

Demystifying Third-Party Litigation Funding

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ABSTRACT

Third-party litigation funding (“TPLF”) is having a moment. The TPLF industry is exploding, with upwards of seventeen billion dollars 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 that would require changes to the practice of TPLF, such as disclosure of third-party funders during litigation and restrictions on how third-party funders can operate.

TPLF, however, 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 empirical precision. This Article empirically studies the rate of TPLF in U.S. federal courts, thus beginning to provide answers to those questions.

The data for this Article comes from two U.S. federal courts that have recently attempted to look behind the opaque curtain of litigation funding. The U.S. District Court for the 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, especially patent law, in which sixteen percent of cases at one district court studied are third-party funded. Importantly, this study demonstrates that the existence of TPLF disclosure requirements drives parties to file elsewhere: in districts that do not require TPLF disclosure.

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INTRODUCTION

Reid Hoffman, it is safe to say, is no fan of Donald Trump. Hoffman—a cofounder of LinkedIn—has been involved in multiple suits related to Donald Trump. He was involved in the civil suit for defamation and sexual assault brought by E. Jean Carroll against Donald Trump.¹ He also was involved in a suit against Fox Corporation over Fox News’ alleged defamation of Smartmatic Corporation while supporting then ex-President Trump.²

But Hoffman was not a party in either trial.³ Nor was he an attorney in either case.⁴ Instead, he was an investor. He gave money to both Carroll’s and Smartmatic’s cases.⁵ In exchange, he received a portion of any winnings that Carroll or Smartmatic received from their cases. Hoffman, therefore, was a third-party litigation funder. Third-party litigation funding (“TPLF”) is the practice of offering litigants nonrecourse loans in exchange for some portion of the winnings, if any, in the litigation.⁶

¹ Benjamin Weiser & Charlie Savage, *LinkedIn’s Co-Founder Helped Fund the Suit Accusing Trump of Rape*, N.Y. TIMES (Apr. 13, 2023), <https://www.nytimes.com/2023/04/13/nyregion/trump-carroll-lawsuit-hoffman-linkedin.html> [<https://perma.cc/FJ76-329R>]. Carroll won a \$5 million damages award and a subsequent \$83.3 million case against Trump for remarks made after the first verdict. *Trump Ordered to Pay E. Jean Carroll \$83.3M in Defamation Damages Trial*, WASH. POST (Jan. 26, 2024, at 18:37 ET), <https://www.washingtonpost.com/politics/2024/01/26/trump-verdict-e-jean-carroll-defamation-trial/> [<https://perma.cc/SW6Z-VZZQ>].

² Emily R. Siegel, *Fox Sues LinkedIn Co-Founder Hoffman for Litigation Funding Info*, BLOOMBERG L. (Feb. 3, 2025, at 13:09 ET), <https://news.bloomberglaw.com/business-and-practice/fox-sues-linkedin-co-founder-hoffman-for-litigation-funding-info> [<https://perma.cc/QR95-S9YC>].

³ See *id.*; Weiser & Savage, *supra* note 1.

⁴ Weiser & Savage, *supra* note 1; Siegel, *supra* note 2.

⁵ He gave a reported \$25 million to Smartmatic. See Siegel, *supra* note 2.

⁶ See Victoria Shannon Sahani, *Reshaping Third-Party Funding*, 91 TUL. L. REV. 405, 407 (2017) (“Third-party funders are entities that invest in litigation and arbitration for profit.”); Ronen Avraham & Anthony Sebok, *An Empirical Investigation of Third Party Consumer Litigant Funding*, 104 CORN. L. REV. 1133, 1133–34 (2019) (describing TPLF as “financial corporations support[ing] plaintiffs’ lawsuits by advancing money as a nonrecourse loan”); Maya Steinitz, *The Litigation Finance Contract*, 54 WM. & MARY L. REV. 455, 459 (2012) (describing TPLF as “for-profit, nonrecourse funding of a litigation by a nonparty”); Jarrett Lewis, *Third-Party Litigation Funding: A Boon or Bane to the Progress of Civil Justice?*, 33 GEO. J. LEGAL ETHICS 687, 689

The TPLF industry, although relatively new in the United States,⁷ has surpassed seventeen billion dollars in investment.⁸ Like hedge funds, TPLF funders have capital and are in search of ways to “employ” that capital in outside businesses.⁹ The difference between a hedge fund or bank and a third-party litigation funder is that the “sector” third-party litigation funders invest in is the business of litigation.¹⁰ Thus Hoffman, in the two cases he funded, was acting as an investor, fronting cash for litigation expenses in exchange for a portion of any potential winnings.

TPLF is neither the newest¹¹ nor the largest financial industry,¹² but it may be the financial industry currently receiving the most attention from lawmakers and courts. Numerous pending or recently passed bills in the U.S. Senate and at various statehouses mandate the disclosure of third-party funders.¹³ Courts are also focusing on TPLF. In October 2024, the Advisory Committee on Civil Rules—the group responsible for updating the Federal Rules of Civil Procedure—established a subcommittee to evaluate potential disclosure requirements for TPLF in federal cases.¹⁴ And at oral argument in January 2025, Justice Gorsuch

(2020) (“Litigation funding is . . . a way for litigants and those seeking international arbitration to secure financing to pursue their claims.”); David R. Glickman, *Embracing Third-Party Litigation Finance*, 43 FLA. ST. U. L. REV. 1043, 1043 (2016) (“TPLF is . . . the process through which the inherent value of a legal claim is used to secure financing,” usually through nonrecourse financing, where “consumers are only obligated to repay an investment to the extent their suit is successful.”).

⁷ See Lewis, *supra* note 6, at 689; see also ANTHONY J. SEBOK, THIRD-PARTY LITIGATION FINANCE 20 (2024) (“The modern debate over third-party litigation finance . . . began in the 1970s and continues today.”).

⁸ NAT’L ASS’N OF MUT. INS. COS., STATEMENT OF THE NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES TO THE UNITED STATES HOUSE COMMITTEE ON THE JUDICIARY 3 (2024), <https://www.congress.gov/118/meeting/house/117421/documents/HHRG-118-JU03-20240612-SD010.pdf> [<https://perma.cc/6YU8-3FKW>].

⁹ Oftentimes the funders in TPLF are hedge funds. See Victoria A. Shannon, *Harmonizing Third-Party Litigation Funding Regulation*, 36 CARDOZO L. REV. 861, 871 (2015) (“The entity supplying the financial backing (commonly referred to as the ‘funder’) most often is an insurance company or a financial institution, such as a bank or hedge fund.”).

¹⁰ See Sahani, *supra* note 6, at 415–16 (describing third-party funders as entities like “a bank, hedge fund, insurance company, or some other entity or individual”).

¹¹ The modern practice of TPLF began in Australia in the 1990s. See Maya Steinitz, *Whose Claim Is This Anyway? Third-Party Litigation Funding*, 95 MINN. L. REV. 1268, 1279–80 (2011) (detailing the rise of the TPLF industry in Australia, from bankruptcy to civil litigation). The United States joined in the practice in the 2000s. See Lewis, *supra* note 6, at 690 (describing, as of 2020, the “current state” of litigation funding being “around a decade old in the United States”).

¹² It is widely reported that there is at least \$17 billion invested in TPLF funding globally. See, e.g., NAT’L ASS’N OF MUT. INS. COS., *supra* note 8, at 3.

¹³ See Sara Merken, *US Lawmaker Calls for Litigation Funding Disclosures*, REUTERS (Oct. 7, 2024, at 17:22 ET), <https://www.reuters.com/legal/government/us-lawmaker-calls-litigation-funding-disclosures-2024-10-07/> [<https://perma.cc/M5SG-QJEZ>] (highlighting a TPLR disclosure bill Representative Darrell Issa introduced in 2024 and discussing recent changes to TPLF law in West Virginia, Louisiana, and other states).

¹⁴ ADVISORY COMM. ON CIV. RULES, MEETING OF THE ADVISORY COMMITTEE ON CIVIL RULES: OCTOBER 10, 2024, at 417–19 (2024); see Robert Freedman, *Court Advisory Committee OKs*

asked how third-party litigation would affect a proposed change to a venue rule, a question that was quickly dodged.¹⁵ Clearly, TPLF is having a moment—the Supreme Court, the U.S. Congress, and numerous states are thinking about how litigation financing works and the risks it poses to the litigation system. But currently there is virtually no empirical evidence of the extent or reach of TPLF. This Article fills that scholarly lacuna, providing a first glimpse inside the black box of TPLF.

Back to the story of Mr. Hoffman. Once his status as a third-party litigation funder was known, Fox Corporation requested a deposition with Mr. Hoffman, as well as discovery concerning statements from Mr. Hoffman about Smartmatic's market price.¹⁶ Fox never would have known about Mr. Hoffman's funding of Smartmatic's lawsuit if not for Hoffman's public statements about his financial interest in the case.¹⁷ And that is the way the TPLF industry wants it: They want disclosure of any third-party funder to be voluntary, not mandated. The TPLF industry and its backers suggest that regulation of the industry is not necessary.¹⁸ In fact, they claim, regulation of the industry will have the effect of driving up the cost of lending, thus reducing the social benefits derived from the TPLF industry.¹⁹ These benefits include easy access to capital for cash-strapped but meritorious plaintiffs,²⁰ screening of

Look at Third-Party Funding Disclosure, LEGAL DIVE (Oct. 30, 2024), <https://www.legaldive.com/news/advisory-committee-civil-rules-third-party-funding-disclosure-litigation-financing-2024/731526/> [<https://perma.cc/BC9N-ZGVP>] (discussing the committee's decision to create a TPLF disclosure subcommittee).

¹⁵ See Transcript of Oral Argument at 35–36, *FDA v. R.J. Reynolds Vapor, Co.*, 606 U.S. 226 (2025) (No. 23-1187) (asking if TPLF would allow parties to circumvent “piggybacking” and continue forum shopping and noting that “[t]hird-party-funded litigation is not unknown in this country”).

¹⁶ See Siegel, *supra* note 2.

¹⁷ See *id.*

¹⁸ See, e.g., William C. Marra, *What's So New About Litigation Finance? Disclosure and Regulation of a New Take on an Old Practice*, in MANDATORY DISCLOSURE RULES FOR DISPUTE FINANCING 81, 85, 104 (David Siffert ed., 2021), <https://www.law.nyu.edu/sites/default/files/CCJ%20Mandatory%20Disclosure%20Book.pdf> [<https://perma.cc/K78K-P8YT>] (“There is no reason to require mandatory disclosure of litigation finance agreements, even as we have long recognized that mandatory disclosure of these various other forms of arrangements is not necessary.”).

¹⁹ See SEBOK, *supra* note 7, at 20 (noting that supporters of TPLF are “those institutions and individuals who see the civil liability system as benign and who see in it the potential for social improvement”).

²⁰ See Jerry Theodorou, *Litigation Funding: Competing Mythologies*, RSTREET (Oct. 14, 2022), <https://www.rstreet.org/commentary/litigation-funding-competing-mythologies/> [<https://perma.cc/KY7B-QWQV>] (“Third party litigation funding (TPLF) facilitates access to justice that claimants would not otherwise have. It helps the ‘little guy’ by leveling the playing field and corrects the imbalance that favors powerful, entrenched defense interests.”); MARK POPOLIZIO, VERISK, FOLLOW THE NEW MONEY TRAIL: THE RISE OF THIRD-PARTY LITIGATION FUNDING 4 (2021), https://lisamillerassociates.com/wp-content/uploads/2022/03/Follow-the-New-Money-Trail_The-Rise-of-Third-Party-Litigation-Funding.pdf [<https://perma.cc/TY6E-MJ3B>] (“Third-party funding

potential cases by litigation funders,²¹ and increased access to justice for plaintiffs across the country.²² Proponents essentially argue that TPLF levels the playing field between deep-pocketed companies and individuals or small companies that have meritorious claims. If Congress overregulates the TPLF industry, proponents reason, the “little guys” will not have the access to cash that they enjoy now.

To critics of the TPLF industry, the practice of litigation funding is unfair to defendants,²³ drives up insurance costs,²⁴ and generally encourages defendants to litigate frivolous—or worse—lawsuits,²⁵ among

proponents argue that this practice promotes greater access to the judicial system for individuals who, absent such funding, may not otherwise have an opportunity to bring a claim.”).

²¹ See U.S. GOV'T ACCOUNTABILITY OFF., GAO-23-105210, THIRD-PARTY LITIGATION FINANCING: MARKET CHARACTERISTICS, DATA, AND TRENDS 10 (2022) (“All the commercial funders we spoke with said that before deciding whether to fund a client, they undertook a due diligence process that evaluated several factors.”); *id.* (“Funders select the most meritorious cases to fund because they only receive returns when claims are successful.”).

²² See Jonathan Barnes, *Litigation Funding Will Offer Justice for the Little Guy*, FIN. TIMES (Dec. 7, 2011), <https://www.ft.com/content/cd8bcef0-1f53-11e1-90aa-00144feabdc0> [<https://perma.cc/8QHE-LFK7>]; *Dispelling the Myths of Litigation Funding*, BURFORD (Oct. 23, 2019), <https://www.burfordcapital.com/insights-news-events/insights-research/dispelling-the-myths-of-litigation-funding/> [<https://perma.cc/T55Z-CBMG>]; *Litigation Finance*, OMNI BRIDGEWAY, <https://omnibridgetway.com/litigation-finance> [<https://perma.cc/6DA7-QJZE>] (last visited Dec. 18, 2025) (“Litigation finance is used to support access to justice for those without means as well as by high-performing companies as a sophisticated corporate-finance and risk-management tool.”); POPOLIZIO, *supra* note 20, at 4.

²³ STEVEN GARBER, ALTERNATIVE LITIGATION FINANCING IN THE UNITED STATES 20 (2010); Malerie Ma Roddy & Jonathan Judge, *Follow the Money: How Litigation Finance May Be Tilting the Scales*, ARENTFOX SCHIFF (Jan. 10, 2023), <https://www.afslaw.com/perspectives/alerts/follow-the-money-how-litigation-finance-may-be-tilting-the-scales> [<https://perma.cc/L443-BT5X>] (stating that critics of TPLF argue that it can be unfair to defendants because there are rules requiring disclosure of litigation funding whereas plaintiffs are generally shielded from such disclosure); Austin T. Popp, *Federal Regulation of Third-Party Litigation Finance*, 72 VAND. L. REV. 727, 743 (2019) (noting that “improper influence over litigation strategy” is a common objection to TPLF); Glickman, *supra* note 6, at 1060 (“There is a concern that the consumer legal funding market wrongfully takes advantage of consumers.”).

²⁴ Ryan Smith, *Uber, Lyft Join Call to Clamp Down on Third-Party Litigation Funding*, INS. BUS. (Feb. 1, 2024), <https://www.insurancebusinessmag.com/us/news/breaking-news/uber-lyft-join-call-to-clamp-down-on-thirdparty-litigation-funding-475395.aspx> [<https://perma.cc/CT33-7LAM>].

²⁵ See Michael Abramowicz, *Litigation Finance and the Problem of Frivolous Litigation*, 63 DEPAUL L. REV. 195, 196 (2014) (“Litigation finance, however, at times might be used to fund non-meritorious cases.”); Jeremy Kidd, *To Fund or Not To Fund: The Need for Second-Best Solutions to the Litigation Finance Dilemma*, 8 J.L. ECON. & POL'Y 613, 627–29 (2012); Geoffrey J. Lysaught & D. Scott Hazelgrove, *Economic Implications of Third-Party Litigation Financing on the U.S. Civil Justice System*, 8 J.L. ECON. & POL'Y 645, 662–65 (2012); Mariel Rodak, Comment, *It's About Time: A Systems Thinking Analysis of the Litigation Finance Industry and Its Effect on Settlement*, 155 U. PA. L. REV. 503, 518–19 (2006); *see also* Popp, *supra* note 23, at 741–43 (explaining the allegation that TPLF increases the filing of frivolous claims); Glickman, *supra* note 6, at 1058 (“Many argue the industry is an engine for frivolous litigation.”).

other sins.²⁶ For instance, in February 2024, the rideshare giant Uber joined a coalition focused on reforming the litigation finance industry in New York state.²⁷ Uber's senior policy manager, Hayley Prim, said that the TPLF industry "is driving insurance costs up, consuming an ever-larger share of fares, and making it harder for drivers to earn a living. Lawmakers need to establish some simple rules to reign in lenders and protect hard-working individuals statewide."²⁸

Regardless of where one stands on the social value of TPLF, the practice has certainly caught the attention of lawmakers.²⁹ While the industry has grown exponentially in the past decade, so too has the interest in regulating the TPLF space.³⁰ State and federal lawmakers have put forward bills that would limit the types of wealth that funders can access,³¹ how much third-party funders can collect in a successful lawsuit,³² and the amount of control that litigants must retain when they enter into third-party funding agreements.³³

Lawmakers are looking intently at creating disclosure requirements for third-party funders. For example, Congressman Darrell Issa, chairman of the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet, introduced the Litigation Transparency Act of 2024,³⁴ which would require disclosure of TPLF in federal court.³⁵ Congressman Issa's subcommittee also held hearings in September 2023, during which many congressmen cast doubt on the social benefits

²⁶ See Popp, *supra* note 23, at 744–45 (noting that the potential waiver of attorney-client privilege and attorney work product protection is a criticism of TPLF); Lewis, *supra* note 6, at 693–96 (same).

²⁷ Smith, *supra* note 24.

²⁸ *Id.*

²⁹ See, e.g., Brian Joseph, *State Lawmakers Wade into Third-Party Litigation Funding*, LEXISNEXIS (Feb. 20, 2024), <https://www.lexisnexis.com/community/insights/legal/capitol-journal/b/state-net/posts/state-lawmakers-wade-into-third-party-litigation-funding> [https://perma.cc/9YEQ-NZTE].

³⁰ See Popp, *supra* note 23, at 745–51 (detailing the various state and federal regulations on TPLF).

³¹ See Joseph, *supra* note 29.

³² See Carol Langford, *Betting on the Client: Alternative Litigation Funding Is an Ethically Risky Proposition for Attorneys and Clients*, 49 U.S.F. L. REV. 237, 249 (2015) (describing how Ohio legislatively overturned *Rancman v. Interim Settlement Funding Corp.*, 789 N.E.2d 217 (Ohio 2003), which ruled that a TPLF agreement was void as champerty).

³³ For example, Florida is moving forward with bills that would prohibit third parties from influencing litigation decisions. See H.B. 1179, 2024 Leg., Reg. Sess. (Fla. 2024); S.B. 1276, 2024 Leg., Reg. Sess. (Fla. 2024).

³⁴ Litigation Transparency Act of 2024, H.R. 9922, 118th Cong. (2024).

³⁵ *Id.* § 2(a) (requiring the disclosure of any third parties with pecuniary rights contingent on the litigation's outcome); see also Litigation Funding Transparency Act of 2021, H.R. 2025, 117th Cong. § 2(a) (2021) (requiring the disclosure of agreements with outside businesses which grant pecuniary rights contingent on litigation's outcome).

of TPLF and demanded more disclosure.³⁶ Furthermore, additional bills—like the Protecting Our Courts from Foreign Manipulation Act of 2023,³⁷ which is a bipartisan effort to require disclosure of TPLF by foreign entities and would prohibit funding of litigation from foreign states and sovereign wealth funds³⁸—seem to be perennial favorites for lawmakers.³⁹

Yet all this congressional and judicial scrutiny is taking place without a clear picture of what is going on in courtrooms concerning TPLF. In fact, senators and congressmen often use the opacity of information about TPLF activity in litigation as the reason to require TPLF disclosure. Judge David Proctor, a member of the Advisory Committee on Civil Rules, said that a subcommittee to study TPLF was needed “if for no other reason than we don’t know what we don’t know.”⁴⁰

While Congress fights about whether TPLF is good or bad and what to do about it, some federal courts have taken action to address TPLF disclosure concerns. Two federal courts, and one judge in particular, have been on the front lines of mandating TPLF disclosure. In June 2021, the U.S. District Court for the District of New Jersey updated its local civil rules and required, for the first time, that third-party funders disclose their involvement in litigation.⁴¹ Less than a year later, in April 2022, Chief Judge Connolly of the U.S. District Court for the District of Delaware adopted a standing order (the “Connolly Order” or “Order”), applicable just to his courtroom, that similarly required plaintiffs to disclose TPLF.⁴²

Chief Judge Connolly has been the leading jurist pushing for TPLF disclosure in his courtroom.⁴³ He modeled his disclosure requirement

³⁶ See Emily R. Siegel, *Litigation Finance Has Become ‘Money Play,’ House Lawmakers Told*, BLOOMBERG L. (Sep. 13, 2023, at 18:19 ET), <https://www.bloomberglaw.com/bloomberglawnews/business-and-practice/X8FKJDEG000000> [<https://perma.cc/CQ6V-3M56>] (explaining that Republicans said “lawsuits are funded by left-wing activists,” whereas Democrats said TPLF “leveled the playing field” and was necessary for increased access to justice).

