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Third–Party Litigation Funding in the U.S., UK, and EU:
What Companies Facing Funded Claims Need to Know

By Britt Miller,
Matthew Provance &
Megan Stride
Mayer Brown LLP

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ABOUT THE AUTHORS

Britt Miller is a Partner with Mayer Brown LLP practicing in the firm's Chicago, IL office. She is a member of the Management Committee and co-leader of the Antitrust & Competition group. She advises clients on high-stakes antitrust litigation and complex commercial litigation, representing domestic and international corporations in price-fixing, market allocation, monopolization, and conspiracy cases, and also counsels clients on general antitrust issues.

Matthew Provance is a Partner with Mayer Brown LLP practicing in the firm's Chicago, IL office. He represents clients in complex civil antitrust litigation involving both monopolization and conspiracy claims and consumer class actions involving data privacy issues. Mr. Provance previously served as a law clerk to the Honorable Robert J. Conrad, Jr., US District Judge for the Western District of North Carolina.

Megan Stride is a Partner with Mayer Brown LLP practicing in the firm's Chicago, IL office. She represents clients across a variety of industries in all phases of US antitrust civil litigation and enforcement actions, including in the defense against allegations of price-fixing, monopolization, and market allocation. Ms. Stride previously clerked for Judge John J. Tharp, Jr. of the United States District Court for the Northern District of Illinois.

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THIRD-PARTY LITIGATION FUNDING IN THE U.S., UK, AND EU: WHAT COMPANIES FACING FUNDED CLAIMS NEED TO KNOW

Third-party litigation funding ("TPLF") is increasingly commonplace in complex cases. Heavily funded cases expose businesses to heightened risk and more expansive, protracted litigation, all while stirring up myriad legal and ethical minefields. 2026 is shaping up to be a pivotal year for TPLF, with landmark legislative proposals, judicial decisions, and regulatory developments across the U.S., UK, and EU. Companies are well advised to stay alert as its use (and the attendant risks) continues to evolve. In this *Working Paper*, we summarize the current TPLF landscape in these three jurisdictions and highlight five notable developments in each.

I. TODAY'S FUNDING MODEL & MARKET SNAPSHOT

In large-scale complex litigation, a funder, often capitalized by a group of investors, may finance one or more plaintiffs in exchange for a share of any proceeds recovered by way of judgment or settlement. U.S., UK, and EU TPLF follow similar models: single-case funding, portfolio funding, and facility-style arrangements, with distinct drawdowns tied to each phase of the litigation. These agreements typically include key terms such as (1) funder commitment amounts; (2) proceed-sharing structures; (3) cross-collateralization with other matters within a broader funding portfolio; and (4) funder control rights, including over case strategy and settlement decisions, with varying degrees of funder control depending on the funding arrangement, investment strategy, or applicable jurisdiction.

Reporting of U.S. TPLF market figures remains scarce. However, a 2024 market report estimated that TPLF in the U.S. was a $16.1 billion industry,[1] an almost 70% increase from 2019.[2] Over the next decade, the U.S. market is projected to reach approximately $25 billion, capturing 47.24% of the estimated global market.[3] Complex commercial cases, particularly antitrust cases, are driving TPLF growth, reflecting funders' interest in high-stakes, potentially high-return disputes.[4] In the antitrust context, the availability of treble damages—which can translate to higher settlements—makes such cases particularly attractive for funders.

Data is similarly limited in the UK, but TPLF is reported to have expanded tenfold from £200 million (in 2013) to £2.2 billion (in 2023) following 2013 reforms.[5] This growth is predicted to continue, reaching an estimated £3.7 billion by 2028,[6] primarily because of English law developments which have caused a spike in class actions.

Data on TPLF remains limited in the EU, mirroring constraints observed in the U.S and the UK.[7] In 2019, the European Commission estimated the European TPLF market at approximately €1 billion. This figure was projected to rise in line with global growth, with an additional €0.6 billion in market revenue by 2025. That

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[1] Westfleet Advisors, *The Westfleet Insider: 2024 Litigation Finance Market Report* 3 (Mar. 31, 2025), https://perma.cc/65XE-PV82.

[2] Westfleet Advisors, *The Westfleet Insider: 2020 Litigation Finance Market Report* (Jan. 27, 2021), https://perma.cc/JRP4-3RXZ.

[3] Research Nester, *Litigation Funding Investment Market Size, Growth Trends 2026-2035* (Jan. 5, 2025), https://perma.cc/BT9N-28EC.

[4] Bloomberg Law, *Litigation Finance Survey 2024*, at 4 (Jan. 9, 2025), https://perma.cc/96LZ-SEY3.

[5] Glyn Rees, *In Review: Third Party Litigation Funding in United Kingdom (England & Wales)*, LEXOLOGY (Dec. 8, 2022), https://tinyurl.com/mr3su5m3.

[6] PwC, UK Legal Services Market Report (July 2022), https://perma.cc/A98F-GE3F.

[7] https://perma.cc/6GJP-3HET.

growth is likely driven by the increase in class and representative action regimes across Europe, especially in the Netherlands and Portugal. In Germany, the number of largely funded lawsuits has increased over the years as well, particularly in cartel follow-on damages cases.

While the U.S., UK, and EU markets differ in maturity and regulatory approach, policymakers in each jurisdiction are confronting the same questions: whether and how to implement disclosure, how to define boundaries for funder control, and how to regulate an industry that operates across borders.

