from 2010 to 2019) and that funders' involvement is contributing to larger legal cost shares going to investors [85] [86]. The report forecasts continued growth of the global litigation funding market – projecting ~8.7% annual growth, to reach an estimated $31 billion worldwide by 2028 [87]. Swiss Re's take is notably cautious: while acknowledging the new funding sources for plaintiffs, it underscores the need for insurers and policymakers to monitor how TPLF might be fueling more protracted litigation and upward pressure on claims payouts.

Regulatory and Ethical Landscape

- **U.S. Chamber of Commerce Institute for Legal Reform – *"Selling Lawsuits, Buying Trouble"* (2009) &** "Still Selling Lawsuits…" **(2019).** The ILR (an arm of the U.S. Chamber) has produced influential white papers opposing unchecked litigation finance. The 2009 report introduced third-party litigation funding to a U.S. audience, pointedly **warning of "ill effects"** if an **unregulated and undisclosed** financing regime took hold in American civil justice [88] [89]. It defined TPLF as essentially "betting" on lawsuit outcomes, and at the time noted the practice was not yet widespread in the U.S. (mostly limited to Australia and a few investment deals) [90] [91]. By 2019, the Chamber observed that those warnings had "proved well-grounded" – litigation funding had **"gone mainstream"** in the United States, with a dramatic expansion in usage among both plaintiffs and law firms [92] [93]. The ILR's updated report catalogs perceived dangers, including claims that TPLF spurs frivolous or abusive litigation, ethical conflicts (fee-splitting, funder influence over attorneys), and distorted incentives in class actions (funder profits potentially diluting recoveries for class members) [94]. It also laments the lack of transparency, arguing that most TPLF deals operate "under a veil of secrecy" since disclosure is not required [95]. ILR advocates for robust regulation – at minimum, **mandatory disclosure** of funding arrangements in litigation (a proposal that was, in fact, under consideration by the federal rules committee) [96] [97]. These reports represent the viewpoint of corporate defendants and insurers: while not neutral, they have been highly influential in policy debates, prompting several state legislatures and courts to consider rules on TPLF disclosure, fee caps, and ethics to address the Chamber's concerns.

- **Sarah Abrams (2025), "Litigation Finance (Litigation Funding)" – D&O Diary Guest Post.** Written from the perspective of the directors & officers (D&O) insurance industry, this piece provides a modern overview of litigation finance and its implications for liability insurers. It notes that litigation funding has been "back in the headlines" as a factor in rising lawsuit counts and settlements, and that multiple U.S. states have recently proposed or passed laws to **increase transparency** (requiring litigants to reveal if their case is funded) [98]. Abrams gives a primer on how funding works: most commercial litigation funders are structured as investment funds (LLCs or limited partnerships) akin to private equity, often domiciled in investor-friendly jurisdictions like Delaware or the Cayman Islands [99] [100]. She explains the typical fund model (GP manages capital from LP investors) and how returns are allocated via a **waterfall** – the funder usually recoups its invested principal first, then a priority return (often a multiple of invested capital), before any remainder is split with the plaintiff and lawyers [101] [102]. The article also emphasizes the due diligence and control structures: funders extensively vet cases (over 30–90 days) and negotiate terms, but generally do not direct litigation strategy day-to-day (to avoid champerty problems) [102] [103]. Citing a 2024 Bloomberg Law survey, Abrams reports the same industry metrics noted above (42 active funders, ~$16 billion AUM, average deal size ~$8 million) [104]. For D&O insurers, the takeaway is that third-party capital is now deeply embedded in high-stakes litigation, potentially increasing claim severity. The author suggests insurers need to anticipate that more plaintiffs can "go the distance" with outside funding, and supports the push for disclosure rules so insurers can gauge when a formidable funding backer is prolonging a case. This post serves as a concise, practice-oriented summary of the state of play circa 2025, blending factual exposition with the concerns of the insurance industry regarding the ripple effects of widespread litigation financing [98] [105].