³⁷ Protecting Our Courts from Foreign Manipulation Act of 2023, S. 2805, 118th Cong. (2023).

³⁸ *Id.* § 2(a).

³⁹ See Seth Katsuya Endo, *Preventative Transparency in Third-Party Litigation Funding*, 120 NW. U. L. REV. 501, 513–14 (2025) (detailing several proposed federal bills).

⁴⁰ Jim Lynch, *Financing Justice: The Rise and Risks of TPLF*, ACTUARIAL REV. MAG. (July 16, 2025), <https://ar.casact.org/financing-justice-the-rise-and-risks-of-tplf/> [<https://perma.cc/5Q5Z-VS59>].

⁴¹ D.N.J. L. CIV. R. 7.1.1.

⁴² Standing Order Regarding Third-Party Litigation Funding Arrangements (D. Del. Apr. 18, 2022).

⁴³ See Jonathan Stroud, *Delaware Court Shines Light on Hidden Abuse in Patent Litigation*, DEL. ONLINE (Feb. 8, 2024, at 05:32 ET), <https://www.delawareonline.com/story/opinion/2024/02/08/delaware-court-shines-light-on-hidden-abuse-in-patent-litigation/72497421007/> [<https://perma.cc/Z68M-4JQ2>].

on New Jersey's earlier disclosure requirement,⁴⁴ and he has since enforced the order with great vigor—well beyond what the judges in New Jersey have done to enforce their disclosure order. For example, in November 2023, Judge Connolly found that lawyers associated with the company IP Edge had violated his disclosure order—and the professional conduct rules—by using shell companies to hide litigation funders in numerous patent suits.⁴⁵ As a result, Judge Connolly referred the cases of four attorneys associated with the patent cases to the U.S. Department of Justice, the U.S. Patent and Trademark Office, and the attorneys' respective state bars; the referrals could lead to criminal prosecutions of the attorneys for the unauthorized practice of law.⁴⁶ As demonstrated through his strict enforcement of the Order, Judge Connolly is serious about the disclosure requirement in his courtroom.

These disclosure requirements in New Jersey and Delaware might seem like insignificant changes to local civil rules—other than for the attorneys sanctioned by Judge Connolly—but the disclosure requirements have provided the public and the judges in those districts with the first look at how TPLF is impacting the litigation system. Now, for the first time, third-party funders in the District of New Jersey or Judge Connolly's courtroom must publicly disclose their interest in the cases that they fund and whether they have a controlling position in the litigation.⁴⁷ This public information about who is funding what type of cases is incredibly valuable for academics, lawmakers, and practicing attorneys. Surprisingly, however, this Article is apparently the first academic investigation of TPLF based on the disclosure requirements of these two courts.

This Article's Part III gives a complete account of the manner in which the data was collected. In short, the data for this study was collected by, among other methods, searching through the dockets of every civil case in New Jersey between August 2021 and December 31, 2024, as well as those cases assigned to Judge Connolly's docket from April 2022 through December 31, 2024. The cases were then hand coded on several different variables, including whether a TPLF disclosure was made within those cases. The resulting data is described in detail in Part III, but the summary of the data collection appears below.

⁴⁴ *Nimitz Techs. LLC v. CNET Media, Inc.*, No. 21-1247, 2022 WL 17338396, at *7 (D. Del. Nov. 30, 2022) (“I modeled the Third-Party Funding Order on Local Civil Rule 7.1.1 of the District of New Jersey's Local Rules.”).

⁴⁵ See Blake Brittain, *US Judge Says 'Patent Monetization' Firm IP Edge May Have Broken Law*, REUTERS (Nov. 27, 2023, at 17:08 ET), <https://www.reuters.com/legal/litigation/us-judge-says-patent-monetization-firm-ip-edge-may-have-broken-law-2023-11-27/> [<https://perma.cc/6Q4J-BKQ5>] (discussing the IP Edge saga).

⁴⁶ See *id.* (noting that the referral to the Texas Supreme Court “could lead to [the attorneys'] criminal prosecution in the state”).

⁴⁷ See Stroud, *supra* note 43. In addition to their funding of the case, third-party litigation funders are required to disclose any control they have over settlement.

TABLE 1. THIRD-PARTY LITIGATION DISCLOSED: DISTRICT OF NEW JERSEY, 8/5/2021–12/31/2024

Total Cases (federal, civil)	50,485
Total TPLF Cases	86 (0.17%)
Total Patent Cases	657
Total TPLF Patent Cases	2 (0.30%)

TABLE 2. THIRD-PARTY LITIGATION DISCLOSED: DISTRICT OF DELAWARE (CONNOLLY, C.J.), 4/18/22–12/31/24

Total Cases (federal, civil)	1,074
Total TPLF Cases	42 (3.9%)
Total Patent Cases	263
Total TPLF Patent Cases	40 (15.2%)

There are numerous takeaways from the data. The first major insight from the data is that TPLF in Delaware is directed almost exclusively toward patent infringement suits; ninety-five percent of Judge Connolly’s TPLF cases are patent cases.⁴⁸ Delaware is home to large swaths of corporate litigation—like securities class actions⁴⁹—yet the overwhelming majority of cases that receive TPLF in Delaware are patent cases. Although some have hypothesized about the reasons for high levels of third-party funding for patent cases,⁵⁰ the near-exclusive focus on patent litigation by funders in Delaware is a stark example of just *how* appealing patent litigation is to third-party funders. However, this pattern does not hold for New Jersey: only two patent cases over three years featured a TPLF disclosure.⁵¹ Third-party funders are more active in Delaware than they are in New Jersey.

The second major finding of this paper is that over fifteen percent of patent cases filed in Judge Connolly’s courtroom are third-party funded.⁵² Although this number is in line with the Government Accountability Office’s vague estimate of “a substantial proportion of

⁴⁸ See *infra* Appendices B1, B2.

⁴⁹ See Jens Dammann, Deference to Delaware Corporate Law Precedents and Shareholder Wealth (June 2018) (unpublished manuscript presented at the German Law and Economics Association 2019 Annual Conference), <https://ssrn.com/abstract=3384446> [<https://perma.cc/7PU4-6VGS>].

⁵⁰ See, e.g., MICHAEL E. LEITER, JOHN H. BEISNER, JORDAN M. SCHWARTZ & JAMES E. PERRY, U.S. CHAMBER OF COM. INST. FOR LEGAL REFORM, A NEW THREAT: THE NATIONAL SECURITY RISK OF THIRD PARTY LITIGATION FUNDING 13 (2022), <https://institutelegalreform.com/research/ilr-briefly-a-new-threat-the-national-security-risk-of-third-party-litigation-funding/> [<https://perma.cc/9LVH-7RZ9>] (“[A]pproximately a quarter of all U.S. patent cases are financed by third parties . . .”).

⁵¹ See *infra* Appendix A.

⁵² See *supra* Table 2.

all patent litigation” backed by TPLF,⁵³ it is likely an undercount for two reasons. First, some patent cases that are third-party funded were likely dismissed before they were required to disclose TPLF and therefore counted as a “non-TPLF” case in this study. Second, there is evidence that TPLF plaintiffs abandoned Delaware after the Connolly Order.⁵⁴ Thus, the percentage of TPLF patent cases prior to the Order was likely higher than it was during the study, because TPLF cases were driven out of New Jersey and Delaware because of the disclosure order.

That leads to the third finding of this Article. The Connolly Order and New Jersey’s TPLF order have driven litigants to file in other courts. Many observers thought that Judge Connolly’s order would have the effect of making Delaware less attractive as a venue for patent cases. The data supports that prediction. But the extent to which patent plaintiffs with third-party funding are avoiding Delaware is astounding. Delaware patent cases have dropped by over forty percent in the period since Judge Connolly’s order.⁵⁵ But more revealing is that TPLF patent cases have virtually dried up. The last TPLF patent case was assigned to Judge Connolly’s docket in March of 2024;⁵⁶ that is over a year without a TPLF case, by far the largest gap of time without a TPLF filing.⁵⁷ The data leads one to assume that TPLF patent plaintiffs have abandoned Delaware because of the Connolly Order and subsequent enforcement of that order.

The Article’s fourth finding is that the sorts of patent cases that receive TPLF are the sorts of cases usually associated with nonpracticing entities (“NPEs”). NPE litigation is often associated with software or communication patents⁵⁸ because, it is believed, those patents have more amorphous claim limitations, and they often read on a multicomponent device like smart phones or internet websites.⁵⁹ The evidence suggests that third-party funders may have supplanted NPEs and are largely functioning as NPEs in these cases. This finding has various political ramifications.

The fifth finding is that pharmaceutical patent cases are *not* TPLF funded in Delaware or New Jersey, despite being the most common sort

⁵³ U.S. GOV’T ACCOUNTABILITY OFF., GAO-25-107214, INTELLECTUAL PROPERTY: INFORMATION ON THIRD-PARTY FUNDING OF PATENT LITIGATION 3 (2024).

⁵⁴ See *infra* Section V.D.

⁵⁵ See *infra* Section V.D.

⁵⁶ See *infra* Appendix B1.

⁵⁷ See *infra* Appendices A, B1, B2.

⁵⁸ See John R. Allison, Mark A. Lemley & David L. Schwartz, *How Often Do Non-Practicing Entities Win Patent Suits?*, 32 BERKELEY TECH. L.J. 237, 263 (2017) (“22.8% of operating company cases litigated to judgment involved software patents, while a whopping 65.9% of NPE suits did.”).

⁵⁹ Bessen and Meurer call this phenomenon the “fuzzy boundaries” problem of patent law. See JAMES BESSEN & MICHAEL J. MEURER, PATENT FAILURE 215–16, 239 (2008) (arguing that “fuzzy boundaries” for abstract claims in software and biotechnology patents act as a tax on innovators).

of patent case filed in both destinations.⁶⁰ This lack of TPLF funding of pharmaceutical patent cases may be due to the relative unattractiveness of pharmaceutical cases to third-party funders, or it may be the result of the pharmaceutical industry not needing capital to pursue litigation. Whatever the reason, TPLF is going to traditional NPE cases and not to pharmaceutical cases. This raises questions about how much of a social benefit TPLF is truly providing in the patent space.

And lastly, in New Jersey a host of cases are third-party funded that would not be categorized as typical “commercial” disputes. These range from gun rights cases to employment disputes.⁶¹ These “nonpatent” TPLF cases represent a second branch of third-party-funded cases that merits further investigation. Essentially, the analysis of the two districts that require disclosure shows that TPLF is being invested in one of two ways: toward intellectual property cases, like 100% of the cases in Delaware,⁶² or to public interest litigation, as the great majority of the New Jersey TPLF cases.⁶³

The data tell two interesting stories: one about patent litigation and the funding behind patent lawsuits and another about the different sorts of cases that attract funding from third parties. The first is a story almost exclusively about Judge Connolly’s chambers in Delaware, and the second is a story almost exclusively about New Jersey. The two districts’ TPLF cases could not be more different. Overall, the data paint a picture of a judicial system that is affected by TPLF, but the impact is felt disproportionately across jurisdictions.

Ultimately, more data from more district courts is desperately needed to complete the puzzle of TPLF’s impact. That data will remain hidden unless other district courts, Congress, or the Advisory Committee on Civil Rules act.⁶⁴ After all, to better understand what is going on with TPLF, more data, like that gleaned from Judge Connolly’s docket

⁶⁰ See GENEVA CLARK, LEX MACHINA, HATCH-WAXMAN ANDA LITIGATION REPORT 2018, at 6 (2018) (finding that New Jersey and Delaware are the top spots for pharmaceutical patent litigation across the United States).

⁶¹ See *infra* Appendix A.

⁶² See *infra* Appendices B1, B2.

⁶³ See *infra* Appendix A.

⁶⁴ See, e.g., *What You Need to Know About Third Party Litigation Funding*, INST. FOR LEGAL REFORM (June 7, 2024), <https://institutelegalreform.com/what-you-need-to-know-about-third-party-litigation-funding/> [<https://perma.cc/8Z2F-PR59>] (“Litigation funding, at a minimum, should be disclosed and subject to fair and proportionate safeguards like other financial and legal professions to prevent litigation abuse and ensure adequate compensation to plaintiffs.”); Mark Popolizio, *Several Industry Groups Renew Calls for a Mandatory TPLF Disclosure Rule as Part of the Federal Civil Rules of Procedure*, VERISK (June 9, 2023), <https://www.verisk.com/blog/several-industry-groups-renew-calls-for-a-mandatory-tplf-disclosure-rule-as-part-of-the-federal-civil-rules-of-procedure/> [<https://perma.cc/4CAC-JZL8>] (stating that various industry groups have called for TPLF disclosure, including the National Association of Mutual Insurance Companies, the American Property Casualty Insurance Association, and the Association of Defense Trial Attorneys).

and the filings in the District of New Jersey, must be gathered. Only by shining a light on how TPLF operates in the courtroom can Congress hope to sensibly regulate TPLF.

This Article proceeds in five Parts. Part I briefly summarizes the TPLF industry and the current status of disclosure of TPLF across the federal courts. It highlights the District of New Jersey as well as Chief Judge Connolly of the District of Delaware and describes the novel approaches these district courts use for disclosure of TPLF. Part II discusses previous empirical studies of TPLF. Part III then documents the data used in this Article and its collection. Part IV describes the data this study uncovered. And finally, Part V discusses the potential implications of those results and suggests further avenues of research.

I. THIRD-PARTY LITIGATION FUNDING

TPLF—when a third party provides nonrecourse funding to a litigant in exchange for a portion of any payouts that result from the litigation—is a rapidly growing industry with over \$17 billion in assets under management.⁶⁵ Notorious examples of third-party financing include Reid Hoffman’s funding suits against Donald Trump;⁶⁶ Peter Thiel’s funding Hulk Hogan’s defamation suit against Gawker Media;⁶⁷ Erin Brockovich’s lawsuit against Pacific Gas and Electric Company;⁶⁸ and a group of Russian billionaires under U.S. sanctions funding various bankruptcy suits in New York and London.⁶⁹ Even big law firms love it: “The 200 largest law firms by revenue accounted for more than a third of the total capital commitments” from third-party funders in both 2023 and 2024.⁷⁰

⁶⁵ NAT’L ASS’N OF MUT. INS. COS., *supra* note 8, at 3.

⁶⁶ *See supra* notes 1–5 and accompanying text.

⁶⁷ Jeffrey James Grosholz, *In the Shadows: Third-Party Litigation Funding Agreements and the Effect Their Nondisclosure Has on Civil Trials*, 47 FLA. ST. U. L. REV. 481, 488–91 (2020) (recounting the *Gawker* trial and noting that Gawker was unaware of Thiel’s involvement).

⁶⁸ Jerry Theodorou, *Time to Shine Light on Dark Third-Party Litigation Funding*, R ST. (Mar. 19, 2024), <https://www.rstreet.org/commentary/time-to-shine-light-on-dark-third-party-litigation-funding/> [<https://perma.cc/6WLS-VUNM>]. Notably, this suit inspired the eponymous film *Erin Brockovich*. *See* Robert W. Welkos, *Digging for the Truth*, L.A. TIMES (Mar. 12, 2000, at 00:00 PT), <https://www.latimes.com/archives/la-xpm-2000-mar-12-ca-7856-story.html> [<https://perma.cc/TSQ8-5V9Y>].

⁶⁹ Emily R. Siegel & John Holland, *Putin’s Billionaires Dodge Sanctions by Financing Lawsuits*, BLOOMBERG L. (Mar. 28, 2024, at 15:25 ET), <https://news.bloomberglaw.com/litigation-finance/putins-billionaires-sidestep-sanctions-by-financing-lawsuits> [<https://perma.cc/CHD5-MCRB>].

⁷⁰ Emily R. Siegel, *Big Law Grows Litigation Finance to Cut Risk, Please Clients*, BLOOMBERG L. (Sep. 4, 2024, at 05:00 ET), <https://news.bloomberglaw.com/business-and-practice/big-law-grows-litigation-finance-to-cut-risk-please-clients> [<https://perma.cc/MZS8-TBWT>]; *see also* WESTFLEET ADVISORS, THE WESTFLEET INSIDER: 2024 LITIGATION FINANCE MARKET REPORT 7 (2024) (noting that such firms accounted for thirty-seven percent of the funding).

Over the past fifteen years, the TPLF industry has exploded in the United States.⁷¹ Initially limited in most states due to champerty laws, the industry now boasts of huge amounts of capital to invest.⁷² But it is an industry that prefers its privacy. Much of what is known about the TPLF industry comes from the few publicly traded companies that engage in TPLF.⁷³ The TPLF industry prides itself on providing financial assistance to plaintiffs⁷⁴ and allowing them to quickly monetize their claims,⁷⁵ all while permitting plaintiffs to offload some of the litigation risk to the funders.⁷⁶

Recently, some federal courts have begun to pry open the black box of TPLF. For example, the U.S. District Court for the District of New Jersey modified its local procedural rules to mandate that third-party funders disclose when they are involved in a case before the court.⁷⁷ Similarly, Chief Judge Connolly from the U.S. District Court for the District of Delaware now requires that third-party funders disclose their financial interest in a case and disclose the amount of control they retain over the case.⁷⁸ This Article focuses on Judge Connolly's approach to TPLF in Delaware and the approach of the entire District of New Jersey. This is the full scope of available data concerning TPLF, because these are the only courts—or judges—that mandate TPLF disclosure. Furthermore, Chief Judge Connolly has been more willing than most judges, including those from the District of New Jersey, to impose sanctions on parties who fail to follow the disclosure requirement in his courtroom.⁷⁹

A. *An Excessively Brief History of the TPLF Industry in the United States*

1. *Champerty and Maintenance Laws*

Champerty and maintenance laws are ancient laws which historically aimed to prevent third parties from financially profiting from

⁷¹ The industry has a longer history in Australia and the United Kingdom. *See* Steinitz, *supra* note 11, at 1278–79.

⁷² *See* Glickman, *supra* note 6, at 1043–44.

⁷³ Burford Capital, for example. *See* *Dispelling the Myths of Litigation Funding*, *supra* note 22.

⁷⁴ U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 21, at 18–19 (“TPLF can help ensure that plaintiffs with limited resources have the funding they need to litigate their cases, according to eight litigation funders, three trade associations, and one academic researcher we interviewed.”).

⁷⁵ *Id.* at 19.

⁷⁶ *Id.*

⁷⁷ *See* D.N.J. L. CIV. R. 7.1.1 (mandating disclosure of TPLF arrangement, whether the third party is necessary for litigation decisions, and a brief description of the nature of the financial arrangement).

⁷⁸ Standing Order Regarding Third-Party Litigation Funding Arrangements, *supra* note 42.

⁷⁹ *See id.*

litigation between others.⁸⁰ Some states, like California, never recognized champerty and maintenance as restrictions on the ability to invest in a lawsuit.⁸¹ The vast majority of states, however, have adopted these ancient common law doctrines. But these doctrines have largely lost their ability to seriously restrict TPLF.⁸²

Partly, these laws no longer restrict third-party funders because of significant legal reforms in various states.⁸³ Many states have either modified or repealed their champerty laws to facilitate or allow litigation funding. These states have largely done away with maintenance and champerty in order to allow plaintiffs who may otherwise lack means to pursue their claims.⁸⁴

Moreover, even in those states that have not rescinded champerty by statute, courts in most states have increasingly adopted a more nuanced interpretation of champerty laws, often focusing on the intent and structure of funding agreements rather than outright prohibitions on them.⁸⁵ In states that still uphold champerty statutes, judges frequently allow funding arrangements so long as they are transparent and do not exploit claimants.⁸⁶

Once champerty laws were loosened, the commercial viability of TPLF was on solid legal footing. The growing market for litigation

⁸⁰ Maintenance is the act of a disinterested party encouraging a lawsuit. *Maintenance*, BLACK'S LAW DICTIONARY (12th ed. 2024). Champerty is just maintenance but with the intent of receiving compensation upon successful completion of the suit. *Champerty*, BLACK'S LAW DICTIONARY (12th ed. 2024).

⁸¹ See *Mathewson v. Fitch*, 22 Cal. 86, 95 (1863) (“[I]n the absence of such a statute, the offense of maintenance is unknown to the laws of this State.”); see also *Abbott Ford, Inc. v. Superior Court*, 741 P.2d 124, 141 n.26 (Cal. 1987) (“California, however, has never adopted the common law doctrines of champerty and maintenance.”).

⁸² See U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 53, at 6 n.15 (“Many states have begun to relax prohibitions against [champerty] . . . which may have contributed to TPLF’s increased acceptance and recent growth.”).