II. U.S. DYNAMICS

A. Disclosure Battles Abound

Rapid industry growth has spurred heightened TPLF discourse and scrutiny at the state level, with ten states enacting legislation that seeks to curb the practice and promote transparency rather than throttle it altogether. However, these measures lack uniformity, creating a fragmented regulatory environment that may invite gamesmanship and forum shopping.

- **Mandated Disclosure**: West Virginia[8], Wisconsin[9], and Kansas[10] mandate the disclosure of funding arrangements, with the latter also mandating the disclosure of funder control over the litigation and access rights to confidential materials.
- **Discoverable – Not Mandated**: Louisiana,[11] Oklahoma,[12] Colorado,[13] and Indiana[14] have more attenuated provisions under which funding

[8] W. Va. Code §§ 46A-6N-1–46A-6N-9 (2024).

[9] Wis. Stat. § 804.01(2)(bg) (2018).

[10] Kan. Stat. Ann. § 60-226(b)(3)(B)(i) (Supp. 2024).

[11] La. Rev. Stat. §§ 9:3580.1–9:3580.13 (2024).

[12] Okla. Stat. tit. 12, § 3226(B)(1)(c) (as amended 2025).

[13] Colo. Rev. Stat. § 13-16-126(7) (2024).

[14] Ind. Code §§ 24-12-11-1–24–12-11-5 (2024).

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arrangements are discoverable upon request. All but Colorado require heightened disclosures for foreign funders.

- **Multi-Pronged**: Montana addresses transparency, windfall, and undue influence concerns by requiring (1) the disclosure of funding arrangements; (2) funder registration; (3) a 25% recovery cap; and (4) a ban on funder control over case administration.[15]

- **New Legislation in 2026**: Effective January 1, 2026, newcomers Georgia[16] and Arizona[17] joined the ranks of states with TPLF legislation. Georgia limits funder control and bars "foreign adversaries" from registering as financiers, while adopting a discoverable (not mandated) model. However, Arizona now mandates disclosure through a revised rule and new legislation that curbs funder control and directs courts to consider funding and potential conflicts in class certification. Meanwhile, Florida,[18] New York,[19] and Rhode Island[20] promise legislative movement in 2026, with proposals that would all mandate automatic disclosure of litigation funding arrangements. Illinois[21] also introduced legislation earlier this year, but it adopts a discoverable (not mandated) model that imposes additional registration requirements for funders, restrictions on specified conduct, and enforcement through the Consumer Fraud and Deceptive Business Practices Act.

- **Federal Rules**: State TPLF disclosure statutes do not govern discovery in federal court, though courts may consider these laws where they are substantive or do not otherwise conflict with the Federal Rules. Currently, there is no uniform rule at the federal court level requiring TPLF disclosure. However, some federal courts have adopted their own local rules and discovery orders addressing disclosure.[22] For example, the U.S. District Court for the District of New Jersey's Local Civil Rule 7.1.1 mandates disclosure of non-party, non-recourse funding. Still, several

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[15] Mont. Code Ann. § 31-4-101 et seq. (2023).

[16] O.C.G.A. § 9-11-26(b)(2.1)(A) (effective Jan. 1, 2026).

[17] Ariz. R. Civ. P. 8(j); Ariz. Rev. Stat. Ann. § 12-3454(A) (effective Jan. 1, 2026).

[18] S.B. 1396, 2025-2026 Reg. Sess. (Fla.) ("Litigation Investment Safeguards and Transparency Act"), https://perma.cc/Y2UL-EJZ5.

[19] A.B. A7599, 2025-2026 Reg. Sess. (N.Y.) ("Sunshine in Lawsuit Funding Act").

[20] H.B. 5221, 2025 Reg. Sess. (R.I.) ("Third-Party Litigation Financing Consumer Protection Act").

[21] S.B. 3812, 103d Gen. Assemb., Reg. Sess. (Ill. 2026).

[22] *See, e.g.*, D.N.J. Civ. R. 7.1.1 (June 21, 2021) (Disclosure of Third-Party Litigation Funding).

courts draw a bright line, refusing to compel disclosure absent a clear nexus to a particular claim or defense, citing attorney-client privilege, common interest, and work product protections.[23]

- **U.S. Court of International Trade**: In January 2026, the court revised its mandatory disclosure forms to address TPLF arrangements, reflecting increased scrutiny following a surge in refund disputes related to levied tariffs.[24]

B. Ethical Issues Remain Complex

Funders are increasingly functioning as strategic gatekeepers, only backing claims they deem "fund-worthy" through a predominantly financial lens. As a result, funders may be empowering themselves to shape both the cases that reach the courts and the contours of emerging jurisprudence. Certain funding arrangements go further, granting funders control rights that can increase party costs, prolong litigation, and skew settlement outcomes. These dynamics concentrate power in funders and heighten ethical and strategic pressures for courts and defendants alike.

