

# ***Demystifying Third-Party Litigation Funding***

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Third-party litigation funding (TPLF) is having a moment. The TPLF industry is exploding, with upwards of \$17 billion flowing into the industry; the Supreme Court recently asked litigants how many of the Court's cases are third-party funded; and Congress is considering numerous bills on TPLF, bills that would require such things as disclosure of third-party funders and restrictions on where and when third-party funders can operate.

However, TPLF operates in the shadows: very little is publicly known about the industry because most third-party funders are privately held corporations. Even simple questions from the Supreme Court, like 'how many of our cases are third-party funded?' or 'what types of cases are third-party funded?' are impossible to answer with any sort of precision. This Article is the first to empirically study the TPLF cases in federal courts and begin to provide answers to those questions.

The data for this Article comes from two federal courts that have recently attempted to look behind the opaque curtain of litigation funding. The U.S. District Court for District of New Jersey and the chief judge on the U.S. District Court for the District of Delaware have mandated the disclosure of third-party funders in their courtrooms. These courts also require disclosure of the extent (if any) of third-party control over the litigation.

The results of this study demonstrate that the amount of TPLF is, at present, highly concentrated in certain areas, like patent law in which 20% of cases are third-party funded. Importantly, this study demonstrates that the existence of TPLF disclosure requirements drives parties to file elsewhere (primarily Texas), where they aren't required to disclose their existence.