⁸³ See *Saladini v. Righellis*, 687 N.E.2d 1224, 1226 (Mass. 1997) (“[A]t least as to lawyers, other principles fulfill whatever purpose champerty once had.” (quoting *Berman v. Linnane*, 679 N.E.2d 174, 178 n.7 (Mass. 1997))). For a more complete treatment of the champerty laws and how they impacted TPLF’s availability, see SEBOK, *supra* note 7, at 203–17.

⁸⁴ See *Kraft v. Mason*, 668 So. 2d 679, 683 (Fla. Dist. Ct. App. 1996) (“[The funder did not] concern herself with the antitrust litigation or impose her views upon the attorneys or the litigants once she provided the loan.”); *Clifford v. Wilcox*, 27 P.2d 722, 725 (Wash. 1933) (noting that the funder did not control settlement).

⁸⁵ See *Kraft*, 668 So. 2d at 682–83 (finding a TPLF agreement not champertous because the defendant “clearly did not act in an officious manner”); *Clifford*, 27 P.2d at 725 (noting that “it does appear that the rigor of [the rule against champerty and maintenance] has been greatly mitigated” in North Dakota).

⁸⁶ See, e.g., *Elliott Assocs., L.P. v. Republic of Peru*, 12 F. Supp. 2d 328, 351 (S.D.N.Y. 1998) (finding that New York champerty law’s “roots in the Medieval law of champerty and maintenance [indicate] . . . that, while not all assignments with the intent to bring suit thereon are barred, assignments taken for the purpose, or motive, of stirring up litigation and profiting thereby are prohibited”).

finance demonstrates that the U.S. legal system's perspective on medieval champerty and maintenance has shifted in the United States and elsewhere.⁸⁷ Most states now recognize the potential benefits of TPLF arrangements.⁸⁸

2. *The Rise of the TPLF Industry in the United States*

Starting in earnest this century, the rise of the TPLF industry in the United States has provided plaintiffs with an alternative means to finance their legal battles.⁸⁹ TPLF's promise is that by increasing the amount of money available for litigants, plaintiffs with strong claims will be less deterred by the expense of litigation.⁹⁰ TPLF allows plaintiffs to access funds to cover legal fees and expenses in exchange for a portion of the potential settlement or judgment.⁹¹ This model has gained traction, particularly in personal injury, products liability, patent, and mass tort cases, as it enables claimants to pursue justice without the burden of upfront costs.⁹²

Moreover, the TPLF industry has expanded due to increasing acceptance and regulatory adaptation within various jurisdictions. Many courts have recognized the benefits of litigation funding, viewing it as a tool to enhance access to justice.⁹³ This shift has been accompanied by a growing number of specialized litigation funding firms, which bring not only capital but also expertise in evaluating the merits of cases.⁹⁴ Some legal scholars have shown that this access to funds may be improving the overall efficiency of the litigation, as cases are screened by third-party funders before bringing a lawsuit.⁹⁵

⁸⁷ *Id.* at 331.

⁸⁸ U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 53, at 6 n.15 (“Many states have begun to relax prohibitions against . . . [champerty and maintenance], which may have contributed to TPLF’s increased acceptance and recent growth.”).

⁸⁹ See Charles Silver & David A. Hyman, *Third Party Litigation Funding: Panacea or More Problems?* 3 (Sep. 30, 2023) (unpublished manuscript), <https://ssrn.com/abstract=4438503> [<https://perma.cc/25CN-6WUE>].

⁹⁰ See U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 21, at 18–19 (listing one of the benefits of TPLF as “[h]elp[ing] even the playing field for underfunded plaintiffs”).

⁹¹ *Id.*

⁹² See Abi Potter Clough, *When Lawsuits Are Investments. Uncovering the Pernicious Toxicity of Litigation Funding*, RISK & INS. (June 18, 2023), <https://riskandinsurance.com/when-lawsuits-are-investments-uncovering-the-pernicious-toxicity-of-litigation-funding/> [<https://perma.cc/6R6T-ND9L>] (stating that TPLF could impact “the mass torts, the class actions, the product liability or the big intellectual property cases you see in the news”).

⁹³ For a fuller treatment on TPLF as an access to justice tool, see Victoria Shannon Sahini, *Rethinking the Impact of Third-Party Funding on Access to Civil Justice*, 69 DEPAUL L. REV. 611 (2020).

⁹⁴ See U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 21, at 19 (“[P]laintiffs can benefit from the due diligence TPLF funders conduct in assessing the merits of a plaintiff’s case, which gives the plaintiff feedback on the case’s strengths and weaknesses.”).

⁹⁵ See Avraham & Sebok, *supra* note 6, at 1165–66.

Additionally, the rise of TPLF has sparked discussions about its implications for the legal system, including concerns over ethics, transparency, and potential conflicts of interest.⁹⁶ Critics argue that third-party funders may exert undue influence over litigation strategies, while proponents highlight the importance of informed consent and contractual clarity in funding agreements.

B. Recent Interest from Lawmakers in the TPLF Industry

Recently, the TPLF industry has received attention from state and federal lawmakers.⁹⁷ For the TPLF industry, this potential regulation is undesirable. State and federal lawmakers have put forward bills that would limit the types of funds that third-party litigation funders can access⁹⁸ and how much third-party funders can collect in a lawsuit,⁹⁹ and even prohibit the practice outright in some jurisdictions.¹⁰⁰

Other bills would mandate the disclosure of TPLF arrangements in court. For example, Congressman Darrell Issa, chairman of the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet, introduced the Litigation Transparency Act of 2024.¹⁰¹ The Litigation Transparency Act would require disclosure of TPLF in federal court.¹⁰² Representative Issa's subcommittee also held hearings in September 2023 in which many congressmen cast doubt on the social benefits of TPLF.¹⁰³ Another bill circulating on Capitol Hill—Protecting Our Courts from Foreign Manipulation Act of 2023—is a bipartisan effort to require disclosure of TPLF by foreign entities and would prohibit funding of litigation from foreign governments and sovereign wealth funds.¹⁰⁴

⁹⁶ See *id.* at 1175–79 (discussing the ethical implications of TPLF).

⁹⁷ See Merken, *supra* note 13.

⁹⁸ See Protecting Our Courts from Foreign Manipulation Act of 2023, S. 2805, 118th Cong. (2023).

⁹⁹ For example, New York state introduced a bill in 2021 that would regulate the interest rate that third-party funders can charge. See A.B. 1270, 2021–2022 Gen. Assemb., Reg. Sess. (N.Y. 2021).

¹⁰⁰ See, e.g., *Maslowski v. Prospect Funding Partners LLC*, 890 N.W.2d 756, 769 (Minn. Ct. App. 2017); *Rancman v. Interim Settlement Funding Corp.*, 99 Ohio St. 3d 121, 2001-Ohio-2154, 789 N.E.2d 217, at ¶ 18 (Ohio 2003).

¹⁰¹ Litigation Transparency Act of 2024, H.R. 9922, 118th Cong. (2024); see also Litigation Funding Transparency Act of 2021, H.R. 2025, 117th Cong. (2021) (requiring disclosure of agreements with outside businesses that are contingent on litigation's outcome).

¹⁰² H.R. 9922.

¹⁰³ See Siegel, *supra* note 36 (explaining that Republicans said “lawsuits are funded by left-wing activists,” whereas Democrats said TPLF “leveled the playing field” and was necessary for increased access to justice).

¹⁰⁴ Protecting Our Courts from Foreign Manipulation Act of 2023, S. 2805, 118th Cong. (2023).

On July 12, 2024, Representative James Comer, chairman of the House Committee on Oversight and Accountability, sent a letter to Chief Justice Roberts requesting that the Judicial Conference “review the role TPLF plays in litigation.”¹⁰⁵ Representative Comer’s view that transparency was needed stemmed, in part, from his belief that “foreign actors,” like Abu Dhabi’s Mubadala Investment Company, were responsible for a string of high-profile third-party-funded cases.¹⁰⁶ And just a few months ago, the body tasked with updating the Federal Rules of Civil Procedure—the U.S. Supreme Court’s Advisory Committee on Civil Rules—agreed to create a subcommittee to look at litigation funding disclosure.¹⁰⁷

All of these federal bills would mandate disclosure of TPLF in federal courts, but as of now there is no rule or law that requires disclosure of third-party funders.¹⁰⁸ Although Congress has not yet been able to mandate disclosure, some judges have taken it upon themselves to require TPLF disclosure in their courtrooms.¹⁰⁹

C. TPLF Disclosure Orders from Federal Courts

Although there is support for federal and state action surrounding TPLF, there has to date been a dearth of evidence about the true extent of the practice of TPLF and its effect on the judicial system.¹¹⁰ And that lack of empirical scholarship is not surprising, given that TPLF agreements are usually private and are only rarely subject to discovery.¹¹¹ Furthermore, most, but not all, litigation funders are privately held corporations and therefore have no public disclosure requirements.¹¹² This

¹⁰⁵ Letter from Rep. James Comer, Chairman, Comm. on Oversight & Accountability, to John Roberts, C.J., U.S. Sup. Ct. 3 (July 12, 2024) (on file with the House Oversight Committee).

¹⁰⁶ *Id.* at 1.

¹⁰⁷ See Freedman, *supra* note 14.

¹⁰⁸ See U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 21, at 23 (“The TPLF industry is not specifically regulated under federal law.”).

¹⁰⁹ See *infra* Section I.C.

¹¹⁰ There have previously been two empirical studies of TPLF. See generally, e.g., Avraham & Sebok, *supra* note 6 (providing the first large-scale empirical analysis of the pre- and post-contract behavior of the TPLF market); David S. Abrams & Daniel L. Chen, *A Market for Justice: A First Empirical Look at Third Party Litigation Funding*, 15 U. PA. J. BUS. L. 1075 (2013) (finding that Australian TPLF led to increased caseloads). There has also been an abundance of literature about TPLF generally. See generally, e.g., Suneal Bedi & William C. Marra, *The Shadows of Litigation Finance*, 74 VAND. L. REV. 563 (2021); Korok Ray & Adam Olson, *Third-Party Funding of Patent Litigation: Problems and Solutions*, 2025 UTAH L. REV. 915 (tracking the rise of third-party-funded cases and TPLF as a percentage of all cases).

¹¹¹ See, e.g., Fleet Connect Sols. LLC v. Waste Connections US, Inc., No. 21-cv-00365, 2022 WL 2805132, at *2–3 (E.D. Tex. June 29, 2022) (denying discovery request of possible TPLF arrangement).

¹¹² See U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 53, at 6 (“[M]any funders are private entities A small number of funders are large, publicly traded companies.”).

has led to a situation in which the claims for and against TPLF have little to no empirical support.¹¹³

Despite this lacuna of empirical data on TPLF, two federal district courts have recently modified their rules to require some form of TPLF disclosure. In June 2021, the U.S. District Court for the District of New Jersey modified its local civil rules to require disclosure of TPLF arrangements in any civil case within thirty days of filing of the action.¹¹⁴ The local rule change requires third-party-funded litigants to state (1) the identity of the funder, (2) whether the funder controls the litigation in any way, and (3) a brief description of the nature of the financial interest.¹¹⁵ Additionally, the rule provides guidelines for seeking additional discovery based on the TPLF disclosure.¹¹⁶ The new rule applied to all pending cases in New Jersey federal courts and required that disclosures for those pending cases be filed on or before August 5, 2021.¹¹⁷

Following New Jersey's lead, a single judge on the U.S. District Court for the District of Delaware made a rule change in April 2022 that similarly mandated disclosure of TPLF.¹¹⁸ Chief Judge Colm Connolly's standing order, like New Jersey's local rule, mandates that parties disclose (1) the identity of any third-party funder, (2) the nature of that third-party funder's control over settlement, and (3) a brief description of the nature of the financial interest of the TPLF.¹¹⁹ The Connolly Order also grants parties the right to assert additional discovery over third-party-funded opponents when that funder "has authority to make material litigation decision or settlement decisions."¹²⁰

¹¹³ See *id.* at 1 ("While TPLF gained a foothold in the U.S. around 2010, publicly available data on litigation funders and TPLF arrangements remain limited.").

¹¹⁴ Order, *In re* Amendment of Local Civil Rules (D.N.J. June 21, 2021), <https://www.njd.uscourts.gov/sites/njd/files/Order7.1.1%28signed%29.pdf> [<https://perma.cc/FRU3-5JQG>]; see also Alison Frankel, *New Jersey Now Has a Sweeping Lit Funding Disclosure Rule. Does It Matter?*, REUTERS (June 23, 2021, at 17:36 ET), <https://www.reuters.com/legal/transactional/new-jersey-now-has-sweeping-lit-funding-disclosure-rule-does-it-matter-2021-06-23/> [<https://perma.cc/3G3K-RNAS>] (discussing the rule).

¹¹⁵ D.N.J. L. CIV. R. 7.1.1.

¹¹⁶ *Id.*

¹¹⁷ *Id.* Currently, New Jersey's TPLF disclosure rule only applies in federal courts in the state; earlier this year, the New Jersey Supreme Court considered adopting a rule to require TPLF disclosure in state courts but ultimately declined to do so. See Charles Toutant, *Shhh . . . Litigation Funding Can Remain Confidential—For Now*, N.J. L.J. ONLINE (Feb. 29, 2024, at 15:12 ET), <https://www.law.com/njlawjournal/2024/02/29/shhh-litigation-funding-can-remain-confidential-for-now/> [<https://perma.cc/PG5E-S7VT>]. There is currently a law pending in the New Jersey legislature that would establish regulations for legal funders, including a possible disclosure requirement. *Id.* ("In rejecting the NJCJI proposal, the court committee referenced a bill, S1475, pending in the Legislature that would establish regulations for legal funders.").

¹¹⁸ Standing Order Regarding Third-Party Litigation Funding Arrangements, *supra* note 42.

¹¹⁹ *Id.*

¹²⁰ *Id.*

Chief Judge Connolly has proven to be willing to enforce his standing order, even when plaintiffs try their best to avoid disclosure. In 2022, three companies filed dozens of patent cases in the District of Delaware.¹²¹ All three companies—Mellaconic IP, Backertop Licensing, and Nimitz Technologies—were NPEs; that is, they were companies that did not make the products covered by the patents that they owned. Instead, they licensed the technology to other companies.¹²² None of the three companies filed a TPLF disclosure, even though they were financially backed by IP Edge, a third-party to the litigation.¹²³

Eventually, Judge Connolly held evidentiary hearings in which he sought to find out about the true ownership of the shell companies.¹²⁴ One of the owners was Hau Bui, a food truck operator, who, upon questioning, did not have any idea what patents the company owned.¹²⁵ This was despite the fact that he was the listed owner of a company that did nothing other than license patents.¹²⁶

In another of the IP Edge cases, Lori LaPray, a paralegal and recently widowed mother, was listed as the owner of Backertop Licensing.¹²⁷ In July 2023, Judge Connolly issued an order for LaPray to appear in his Delaware courtroom and answer questions about her ownership.¹²⁸ LaPray failed to appear on numerous occasions and racked up a \$53,000 contempt fine as a result.¹²⁹ When she finally appeared in September 2024, Chief Judge Connolly left the sanction intact, but he advised LaPray to acquire a new attorney, not to rely on Backertop's attorney, and to investigate whether she should bring a malpractice suit against her Backertop attorney.¹³⁰

Chief Judge Connolly's investigation into the IP Edge cases was as thorough as one would expect from a former federal prosecutor.¹³¹

¹²¹ See *infra* Appendix B1.

¹²² James Bessen & Michael J. Meurer, *The Direct Costs from NPE Disputes*, 99 CORN. L. REV. 387, 390 (2014).

¹²³ See *infra* Appendix B1.

¹²⁴ See Michael Shapiro & Emily R. Siegel, *Judge's Litigation Funding Probe Reveals IP Edge's Human Toll*, BLOOMBERG L. (Dec. 4, 2023, at 05:01 ET), <https://news.bloomberglaw.com/ip-law/judges-litigation-funding-probe-reveals-ip-edges-human-toll> [<https://perma.cc/KLN9-8CXD>] (detailing the stories of the IP Edge patent company "owners").

¹²⁵ *Nimitz Techs. LLC v. CNET Media, Inc.*, No. 21-cv-01247, 2023 WL 8187441, at *10–13 (D. Del. Nov. 27, 2023).

¹²⁶ See *id.* at *13.

¹²⁷ Christopher Yaszko, *Judge's Rare Rebuke of Lawyers Shakes Up Patent-Funding Probe*, BLOOMBERG L. (Sep. 30, 2024, at 04:45 ET), <https://www.bloomberglaw.com/product/blaw/bloomberglawnews/bloomberg-law-news/XDIS6D9K000000> [<https://perma.cc/3QJ5-2SBC>].

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Judge Connolly was an Assistant U.S. Attorney from 1992–1999, and the U.S. Attorney for the District of Delaware from 2001–2009. See *Chief Judge Colm F. Connolly*, U.S. DIST. CT.,

Ultimately, Judge Connolly concluded that the true owner of all three companies was IP Edge, a patent-assertion company, finding that “IP Edge arranged for the patents to be assigned to LLCs it formed under the names of relatively unsophisticated individuals.”¹³² As a result, Chief Judge Connolly referred the attorneys representing the three companies and IP Edge to disciplinary bodies of the state bars in which the attorneys were barred.¹³³ Chief Judge Connolly’s sanctioning of IP Edge and their attorneys shocked many in the Delaware legal community.¹³⁴

The District of New Jersey’s new Local Civil Rule 7.1.1 and Judge Connolly’s standing order are the first glimpses inside the black box of TPLF.¹³⁵ These two rules and the information parties have subsequently disclosed form the basis for the collection of data used in this Article.

II. PAST EMPIRICAL STUDIES OF TPLF

To date, there has not been much in the way of empirical evidence surrounding TPLF. This is largely because the practice primarily occurs out of the public eye.¹³⁶ Third parties enter private agreements with potential plaintiffs and there is no reason why those agreements must become public.¹³⁷ For the most part, they do not: Most TPLF agreements remain private.¹³⁸

There have, however, been important contributions to the empirical study of TPLF generally. For example, Ronen Avraham and Anthony Sebok have studied consumer TPLF.¹³⁹ They had access to over 200,000

D. DEL., <https://www.ded.uscourts.gov/judge/chief-judge-colum-f-conolly> [<https://perma.cc/2S66-S7XY>] (last visited Dec. 18, 2025, at 18:35 ET) (click “Biography”).

¹³² *Nimitz Techs. LLC v. CNET Media, Inc.*, No. 21-cv-01247, 2023 WL 8187441, at *35 (D. Del. Nov. 27, 2023).

¹³³ *Id.* at *1. The Federal Circuit subsequently upheld the sanctions issued by Judge Connolly. *See Backertop Licensing LLC v. Canary Connect, Inc.*, 107 F.4th 1335, 1337 (Fed. Cir. 2024).

¹³⁴ *See* Steve Brachmann, *In Wild Opinion, Chief Judge Connolly Refers IP-Edge Affiliated Attorneys for Disciplinary Action*, IPWATCHDOG (Nov. 29, 2023, at 12:15 ET) (calling IP Edge’s actions a “seemingly outrageous scheme”), <https://ipwatchdog.com/2023/11/29/wild-opinion-judge-conolly-refers-ip-edge-affiliated-attorneys-disciplinary-action/id=170079/> [<https://perma.cc/Z57C-SQ7D>].

¹³⁵ Sean Keller & Jonathan Stroud, *Litigation Funding Disclosure and Patent Litigation*, 33 FED. CIR. BAR J. 77, 79–80, 82, 93 (2024) (lamenting the shortcomings of using local rules instead of a consistent, nationwide standard for TPLF disclosure).

¹³⁶ *See* U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 21, at 5 fig. 1 note (noting that litigation funders are “typically private firms”).

¹³⁷ *Id.* at 26 (“There also is no nationwide requirement to disclose litigation funding agreements . . .”).

¹³⁸ *See id.* at app. 37 n.1 (noting that the Government Accountability Office requested agreements from twelve funders for a study on TPLF; only six funders provided example agreements, but all of them were heavily redacted).