Although well-funded plaintiffs' counsel benefit from substantial discovery and expert resources, they often tread ethical fault lines between competing incentives among claimant goals, funder economics, and fee recovery. Lawyers have a duty to act in their clients' best interests—but who is really leading the dance when funder economics drive the rhythm? Conflicts arise when funder pressure to pursue or settle claims drives litigation strategy in ways that prioritize investment returns over legal merit. As discussed below, these tensions are amplified in class actions, where funder motivations can shape coordinated strategies across a

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[23] *See, e.g.*, *Haptic, Inc. v. Apple Inc.*, No. 3:24-cv-02296-JSC (N.D. Cal. June 3, 2025) (denying Defendants' tactic to seek third-party funding disclosure to rebut a "David v. Goliath" narrative citing work product protections).

[24] Emily R. Siegel, *Trade Court for Trump Tariff Fights Wants Suit Funders Revealed*, BLOOMBERG LAW (Jan. 28, 2026), https://perma.cc/F8GC-K7TZ.

portfolio of claims. Parallel concerns emerge when funders gain access to confidential or proprietary information while remaining outside the disciplinary reach of the American Bar Association ("ABA"), state bars, and other regulatory authorities. The ABA has repeatedly flagged these risks, including potential interference with professional judgment,[25] fee-splitting and conflict of interest issues,[26] and threats to attorney independence, a topic that was most recently discussed in a December 2025 ABA guidance.[27] In 2026, companies facing funded claims must account for these issues to manage risk, shape litigation and settlement strategy, control costs, and navigate concerns over opponents' ethical obligations.

These companies should know that resolving the ethical debates that have arisen over TPLF will likely remain impossible while the process is shrouded in secrecy and largely exempt from disclosure and discovery, particularly in U.S. litigation. For example, even states that have not condemned TPLF under the common law doctrine of champerty[28] continue to recognize that TPLF arrangements may violate public policy if the funder acquires undue influence or control over the prosecution or settlement of a funded claim.[29] Indeed, legal scholars note that a "[TPLF] agreement that allows a funder to take control of settlement . . . would be seen as against public policy in every state."[30] The problem

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[25] A.B.A., Comm'n on Ethics 20/20, *Informational Report to the House of Delegates: Alternative Litigation Finance* (2012), https://perma.cc/64W4-QKP4.

[26] A.B.A., *Best Practices for Third-Party Litigation Funding, ABA Res. 111A* (Aug. 3–4, 2020), https://tinyurl.com/2ktws4sh.

[27] Timothy A. Duree, *What Attorneys Should Consider When Thinking About Third-Party Litigation Funding*, LAW PRACTICE TODAY (Dec. 12, 2025), https://tinyurl.com/yrcut9fz.

[28] "Champerty" is a common law doctrine prohibiting a third party from financing or supporting another person's lawsuit in exchange for a share of the proceeds.

[29] *Maslowski v. Prospect Funding Partners LLC*, 944 N.W.2d 235, 241 (Minn. 2020).

[30] Anthony J. Sebok, *The Rules of Professional Responsibility and Legal Finance: A Status Update* 11 n.41, Cardozo L. Jacob Burns Inst. for Advanced Legal Studies, (Fac. Rsch. Paper No. 67 2022), https://ssrn.com/abstract=4065918.

for defendants is that courts have been reluctant to permit *any* discovery into TPLF arrangements as would be needed to shine a light on the funding terms or the dynamics between plaintiffs and their funders—although, as discussed below, some courts have ordered disclosure in limited circumstances. Without appropriate discovery, it remains unclear how TPLF arrangements that create potential ethical or public policy issues can be properly tested by the adversarial process.

C. Federal Regulatory Scrutiny Is Growing

In 2025, Congress introduced three key proposals, the Litigation Transparency Act of 2025 (H.R. 1109),[31] Tackling Predatory Litigation Funding Act (H.R. 3512),[32] and Protecting Our Courts from Foreign Manipulation Act of 2025 (H.R. 2675).[33] On January 12 and February 11, 2026, legislators introduced two companion bills, the Protecting Third Party Litigation Funding from Abuse Act (H.R. 7015),[34] and the Litigation Funding Transparency Act of 2026 (S. 3826), respectively.[35] These proposals would collectively mandate TPLF disclosure, restrict funding from countries of concern and sovereign wealth funds, curb funder influence on litigation strategy, and tax funder proceeds. Proponents argue that these measures are necessary to protect U.S. national security and rein in foreign actors who might use TPLF to evade sanctions,[36] or funders who wish to advance

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[31] Litigation Transparency Act of 2025, H.R. 1109, 119th Cong. (2025), https://www.congress.gov/bill/119th-congress/house-bill/1109.

[32] Tackling Predatory Litigation Funding Act, H.R. 3512, 119th Cong. (2025), https://www.congress.gov/bill/119th-congress/house-bill/3512.

[33] Protecting Our Courts from Foreign Manipulation Act of 2025, H.R. 2675, 119th Cong. (2025), https://www.congress.gov/bill/119th-congress/house-bill/2675.

[34] Protecting Third Party Litigation Funding from Abuse Act, H.R. 7015, 119th Cong. (2026), https://www.congress.gov/bill/119th-congress/house-bill/7015.

[35] Litigation Funding Transparency Act of 2026, S. 3826, 119th Cong. (2026), https://www.congress.gov/bill/119th-congress/senate-bill/3826.

[36] Emily R. Siegel & John Holland, *Putin's Billionaires Dodge Sanctions by Financing Lawsuits*, BLOOMBERG LAW (Mar. 28, 2024), https://perma.cc/2ZWW-D9AE.

national and competitive interests,[37] with taxation serving as a key enforcement tool. Opponents complain that the bills could threaten free speech, privacy, and confidentiality rights; stifle innovation and IP enforcement; and reduce donor participation, limiting suits on polemic issues and potentially restricting access to justice.

