

Questions for the Record from Rep. Issa for Chairman Goodlatte, Mr. Taylor, and Mr. Kochan  
“The U.S. Intellectual Property System and the Impact of Litigation by Third-Party Investors and  
Foreign Entities”  
June 12, 2024

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Third-party litigation funding

Mr. Taylor:

- 1) What is portfolio litigation funding, how does it differ from single-case funding (including as an investment), and what effect does it have on the types and strength of lawsuits filed?
- 2) How could a plaintiff losing strategic control over a lawsuit as a consequence of a third-party funder’s influence potentially change the course of litigation and impact the court system?
- 3) How does the typical secrecy of third-party litigation funding agreements contribute to the goals and activities of patent-assertion entities?
- 4) Who are some of the biggest players in this space, and what do we know about their goals with litigation funding?
- 5) You have described courtrooms hearing patent cases as “virtual casinos” for litigation funders. Can you explain what you meant by that?

Mr. Kochan:

- 1) What is portfolio litigation funding, how does it differ from single-case funding (including as an investment), and what effect does it have on the types and strength of lawsuits filed?
- 2) How could a plaintiff losing strategic control over a lawsuit as a consequence of a third-party funder’s influence potentially change the course of litigation and impact the court system?
- 3) How does the typical secrecy of third-party litigation funding agreements contribute to the goals and activities of patent-assertion entities?
- 4) Who are some of the biggest players in this space, and what do we know about their goals with litigation funding?
- 5) How would greater transparency in third-party litigation funding enable policymakers and judges to make better decisions?

- 6) Why is litigation funding, as opposed to the capital markets, a potentially attractive investment?

Mr. Goodlatte:

- 1) What is portfolio litigation funding, how does it differ from single-case funding (including as an investment), and what effect does it have on the types and strength of lawsuits filed?
- 2) How could a plaintiff losing strategic control over a lawsuit as a consequence of a third-party funder's influence potentially change the course of litigation and impact the court system?
- 3) How does the typical secrecy of third-party litigation funding agreements contribute to the goals and activities of patent-assertion entities?
- 4) Who are some of the biggest players in this space, and what do we know about their goals with litigation funding?
- 5) Have any state legislatures taken action to address concerns about third-party litigation funders? If so, what have been the results?

Questions for the Record from Rep. Fitzgerald for Chairman Goodlatte, Mr. Taylor, and Mr.  
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1. **Mr. Taylor:** Does protracted litigation affect a company’s R&D investments? For example, could China hypothetically disrupt the creation and dissemination of key national security technologies by successfully influencing the outcome of U.S. litigation?
2. **Mr. Kochan:** Proponents of third-party litigation financing argue that it levels the judicial playing field by giving underfunded litigants access to more resources. Is that actually what we’re seeing play out? For example, has the increase in TPLF led to more quality cases being litigated, or simply a higher quantity of meritless claims being filed?
  - a. **Follow-up:** A 2022 study by the Insurance Information Institute showed 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,” while also increasing premiums for consumers. If TPLF has driven up the cost of litigation, could you argue that the barrier to entry into our justice system is now even higher?
3. **Mr. Taylor:** You have described courtrooms hearing patent cases as “virtual casinos” for litigation funders. Can you explain what you mean by that?
4. **Chairman Goodlatte:** Opponents of disclosure argue that there is no problem with TPLF because funding frivolous lawsuits wouldn’t be profitable unless it creates a return. Can you discuss how a handful of large damages awards or settlements can make investing in a large portfolio of cases economically advantageous, even where most or all of the cases are of dubious merit?
5. **Mr. Taylor and Chairman Goodlatte:** While the focus of our hearing was largely on the impact that TPLF is having on U.S. Intellectual property, I also sit on the House Financial Services Subcommittee on Housing and Insurance, and I have been hearing from a number of property casualty insurance companies about the impact that TPLF is having on their business operations and the policyholders they serve. As you know, property casualty insurers provide personal and commercial lines insurance contracts that include coverage against liability for losses suffered by third parties. Often, those coverages include a defense obligation as well when claims turn into litigation. What can you share with us about the impact TPLF is having on consumers?

Question for the Record from Rep. Lee for Chairman Goodlatte, Mr. Taylor, Mr. Kochan, and  
Ms. Sahani  
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1. The role of massive increases in the number of litigated insurance claims and verdict amounts are not well known in the state of Florida. Third-party litigation funding, shrouded in secrecy and potentially including foreign funders, is a contributor to these increases, as funders seek returns on their investments. According to research conducted by the Insurance Information Institute (III) in 2022, Florida accounted for 15% of all homeowners claims nationwide and 71% of lawsuits, with litigated claims being six-times more expensive than non-litigated claims. Can you speak to how this litigation affects premiums and are there potential policy proposals to prevent frivolous litigation?