¹³⁹ *See* Avraham & Sebok, *supra* note 6, at 1140.

funding requests from consumers to one of “the largest consumer litigation financing firms in the United States.”¹⁴⁰ In looking through that data, they were able to uncover valuable information about consumer TPLF funding, such as how consumers receive funding and what types of cases are typically funded.¹⁴¹ They found, among other things, that consumer, as opposed to commercial, litigation funding was overwhelmingly directed at individual cases (96%)¹⁴² and was directed primarily toward motor vehicle accidents (59%), slip and fall cases (12%), and premises liability cases (6%).¹⁴³ They also found that the underwriting procedures of funders were robust; that funders do not generally overinvest in the cases they take on; that around twelve percent of consumers end up not paying the funders anything; and that the funders generally get less of a return than typically thought.¹⁴⁴

Two other published empirical studies about the industry both use data from Australia, which was an early adopter of TPLF. In the first study, David Abrams and Daniel Chen studied 113 TPLF cases in Australia.¹⁴⁵ They found that TPLF led to an increase in both litigation overall and caseloads among courts.¹⁴⁶ Ultimately, they concluded that the welfare effects of having TPLF were ambiguous.¹⁴⁷ Similarly, in the second study, Daniel Chen looked at TPLF in Australia and concluded that TPLF led to slower cases and more case backlogs in the courts.¹⁴⁸ He also found that TPLF cases received more citations and were reversed less often than comparable cases without TPLF.¹⁴⁹

This Article furthers the previous studies of TPLF by examining how disclosure requirements affect TPLF in the two district courts that currently mandate it. Further, unlike previous empirical studies of TPLF, this Article empirically describes the types of TPLF cases and the number of TPLF cases filed in U.S. federal courts.

III. DATA COLLECTION AND LIMITATIONS

This Part details the data collected and the means of collecting such data. It also provides a list of limitations on that data and insights

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 1141.

¹⁴² *Id.* at 1144.

¹⁴³ *Id.* at 1147.

¹⁴⁴ *Id.* at 1141–42.

¹⁴⁵ Abrams & Chen, *supra* note 110, at 1081, 1094.

¹⁴⁶ *Id.* at 1102–03.

¹⁴⁷ *Id.* at 1106–07.

¹⁴⁸ Daniel L. Chen, *Can Markets Stimulate Rights? On the Alienability of Legal Claims*, 46 RAND J. ECON. 23, 40–42 (2015).

¹⁴⁹ *Id.*

into what data would be helpful in conducting further empirical studies on TPLF.

A. *Data Collection Method*

Data collection for this Article was done by, first, collecting all the cases assigned to Chief Judge Connolly between April 18, 2022, and December 31, 2024. This date range is the entire period in which a TPLF disclosure order was in effect for his courtroom.¹⁵⁰ A similar method was done for the entire district of New Jersey, but with an earlier date reflecting New Jersey's earlier adoption of a TPLF order.¹⁵¹ Therefore, two separate databases were created: the Connolly (Delaware) database and the New Jersey database. The cases were compiled based on Bloomberg docket searches that were then cross-checked for accuracy with Lexis's Court Link database.¹⁵²

After the complete case list was collected, the cases were examined for a TPLF disclosure for those cases filed after April 18, 2022, for Judge Connolly and from June 11, 2021, for New Jersey.¹⁵³ Overall, 1,074 civil cases filed in the District of Delaware were assigned to Judge Connolly in the relevant period. The number was much larger for New Jersey: 50,485.

Because there is no set form or rule under which a TPLF disclosure must be made, the 1,074 Delaware cases were searched manually for possible TPLF disclosures. Those manual searches were cross-checked through automated searches referencing the Connolly Order.

As for New Jersey, with more than 50,000 cases to comb through, the Author used automated searches to reduce the number of cases that merited manual examination. First, the cases were searched for various combinations of the words "third-party litigation funding."¹⁵⁴ Next, the

¹⁵⁰ Judge Connolly published his order mandating disclosure of TPLF in cases before him on April 18, 2022. Standing Order Regarding Third-Party Litigation Funding Arrangements, *supra* note 42.

¹⁵¹ The District of New Jersey passed its TPLF order on June 21, 2021, but required that it be followed by August 2021. D.N.J. L. Civ. R. 7.1.1; *see also* Notice from William T. Walsh, Clerk, D.N.J., *Notice to the Bar Re: Clarification of L. Civ. R. 7.1.1, Third-Party Litigation Funding* (July 29, 2021), https://www.njd.uscourts.gov/sites/njd/files/NoticetoBarreL.Civ_.R.7.1.1clarification.pdf [<https://perma.cc/X69S-PDJP>] (indicating effective date of the order).

¹⁵² For example, to compile the Delaware cases, the Author selected cases assigned to Judge Connolly after April 18, 2022, and limited the search to civil cases.

¹⁵³ There were a few cases filed *before* Judge Connolly's order that nevertheless had a TPLF disclosure, as the Order itself was not limited to cases filed after its issuance. The Author noted those cases, but most of the data the Author reports here is based on those cases filed after April 18, 2022. The same holds true for TPLF disclosures in New Jersey. In the few places in which the Author references pre-TPLF-order cases, the Author notes that fact. *See infra* Appendices A, B1, B2 (noting in italics those cases that were filed before the TPLF orders were in place).

¹⁵⁴ For example, the Author searched "third-party funder," "litigation funding," and "third-party." The Author also conducted this search for the Delaware cases.

cases were searched for any document that referred to the date New Jersey implemented the TPLF disclosure order, June 11, 2021. The New Jersey cases were further checked by searching for TPLF cases against random blocks of 200 cases. Five sections of 200 cases were searched and found no cases that had TPLF disclosures that the manual search method failed to uncover. That is not to say that there are no other cases from New Jersey that were missed, but the Author is confident that the search methods uncovered the vast majority of disclosed-TPLF cases in New Jersey.

Most cases were rather clear regarding whether they had a TPLF disclosure, but there were a few that needed more thorough examination and their inclusion in the database required a judgment call. For example, some cases had a “non-TPLF disclosure”: The attorneys in those cases filed a disclosure, but it was a disclosure of no third-party funding in the case.¹⁵⁵ These cases were coded as “non-TPLF disclosure” cases; in other words, they were not included in the database.

Also, oftentimes a contingency arrangement with the attorneys in the case was disclosed, but, at the same time, a TPLF relationship was disclosed *not* to exist.¹⁵⁶ These types of cases were classified as “non-TPLF disclosures,” the same as cases with no disclosure of any kind about TPLF. In other words, these were not included in the study.

A few of these “non-TPLF disclosures” were challenged by Judge Connolly and resulted in extended motions and appeals by the plaintiffs who challenged, ultimately unsuccessfully, Judge Connolly’s order.¹⁵⁷ These cases revealed that there was, in fact, a third-party funding arrangement that the plaintiffs had attempted to hide from Judge Connolly and involved extensive discovery and pushback from the plaintiffs. These cases were classified as “TPLF Cases,” even though they do not have a TPLF disclosure. In other words, these cases were included in the database, even though they never officially had a TPLF disclosure filed.

Thus, the study here consists of two smaller databases within each of the larger New Jersey and Connolly databases. The Connolly

¹⁵⁵ See Statement in Response to the Court’s Standing Order Regarding Third-Party Litigation Funding Arrangements at 1, *Ademco Inc. v. ICM Controls Corp.*, No. 22-cv-01067 (D. Del. Sep. 12, 2022) (no TPLF but filed a disclosure). The District of New Jersey, apparently swamped with these nondisclosures, had to clarify their disclosure rule to explicitly state that if no third-party funder exists in a case, no disclosure of that fact is required. See Notice from William T. Walsh, *supra* note 151.

¹⁵⁶ See, e.g., Statement Regarding Third-Party Funding at 1, *S.M.R. Innovations LTD v. Motorola Mobility LLC*, No. 22-cv-00592 (D. Del. June 1, 2022) (disclosing a contingency arrangement but disavowing that a TPLF arrangement was in place).

¹⁵⁷ See *Nimitz Techs. LLC v. CNET Media, Inc.*, No. 21-cv-01247, 2023 WL 8187441, at *1–2 (D. Del. Nov. 27, 2023) (finding that Nimitz violated the TPLF disclosure order and recommending that the U.S. Department of Justice investigate the case for possible criminal charges).

database includes one database with the total civil cases filed during the relevant period and another database with the cases that had a TPLF disclosure. The New Jersey database has the same two databases for the New Jersey cases. From these two sets of databases (i.e., the entire docket of Judge Connolly and the cases flagged as TPLF cases, and the entire docket of the District of New Jersey and the cases flagged as TPLF cases) all the data presented herein was gathered.

B. Data Limitations

As with any empirical study, there are limitations with the data or data collection method. Several such limitations are highlighted in this subpart, before reviewing the data, to give the reader a better sense of what the data can and *cannot* reveal.

1. The Data Cover a Small Portion of the Federal Courts

One of the limitations of the dataset is that it only considers one judge and one federal district court. This is only a small slice of the over 670 federal district judges¹⁵⁸ and the ninety-four federal district courts in the United States.¹⁵⁹ This focus on Chief Judge Connolly and the District of New Jersey is an unfortunate byproduct of not having set rules for judges on how to handle disclosure of TPLF. If there were more disclosure requirements, or if there was a modification to the Federal Rules of Civil Procedure,¹⁶⁰ there would be more data available to better understand the workings of all federal litigation.

Looking at just one judge's docket plus an entire district court *can* provide valuable information about the practice of TPLF, however. First, considering Chief Judge Connolly's and New Jersey's dockets can at least provide an estimate of the frequency of TPLF nationwide. But there are important differences between Delaware and New Jersey's dockets when compared with the rest of the nation.

¹⁵⁸ *Introduction to the Federal Court System*, U.S. DEP'T OF JUST., <https://www.justice.gov/usao/justice-101/federal-courts> [<https://perma.cc/67XD-VN7R>] (last visited Dec. 18, 2025) ("There are over 670 district court judges nationwide.").

¹⁵⁹ *FAQs: Court Information*, U.S. CTS., <https://www.uscourts.gov/about-federal-courts/court-role-and-structure/faqs-court-information> [<https://perma.cc/5JDS-TFZM>] (last visited Dec. 18, 2025) (click "How many district courts are there?").

¹⁶⁰ This is what the U.S. Chamber of Commerce Institute for Legal Reform has urged the Advisory Committee on Civil Rules. See *ILR Urges Advisory Committee to Adopt Mandatory Uniform Disclosure of TPLF*, INST. FOR LEGAL REFORM (May 9, 2023), <https://institutelegalreform.com/blog/ilr-urges-advisory-committee-to-adopt-mandatory-uniform-disclosure-of-tplf/> [<https://perma.cc/DH2B-KKE8>] (urging the committee to amend Rule 26 of the Federal Rules of Civil Procedure). The Federal Advisory Committee on Civil Rules is also considering one such amendment. See Merken, *supra* note 13.

Delaware's docket is very different than other federal district court dockets. Delaware tends to receive a high number of corporate-related cases, due to the state's status as the incorporation capital of America; patent cases, due to the district's expertise in handling complex technological matters and because of the narrowed patent venue statute following *TC Heartland LLC v. Kraft Foods Group Brands LLC*;¹⁶¹ among others.¹⁶²

New Jersey receives fewer patent cases as a percentage of total cases, but those patent cases tend to be heavily skewed toward pharmaceutical patent cases.¹⁶³ There is a large number of judges in the District of New Jersey: seventeen judgeships compared with just four for Delaware.¹⁶⁴ In general, New Jersey's docket is much more diverse than that of Delaware.¹⁶⁵

Just as the types of cases and their frequency will vary greatly from district to district, so too might the number of TPLF cases across districts. Yet despite these limitations, there is currently such a dearth of information regarding the extent of TPLF across cases that these two data points provide more information about what cases are third-party funded than any other extant method.

2. Underreporting of TPLF

Another limitation with the data is false negatives. Although it is highly unlikely that a party who is not third-party funded would erroneously disclose that they are third-party funded (a false positive) it is more likely that some third-party-funded cases do not disclose their funding (a false negative). This could be for reasons such as oversight, misunderstanding the disclosure orders, or clever corporate organizing to avoid the disclosure requirement. There is no way, other than late disclosure to amend a prior mistake, to capture these false negatives. In fact, Judge Connolly has aggressively enforced his order, going so far as

¹⁶¹ See *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 581 U.S. 258, 262 (2017) (holding that a U.S. corporation's residence is its state of incorporation for purposes of 28 U.S.C. § 1400(b)); *Patent Cases Rise, With Two Courts Leading the Nation*, U.S. CTS. (Apr. 21, 2014), <https://www.uscourts.gov/data-news/judiciary-news/2014/04/21/patent-cases-rise-two-courts-leading-nation> [<https://perma.cc/CR3D-2AW3>] (identifying the District of Delaware as the top court for hearing patent cases in 2014).

¹⁶² See John R. Thomas, *Hatch-Waxman's Renegades*, 2023 U. ILL. L. REV. 831, 833.

¹⁶³ See *id.* at 833, 850 (“The District of Delaware and the District of New Jersey ordinarily hear 90% of [pharmaceutical patent] cases each year . . .”).

¹⁶⁴ *New Jersey U.S. Federal District Courts Case Law*, JUSTIA, <http://law.justia.com/cases/federal/district-courts/new-jersey/> [<https://perma.cc/6NDC-QQHM>] (last visited Jan. 5, 2026); *Delaware U.S. Federal District Courts Case Law*, JUSTIA, <https://law.justia.com/cases/federal/district-courts/delaware/> [<https://perma.cc/H3P6-F5Z3>] (last visited Jan. 5, 2026).

¹⁶⁵ See *Table C-3A—U.S. District Courts—Civil Cases Pending, by Nature of Suit and District*, U.S. CTS. (Sep. 30, 2024), https://www.uscourts.gov/sites/default/files/2025-01/jb_c3a_0930.2024.pdf [<https://perma.cc/P6QG-8BWK>].

to recommend that the Department of Justice investigate some reticent TPLF plaintiffs.¹⁶⁶

That means that the numbers reported below for TPLF cases in Delaware and New Jersey are likely to be low estimates; that is, they are likely the floor on the number of cases that are third-party funded, and the actual number of TPLF cases is likely higher.

3. *Selection Effects: Filing Elsewhere Because of the Order*

An additional limitation with the data is a problem with litigation studies generally: selection effects. Because the plaintiff generally chooses where to file,¹⁶⁷ any empirical study about litigation has a problem with selection effects. These cases are not placed in Delaware or New Jersey randomly; those locations are chosen by (primarily) the plaintiffs.¹⁶⁸

For example, after Judge Connolly issued his April 18, 2022 order, plaintiffs may have sought to avoid Delaware because of Connolly's disclosure requirement. Thus, the data after that date is likely influenced by the plaintiff's selection; plaintiffs that may have filed in Delaware if there were no order may have chosen to file elsewhere—or not at all—once the order was in place.

Because of these selection effects, this Article reports data from the period after the disclosure requirements were implemented *and* for the equivalent period before the orders were implemented to attempt to evaluate how filings have changed because of TPLF disclosure requirements. It is difficult at this point to say with confidence that this change in filing behavior is due solely to disclosure obligation. But looking at the filings before and after the orders can provide a sense of the relative importance of disclosure requirements to TPLF plaintiffs in their choice of forum.

4. *No State Court Data*

The database here consists of one federal judge's docket and one federal district court's dockets, but TPLF cases are not limited to federal cases. In fact, there is reason to suspect that state courts may be more lucrative to funders looking for a quick return on investment.¹⁶⁹ The lack of state court information limits the inferences one can draw

¹⁶⁶ See, e.g., *Nimitz Techs. LLC v. CNET Media, Inc.*, No. 21-cv-01247, 2023 WL 8187441, at *35 (D. Del. Nov. 27, 2023).

¹⁶⁷ Scott Dodson, *Plaintiff Personal Jurisdiction and Venue Transfer*, 117 MICH. L. REV. 1463, 1466 (2019) (“[D]efendants . . . are involuntary parties subjected to the initial forum choice of the plaintiff.”).

¹⁶⁸ See *id.*

¹⁶⁹ See Avraham & Sebok, *supra* note 6, at 1135–36, 1144–45 & chart 1 (presenting data on “consumer” TPLF cases—overwhelmingly state cases—and showing that the investments in this sector are growing).

from this Article’s data as state court cases may have significantly more or fewer cases than federal court.¹⁷⁰

But this drawback may be ameliorated in one area: patent law. Because patent cases can only be filed in federal court,¹⁷¹ federal courts house 100% of the third-party-funded patent cases. Accordingly, the lack of state court data may impact certain fields, especially the consumer TPLF space, more than the patent space. Therefore, although this Article’s data cannot provide much insight about the frequency of consumer TPLF,¹⁷² it is a useful tool for evaluating TPLF—particularly the impact of TPLF disclosure—on the patent field.

IV. SUMMARY OF THE DATA

This Part provides a detailed summary of the findings of the TPLF study. It details the amount and types of cases either filed in the District of New Jersey or assigned to Judge Connolly’s courtroom after those courts implemented a TPLF disclosure order. It then focuses on the patent infringement cases that are third-party funded. It subsequently notes the number of unique attorneys and third-party funders that appear in the database. Finally, Part IV discusses the amount of funders’ reported “control” over the litigation they fund.

A. Percentage of TPLF Cases

In New Jersey, there were 50,485 civil cases filed between August 5, 2021, and December 31, 2024. Of those cases, only eighty-six cases had a TPLF disclosure.¹⁷³ That means only a small percentage of civil cases, 0.17%, had third-party funding.

TABLE 3. THIRD-PARTY LITIGATION DISCLOSED: DISTRICT OF NEW JERSEY, 8/5/2021–12/31/2024

Total Cases (federal, civil)	50,485
Total TPLF Cases	86 (0.17%)

Between April 18, 2022, and December 31, 2024, Chief Judge Connolly received a total of 1,047 civil cases in Delaware. Of those, forty-two were TPLF cases. That means third parties funded 3.9% of the civil cases filed in Judge Connolly’s chambers.

¹⁷⁰ For an examination of state-based TPLF claims, see Avraham & Sebok, *supra* note 6. Their study is the gold standard on state-based claims.

¹⁷¹ 28 U.S.C. § 1338(a).

¹⁷² For more on consumer TPLF cases in state courts, see Avraham & Sebok, *supra* note 6.

¹⁷³ There was one plaintiff, Atlas Data Privacy Corporation, who sued seventy-four distinct defendants in seventy-four distinct suits. The same funder financed all these cases. These cases were all included in the data for New Jersey. See *infra* Appendix A.

TABLE 4. THIRD-PARTY LITIGATION DISCLOSED: DISTRICT OF DELAWARE
(CONNOLLY, C.J.), 4/18/2022–12/31/2024

Total Cases (federal, civil)	1074
Total TPLF Cases	42 (3.9%)

Although this seems like a modest number of TPLF cases, the dataset’s limitations make it difficult to project this onto U.S. cases with any sort of confidence. The District of Delaware has a very unique set of cases because of the state’s reputation as a business-friendly environment.¹⁷⁴ Delaware’s judges—because of the state’s reputation—see a high number of complex cases, like patent and antitrust.¹⁷⁵ After seeing a number of these complex cases, the judges develop expertise and gain efficiency in handling such cases, attracting even more of these cases to be filed in Delaware.¹⁷⁶ Without data on other districts, however, it is improper to use Delaware’s experience with TPLF as a proxy for the rest of the country. The differences are far too great between districts.

Similarly, the District of New Jersey has some unique characteristics that make it difficult to draw conclusions on other districts’ TPLF experience.¹⁷⁷ For example, New Jersey is home to many of America’s generic drug makers, so the District of New Jersey receives a large number of abbreviated new drug application (“ANDA”) pharmaceutical cases.¹⁷⁸

But the numbers are strikingly low for the District of New Jersey, especially when one considers that a single plaintiff with a single funder filed seventy-four of those eighty-six TPLF cases.¹⁷⁹ Either the percentage of New Jersey cases that are third-party funded is virtually de minimis or a large number of New Jersey plaintiffs are failing to disclose third-party arrangements.

¹⁷⁴ See Ofer Eldar & Neel U. Sukhatme, *Will Delaware Be Different? An Empirical Study of TC Heartland and the Shift to Defendant Choice of Venue*, 104 CORN. L. REV. 101, 129–30 (2018) (explaining the Delaware judiciary’s reputation and listing how it strives to be different from other courts).

¹⁷⁵ U.S. DIST. CT., D. DEL., ANNUAL REPORT 2022, at 9 (2022), <https://www.ded.uscourts.gov/sites/ded/files/news/FINAL%20Court%20Report2022%20%281%29.pdf> [<https://perma.cc/UF68-NTUH>] (“For the past decade, Delaware has ranked in the top five district courts for patent filings in the nation.”).

¹⁷⁶ *Id.*

¹⁷⁷ See Thomas, *supra* note 162, at 837–50 (explaining the peculiarities of pharmaceutical patent cases under the Hatch-Waxman Act).

¹⁷⁸ *Id.* at 833, 850 (“The District of Delaware and the District of New Jersey ordinarily hear 90% of [Hatch-Waxman] cases each year . . .”).

¹⁷⁹ See Avraham & Sebok, *supra* note 6, at 1144 (noting that around nine percent of third-party funding requests in the study originated from consumers in New Jersey).

B. Patent Infringement Cases

The Author also collected data on the case type involved in TPLF. The findings from that data indicate patent cases are especially relevant for third-party funders.