Although the Litigation Transparency Act and Foreign Manipulation Act have faced increased pushback this year, [38] the House Judiciary Committee's approval of the Foreign Manipulation Act in November 2025 marked a meaningful development in industry oversight. Rising debate and legislative activity in 2026 suggest growing momentum toward the first federal TPLF regulatory framework.

This momentum has also caught the attention of international funders. A recent Bloomberg Law report, one of at least ten articles that the outlet has published on the topic since January 1, 2026, notes that funders are alarmed by Congress' recent proposals, particularly those involving entities backed by sovereign wealth funds.[39] Investors, who treat TPLF purely as a financial opportunity, argue that foreign-based restrictions would restructure the legal landscape in ways that introduce market uncertainty, make TPLF a less attractive investment, and deter cross-border funding. Funders also claim that mandatory disclosure could trigger additional discovery disputes and delay case resolution, but for defendants, such disclosures offer the critical insight needed to understand case motivations and funder financial ties.

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[37] Emily R. Siegel, *China Firm Funds US Suits Amid Push to Disclose Foreign Ties,* BLOOMBERG LAW (Nov. 6, 2023), https://perma.cc/RHY2-HHVS.

[38] Emily R. Siegel, *Issa Litigation Finance Bill 'Paused' After Bipartisan Push Back*, BLOOMBERG LAW (Jan. 15, 2026), https://perma.cc/N5QK-5ANY.

[39] Emily R. Siegel & John Holland, *Investors Lament 'Anti-Foreign' Litigation Funding Push*, BLOOMBERG LAW (Jan. 23, 2026), https://perma.cc/AX9J-CEXC.

As certain legislators continue to push for oversight and transparency to rein in litigation funders, those funders are looking to push back. In July 2025, the International Legal Finance Association (ILFA), a consortium of international funders, became a "war room," as described by its Director, Paul Kong, for strategizing opposition to a litigation funding tax bill introduced by Senator Thom Tillis. This provision was included in the "One Big Beautiful Bill" and would have taxed funder profits at nearly 40%.[40] However, the bill was ultimately stricken under the Byrd Rule on the grounds that it was not primarily budgetary.[41] A few months later, Kong endorsed the EU's decision to forgo TPLF regulation, warning that the legislation "would have choked off the availability of financial support to level the playing field for claimants."[42] On the U.S. front, ILFA criticized Congress' proposals as broad-brush restrictions and "direct assaults" driven by "manufactured fear,"[43] a concern echoed by funders in 2026 who argue that the legislation weaponizes the term "foreign."[44] Notably, advocacy and lobbying efforts have recently extended beyond funders. The American Civil Accountability Alliance launched in January 2026 and has entered the debate on behalf of consumers and small businesses, framing the issue as preserving access to the civil justice system.[45]

[40] Emily R. Siegel, *Litigation Funders' Tax Bill Escape Spurs Industry Reckoning*, BLOOMBERG LAW (July 11, 2025), https://perma.cc/49CR-6FSV.

[41] *Id.*

[42] John Freund, *ILFA Welcomes Commissioner McGrath's Rejection of EU Regulation for Third-Party Litigation Funding*, LEGAL FUNDING JOURNAL (Nov. 20, 2025), https://perma.cc/HQ82-L2S5.

[43] *See* Int'l Legal Fin. Ass'n, *ILFA Statement on House Judiciary Markup of the Litigation Transparency Act of 2025 and the Protecting Our Courts from Foreign Manipulation Act of 2025* (Nov. 17, 2025), https://tinyurl.com/34dyrszw.

[44] *Supra* n.40.

[45] American Civil Accountability Alliance, Home, https://perma.cc/NTH7-PPN4.

Regulatory scrutiny has also piqued the interest of the U.S. Judicial Conference's Advisory Committee on Civil Rules ("Committee"). In 2014, the Committee labeled TPLF as an "evolving concern" but declined to intervene, noting that the issue was not yet ripe.[46] Nearly a decade later, the Committee formed a TPLF subcommittee to consider whether a disclosure rule is warranted.[47] At its October 2025 biannual meeting in Washington D.C., members discussed potential approaches, including a model akin to mandatory insurance disclosures under Federal Rule of Civil Procedure 26(a). Committee Chair Chief Judge Proctor observed "sharp views and sharp elbows"[48] during debate over foreign financing, public disclosure, disclosure thresholds, and collateral litigation and discovery disputes. The Committee did not reach a consensus on a proposed rule, however, and the TPLF subcommittee remains in an "information-receptor mode."[49]

On March 10, 2026, the U.S. Chamber Institute for Legal Reform and Lawyers for Civil Justice submitted a proposed amendment to Rule 26(a)(1)(A) that would require automatic disclosure of TPLF funding arrangements. It remains uncertain, however, whether this submission will yield a draft rule proposal in 2026.

D. Antitrust Cases Continue to See Litigation Funding Disputes

Antitrust litigation, in particular, continues to drive TPLF debates. The most public example is the litigation involving Sysco Corporation and its funder, Burford Capital. Sysco financed its antitrust litigation through Burford, which provided

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[46] Comm. on Civ. Rules, *Meeting Agenda* 417 (Oct. 10, 2024), https://perma.cc/8BC5-MZRH.