Impact of Technology and AI on Litigation Finance (Post-2022)

- **Winston & Strawn LLP (2024), "Deep Learning Meets Deep Pockets: Artificial Intelligence's Impact on Litigation Financing."** This legal industry commentary explores how advances in AI are transforming litigation finance by improving case sourcing and underwriting. It reports that in FY2023, litigation funders in the U.S. made **$2.7 billion** in new funding commitments – a resurgence after a pandemic dip – and credits "the world's new favorite technology" (AI) as a factor enabling renewed growth [106] [107]. AI tools allow funders to analyze more cases faster and identify profitable opportunities that might be missed by humans [108]. For example, the article cites **Legalist Inc.'s** algorithmic "truffle sniffer," which combs court dockets for certain judges, venues, and case types that statistically predict a likely win or lucrative settlement [108]. Other startups use machine learning and public data to discover potential claims ("harm suffered but unknown to the victim") and then pair those claimants with lawyers – effectively creating new lawsuits that wouldn't have existed without AI-driven analysis [109] [110]. On the underwriting side, AI and analytics help funders evaluate the strength of claims more accurately; one leading firm is quoted saying that algorithms and **machine learning have the potential to enhance diligence**, calling this the industry's "Holy Grail" for more efficient, accurate investment decisions [111]. Some funders now automatically monitor litigation milestones (e.g. alerting if a case survives a motion to dismiss, which greatly increases its settlement value) [111]. The Winston piece argues these technologies will significantly **increase the volume of funded litigation**: by lowering diligence costs and improving success predictions, AI lets funders deploy capital into more cases – including smaller claims that used to be uneconomical – and to stick with cases longer (e.g. through trial rather than settling early) [112]. The authors raise a red flag that this could mean a *"deluge of litigation"* for corporate defendants [113]. They advise companies to respond proactively (for instance, by litigating more aggressively early on to discourage funders' algorithms from tagging the case as a good investment) [114]. The article also touches on related concerns, like the lack of legal rules around disclosure of AI-driven funding and even national security implications (reports of foreign or sanctioned investors using litigation funding covertly) [115] [116]. In summary, this source highlights that AI is both supercharging the ability of litigation funders to find and back claims, and potentially exacerbating the very issues of litigation volume and transparency that regulators and observers are grappling with.

- **Stellium (2023), "Tracing the Evolution of Data Analytics in Litigation Finance."** This industry analysis piece (by a legal tech consulting firm) underscores how data and AI are increasingly integral to litigation finance strategy. It notes that early uses of data analytics involved tracking how specific courts or judges tend to rule (descriptive insights), but today funders are leveraging **predictive analytics** and even prescriptive insights. Studies have shown AI models can predict case outcomes with accuracy exceeding that of seasoned litigators in some instances [117]. These tools can also uncover non-obvious patterns – for example, correlations in jury behavior or factors influencing settlement amounts – that help funders in risk assessment and case selection [118]. The article points out that sophisticated players are not only using analytics to pick winning cases, but also to **avoid litigation in the first place**: companies analyze data on what fact patterns or behaviors lead to lawsuits and then adjust business practices to reduce those risks [119]. On the industry level, Stellium highlights that data-driven approaches are becoming standard. More than half of in-house counsel at large companies now have direct experience with litigation funding, and satisfaction rates above 80% over the past five years reflect that when used, it generally works as intended [120] [121]. The piece also discusses emerging **reporting standards**: in the U.S., federal regulators (e.g. the Treasury Department) are considering rules to improve market transparency by 2024, such as common legal entity identifiers and requirements to report funding data in a machine-readable way [122] [123]. Industry leaders like Burford Capital have even collaborated with the SEC on standardized valuation methodologies, combining legal case metrics with finance concepts (time value of money, duration) to more consistently report portfolio values [124]. These trends aim to build investor confidence and comparability in an evolving asset class. Finally, Stellium identifies that **Generative AI** (large language models) is on the horizon to revolutionize legal workflows – from document review to case strategy – which could further reduce costs and uncertainties in litigation (benefiting funders and litigants alike) [125] [126]. In essence, this source portrays a future in which litigation finance is highly data-driven, with AI enhancing decision-making and transparency, even as it acknowledges the need for guardrails (like disclosure of funding and data security standards) in the tech-enabled landscape of modern litigation funding.

Sources: Molot (2009) [2] [3]; Steinitz (2011) [4]; RAND (2010) [7]; Abrams & Chen (2013) [11]; Antill & Grenadier (2023) [21] [20]; GAO (2022) [27] [31]; *Hedge Fund Journal* (2013) [40] [44]; *The Economist* (2018) [48] [52]; Financier Worldwide (2021) [58] [61]; Westfleet via Bloomberg Law (2025) [71] [74]; Swiss Re (2021) [81] [87]; ILR (2009/2019) [89] [92]; Abrams (D&O Diary, 2025) [98] [99]; Winston & Strawn (2024) [108] [112]; Stellium (2023) [117] [122].

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