1. Ninety-Five Percent of Judge Connolly's TPLF Cases Are Patent Cases; New Jersey Has Only Two TPLF Patent Cases

The importance of patent litigation to third-party litigation funders is very noticeable: Forty out of forty-two TPLF cases are patent disputes. That means ninety-five percent of TPLF cases are patent cases in Judge Connolly's courtroom.¹⁸⁰ Thus, in Delaware, at least, almost all TPLF funding is directed at patent cases. The other two cases that were not patent cases? They were also intellectual property cases—concerning *trademark* infringement.¹⁸¹

TABLE 5. THIRD-PARTY FUNDED PATENT CASES: DISTRICT OF DELAWARE (CONNOLLY, C.J.), 4/18/2022–12/31/2024

Total Patent Cases	263
Total TPLF Patent Cases	40 (15.2%)

In New Jersey the data is starkly different. New Jersey only had two patent cases with TPLF filings after the District of New Jersey instituted its TPLF order.¹⁸² And New Jersey receives a significant number of patent cases overall.¹⁸³

¹⁸⁰ Westfleet Advisors reports that twenty-one percent of “all [new] capital commitments” go toward patent litigation. WESTFLEET ADVISORS, THE WESTFLEET INSIDER: 2022 LITIGATION FINANCE MARKET REPORT 6 (2022). Patent litigation is also the largest category of cases supported by third-party funders. *See id.* The data from Delaware backs this up. Some TPLF cases are not patent cases. *See, e.g.,* Unstoppable Domains Inc. v. Gateway Registry, Inc., No. 22-cv-00948, 2023 WL 4156709, at *2 (D. Del. June 23, 2023) (trademark infringement); Florcsk v. Unstoppable Domains Inc., No. 22-cv-01230, 2024 WL 492384, at *1 (D. Del. Feb. 8, 2024) (trademark infringement); Salesforce, Inc.'s Motion to Compel Compliance with Subpoenas *Duces Tecum* and *Ad Testificandum* at 1, WSOU Invs., LLC v. Salesforce, Inc., No. 23-mc-00027 (D. Del. Jan. 20, 2023) (motion to compel, later transferred to Texas after TPLF disclosure); Frome Wye Ltd. v. Hosie Rice LLP, No. 22-mc-249, 2022 WL 17735950, at *1 (D. Del. Dec. 16, 2022) (arbitration).

¹⁸¹ *See Unstoppable Domains*, 2023 WL 4156709, at *1; *Florcsk*, 2024 WL 492384, at *1.

¹⁸² *See infra* Appendix A.

¹⁸³ *See* BRIAN C. HOWARD & JASON MAPLES, LEX MACHINA, HATCH-WAXMAN/ANDA LITIGATION REPORT 2 fig. 1 (2014) (showing New Jersey as the second highest district for ANDA litigation), <https://law.shu.edu/documents/Gibbons-View-from-the-Bench-ANDA-Litigation-Howard.pdf> [https://perma.cc/EPB7-A8LB].

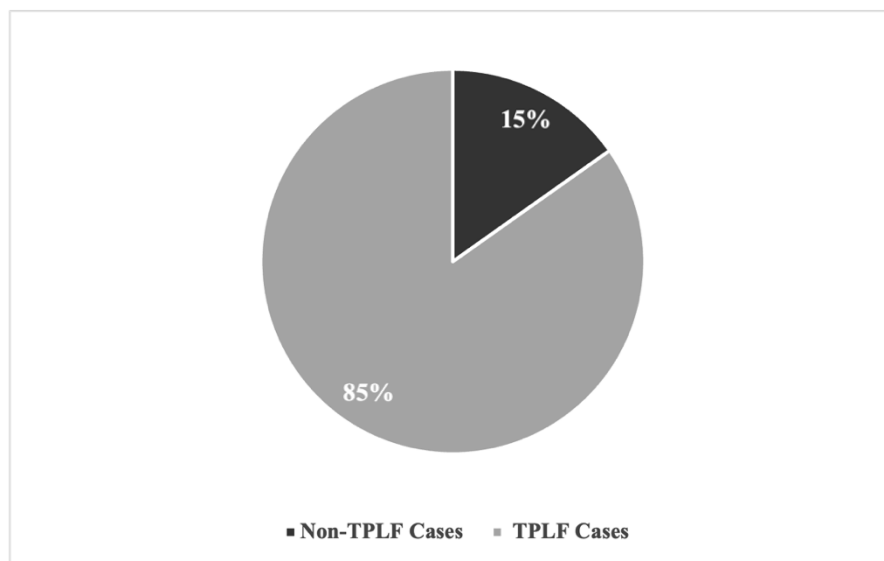
TABLE 6. THIRD-PARTY FUNDED PATENT CASES: DISTRICT OF NEW JERSEY,
8/5/2021–12/31/2024

Total Patent Cases	657
Total TPLF Patent Cases	2 (0.30%)

2. *Fifteen Percent of Judge Connolly’s Patent Cases Are TPLF Cases*

Nearly one out of every six patent cases filed in Judge Connolly’s chambers was a TPLF case—forty TPLF cases out of 263 total patent cases. That means that fifteen percent of the patent cases filed in Delaware were attractive investment vehicles for third-party funders. Figure 1 below shows this breakdown.

FIGURE 1. DISTRICT OF DELAWARE (CONNOLLY, C.J.) PATENT CASES:
4/18/2022–12/31/2024



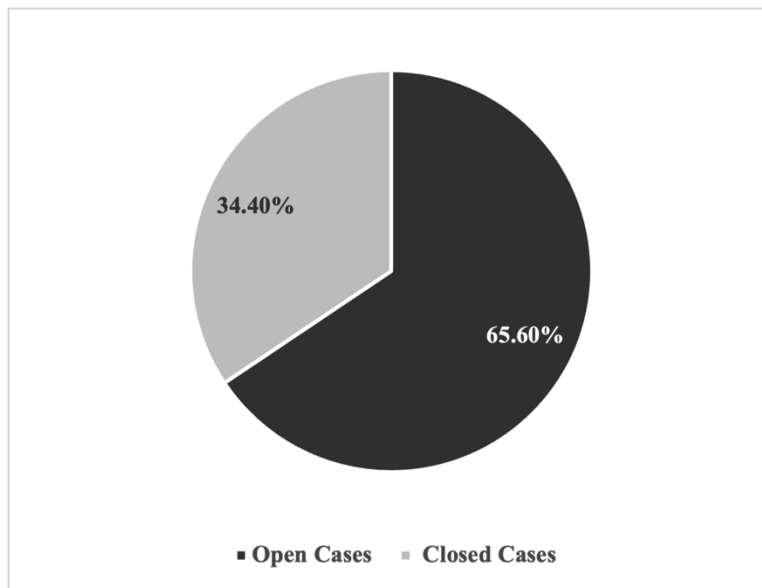
3. *How TPLF Patent Cases Are Litigated*

The investors who screen TPLF cases do not want to place their money on losing bets. Thus, funders’ screening function may increase the quality of cases that are chosen to receive funding. Avraham and Sebok have noted this screening function occurring in the consumer TPLF space.¹⁸⁴ Until now, however, this has largely been a theoretical benefit rather than a proven advantage with commercial TPLF cases. Thanks to Judge Connolly, there is now more data to analyze whether TPLF funding serves a useful screening function.

¹⁸⁴ See Avraham & Sebok, *supra* note 6, at 1165–66.

First, consider whether the patent cases filed in Connolly's chambers after the disclosure order were still active at the time of the writing of this Article or whether they had been fully adjudicated or dismissed. A little less than two-thirds of TPLF cases were still ongoing as of the writing of this Article.¹⁸⁵ "Open cases" indicates a case that is still ongoing, whereas "closed cases" indicates that the case was dismissed.¹⁸⁶ Figure 2 below highlights the fact that two-thirds of TPLF patent cases in the database remain open:

FIGURE 2. DISTRICT OF DELAWARE (CONNOLLY, C.J.): TPLF PATENT CASES (AS OF 1/1/25)



One might anticipate that only two-and-a-half years after the Connolly Order, a great majority of these cases would still be active. After all, some of these cases in the database were filed in January 2024; it would generally be expected that cases that have been in litigation for less than a year will still be open.¹⁸⁷

Yet when compared with the non-TPLF patent cases, the percentage of closed cases tells a very different story. Over two-thirds of the non-TPLF patent cases have been *dismissed* at the time of this Article. That is a stark difference from the TPLF patent cases in which only

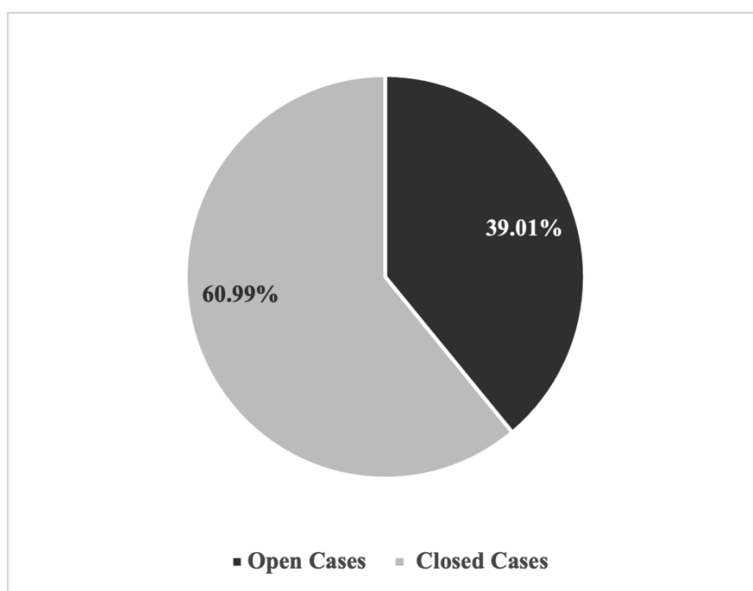
¹⁸⁵ The Author last checked the database on December 31, 2024.

¹⁸⁶ Such dismissals include voluntary dismissals, adverse decisions ending a case, or dismissals in light of a settlement.

¹⁸⁷ Note that case *InvesTrex LLC v. Benzinga Holdings, LLC*, No. 24-cv-00031 (D. Del. May 13, 2024), in fact has been dismissed.

one-third of the cases have been dismissed. Figure 3 below demonstrates the frequency of non-TPLF cases terminating quickly:

FIGURE 3. DISTRICT OF DELAWARE (CONNOLLY, C.J.): NON-TPLF CASES (AS OF 1/1/2025)



4. Patented Technology in TPLF Cases

The technology in the TPLF patent cases filed in New Jersey and Delaware also raises an interesting issue. Although Delaware and New Jersey receive around ninety percent of the nation's pharmaceutical patent cases,¹⁸⁸ none of the TPLF cases in either database are pharmaceutical cases. Indeed, there are many pharmaceutical cases on Judge Connolly's docket following the Order¹⁸⁹ and in New Jersey as well, but none of them have a TPLF disclosure. In fact, most of Judge Connolly's

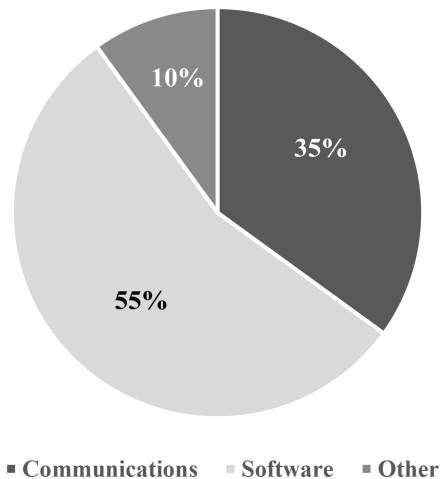
¹⁸⁸ See Thomas, *supra* note 162, at 833; see also MICHAEL FLYNN & BEN YENERALL, 2022 D. DEL. PATENT LITIGATION REVIEW 2-3 (2023), https://www.morrisnichols.com/media/publication/15192_MorrisNichols_2022-DDel-Patent-Litigation-Review.pdf [<https://perma.cc/ZJ4S-B757>] (reporting that the District of Delaware received sixty-three percent of the 264 ANDA cases filed nationwide); Timothy Cook & Kevin Yurkerwich, *Managing ANDA Venue Issues as Del. and NJ Filings Rise*, LAW360 (Dec. 1, 2023, at 16:43 ET), <https://www.law360.com/articles/1771320/managing-anda-venue-issues-as-del-and-nj-filings-rise> [<https://perma.cc/B7RT-CFS4>] (reporting that ninety percent of pharmaceutical patent infringement cases were filed in either the District of New Jersey or the District of Delaware in 2023).

¹⁸⁹ See, e.g., Complaint for Patent Infringement at 1, *Janssen Pharms., Inc. v. Hikma Pharms. USA, Inc.*, No. 23-cv-00595 (D. Del. May 31, 2023); Court Docket, *Novo Nordisk, Inc. v. Mylan Pharms., Inc.*, No. 22-cv-01040 (D. Del. filed Mar. 18, 2022).

non-TPLF docket consists of pharmaceutical patent cases. Furthermore, New Jersey had over 400 pharmaceutical patent cases filed in the period after the local rule change mandating TPLF disclosure. In none of those cases did plaintiffs disclose third-party funding. This demonstrates that TPLF funders are largely absent in the ANDA patent litigation space.

But beyond the lack of TPLF for ANDA cases, other observations can be made about the types of patent cases bearing TPLF. Most of the patent disputes appearing in the TPLF database are related to software or mechanical technology. Figure 4 shows a breakdown of the types of patented technology in the TPLF cases in Delaware.

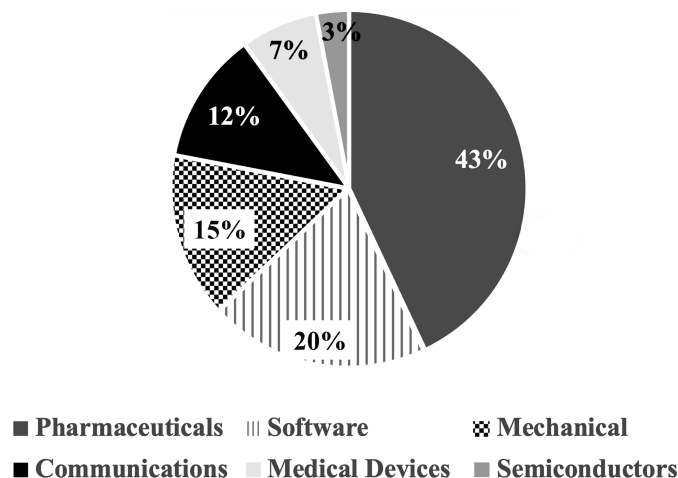
FIGURE 4. DISTRICT OF DELAWARE (CONNOLLY, C.J.):
TPLF TECHNOLOGY TYPE FOR CASES BETWEEN 4/18/2022–12/31/2024



Compare the technology skew of the TPLF cases in the database to the skew in patent cases that *do not* receive TPLF. In non-TPLF cases, the dominant technology class is pharmaceuticals. As compared with the TPLF cases, the non-TPLF cases have a much smaller percentage of software and communications patents. Software and communications patents are the preferred technology type of NPEs due to their potential breadth and scope.¹⁹⁰

¹⁹⁰ Allison et al., *supra* note 58, at 261.

FIGURE 5. DISTRICT OF DELAWARE (CONNOLLY, C.J.):
NON-TPLF TECHNOLOGY FOR CASES BETWEEN 4/18/2022–12/31/2024



C. Attorneys and Funders in TPLF Cases

There is a total of ten funders that have appeared before Judge Connolly since the Order. This number is in line with what one would expect to see. There are forty-four active third-party litigation funders in the United States,¹⁹¹ many of whom focus on particular types of cases.¹⁹² Also, patent litigation cases tend to cluster—that is, one company brings multiple cases against multiple defendants, usually around the same patents or patent families.¹⁹³ Thus, the forty TPLF cases in the Delaware database comprise numerous related cases. For instance, there are seven cases filed by InvesTrex LLC against seven separate defendants.¹⁹⁴ Of these seven cases, five were filed on the same day and

¹⁹¹ Thibault Denamiel, Matthew Schleich & William Alan Reinsch, *Is Third-Party Litigation Financing a National Security Problem?*, CTR. FOR STRATEGIC & INT'L STUDS. (Feb. 23, 2024), <https://www.csis.org/analysis/third-party-litigation-financing-national-security-problem> [<https://perma.cc/ZC7D-39YA>].

¹⁹² WESTFLEET ADVISORS, *supra* note 180, at 4.

¹⁹³ The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284–341 (2011), made new rules for joinder in patent cases. Now, one needs to bring separate suits against individual defendants, even though they might be suing on the same patent and alleging the same basic facts constituting infringement. *Id.* § 19, 125 Stat. at 332–33; 35 U.S.C. § 299; *see* Charles Gorenstein, *America Invents Act Exercises “Con-Troll” Over Patent Litigation*, IPWATCHDOG (Sep. 19, 2011, at 15:50 ET), <https://ipwatchdog.com/2011/09/19/con-troll-over-patent-litigation/id=19279/> [<https://perma.cc/78JM-U7FM>].

¹⁹⁴ Complaint for Patent Infringement at 1, *InvesTrex LLC v. Apollo Glob. Mgmt, Inc.*, No. 23-cv-00204 (D. Del. Feb. 24, 2023); Complaint for Patent Infringement at 1, *InvesTrex LLC v. Benzinger Holdings LLC*, No. 24-cv-00031 (D. Del. Jan. 11, 2024); Complaint for Patent Infringement

concern the same patent, and all the defendants are in the news business. Thus, the same funder backed all seven cases.

Aside from having the same funders, those clustered cases also typically feature the same attorneys.¹⁹⁵ Commercial TPLF agreements often mandate that a particular attorney handles the case; oftentimes, the funder selects that attorney.¹⁹⁶ Thus, a group of related patent cases often has common attorneys, both for the funder's comfort and for efficiency. This is borne out in the data from Delaware: among the forty TPLF-funded patent cases and the ten unique funders, there are eleven attorneys that appear on the cases.¹⁹⁷ This shows that, basically, whenever a funder is backing a case based on a patent family, they want the same attorney handling all the cases. Table 7 below shows the data on attorneys and funders for Chief Judge Connolly.

TABLE 7. TPLF FUNDERS AND ATTORNEYS: DISTRICT OF DELAWARE
(CONNOLLY, C.J.), 4/18/2022–12/31/2024

Total TPLF Cases	40
Number of Unique Funders	11
Number of Unique Attorneys	12

New Jersey has a much more diverse set of funders. New Jersey has fourteen unique funders.¹⁹⁸ In fact, in New Jersey there are only two repeat funders: Atlas Litigation Support, which backed seventy-four civil rights cases from the same plaintiff, and the Legalist Fund.¹⁹⁹ Many of the other funders in New Jersey are the type one may think about alongside hedge funds and insurance corporations: Longford Capital, VF Asset Holdings, and others.²⁰⁰ But there are also a host of funders that are best classified as public interest organizations, such as Yale's Media Freedom & Info Access Law Clinic and the Firearms Policy Organization.²⁰¹ The TPLF literature has not yet thoroughly considered these sorts of public interest organization funders, and they deserve more study.

at 1, *InvesTrex LLC v. Bloomberg L.P.*, No. 23-cv-00205 (D. Del. Feb. 24, 2023); Complaint for Patent Infringement at 1, *InvesTrex LLC v. News Corp.*, No. 23-cv-00206 (D. Del. Feb. 24, 2023); Complaint for Patent Infringement at 1, *InvesTrex LLC v. Seeking Alpha Inc.*, No. 23-cv-00207 (D. Del. Feb. 24, 2023); Complaint for Patent Infringement at 1, *InvesTrex LLC v. Stocktwits, Inc.*, No. 23-cv-00208 (D. Del. Feb. 24, 2023); Complaint for Patent Infringement at 1, *InvesTrex LLC v. Yahoo Inc.*, No. 23-cv-00301 (D. Del. Mar. 19, 2023).

¹⁹⁵ See *infra* Appendix B1.

¹⁹⁶ Other times, the attorney brings the case to the funder with the stipulation that the attorney that found the case handles the case.

¹⁹⁷ See *infra* Appendix B1.

¹⁹⁸ See *infra* Appendix A.

¹⁹⁹ See *infra* Appendix A.

²⁰⁰ See *infra* Appendix A.

²⁰¹ See *infra* Appendix A.

TABLE 8: TPLF FUNDERS AND ATTORNEYS: DISTRICT OF NEW JERSEY,
8/5/2021–12/31/2024

Total TPLF Cases	86
Number of Unique Funders	14
Number of Unique Attorneys	16

D. Control

Another variable the Author coded for in the databases was whether the funder had any control over the litigation. The TPLF orders in New Jersey and Delaware both require a third-party-funded plaintiff to disclose the amount of control—if any—that a funder has over the litigation and any potential settlement.²⁰² An affirmative response exposes a third-party funder to discovery and possible joinder to the action.²⁰³

In none of the 126 TPLF cases in New Jersey or Delaware did a plaintiff admit to the funder having control over any aspect of the litigation.