[47] *See Memorandum from Professor Richard Marcus to the Advisory Comm. on Civ. Rules Re Third Party Litigation Funding Subcommittee Report* 183 (Oct. 1, 2025), Lawyers for Civil Justice, https://perma.cc/7JQZ-EKXK.

[48] Jeff Overley, *Judiciary Panel Eye Rules for Class Cert. Litigation Funding*, LAW360 (Oct. 25, 2025), https://perma.cc/D8FH-4LNK.

[49] *See supra* n. 47.

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more than $140 million to support multidistrict litigation against major meat producers. The parties' funding agreement provided that Sysco "shall not accept a settlement offer without [Burford's] prior written consent, which shall not be reasonably withheld."[50] That provision spurred friction between the parties when Burford opposed proposed settlements in several cases, asserting that the negotiated amounts were "too low" without further explanation.[51] Tensions increased when Sysco learned that plaintiffs' counsel had advised Burford on whether to approve those settlements, forming another link in an already complex ethical triangle.[52]

Sysco and Burford agreed to resolve the dispute, and Sysco assigned its claims to Carina Ventures, LLC, a special vehicle which holds Burford's ownership interest in claims assigned by Sysco.[53] This assignment extended across multiple antitrust cases, including *Keurig*, *Beef*, *Pork*, *Broilers*, and *Turkey*. However, two of these assignments escalated into parallel litigation, namely determining whether Carina had standing to continue Sysco's claims.[54] In 2024, Judge Durkin of the Northern District of Illinois rejected Defendants' challenges of the assignment, finding that it was not "champertous" and did not violate public policy. Moreover, the court declined to compel disclosure of Sysco and Carina's funding agreement, holding that the assignment was valid and as a result discovery was unnecessary and improper.[55]

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[50] *In re Pork Antitrust Litigation*, 2024 WL 2819438, at *1 (D. Minn. 2024).

[51] *In re Broiler Chicken Antitrust Litigation*, 167 F.4th 430, 445 (7th Cir. 2026).

[52] *Lawsuit Against Burford Gives a Peek into the Secretive World of Litigation Funding,* U.S. CHAMBER INSTITUTE FOR LEGAL REFORM (May 11, 2023), https://perma.cc/LLH7-NCKS.

[53] *In re Turkey Antitrust Litigation*, 789 F. Supp. 3d 648, 651 (N.D. Ill. 2025).

[54] *Id.*

[55] *Id.* at 2.

Courts have not reached uniform results on claim assignment. Defendants in a parallel suit before the U.S. District Court for the District of Minnesota raised the same champertous, public policy, and non-party interest concerns, arguing that the assignment improperly transferred claims to a funder with no underlying injury. To contrast, the Minnesota court found in Defendants' favor, holding that while the state had abolished its common-law principle of champerty, courts must "still be careful to ensure that litigation financiers do not attempt to control the course of the underlying litigation."[56] In light of Burford's prior conduct, opposing settlements, the court denied the assignment.[57] This dispute foreshadows that Defendants may face varied outcomes as courts assess whether funders can step into the shoes of the original claimant.

The Sysco and Burford saga illustrates how a single dispute can generate satellite litigation in multiple jurisdictions, underscoring that TPLF is a cross-border industry. This emerging split amongst courts also highlights how TPLF is testing the boundaries of traditionally settled doctrines like standing, champerty, and claim assignment. Funding arrangements, particularly provisions governing consent rights or settlement thresholds, may therefore prove to be more outcome-determinative in light of recent decisions.

E. Investors Are Eying Managed Legal Services

Investor interest is also expanding to managed legal services. In October 2025, Certum Group, a major litigation funder, acquired a management service organization ("MSO"), rebranding it Certum Legal Solutions.[58] MSOs manage a law

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[56] *In re Pork Antitrust Litigation*, 2024 WL 2819438, at *4 (D. Minn. 2024)(quoting *Maslowski v. Prospect Funding Partners LLC*, 944 N.W.2d 235, 241 (Minn. 2020)).

[57] *Id.* at 4.

[58] Emily R. Siegel, *Litigation Funder Certum Launches MSO Aimed at Mass Torts Firms*, BLOOMBERG LAW (Dec. 4, 2025), https://perma.cc/F3QV-BPV8.

firm's administrative, operational, and financial functions. Reports indicate that Certum has partnered with mass tort firms offering back-office management needs on a fee-for-service basis.[59] Other TPLF funders, including Burford,[60] describe MSOs as an alternative investment in law firms distinct from TPLF. The MSO model introduces a new investment pathway for regulators and legal participants to monitor. As the industry is still nascent, policymakers and judges may soon consider MSOs within the evolving TPLF framework.

While the U.S. TPLF debate is centered on whether to implement disclosure requirements at all, and at what government level, the UK market has moved beyond this threshold. Instead, UK concerns center on the scope of regulatory oversight and the consequences of landmark judicial decisions that have reshaped the enforceability of funding agreements.

