

# Third-Party Litigation Funding

## The Basics

An investment opportunity like litigation funding, the returns of which are uncorrelated with broader markets, can prove attractive to investors interested in alternative asset classes—particularly in a climate flush with excess capital and during times of historically low interest rates. Despite risk and expense of capital running high in this relatively nascent asset class, interest in the practice of third-party litigation funding appears to be growing in the US.

A third-party litigation funder provides capital to a litigant in return for a share of any financial recovery from the underlying litigation. A typical funding agreement requires a priority return of at least 1x, with the funder receiving repayment of the principal investment (plus any specified return) before counsel or litigant is paid.

Litigation funding is typically provided on a nonrecourse basis; that is, the funder collects a return on its investment only in the event of a successful outcome. If a funded plaintiff fails to recover in litigation, that plaintiff is generally *not* obligated to repay the funds advanced for the litigation.

Third-party funders of NPE litigation typically fall into one of three categories: general litigation finance firms (e.g., Burford Capital, Longford Capital); targeted IP investment firms (Dyna IP, IPValue Management); or multi-strategy funds (Fortress Investment Group, Magnetar Capital).

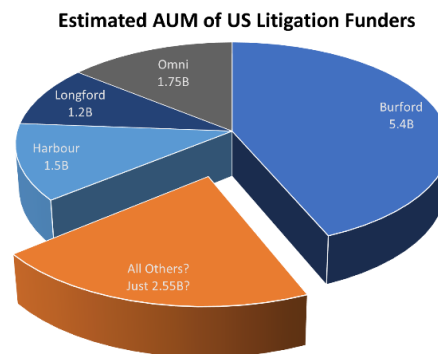
RPX tracks relationships between patent holders and third-party litigation funders, reporting in member-facing content and data (e.g., on RPX Insight) only those funding relationships that can be corroborated via publicly available documents.

## The Numbers

To date, RPX has identified via public records over 130 relationships between US patent holders and third-party litigation funders; 30 new third-party backed NPE campaigns launched in 2021, at least nine in Q4 alone; and at least seven such campaigns initiated in Q1 2022.

In March 2022, Westfleet Advisors released its [2021 Litigation Finance Market Report](#), which estimated that a group of 47 litigation funders active in the US market had combined assets under management (AUM) of \$12.4B (up from \$11.3B in 2020).

- Not limited to funders active in the patent space, the report claimed that “Patent litigation attracted a significantly higher percentage of new commitments in 2021, comprising 29% of all capital commitments. This allocation represents a 61% increase from 2020 as a percentage of the total.”
- RPX analysis suggests that the combined AUM for litigation funders active in the US market could be higher than Westfleet’s estimate. The combined [reported](#) AUM of just four pure play litigation funders that RPX has confirmed, via public records, to be currently active in the patent space (Burford Capital, Harbour Litigation Funding, Longford Capital, and Omni Bridgeway) is \$9.85B to date.
- That \$9.85B *does not* include the AUM of Fortress nor any hedge funds or private equity firms that RPX has tied via public records to patent litigation.



## The Effects

In 2022 and beyond, expect...

- Yet more NPEs to seek out third-party funding partners as the practice becomes more accepted and capital is abundant
- High, uncorrelated returns to attract new investors, including from the insurance markets
  - CAC Specialty (with ties to Fortress), AON, Lockton, and others are brokering plaintiff’s insurance of large patent infringement verdicts. Bespoke products marketed by CAC and Concord, among others, include insurance of litigation funders’ investments.
- Asymmetrical nature of returns to cause interests to diverge, leading some plaintiffs to make “settle or litigate” decisions that may be rational to the plaintiff, but sub-optimal for the interested parties as a group