V. CRITICAL ANALYSIS OF THE DATA AND RECOMMENDATIONS TO LAWMAKERS

So how should one interpret this data? This Part analyzes the data in four sections, explaining what the data reveals regarding the amount of TPLF generally, TPLF's effect on patent litigation in particular, the relative strength of TPLF cases, and the effect of TPLF disclosure orders on plaintiffs' forum choices. Each Section concludes with suggestions for further research.

A. TPLF in the Federal Courts, Generally

Overall, the number of suits backed by third-party funding is relatively modest. Less than one percent of cases (0.17%) in New Jersey received third-party funding, and 3.9% of cases in Delaware were third-party funded.

Although one should exercise caution when extrapolating out to other federal district courts—TPLF disclosure obligations only apply to a small minority of courts in the United States—this data suggests that TPLF does not yet represent a systemic challenge to the federal

²⁰² See D.N.J. L. Civ. R. 7.1.1; Standing Order Regarding Third-Party Litigation Funding Arrangements, *supra* note 42.

²⁰³ See FED. R. Civ. P. 19(a)(1)(A) (requiring joinder of certain parties); *see also* Brittain, *supra* note 45 (documenting the IP Edge saga, in which, among other things, IP Edge was subject to multiple discovery hearings about the true ownership of the patent assertion entities involved in the cases).

court system. However, as detailed in Section V.B, TPLF does represent a significant shift in patent litigation—at least as a driver of litigation behavior in New Jersey and Delaware—and certainly deserves more study.

B. *TPLF in Patent Litigation*

Although the overall impact of TPLF in New Jersey and Delaware seems to be small, one area where TPLF is a major factor is patent litigation. Fifteen percent of patent cases in Delaware were third-party funded during the period of study. Conversely, in New Jersey less than one percent of all cases were third-party funded.

1. *The Appeal of Delaware Patent Cases to Third-Party Funders*

There are several ways to interpret this data. First, it may be that patent cases are the most attractive investment vehicles for third-party funders. That is not to say that other types of cases are not possible investment opportunities, just that they are not as attractive as the patent cases. This is somewhat surprising, given the types of corporate cases that Delaware—and thus Judge Connolly—receive and the potential rich payouts of those cases. But it would be consistent with what others have found about the attractiveness of patent litigation to third-party funders.²⁰⁴ That patent litigation is attractive to funders is well known, but the extent that patent litigation is desirable for funding over other types of litigation is possibly understated. More study of what makes patent litigation attractive to funders is needed, but one can make some preliminary suppositions as to why funders prefer patent litigation.

Patent litigation often involves entities that have little to no risk of countersuit.²⁰⁵ Oftentimes small inventors or, more commonly, NPEs²⁰⁶ are enforcing the patents and therefore seeking funding to litigate.²⁰⁷ With few assets to speak of, the chance of a lucrative countersuit is very

²⁰⁴ See *2022 Patent Dispute Report*, UNIFIED PATS. (Jan. 5, 2023), <https://www.unifiedpatents.com/insights/2023/1/4/2022-patent-dispute-report> [<https://perma.cc/CZM6-V6KR>] (reporting that around thirty percent of patent cases nationwide receive TPLF); see also Joseph Matal, *Patent Lawsuits Are a National-Security Threat*, WALL ST. J. (Mar. 20, 2024, at 17:13 ET), <https://www.wsj.com/opinion/patent-lawsuits-are-a-national-security-threat-secretly-funded-litigation-f3cd5bd4> [<https://perma.cc/9NUE-6V8T>] (same).

²⁰⁵ See David S. Olson, *On NPEs, Holdups, and Underlying Faults in the Patent System*, 99 CORN. L. REV. ONLINE 140, 144 (2014) (arguing that the advent of NPEs was transformational for the patent system, principally because they had “no exposure to the risk of countersuits”).

²⁰⁶ NPEs—or more pejoratively “patent trolls”—are entities created specifically to hold patents and enforce them. See *supra* note 122 and accompanying text.

²⁰⁷ See Paul Taylor, *The U.S. Intellectual Property System and the Impact of Litigation Financed by Third-Party Investors and Foreign Entities*, PAT. PROGRESS (June 25, 2024), <https://www.patentprogress.org/2024/06/the-u-s-intellectual-property-system-and-the-impact-of-litigation->

low against NPEs.²⁰⁸ Additionally, any settlement reached in a patent infringement case is likely to be less complicated—and therefore easier to claim for third-party funders—than other complex commercial litigation. Lastly, patent cases carry the possibility of very large damage awards,²⁰⁹ thereby making them appealing to investors. On the demand side of the equation, patent cases can be very expensive to litigate, causing plaintiffs to seek out TPLF as a way to shift the risk of litigating.²¹⁰

A second alternative to interpreting the data is to conclude that the reason we see so many TPLF patent cases is because Chief Judge Connolly—and the District of Delaware as a whole—receives so many patent cases. Indeed, Judge Connolly received 263 patent cases after the Order.²¹¹ For most any other judge in any other district court—outside of district courts in Delaware, Texas, and California—that would be an astronomical number of patent cases. Of course, if a judge receives more patent cases, they should also receive more TPLF patent cases.

But this lots-of-patent-cases-lots-of-TPLF hypothesis is undercut somewhat when looking across the Delaware River at New Jersey. The District of New Jersey also receives a high number of patent cases—657 during the period after the change to its local rules.²¹² Of these 657, only two disclosed a TPLF relationship.²¹³ Here, one sees another patent-heavy district court, yet very few TPLF disclosures. Funders are making bets on patent cases, but they prefer to bet on Delaware patent cases rather than New Jersey patent cases. So, not all patent-heavy districts are also TPLF-heavy.

A third way to interpret the data is that litigation funders are so resistant to disclosure that they immediately stopped filing their cases in Delaware upon the issuance of the Connolly Order.²¹⁴ This would

financed-by-third-party-investors-and-foreign-entities/ [https://perma.cc/FL3V-L64A]; Theodorou, *supra* note 68.

²⁰⁸ See Olson, *supra* note 205, at 144.

²⁰⁹ See, e.g., VLSI Tech. LLC v. Intel Corp., No. 21-cv-00057, 2022 WL 1477726, at *1 (W.D. Tex. May 10, 2022) (awarding over \$2 billion in damages); see also Michael J. Garvin, *Intellectual Property Alert: Third-Party Funding of Patent Litigation*, VORYS (Aug. 2, 2018), <https://www.vorys.com/publication-I-Intellectual-Property-Alert-I-Third-Party-Funding-Of-Patent-Litigation> [https://perma.cc/7C62-EXC2] (“[A]ll major litigation funding firms promote patent and other intellectual property cases among the kinds of cases they fund, no doubt because patent cases often involve very high damages.”).

²¹⁰ Paul R. Gugliuzza, *Quick Decisions in Patent Cases*, 106 GEO. L.J. 619, 630 (2018) (highlighting the high cost of patent litigation, particularly discovery in patent cases).

²¹¹ See *supra* Figure 2; *infra* Appendix B1.

²¹² See *supra* Figure 1.

²¹³ See *infra* Appendix A.

²¹⁴ For example, VLSI dropped claims it litigated for three-and-a-half years against Intel, with prejudice, rather than comply with Connolly’s order. See Scott Graham, *VLSI Drops Claim amid Transparency Demands*, LAW.COM (Dec. 28, 2022, at 16:12 ET), <https://www.law.com/delbizcourt/2022/12/28/theyve-had-enough-of-judge-connolly-vlsi-drops-claim-amid-transparency-demands/> [https://perma.cc/JY9H-ZA8A].

be in line with what some plaintiffs in the patent field said when Chief Judge Connolly issued the Order.²¹⁵ But this hypothesis seems unlikely. There seems to be no reason that nonpatent TPLF funders would fear disclosure such that every funder chose to file elsewhere, but patent funders would not have the same fear. Indeed, many patent plaintiffs backed by TPLF have expressed that Connolly's order would persuade them to file elsewhere—something the data suggests is, in fact, happening—yet these plaintiffs continue to file in Delaware.²¹⁶

It is unclear exactly why Delaware saw fifteen percent of patent cases backed by TPLF while New Jersey had less than one percent. It could be that funders overwhelmingly prefer Delaware as a venue for their patent suits,²¹⁷ that New Jersey does not attract the sorts of patent cases that funders prefer, or some other reason. But this difference in TPLF filings between the two districts certainly deserves more study.

2. Undercounting Delaware TPLF Cases

The fifteen percent of third-party-funded patent cases is in line with most estimates of the amount of TPLF in patent law throughout the nation.²¹⁸ Thus, the data this Article reveals shows that some of the estimates about the role litigation financing plays in the patent litigation space have been accurate.

If anything, however, this fifteen-percent figure likely underestimates the percentage of nationwide patent cases that receive TPLF. This is for two main reasons. First, most patent cases filed in the United States that have NPE plaintiffs are concentrated in the Districts of Western and Eastern Texas.²¹⁹ If fifteen percent of the District of Delaware's

²¹⁵ Emily R. Siegel, *Disclosure Order Targeting Funders Stunts Delaware Patent Suits*, BLOOMBERG L. (Dec. 6, 2024, at 05:00 ET), <https://www.bloomberglaw.com/bloomberglawnews/business-and-practice/XA18265S000000> [<https://perma.cc/757A-E5R5>].

²¹⁶ U.S. DIST. CT., D. DEL., ANNUAL REPORT 2024, at 9 (2024), <https://www.ded.uscourts.gov/sites/ded/files/news/FINAL%20Court%20Report2024%20.pdf> [<https://perma.cc/4RVU-FGEE>].

²¹⁷ See, e.g., John R. Allison, Mark A. Lemley & David L. Schwartz, *Understanding the Realities of Modern Patent Litigation*, 92 TEX. L. REV. 1769, 1778 (2014). Anecdotally, many funders with whom the Author has spoken have noted the unrivaled benefits of litigation in Delaware.

²¹⁸ Unified Patents has identified that from 2015–2021, third parties have funded twenty-four percent of patent cases filed in the United States. See Korok Ray, *Time to Disclose Third-Party Funding of Patent Litigation*, REALCLEAR: POL'Y (Feb. 6, 2023), https://www.realclearpolicy.com/articles/2023/02/06/time_to_disclose_third-party_funding_of_patent_litigation_879783.html [<https://perma.cc/U9XN-WWE4>]; see also Ryan Davis, *Patent Suits Mostly Stayed Level in 2022, Yet Appeals Fell*, LAW360 (Feb. 15, 2023, at 12:14 ET), <https://www.law360.com/ip/articles/1573847> [<https://perma.cc/YES2-KBKN>] (“[P]atent litigation is totally independent from the stock market’ Investors have been attracted to funding patent cases ‘because it is sort of a constant return, no matter what happens in the larger economy’” (quoting Interview with Jason Balich, Wolf Greenfield & Sacks PC)).

²¹⁹ See *Patent Dispute Report: 2024 Mid-Year Report*, UNIFIED PATS. (July 22, 2024), <https://www.unifiedpatents.com/insights/2024/7/22/patent-dispute-report-2024-mid-year-report> [<https://www.unifiedpatents.com/insights/2024/7/22/patent-dispute-report-2024-mid-year-report>].

patent cases have TPLF, the Districts of Eastern and Western Texas likely have a higher percentage of patent TPLF. After all, the percentage of NPE cases is much higher in East and West Texas than in Delaware, and anecdotal evidence suggests that NPE cases tend to attract more TPLF.²²⁰ Because the percentage of NPE cases is higher in Texas, it is likely that a higher number of those plaintiffs are third-party funded than in Delaware. Because the bulk of U.S. patent cases are filed in Delaware, Eastern Texas, and Western Texas and because the number of TPLF plaintiffs is likely higher than fifteen percent in the Texas districts, it is likely that the total number of TPLF patent cases is higher than fifteen percent nationwide.

Second, the percentage of cases filed in Delaware is likely lower than it would have been absent the Connolly Order. As explained in Section V.C below, it is highly likely that the Order encouraged other TPLF plaintiffs to file elsewhere, in a district that did not have TPLF disclosure requirements.

Furthermore, this fifteen-percent figure undoubtedly undercounts the total number of TPLF cases. Some cases characterized as non-TPLF for purposes of this Article are likely to be TPLF cases. For example, Waverly Licensing, an NPE, sued Monolithic Power Systems.²²¹ Neither party in that case made a TPLF disclosure.²²² But the case was dismissed forty-one days after filing, less than thirty days after the case was assigned to Judge Connolly, and before disclosure of any third-party funding would have been required.²²³ It is highly likely that the case would have been classified as a TPLF case if it had reached a later stage of litigation; however, it was classified as a non-TPLF case for this Article because no party ever made a TPLF disclosure. There were similar cases in which the Author suspects the plaintiff received third-party funding, but the cases were similarly dismissed before disclosure was required.

perma.cc/6HH6-QRES] (reporting in figure 5 that the Eastern District of Texas received 426 NPE patent cases and the Western District of Texas received 168 NPE filings, making them the top two districts).

²²⁰ See *id.*; Letter from U.S. Mfrs. Ass'n for Dev. & Enter. to Darrell E. Issa, Chairman, and Henry C. Johnson Jr., Ranking Member, Subcomm. on Cts., Intell. Prop. & the Internet, H. Comm. on the Judiciary (June 12, 2024) (on file with The George Washington Law Review) (“[T]he majority of [third-party litigation] funding [is] directed to NPEs.”).

²²¹ See Complaint for Patent Infringement at 1, *Waverly Licensing LLC v. Monolithic Power Sys., Inc.*, No. 22-cv-00889 (D. Del. June 30, 2022).

²²² See Disclosure Statement, *Waverly Licensing*, No. 22-cv-00889 (D. Del. June 30, 2022). This is even though they are listed as having third-party funding by Unified Patents. See *1:22-cv-00889—Waverly Licensing LLC v. Monolithic Power Systems Inc.*, UNIFIED PATS., <https://portal.unifiedpatents.com/litigation/Delaware%20District%20Court/case/1:22-cv-00889> [https://perma.cc/7X67-P25P] (last visited Jan. 9, 2026).

²²³ See Notice of Voluntary Dismissal, *Waverly Licensing*, No. 22-cv-00889 (D. Del. Aug. 10, 2022), Dkt. No. 9; Standing Order Regarding Third-Party Litigation Funding Arrangements, *supra* note 42.

3. *The Technology Preferences of TPLF*

The data in this Article demonstrate that third-party funders prefer to litigate software and communications patents rather than mechanical or pharmaceutical patents.²²⁴ In fact, pharmaceutical, or ANDA, cases were never third-party funded over the period studied.²²⁵

There are many reasons that this may be the case. First, ANDA cases are very complex²²⁶ and usually have specialized attorneys that specifically focus on ANDA cases.²²⁷ They may not be attractive to third-party funders for this reason. Second, ANDA cases often involve a serious time commitment. Because these cases usually involve a drug manufacturer and a generic manufacturer—both of whom are interested in manufacturing a drug—neither party is likely to settle quickly; both parties oftentimes want a ruling in the case.²²⁸ For a funder who needs a quick return on investment, this fact may lead them to look elsewhere for cases to finance. Third, most pharmaceutical companies—whether brand or generic—have deep pockets and therefore are generally not in need of TPLF in order to litigate.²²⁹ They may desire TPLF for other reasons,²³⁰ but the main reason to think that plaintiffs turn to TPLF—quick cash to support litigation²³¹—is not a factor in most ANDA cases. Fourth, for a winning plaintiff in an ANDA litigation, the prize is usually the invalidation of their opponent’s patent and the right to make and sell the drug at issue.²³² In contrast, the prize for a successful defendant

²²⁴ See *supra* Section IV.B.4.

²²⁵ See *supra* Section IV.B.4.

²²⁶ See A.B.A., *ANDA LITIGATION* 27–30 (Kenneth L. Dorsney ed., 3d ed. 2020) (discussing the intricacies of the exclusivity period after filing an ANDA).

²²⁷ See Pedram Sameni, *Top Attorneys in ANDA Litigation: A Spotlight on the Best Performers and Most Active of 2024*, PATEXIA (Sep. 26, 2024), <https://patexia.com/feed/top-attorneys-in-anda-litigation-a-spotlight-on-the-best-performers-and-most-active-of-2024-20240926> [<https://perma.cc/NE5X-WUAG>] (listing the attorneys who tried the most ANDA cases in 2024).

²²⁸ See Pedram Sameni, *Report: ANDA Litigation is Declining*, IPWATCHDOG (Aug. 28, 2021, at 12:15 ET), <https://ipwatchdog.com/2021/08/28/report-anda-litigation-declining/> [<https://perma.cc/G9VW-G6DZ>] (“ANDA cases are less likely to end in a settlement compared to other types of patent litigation.”).

²²⁹ For example, Novo Nordisk, the maker of the weight loss drug Wegovy, had a 2023 revenue of \$36 billion. NOVO NORDISK, *ANNUAL REPORT 2024*, at 7 (2024), https://www.novonordisk.com/content/dam/nncorp/global/en/investors/irmaterial/annual_report/2025/novo-nordisk-annual-report-2024.pdf [<https://perma.cc/A9CE-88RU>].

²³⁰ Like, for instance, converting the liability of litigation into an asset.

²³¹ See *supra* notes 89–92 and accompanying text.

²³² See CLARK, *supra* note 60, at 4; Mikele Biccoli, *ANDA Litigation Intelligence Report Ranking Methodology 2024*, PATEXIA, <https://solutions.patexia.com/anda-litigation-intelligence-report-ranking-methodology-2024/> [<https://perma.cc/78TT-J67S>] (last visited Jan. 10, 2026) (“[I]t became apparent that practical and effective outcomes were relatively scarce. Few decisions

is validation of the already-existing patent and the ability to continue selling the drug without competition.²³³ Although either scenario can be incredibly lucrative to the companies involved, the winnings in a successful ANDA case are much harder to divide than cash. This complexity over how to structure the reward for a third-party funder may dissuade funders from investing in the space.

This apparent aversion to TPLF funding in ANDA cases—or ANDA patent filers’ aversion to TPLF—absolutely merits further research. Further research may uncover whether ANDA filers simply do not seek out or want TPLF or whether third-party funders see ANDA litigation as not worth the investment.

Although ANDA litigation was never third-party funded in the cases studied in this Article, the data in the New Jersey and Delaware databases shows communication or software patents were very likely to receive funding. The typical TPLF patent case involved some technology that could have a colorable relation to a mass market product: for example, social networking.

In 2023, InvesTrex sued a number of news organizations for patent infringement.²³⁴ The 2011 patent at issue in those cases involved a method of maintaining a social network for investors,²³⁵ specifically a system that has a social network with a messaging function.²³⁶ That messaging function allows the user to send a message that includes a ticker symbol that is automatically hyperlinked to information about the company’s stock price.²³⁷ This type of software patent is typical for the TPLF cases appearing on Chief Judge Connolly’s docket.²³⁸ Additionally, NPEs typically litigate these types of patents.²³⁹ Now, it appears that much of what is characterized as NPE patent litigation is being performed with TPLF.²⁴⁰

To be sure, some NPE litigation in Delaware is not third-party funded. Even some software and communication patents are also not third-party funded. For example, Unwired Global Systems filed several

or outcomes could be definitively classified as conveying tangible and evaluable benefits . . . to either the Plaintiff (Brand) or Defendant (Generic).”).

²³³ See CLARK, *supra* note 60, at 4.

²³⁴ See cases cited *supra* note 194.

²³⁵ See cases cited *supra* note 194; U.S. Patent No. 8,458,084 B2 col. 1 ll. 14–20 (filed May 31, 2011) (issued June 4, 2013).

²³⁶ ‘084 B2 Patent col. 10 ll. 11–27.

²³⁷ *Id.* col. 4 ll. 4–7, col. 10 ll. 11–27.

²³⁸ See *supra* Figure 4.

²³⁹ See *E-Commerce and Software Saw the Most NPE Litigation in Q2*, RPX (Aug. 17, 2022), <https://www.rpxcorp.com/data-byte/e-commerce-and-software-saw-the-most-npe-litigation-in-q2/> [<https://perma.cc/U748-D4KX>].

²⁴⁰ For a more complete theoretical discussion of the relation between patent trolls and third-party funders, see generally W. Bradley Wendel, *Litigation Trolls*, 12 N.Y.U. J.L. & Bus. 725 (2016).