III. UK DYNAMICS

A. The Growth and Evolution of UK TPLF

TPLF in the UK has only been around since 2013. Prior to that, it was prohibited by the doctrine of maintenance and champerty, a doctrine of medieval law designed to prevent what was historically considered "intermeddling" by funders (i.e., the idea that litigation funders should not control the conduct of litigation or be the cause of it being commenced). This regulatory pivot led to significant growth in the market, with well-established U.S. funders exploring UK opportunities centered on legislative reforms and case law developments in class action litigation. One study suggests that 57% of all identified cases in the English courts between 2019 and 2024 were litigated under one of the UK's class actions

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[59] *Id.*

[60] Ryan Boysen, *Litigation Funder Burford Eyes Investments in U.S. Law Firms*, LAW360 (Aug. 18, 2025), https://perma.cc/3KY6-XA4V.

regimes, the vast majority of which (if not all) were funded.[61]

B. Recent Uncertainty in the UK TPLF Market

In 2023, amidst this marked increase in funded litigation, the UK Supreme Court issued its *"PACCAR"* decision,[62] introducing significant upheaval and uncertainty into the UK TPLF system. In *PACCAR,* the Court ruled that the subject Litigation Funding Agreements ("LFAs") were damages-based (no-win, no-fee) agreements due to their inclusion of provisions awarding funders a percentage of recovered damages. All such agreements are, under UK law, subject to strict regulatory requirements—with which the LFAs had not complied. The Court ruled them unenforceable. The ruling caused significant uncertainty in the market, but funders and funded claimants reacted swiftly by amending their arrangements to work around the regulatory requirements and the Supreme Court's concerns by, for example, framing funder returns as a multiple of invested capital. The validity of these reframed LFAs became the subject of several satellite appeals including to the Supreme Court, which were resolved (in favor of the funders and funded parties) in 2025.

C. Regulatory and Legislative Scrutiny

2025 also brought regulatory scrutiny from the UK Civil Justice Council (CJC). The CJC's June 2025 report on litigation funding made various recommendations including that legislation be introduced to reverse the impact of the *PACCAR* decision and also that "light-touch" regulation of litigation funding be introduced.[63] Specifically, the report recommended added protections for

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[61] Racheal Mulheron KC, *A Review of Litigation Funding in England and Wales*, Queen Mary University of London (Mar. 28, 2024), https://perma.cc/JCA9-URK8.

[62] *R (on the application of PACCAR Inc and others) (Appellants) v Competition Appeal Tribunal and others (Respondents)* [2023] UKSC 28.

[63] See our key takeaways at Airlie Goodman et al., *UK Government to Mitigate Impact of Supreme Court's 2023 Decision on Litigation Funding in* Paccar, Mayer Brown (Jan. 6, 2026), https://perma.cc/9NP4-GEWE.

defendants including early disclosure and judicial scrutiny of LFAs in class actions, as well as mandatory after-the-event insurance to cover defendants' costs in the event of the defendant's success (under the UK's loser-pays costs recovery system). In late December 2025, the UK government announced its intention to adopt these recommendations although it remains to be seen precisely which and how the regulatory recommendations will be introduced and when the legislation might be finalized.

D. Litigation Funding in Live Litigation

In late 2025, two landmark collective action cases were resolved following full trials. In both, the claimants were funded and prevailed.

The first case was an opt-out antitrust private damages action before the Competition Appeal Tribunal (CAT), against a multinational technology company alleging abuse of dominance, exclusionary practices, and excessive pricing in relation to app developers on the company's proprietary store.[64] This was the first time that a class representative in the CAT's opt-out regime succeeded in establishing their claims, resulting in an award of £1.4 billion to the class of approximately 36 million customers.

In the second case, the High Court found that a UK-headquartered mining company was liable for environmental damages caused by its Brazilian subsidiary.[65] A judgment on the company's application for permission to appeal this liability judgment is pending, and a second trial to determine quantum is scheduled for this year, but the claims are estimated to be worth £36 billion according to the counsel for the approximately 620,000 claimants. Notably, this litigation follows a recent trend of cases backed by TPLF, in which claimants seek

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[64] *Dr Rachael Kent v Apple Inc. and Apple Distribution International Ltd* [2025] CAT 67.

[65] *Municipio de Mariana and ors v BHP Group (UK) Limited and ors* [2025] EWHC 3001 (TCC).

redress in the English courts against UK-headquartered companies for damages arising from the alleged torts of their foreign subsidiaries.

But the funders' record is not perfect. In December 2025, the UK Supreme Court ruled that the claims in a £2.7 billion foreign exchange rigging opt-out collective action against major banks were "weak" and should not have been allowed to continue.[66] The Court explained that the Competition Appeal Tribunal was entitled to refuse to certify the collective proceedings brought against major international investment banks on an opt-out basis and to allow them, if at all, only on an opt-in basis.[67] The Supreme Court confirmed that *"the policy of facilitating the vindication of rights and deterring future wrongdoers is not a strong factor pointing in favour of opt-out rather than opt-in proceedings"*—disappointing the UK TPLF market which has grown on the back of the rise of the opt-out regime in recent years. Businesses with potential exposure to UK class action litigation will be reassured by the Court's comment that there is *"a balance to be struck between assisting claimants to obtain redress and protecting defendants from oppressive litigation."*[68]

E. Mandated Disclosure and Limited Funder Influence on Litigation

Mandated disclosure and limitations on funder influence are already key features of the UK TPLF market in the antitrust class action space, as class representatives are required to demonstrate that they have obtained sufficient funding to litigate the proceedings through trial. For this purpose, even without the reforms envisaged by the CJC Report, litigation funding is routinely disclosed and

[66] *Evans (Respondent) v Barclays Bank Plc and others (Appellants)* [2025] UKSC 48.

[67] That decision also held that the Court of Appeal had wrongly interfered with a discretionary case-management ruling by the CAT.

[68] *Evans v Barclays* at [168].

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scrutinized as part of the class certification stage in actions before the Competition Appeal Tribunal. We expect the adequacy and appropriateness of funding arrangements to continue to be avenues for challenge by defendants at the certification stage. Disputes have also arisen between funders and funded claimants at the settlement stage: in 2025, a funder commenced parallel judicial review and arbitration proceedings against the claimant class representative whose claims they had funded.[69] The funder's alleged grounds were that a settlement was premature and for too low a settlement sum—only 2% of the damages which the class representative had estimated could be recovered.

The UK's recent *PACCAR* decision, highlighting light-touch regulation, brings the jurisdiction back toward its early roots and restrictions of TPLF under the champerty doctrine, and is a notable departure from the EU. Yet, the same pressures that prompted UK changes, rising class actions, growing concerns about funder influence, and cross-border forum shopping, are building across EU Member States and are unlikely to remain unaddressed.

IV. EU DYNAMICS

A. The EU's Decision Not to Regulate – for Now

TPLF in the EU is not subject to comprehensive, harmonized regulation as of 2026. That said, both legislators and regulators are taking notice of the practice. In 2022, the European Parliament issued a resolution with recommendations to the Commission on responsible private funding of litigation.[70] The recommendations identified significant potential ethical risks associated with TPLF, including that litigation funders may prioritize their own financial interests over those of claimants. To address these concerns, the Parliament's resolution called for

[69] *Walter Hugh Merricks CBE v Mastercard Incorporated and Others* – CAT Case no 1266/7/7/16.

[70] https://tinyurl.com/3ary2s3w.

litigation funders to be subject to a fiduciary duty of care, requiring them to act in claimants' best interests while prohibiting undue control over funded proceedings. Additionally, the resolution proposed an authorization system for litigation funders, with ongoing supervision by authorities and courts to ensure compliance with the proposed standards of governance. Parliament also recommended the disclosure of funding agreements to courts and greater transparency regarding funder-party relationships.

Following debate triggered by the European Parliament's resolution, the European Commission (March 2025) conducted a mapping exercise of Member State practices.[71] Industry stakeholders argued that prescriptive rules could restrict financing for claimants and impede access to justice within the internal market. Ultimately, in November 2025, the European Commission decided that it would not, at this stage, propose EU-level legislation on TPLF.[72]

The policy debate remains active, however. In January 2026, several business associations, including the European Banking Federation, European Justice Forum, and AmCham EU, issued a joint statement calling for binding EU-level rules governing professional TPLF. [73]

B. TPLF and Collective Redress

For now, the only piece of EU legislation that directly addresses TPLF is Article 10 of the Representative Actions Directive (EU) 2020/1828 ("RAD"), which governs funding of representative actions for redress measures in consumer collective redress cases. It requires Member States to ensure that where

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[71] https://perma.cc/UM5L-2V56.

[72] Eur. Comm'n, "Report of the High-Level Forum on Justice for Growth" (Nov. 18, 2025), https://perma.cc/6KFB-VXLF.

[73] Law Society Gazette Ireland, "No EU legislation on third-party litigation funding," https://perma.cc/RM3X-ERSD.

representative consumer actions are funded by third parties, conflicts of interest are prevented and that funding does not divert the action away from protecting consumer interests. It is left to the Member States to determine whether to permit TPLF and how to implement Article 10 of the RAD.

C. Fragmented Rules at the Member States' Level

In the vast majority of EU Member States, TPLF is neither specifically regulated nor prohibited. Due to the absence of comprehensive regulation, TPLF often operates within the general framework of national contract law and civil procedure. Consumer law, including legislation on unfair contract terms, applies if a consumer is a party to the agreement. Most Member States have implemented Article 10 of the RAD for representative actions but have not gone beyond it by enacting broader TPLF-specific legislation. Ireland remains a jurisdiction where TPLF is currently illegal under common law doctrines that prohibit third parties from funding litigation for profit. However, reform is under active consideration in Ireland, where the Irish Law Reform Commission is expected to publish its briefing in late Spring 2026

Some jurisdictions, such as the Netherlands and Germany, have mature and well-established TPLF markets. In Germany, there is no general legal regime governing TPLF, and thus, TPLF is generally permissible and frequently used in mass consumer claims and competition damages matters. However, like the Sysco-Burford dispute in the U.S., a similar legal debate arose over whether TPLF-backed special purpose vehicles pursuing assigned claims in court create conflicts of interest prohibited by the German Legal Services Act. Disputes before German courts have typically focused on these assignment vehicles and compliance with the Legal Services Act, rather than on the permissibility of third-party funding *per se*. In the context of implementing the RAD, Germany has restricted the use of TPLF

in redress actions with a 10% cap on funders' share of the gains,[74] significantly reducing the attractiveness of these actions for third-party funders, who typically seek a share exceeding 10%.