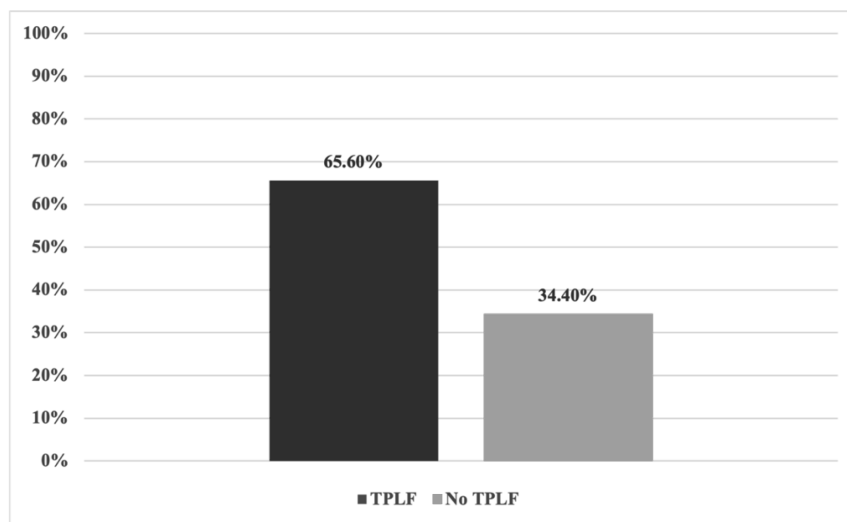
patent cases in the District of Delaware regarding wireless technology to which they did attach a TPLF disclosure.²⁴¹ Despite this, Unified Patents lists Unwired Global as an NPE with third-party financing.²⁴² Now, it might be that Unwired Global has some NPE litigation that does not have TPLF, or it might be that Unwired Global is simply not disclosing its third-party funding as the court requires, or it might be that Unified Patents' data is incorrect. Regardless, more investigation is required to uncover why Unwired Global and other companies like it are not filing TPLF disclosures.

What *is* certain is that third-party funders exclusively choose software and mechanical inventions in their funding decisions. This litigation approach mirrors the strategies of NPEs.

C. Litigation Strategy of TPLF

The data in this Article suggests that TPLF cases are stronger cases than those that are not third-party funded. For example, TPLF cases generally survive longer than their non-TPLF cousins.²⁴³ Figure 6 below highlights the difference in survival of TPLF versus non-TPLF cases.

FIGURE 6. DISTRICT OF DELAWARE (CONNOLLY, C.J.):
OPEN CASES BY TPLF STATUS



²⁴¹ See, e.g., Complaint for Patent Infringement at 2, 4, Unwired Glob. Sys. LLC v. A10 Networks, Inc., No. 23-cv-01165 (D. Del. Oct. 17, 2023).

²⁴² 1:23-cv-01165—Unwired Global Systems LLC v. A10 Networks Inc, UNIFIED PATS., <https://portal.unifiedpatents.com/litigation/Delaware%20District%20Court/case/1:23-cv-01165> [<https://perma.cc/8J6A-AU48>] (last visited Jan. 11, 2026).

²⁴³ See *supra* Section IV.B.3.

Of course, many factors affect a dismissal: a case may be dismissed because the parties have reached an agreement; a motion for summary judgment was granted;²⁴⁴ a Rule 12(b)(6) motion was granted;²⁴⁵ the plaintiff did not want to or lacked the funds to litigate anymore; or any number of other reasons. But early dismissal of two-thirds of non-TPLF cases does suggest, in the aggregate, that those cases are not as strong as the TPLF cases, which have been dismissed at half that rate.²⁴⁶

Additionally, this difference in early dismissals is likely influenced by the fact that, by definition, TPLF cases have the money needed to fully litigate the case. Although non-TPLF cases are more likely to accept a lowball offer to settle or give up their enforcement fight entirely due to lack of funds, the TPLF patent cases have the money to pursue their case. TPLF makes it easier to hang on to a case than if one is having to fund the lawsuit himself.

Other measures of the quality of a patent suit were more ambiguous about TPLF's benefits. For example, when considering the difference in how cases are litigated, one could look at whether TPLF cases pushed the judge for quicker—or more drawn out—case scheduling, such as trial dates, *Markman v. Westview Instruments, Inc.*²⁴⁷ hearing, etc. But because this study was conducted within two-and-a-half years of the Connolly Order, most cases had not yet progressed enough to effectively analyze whether third-party funders push cases to quicker resolution.²⁴⁸ Similarly, one might look to whether a case was likely to have a request to transfer to another district: There may be different behavior from TPLF parties than from non-TPLF parties. However, motions to transfer, which are relatively rare in Delaware, were very rare in the cases in the database.²⁴⁹

Similarly, the average case length does not provide any definitive information about differences in the way judges handle TPLF and non-TPLF cases. The average case length for cases that have concluded is 124 days for TPLF cases versus 131.2 days for non-TPLF cases. This one-week difference does not suggest that TPLF cases terminate on a different timeline than the non-TPLF cases. It may be that there are differences in how these cases are litigated, but the evidence is not showing up in the data at this preliminary stage.

²⁴⁴ FED. R. CIV. P. 56(a).

²⁴⁵ FED. R. CIV. P. 12(b)(6).

²⁴⁶ See *supra* Figure 6.

²⁴⁷ 517 U.S. 370 (1996).

²⁴⁸ For example, looking at claim construction, only three of the cases in the Author's database had been through a *Markman* hearing, one of the key points in patent litigation. See *id.* at 388–89, 391 (establishing the modern practice for interpreting the scope of patent claims). All three of the cases here that reached the *Markman* stage were non-TPLF.

²⁴⁹ The one motion to transfer was not granted. It was brought in a case that involved a TPLF-backed plaintiff; the defendant brought the motion.

TPLF patent cases have a better chance of survival compared with non-TPLF cases. But an issue for further study is determining whether that survival is due more to third parties screening cases or TPLF cases having more capital to continue litigating, or because TPLF funding is a signal to judges of a case's merit.

D. TPLF Cases Fleeing from Delaware (and New Jersey?)

When Chief Judge Connolly issued his Order, there were predictions that Delaware would dry up as a patent litigation hotbed.²⁵⁰ These predictions have continued.²⁵¹ Anecdotally, there is evidence that some plaintiffs are willing to walk away rather than disclose their litigation funders.²⁵² But others have predicted that although the Connolly Order would deter some plaintiffs from filing in Delaware, the advantages of Delaware—namely, its reputation as an easy-to-acquire venue with experienced judges—would outweigh the onerousness of the TPLF disclosure requirement.²⁵³ The data show that Delaware's patent filings have dropped precipitously since the Connolly Order. During the

²⁵⁰ See Jacob Gershman, *Delaware Judge Targets Secret Funding of Lawsuits*, WALL ST. J. (May 22, 2023, at 08:00 ET), <https://www.wsj.com/us-news/law/delaware-judge-targets-secret-funding-of-lawsuits-b0fe608b> [<https://perma.cc/QD2Z-65LR>]; Heather M. Schneider & Eugene L. Chang, *Patent Ownership and Litigation Financing: A New Era Begins in Delaware?*, CLIENT ALERT (Wilkie Farr & Gallagher LLP, New York, N.Y.), Dec. 22, 2022, at 4, <https://www.willkie.com/-/media/files/publications/2022/patentownershipandlitigationfinancinganewerabegins.pdf> [<https://perma.cc/W6SE-PFVL>] (“By markedly increasing the risk of filing for parties with third-party connections they prefer not to reveal, Chief Judge Connolly’s actions may deter some plaintiffs from filing and in turn reduce the court’s crushing caseload.”).

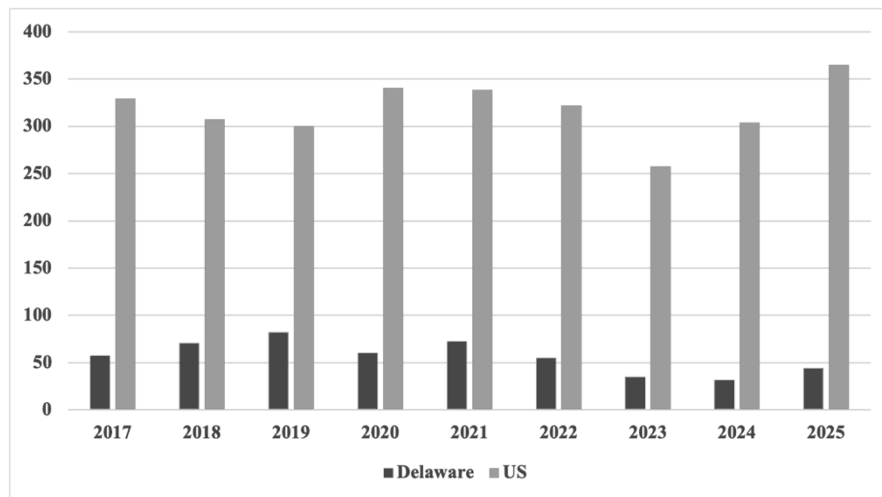
²⁵¹ See Eugene Mar, *One Judge’s Mission to Unearth Who Is Behind These Patent Trolls*, JD SUPRA (July 18, 2024), <https://www.jdsupra.com/legalnews/one-judge-s-mission-to-unearth-who-is-5590704/> [<https://perma.cc/QN9N-C7AJ>] (stating that the Connolly Order has “led some patent trolls to stop filing in Delaware”).

²⁵² See Graham, *supra* note 214 (recounting how VLSI—an entity with funding from Fortress, a third-party litigation financier—dropped its case against Intel rather than subject its funders to disclosure). They had been litigating against Intel for three-and-a-half years. *Id.* The case was dismissed with prejudice, meaning that VLSI cannot assert these patents against Intel again. *See id.* But the \$2.18 billion that they were awarded against Intel in Texas probably eases the pain of having to drop the new charges in Delaware. *See VLSI Tech. LLC v. Intel Corp.*, No. 21-cv-00057, 2022 WL 1477726, at *1 (W.D. Tex. May 10, 2022) (awarding \$2.175 billion in damages); *see also* Stroud, *supra* note 43 (relaying how “entities[] like VLSI Technology LLC and IP Edge have now pulled back from litigation in Delaware to keep their investors hidden”).

²⁵³ See Harper Batts, *Early 2023 Update: Where Are Plaintiffs Filing Patent Cases Now?*, SHEPARD MULLIN (Feb. 10, 2023), <https://www.intellectualpropertylawblog.com/archives/early-2023-update-where-are-plaintiffs-filing-patent-cases-now/> [<https://perma.cc/7EV2-84D8>] (“[I]t appears Delaware has maintained its popularity despite the attention Judge Connolly’s standing orders have received.”). Still, others have said that the Connolly Order amounts to “gender harassment.” *See* Christopher Yaszko, *Connolly Letter Called ‘Gender Harassment’ by Patent Plaintiff*, BLOOMBERG L. (June 8, 2023, at 14:32 ET), <https://news.bloomberglaw.com/ip-law/connolly-letter-called-gender-harassment-by-patent-plaintiff> [<https://perma.cc/6BAP-BHFG>].

two-year period before the Order, Delaware received 1,899 patent case filings. After the Order, the district received 1,121 patent cases. That is a forty-one percent drop in patent filings. Overall, patent cases in the United States for that period dropped by only 8.8%. Figure 7 illustrates the comparison between Delaware and the broader United States in terms of the number of filed patent cases. This staggering difference between Delaware's drop in patent cases filed and the overall U.S. rate of patent cases filed indicates that something drove patent filers out of Delaware during this period.

FIGURE 7. U.S. AND DELAWARE PATENT CASES, BY YEAR



Something is impacting the amount of patent cases filed in Delaware. Although the Connolly Order is a prime suspect for the drop in patent cases in the district, there are other possible factors in the drop. For example, another judge in the District of Delaware, Judge Leonard Stark, was elevated to the Federal Circuit on March 17, 2022.²⁵⁴ Judge Stark was an expert in patent litigation,²⁵⁵ and his leaving the bench in Delaware may have convinced plaintiffs to file their cases elsewhere. Additionally, patent litigation generally has slowed since 2022. Other,

²⁵⁴ Notice, U.S. Fed. Cir., Investiture Ceremony for the Hon. Leonard P. Stark (Oct. 11, 2022), <https://www.cafc.uscourts.gov/wp-content/uploads/Announcements/PublicNotices/Notice-Judge-StarkInvestiture-10112022.pdf> [<https://perma.cc/4RCQ-AVHA>].

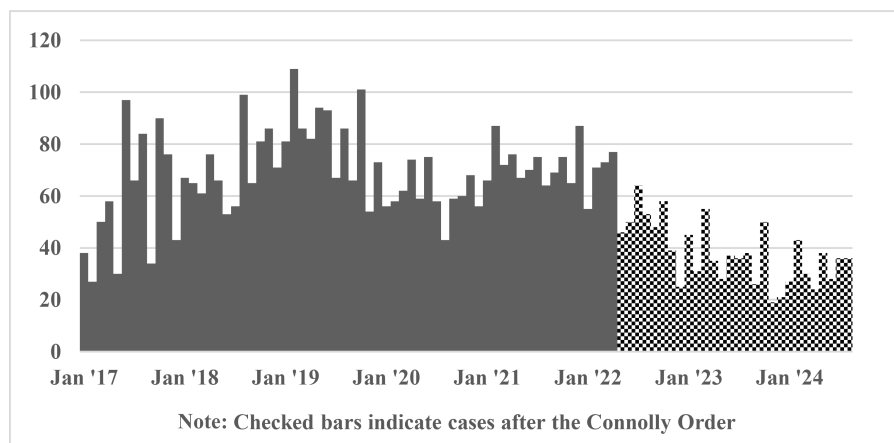
²⁵⁵ Anthony M. Insogna, David M. Maiorana, Ryan B. McCrum & Jennifer L. Swize, *President Biden Selects District of Delaware Chief Judge Stark for Federal Circuit*, JONES DAY (Nov. 2021), <https://www.jonesday.com/en/insights/2021/11/president-biden-selects-district-of-delaware-chief-judge-stark-for-federal-circuit> [<https://perma.cc/FC57-3RK5>].

more subtle changes to Delaware’s practices may have also contributed to the reduction in filings.²⁵⁶

Some of the drop is probably related to general trends and not exclusively to the Connolly Order. For example, Delaware received 2,149 patent cases from July 6, 2017, to November 26, 2019. That means that in the period between November 27, 2019, and April 17, 2022, patent cases dropped by 8.9%, despite both periods being before the Order. There is something else driving patent cases out of Delaware—or out of filing altogether. But the fact that cases dropped by a staggering forty-one percent over the next two years indicates that at least some filers of patent cases were looking elsewhere, likely because the Connolly Order.

If one considers a monthly chart of the patent filings in the District of Delaware, there is a precipitous drop-off in filings in May 2022, the first full month after the Connolly Order. The following months, as shown in Figure 8, see a general trend of fewer and fewer patent cases filed in Delaware.

FIGURE 8. DISTRICT OF DELAWARE: PATENT CASE FILINGS, BY MONTH

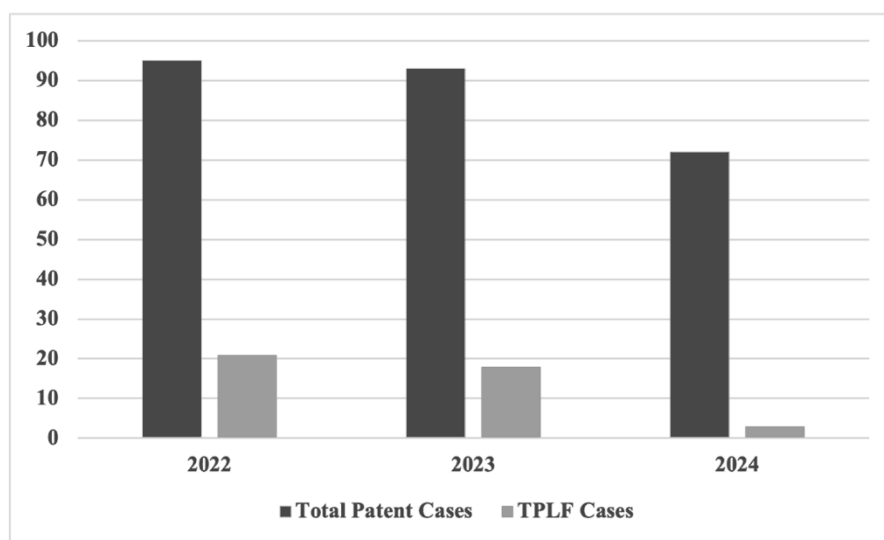


Zeroing in further on the period after the Order, one can see a quick drop off in patent filings after April 2022, followed by a fairly constant, yet diminishing, number of filings thereafter until 2024.

²⁵⁶ For instance, at a Delaware Federal Bar event in 2022, Chief Judge Connolly spoke of ways to reduce the District of Delaware’s overwhelming docket. Stephanie Smiertka Riley, *Delaware Judge Enforces Patent Case Disclosure Requirements*, WOMBLE BOND DICKINSON (Aug. 25, 2022), <https://www.womblebonddickinson.com/us/insights/alerts/delaware-judge-enforces-patent-case-disclosure-requirements> [<https://perma.cc/ZRU2-FHA2>]. Those methods include increased use of magistrates and special masters, as well as a change in deadlines “for filings other than initial pleadings” from 6:00 p.m. to 5:00 p.m. *Id.*

Now, if one tracks the number of patent cases with a TPLF disclosure, the drop-off in filings is stark after April 2022. Figure 9 breaks down the amount of TPLF patent cases versus the total patent filings by year.

FIGURE 9. DISTRICT OF DELAWARE (CONNOLLY, C.J.):
PATENT CASES, 4/18/2022–12/31/2024



Perhaps the most interesting thing about the TPLF filings in Delaware is that there are, in fact, some TPLF patent cases that *are* filed in Delaware after the Connolly Order: forty, in fact.²⁵⁷ In New Jersey, by contrast, there are virtually no TPLF patent cases after its disclosure order.²⁵⁸ There are reasons to suspect that Delaware will continue to be an attractive patent destination, despite the Order—albeit, a less attractive venue than before. First, Delaware will always have a venue advantage over other district courts, because corporate venue in patent cases is limited to (1) the defendant’s state of incorporation²⁵⁹ or (2) where the defendant has committed acts of infringement *and* has a regular and established place of business.²⁶⁰ Although this still provides many plaintiffs with a range of districts in which they can sue, proving that a defendant has a regular and established place of business outside

²⁵⁷ See *supra* Figure 1.

²⁵⁸ See *infra* Appendix A.

²⁵⁹ *TC Heartland LLC v. Kraft Foods Grp. Brands, LLC*, 581 U.S. 258, 261–62 (2017) (interpreting “where the defendant resides” for the purposes of 28 U.S.C. § 1400(b) as being “only in its State of incorporation”).

²⁶⁰ *Id.* at 261.

of their state of incorporation may prove difficult in some cases.²⁶¹ Thus, Delaware, where most large American companies are incorporated,²⁶² will continue to be an attractive forum because venue will always be met when suing a Delaware-incorporated defendant.

Also, Delaware has advantages beyond ease of establishing venue. The judges in Delaware are already highly experienced with patent cases.²⁶³ This familiarity with patent cases is attractive to certain plaintiffs who want an experienced handler of their case. The judges in Delaware also have a reputation of evenhandedness when it comes to patent cases. Although many plaintiffs want the procedural advantages offered to plaintiffs by districts like the Eastern District of Texas²⁶⁴ or, until recently, the Western District of Texas,²⁶⁵ some plaintiffs may want the reputation of Delaware judges.

Now that Delaware lacks the procedural advantages that Texas does—i.e., judge shopping, hostility towards transfer motions and motions to dismiss, refusal to stay cases when the defendant brings an inter partes review, etc.²⁶⁶—and has a procedural *disadvantage* for TPLF plaintiffs, the forum shopping calculus has tipped further toward Texas. And it seems the data supports the theory that TPLF plaintiffs will increasingly avoid Delaware.

Figure 8, above, seems to show that plaintiffs were somewhat willing to continue filing in Delaware despite the TPLF order. But as it became increasingly apparent that Chief Judge Connolly was more than willing to investigate and enforce the Order,²⁶⁷ TPLF patent plaintiffs have increasingly decided not to file in Delaware. In fact, there have only been four TPLF disclosures in 2024.²⁶⁸ Thus, it seems plain that the Connolly Order has had a large impact on patent filings within the district—particularly with plaintiffs that are third-party funded.

But what of other factors impacting the number of case filings in Delaware? The data provides some partial answers as to whether they have affected filings. For example, did Judge Stark's departure from

²⁶¹ For instance, Apple closed two Apple stores in the Dallas suburbs of Plano just to avoid being subject to venue in the Eastern District of Texas. Timothy B. Lee, *Apple Closes Two Dallas Stores in Apparent Bid to Ward Off Patent Trolls*, ARS TECHNICA (Feb. 23, 2019, at 11:00 ET), <https://arstechnica.com/tech-policy/2019/02/apple-closes-two-dallas-stores-in-apparent-bid-to-ward-off-patent-trolls/> [<https://perma.cc/6XAL-VENF>].

²⁶² *About the Division of Corporations*, DEL. DIV. CORPS., <https://corp.delaware.gov/about-agency/> [<https://perma.cc/DXR5-NT56>] (last visited Dec. 18, 2025) (“More than 66% of the Fortune 500 have chosen Delaware as their legal home.”).

²⁶³ J. Jonas Anderson, *Court Competition for Patent Cases*, 163 U. PA. L. REV. 631, 655 (2015).

²⁶⁴ *See id.* at 651–52.

²⁶⁵ *See* J. Jonas Anderson & Paul R. Gugliuzza, *Federal Judge Seeks Patent Cases*, 71 DUKE L.J. 419, 452–68 (2021).

²⁶⁶ *Id.*

²⁶⁷ *See supra* notes 121–34 and accompanying text.

²⁶⁸ *See infra* Appendix B1.

the bench lead to plaintiffs looking elsewhere? President Biden nominated Judge Stark to the U.S. Court of Appeals for Federal Circuit on November 3, 2021²⁶⁹—so plaintiffs knew well before the Connolly Order that there was a strong possibility that Judge Stark would not be around to conduct their trial. Shortly thereafter, on February 9, 2022, the U.S. Senate confirmed Stark’s nomination.²⁷⁰ He was sworn in on March 17, 2022, as a judge on the Federal Circuit.²⁷¹

It is impossible to determine the impact of Judge Stark leaving the bench versus the impact of the Connolly Order, considering that they happened within a relatively brief period: Connolly issued his Order on April 18, 2022, and Stark was ultimately confirmed just a month earlier. But Judge Stark’s *nomination* to the Federal Circuit happened nearly five months before Judge Connolly’s order. If a plaintiff was disinclined to file their case in Delaware without Judge Stark on the bench, the nomination date is likely the important date to consider: A judicial nomination is certainly not a guarantee that a judge will leave the bench, but with a president from Delaware²⁷² and a Senate controlled by the President’s party,²⁷³ odds were high that Stark would be confirmed. If Stark’s elevation was the main driver behind plaintiffs’ decision to look beyond Delaware, one should see the drop-off in filings happen in November 2021; however, December 2021 was the *highest* month for patent filings in Delaware since October 2019, with eighty-seven cases.²⁷⁴ The next few months were fairly typical for patent filings in Delaware: fifty-five, seventy-one, seventy-three, and seventy-seven cases, respectively. This is not exactly the behavior of plaintiffs who are concerned with an experienced jurist leaving the Delaware bench. Instead, the drop-off occurred after Judge Connolly issued his Order on April 18, 2022.

Of course, it is impossible to say with certainty *how much* of an impact Connolly’s order had on Delaware’s patent caseload. Delaware

²⁶⁹ Press Release, The White House, President Biden Names Ninth Round of Judicial Nominations (Nov. 3, 2021) (on file with the National Archives).

²⁷⁰ 168 CONG. REC. S616–17 (daily ed. Feb. 9, 2022) (noting the confirmation of “Leonard Philip Stark, of Delaware, to be United States Circuit Judge for the Federal Circuit”).

²⁷¹ Notice, U.S. Fed. Cir., *supra* note 254; *Notices & Announcements*, U.S. FED. CIR. (Mar. 17, 2022), <https://www.cafc.uscourts.gov/home/the-court/notices-announcements/page/12/> [<https://perma.cc/H6MU-SLK4>].

²⁷² See Sheryl Gay Stolberg, *Biden Hosts a Final ‘Quad Summit’ at His Delaware Home*, N.Y. TIMES (Sep. 21, 2024), <https://www.nytimes.com/2024/09/21/us/politics/biden-quad-summit.html> [<https://perma.cc/22CC-PXYF>] (reporting on an international meeting President Biden held at his home in Wilmington, Delaware).

²⁷³ See *Party Division*, U.S. SENATE: PARTIES & LEADERSHIP, <https://www.senate.gov/history/partydiv.htm> [<https://perma.cc/NTE8-ATH3>] (last visited Dec. 18, 2025) (showing the Senate during the 117th Congress had forty-eight Democrats and fifty Republicans with two independents caucusing with the Democratic Party and that “Democrats [held] the majority due to the tie-breaking vote of Vice President Kamala Harris”).

²⁷⁴ December 2021 remains the recent high month for patent filings in Delaware.

has certainly become less welcoming to patent plaintiffs since Judge Connolly became Chief Judge. He has made multiple changes to the administration of the district that may be construed as “anti-patentee” — even aside from the Order.²⁷⁵ It is likely that some of this anti-patent-case ethos has contributed to patent plaintiffs’ decision to file in other districts. But the near evaporation of TPLF filers around the date of the Order suggests that a large factor in plaintiffs’ exit from Delaware is the Order and Connolly’s dogged pursuit of attorneys evading it.

Proponents of regulating TPLF will likely see this data as proof that third-party funders have something to hide. TPLF supporters, on the other hand, will probably claim that there is nothing untoward about choosing, within the rules of the chosen venue, not to disclose funding. In general, to discover how much TPLF impacts the federal litigation system, there should be nationwide rules about TPLF disclosure. That way, one can assess the impact TPLF has on litigation while ameliorating the distortion of selection effects. And that is the only way to know what we do not know.

CONCLUSION

The District of New Jersey’s June 2021 TPLF disclosure order and Chief Judge Connolly’s Order have provided the first glimpse under the hood of litigation funding. From an analysis of the cases funded by third parties, the engine that powers TPLF is—at least in Delaware—patent litigation. Ninety-six percent of the cases funded by third parties in Chief Judge Connolly’s courtroom are patent litigation cases. Sixteen percent of all patent cases filed in Connolly’s chambers are TPLF cases, and that number is likely an undercount. Furthermore, those TPLF patent cases are typical NPE cases: software or communications patents brought against large companies.

But this peek into the black box of litigation funding came at a cost to Delaware. Patent filings in the District of Delaware have dropped precipitously since the Connolly Order. And almost all of that drop is due to TPLF cases increasingly being filed elsewhere.

On the other hand, in neighboring New Jersey, TPLF disclosure requirements have had much less impact in terms of filing numbers. Far less than one percent of civil cases filed in New Jersey were filed with a TPLF disclosure. Either third-party-funded plaintiffs never had reason to file in the District of New Jersey or the TPLF disclosure order convinced them to file elsewhere.

²⁷⁵ See, e.g., Steven L. Caponi, Matthew B. Goeller & Megan E. Hunt, *Judge Connolly Issues Three New Orders Impacting Patent Cases*, K&L GATES (May 16, 2022), <https://www.klgates.com/Judge-Connolly-Issues-Three-New-Orders-Impacting-Patent-Cases-5-16-2022> [<https://perma.cc/Z5EY-C2U9>] (reporting on Judge Connolly’s changes to scheduling order procedures and his requirements for additional disclosures under Federal Rule of Civil Procedure 7.1).

In both New Jersey and Delaware, the data reveals that TPLF is not at play in pharmaceutical patent cases, while it is alive and well in software and communications patent suits. This suggests that third-party funding plays a large role in funding NPE suits. This also suggests, but does not prove, that such TPLF is more common in Texas, which has a high number of NPE patent suits.

More study of the real-world litigation impacts of TPLF is desperately needed. But to further study TPLF, more data is needed. The best way to get that data is by mandating that all federal cases have a disclosure requirement for third-party funding. Barring that, those who study TPLF and its impacts must rely on individual courts and districts to issue their own rules requiring such disclosures.

APPENDIX A: NEW JERSEY TPLF CASES
(JUNE 21, 2021–Nov. 15, 2024)

Note that cases in *italics* are cases that were filed before New Jersey's TPLF disclosure order but that were still pending after its issuance and were therefore subject to the disclosure requirement.

Case	Date Filed	Cause of Action	TPLF Name
<i>In Re: Johnson & Johnson Talcum Powder Products</i>	10/4/2016	<i>Personal Injury</i>	<i>TRGP Capital and Virage Capital</i>
<i>Microspherix LLC v. Merck Sharp & Dohme Corp.</i>	6/5/2017	<i>Patent Infringement</i>	<i>Law Finance Group</i>
<i>Absorption Pharmaceuticals, LLC v. Reckitt Benckiser, LLC</i>	12/8/2017	<i>Fraud</i>	<i>Omni Bridgeway</i>
<i>Sandoz Inc. v. United Therapeutics Corp.</i>	4/16/2019	<i>Antitrust</i>	<i>Henderson SPV</i>
<i>Guy A. Shaked Investments, Ltd. v. Ontel Products Corp.</i>	8/3/2020	<i>Patent Infringement</i>	<i>Mossco Capital</i>
<i>Pedoto v. Seton Hall University</i>	11/10/2020	<i>Civil Rights</i>	<i>Legalist Fund III, LP</i>
<i>Rachlin v. Baumann</i>	8/16/2021	<i>Civil Rights Act</i>	<i>Firearms Policy Foundation</i>
<i>Wurth USA, Inc. v. Thompson</i>	11/9/2021	<i>Breach of Contract</i>	<i>Winzer Corp</i>
<i>Evolve Interactive LLC v. LG Electronics USA, Inc.</i>	10/11/2021	<i>Patent Infringement</i>	<i>Endpoint IP LLC</i>
<i>Eastern Appliances Inc. v. Brother Appliances</i>	12/12/2022	<i>Breach of Contract</i>	<i>Frontier Investment Group, LLC</i>
<i>Hulse v. Aucta Pharmaceuticals, Inc.</i>	7/18/2022	<i>Breach of Contract</i>	<i>Legalist Fund III, LP</i>
<i>Newark Teachers Union Local 481, AFT, AFT-CIO v. City of Newark Board of Education</i>	1/20/2022	<i>Employment Discrimination</i>	<i>Newark Teacher's Union</i>
<i>Royzenshteyn v. Onyx Enterprises Canada Inc.</i>	12/27/2022	<i>Breach of Contract</i>	<i>VF Asset Holdings, LLC</i>
<i>Jawbone Innovations, LLC v. Sony Electronics Inc.</i>	2/28/2023	<i>Patent Infringement</i>	<i>Longford Capital Fund III, LP</i>
<i>Local No. 1 Health Fund v. Plan of Benefits for the Local No. 1. Health Fund</i>	10/13/2023	<i>RICO</i>	<i>Legalist Fund III, LP</i>

Case	Date Filed	Cause of Action	TPLF Name
Lovaglio v. Baston	11/2/2023	Civil Rights Act	The Institute for Justice
Morrill v. Fulop	12/18/2023	Civil Rights Act	Yale's Media Freedom & Info Access Law Clinic; Weissman & Mintz
PBF Holding Company LLC v. United States	10/26/2023	IRS: Refund Excise Tax	Ryan Excise Tax Service, LLC
Atlas Data Privacy Corporation v. 6Sense Insights, Inc. ²⁷⁶	3/22/2024	Other Civil Rights	Atlas Litigation Support, LLC (% Parabellum Capital LLC)

²⁷⁶ There were seventy-four cases filed by Atlanta Data Privacy Corp., all of which were funded by Atlas Litigation Support, LLC.

APPENDIX B1: DELAWARE PATENT INFRINGEMENT TPLF CASES
(APR. 18, 2022–Nov. 22, 2024)

For all cases marked with an asterisk (“*”), the name of the third-party funder was not disclosed. The Author presumes it to be attorney Jimmy Chong based on Judge Connolly’s disciplinary actions taken against him regarding disclosure requirements.²⁷⁷ As with the prior table, cases in *italics* are cases that were filed before Judge Connolly’s TPLF disclosure order but that were still pending after its issuance and were therefore subject to the disclosure requirement.

Case	Date Filed	TPLF Name
<i>DDR Holdings LLC v. Priceline.com LLC</i>	5/2/2017	<i>Unknown (disclosure sealed)</i>
<i>Personal Audio, LLC v. Google LLC</i>	12/6/2017	<i>Medigo Associates, LLC</i>
<i>Ethanol Boosting Systems LLC v. Ford Motor Co.</i>	5/27/2020	<i>Longford Capital Fund II</i>
<i>Media Content Protection LLC v. HP, Inc.</i>	9/17/2020	<i>Combs Investment, LLC</i>
<i>Media Content Protection LLC v. Dell Technologies, Inc.</i>	9/17/2020	<i>Combs Investment, LLC</i>
<i>Media Content Protection LLC v. Lenovo</i>	9/17/2020	<i>Combs Investment, LLC</i>
<i>Media Content Protection LLC v. Intel Corp.</i>	9/17/2020	<i>Combs Investment, LLC</i>
<i>Media Content Protection LLC v. Mediatek, Inc.</i>	9/17/2020	<i>Combs Investment, LLC</i>
<i>Media Content Protection LLC v. Realtek Semiconductor Corp.</i>	9/17/2020	<i>Combs Investment, LLC</i>
<i>De Fernandez v. Seaboard Marine Ltd.</i>	7/21/2021	<i>Unknown (disclosure sealed)</i>
<i>Nimitz Technologies LLC v. CNET Media, Inc.</i>	8/20/2021	<i>Mavexar/IP Edge*</i>
<i>Charles Smith Enterprises, LLC v. Catapult Sports Inc.</i>	9/8/2021	<i>IP Commercialization Labs (IPCL)</i>
<i>Charles Smith Enterprises, LLC v. DVSport, Inc.</i>	9/8/2021	<i>IP Commercialization Labs (IPCL)</i>
<i>Nimitz Technologies LLC v. Buzzfeed, Inc.</i>	9/27/2021	<i>Mavexar/IP Edge*</i>
<i>Longbeam Technologies LLC v. Amazon.com, Inc.</i>	11/1/2021	<i>Diagnault Iyer LLP</i>

²⁷⁷ See Brachmann, *supra* note 134; Backertop Licensing LLC v. Canary Connect, Inc., 107 F.4th 1335, 1337–39 (Fed. Cir. 2024).

Case	Date Filed	TPLF Name
<i>Nimitz Technologies LLC v. Imagine Learning, Inc.</i>	12/31/2021	<i>Mavexar/IP Edge*</i>
<i>Swirlate IP LLC v. Quantela, Inc.</i>	2/24/2022	<i>Mavexar/IP Edge*</i>
<i>Mellaconic IP LLC v. Deputy, Inc.</i>	2/25/2022	<i>Mavexar/IP Edge*</i>
<i>Mellaconic IP LLC v. TimeClock Plus, LLC</i>	2/25/2022	<i>Mavexar/IP Edge*</i>
<i>Swirlate IP LLC v. Lantronix, Inc.</i>	2/25/2022	<i>Mavexar/IP Edge*</i>
<i>Bright Capture LLC v. Expensify, Inc.</i>	3/28/2022	<i>Bayes Fund LLC</i>
<i>Nimitz Technologies LLC v. Bloomberg L.P.</i>	3/30/2022	<i>Mavexar/IP Edge*</i>
<i>Creekview IP LLC v. Skullcandy Inc.</i>	3/31/2022	<i>Mavexar/IP Edge*</i>
<i>Creekview IP LLC v. Jabra Corp.</i>	3/31/2022	<i>Mavexar/IP Edge*</i>
<i>Lamplight Licensing LLC v. ABB Inc.</i>	3/31/2022	<i>Mavexar/IP Edge*</i>
<i>Waverly Licensing LLC v. Granite River Labs Inc.</i>	3/31/2022	<i>Mavexar/IP Edge*</i>
<i>Waverly Licensing LLC v. AT&T Mobility LLC</i>	3/31/2022	<i>Mavexar/IP Edge*</i>
<i>Mellaconic IP LLC v. Justworks, Inc.</i>	4/27/2022	<i>Mavexar/IP Edge</i>
<i>Mellaconic IP LLC v. Deputy, Inc.</i>	4/27/2022	<i>Mavexar/IP Edge</i>
<i>Mellaconic IP LLC v. Avast Software, Inc.</i>	4/27/2022	<i>Mavexar/IP Edge</i>
<i>Backertop Licensing LLC v. Hampton Products International Corp.</i>	4/28/2022	<i>Mavexar/IP Edge*</i>
<i>Backertop Licensing LLC v. Wyze Labs, Inc.</i>	4/28/2022	<i>Mavexar/IP Edge*</i>
<i>Backertop Licensing LLC v. Canary Connect, Inc.</i>	4/28/2022	<i>Mavexar/IP Edge</i>
<i>Backertop Licensing LLC v. August Home, Inc.</i>	4/28/2022	<i>Mavexar/IP Edge</i>
<i>Watchy Technology Private Ltd. v. Mushroom Networks, Inc.</i>	6/2/2022	<i>Patent Asset Management Advisors, LLC</i>
<i>Watchy Technology Private Ltd. v. Tata Communications (America), Inc.</i>	6/2/2022	<i>Patent Asset Management Advisors, LLC</i>
<i>Watchy Technology Private Ltd. v. Liveu Inc.</i>	6/2/2022	<i>Patent Asset Management Advisors, LLC</i>
<i>Watchy Technology Private Ltd. v. Broad Sky Networks, LLC</i>	6/2/2022	<i>Patent Asset Management Advisors, LLC</i>
<i>Missed Call, LLC v. Twilio Inc.</i>	6/6/2022	<i>Ramey LLP</i>
<i>Missed Call, LLC v. Talkdesk, Inc.</i>	6/6/2022	<i>Ramey LLP</i>
<i>Missed Call, LLC v. Freshworks, Inc.</i>	6/6/2022	<i>Ramey LLP</i>
<i>Safe IP LLC v. Proctorio, Inc.</i>	7/11/2022	<i>Ramey LLP</i>
<i>Safe IP LLC v. Grammarly, Inc.</i>	7/11/2022	<i>Ramey LLP</i>

Case	Date Filed	TPLF Name
Safe IP LLC v. Copyleaks, Inc.	7/11/2022	Ramey LLP
Nimbelink Corp. v. Digi International Inc.	7/20/2022	Wensum Yare LLP
Ampt, LLC v. Solaredge Technologies, Inc.	7/28/2022	Boundary Capital LLC
Lamplight Licensing LLC v. Ingram Micro, Inc.	7/31/2022	Mavexar/IP Edge*
Investrex LLC v. News Corporation	2/24/2023	Marbit Lending, LLC
Investrex LLC v. Bloomberg LP	2/24/2023	Marbit Lending, LLC
Investrex LLC v. Apollo Global Management, Inc.	2/24/2023	Marbit Lending, LLC
Investrex LLC v. Stocktwits, Inc.	2/24/2023	Marbit Lending, LLC
Investrex LLC v. Seeking Alpha Inc.	2/24/2023	Marbit Lending, LLC
Tron Holdings LLC v. Booking Holdings, Inc.	3/13/2023	Marbit Lending, LLC
Investrex LLC v. Yahoo Inc.	3/19/2023	Marbit Lending, LLC
Bright Capture LLC v. Veryfi, Inc.	4/5/2023	Bayes Fund LLC
Watchy Technology Private Limited v. Tvu Networks Corporation	4/26/2023	Patent Asset Management Advisors, LLC
Watchy Technology Private Limited v. Dejero, Inc.	4/26/2023	Patent Asset Management Advisors, LLC
Staton Techiya, LLC v. Harman International Industries, Inc.	7/25/2023	Purple Vine IP Operating (Shenzen)
Staton Techiya, LLC v. Harman International Industries, Inc.	7/25/2023	Purple Vine IP Operating (Shenzen)
Virtual Creative Artists, LLC v. Tumblr, Inc.	10/10/2023	Unknown*
Virtual Creative Artists, LLC v. Monster Worldwide, Inc.	10/10/2023	Unknown*
Virtual Creative Artists, LLC v. The Meet Group, Inc.	11/20/2023	Unknown*
Virtual Creative Artists, LLC v. Nextdoor, Inc.	11/20/2023	Unknown*
Investrex LLC v. Benzinga Holdings LLC	1/11/2024	Marbit Lending, LLC
Sportradar US LLC v. Sportscaster, Inc.	2/9/2024	Longford Capital Fund III, LP
CUPP Cybersecurity LLC v. Gen Digital Inc.	2/15/2024	Longford Capital Fund II, LP
ALM Holding Co. v. Zydex Industries Private Ltd.	3/21/2024	Ingevity Corp.

APPENDIX B2: DELAWARE NONPATENT TPLF CASES
(APR. 18, 2022–NOV. 22, 2024)

Case	Date Filed	Cause of Action	TPLF Name
Unstoppable Domains Inc. v. Gateway Registry, Inc.	7/19/2022	Trademark Infringement	Namebase USA, Inc.
Florsck v. Unstoppable Domains Inc.	9/21/2022	Trademark Infringement	Namebase USA, Inc.