D. Potential for Forum Shopping

For defendants, the lack of harmonization and regulation means that disclosure obligations, limits on funder control, security for costs, and cost-recovery rules vary by forum and case type. There is no EU-wide mandatory disclosure regime comparable to the U.K. Competition Appeal Tribunal's certification practice. In many national courts, disclosure occurs only at the courts or claimant's discretion. Much like the varied state TPLF laws in the U.S., these divergences across the EU encourage strategic forum selection by funders and funded claimants. Funders often help claimants identify favorable venues, including jurisdictions more receptive to collective redress. Parallel or competing proceedings (for example, actions filed in different Member States or the U.K.) are increasingly common, requiring defendants to coordinate defense strategy, disclosure, and settlement positioning across borders.

E. Assignment Models and the CJEU's Ruling in ASG 2

In some Member States, most notably the Netherlands and Germany, assignment models have emerged as a complement or alternative to collective redress mechanisms. Under this model, individual parties assign their claims to a special purpose vehicle, which then pursues the bundled claims in court in its own name. These types of actions are often funded by TPLF.

As noted above, some debate has occurred in Germany over whether TPLF-backed assignment models comply with the German Legal Services Act, which prohibits legal services that create conflicts of interest. While most German courts

[74] § 4 para. 2 no. 3 of the Act on Enforcement of Consumer Rights (*Verbraucherrechtedurchsetzungsgesetz*).

have found these arrangements permissible, even where a third-party funder is involved, the Regional Court of Dortmund had doubts in a cartel damages case. In that case (*ASG 2*), 32 sawmills in Germany, Belgium, and Luxembourg had assigned their compensation claims against the state of North Rhine-Westphalia to a private company seeking consolidated recovery in its own name and at its own expense, in exchange for a success fee. A violation of the Legal Services Act would render the assignments invalid, potentially leading to limitation of the underlying claims and loss of rights for the original claimholders. Considering these consequences, the court referred this question to the CJEU.

In January 2025, the CJEU ruled that European antitrust law (Art. 101 TFEU) precludes national rules that prevent injured parties from assigning claims to a legal-services provider for collective assertion in stand-alone actions, provided that: (1) national law offers no other effective means of bundling individual claims, and (2) pursuing individual claims would be impossible or excessively difficult, thereby denying effective judicial protection. Where national rules cannot be interpreted in conformity with EU law, national courts must disapply them.[75] In its ASG 2 decision, the CJEU thus neither mandated nor prohibited TPLF-backed assignment models. Their permissibility depends on the design of national law and the availability of alternative, effective mechanisms of private enforcement. This leaves room for continued debate about the permissibility of assignment models in Germany.

In this context, the German Federal Court of Justice is currently considering whether antitrust damages can be pursued using an assignment model financed by a third-party funder. A decision is expected next month (May 2026) and is likely to provide further guidance on the permissibility and limits of such arrangements

[75] CJEU, Judgement of 28 January 2025, C-253/23, ASG 2, EU:C:2025:40.

under German law.[76]

While these judgments focus on cartel damages cases, their reasoning on the enforcement of legal rights via assignment models is likely relevant to other claims concerning the private enforcement of rights derived from EU law.

V. KEY TAKEAWAYS

To best position their businesses should they face funded claims, counsel should take proactive steps. The developments discussed in this article point to the following strategies:

1) **Stay Ahead of Legislation**: Track the rapidly evolving TPLF legislative landscape, including pending state bills (Florida, New York, Rhode Island, and Illinois), federal proposals (H.R. 1109, 2675, 3512, 7015, and S. 3826), the UK government's anticipated response to the CJC report, and Member State and EU-level developments. Early awareness of new disclosure, registration, and funder control requirements can provide a meaningful strategic advantage.
2) **Monitor Judicial Decisions**: Watch for developments in the emerging circuit split on claim assignment and funder standing (as illustrated by the Sysco-Burford dispute), judicial treatment of TPLF disclosure motions, and the outcome of the pending German Federal Court of Justice decision on TPLF-backed assignment models. Successful discovery motions compelling disclosure and judicial decisions limiting disclosure can provide critical insight and directly shape litigation strategy.
3) **Protect Confidential Information**: Implement targeted protective orders to prevent funders, who typically operate outside the disciplinary reach of the ABA, state bars, and regulatory authorities, from accessing proprietary materials, trade secrets, and strategic business information.
4) **Conduct Targeted Discovery**: Act early and tailor discovery to identify funders and the specific TPLF terms that can affect case administration, including undue funder consent rights over strategy or settlement, recovery caps relevant to adequacy, or any other provisions that could give rise to conflicts.

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[76] FCJ, press statement of 6 February 2026, https://perma.cc/4VLG-QHF6.

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5) **Anticipate Cross-Border Issues**: Account for foreign funding restrictions and jurisdictional differences, including the potential for forum shopping across the fragmented state-by-state framework in the U.S., non-regulation in the E.U., and the UK's light-touch regulatory approach. This lack of harmonization invites forum shopping by funders and funded claimants, and companies with exposure in multiple jurisdictions should coordinate strategy across borders.

TPLF is no longer a background financing tool. Rather, it has become a core feature of modern litigation, one that shapes strategy, settlement dynamics, and motion outcomes across borders. The developments in this article underscore that the judicial, regulatory, and market landscape is shifting in all three jurisdictions. For companies facing funded claims, preparedness is no longer optional; it is a competitive necessity.

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