

LITIGATION FINANCE GUIDE



AUG 2020

A grayscale, high-angle photograph of several modern skyscrapers with glass facades, viewed from a low perspective looking up. The buildings are partially obscured by a large, dark gray diagonal shape that cuts across the page from the bottom left towards the top right.

Legalist



GETTING STARTED

WHAT IS LITIGATION FINANCE?

Litigation finance is the practice where a third party provides capital to a plaintiff or law firm involved in litigation in return for some financial recovery from the lawsuit. This allows plaintiffs and law firms to access the capital necessary for legal fees, growth, and operations before the case is resolved.

The defining feature of litigation finance is that it is non-recourse, or only paid back if the underlying cases are successful.

HOW DO COMPANIES USE LITIGATION FINANCE?

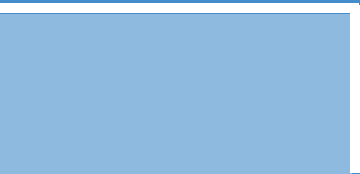
Companies use litigation financing for a variety of purposes: to offset expensive legal costs or to fund operating expenses.

Even for companies with sufficient capital to cover legal costs, the ability to deflect costs if litigation is not successful can present an attractive opportunity. By shifting litigation costs – which often fall outside of normal operating budgets – to a third party, companies can deploy capital instead to their core business.

HOW DO LAW FIRMS USE LITIGATION FINANCE?

Law firms using litigation finance to bring in new clients who may not have the capacity to pay on an hourly basis, or alternatively, to receive working capital against a portfolio of existing contingency cases. Whether existing matters are creating cash drag with unpaid invoices or simply not generating contingent returns fast enough, litigation finance can provide instant revenue against uncertain cashflow that traditional lenders are unable to evaluate.

Hourly law firms can submit individual cases for client financing while contingency firms can bundle a portfolio of contingent stakes to receive an advance on fees. Either route generates revenue while freeing up the law firm's existing capital for growth.



PROCESS

WHAT MAKES A CASE SUITABLE FOR FINANCING?

While all litigation funders evaluate cases by distinctive criteria, most funders look for companies acting as plaintiffs in cases that involve clear liability, significant damages, and collectible defendants. In addition, funders may seek cases that fall within certain case type parameters or in certain jurisdictions.

WHAT KINDS OF CASES DOES LEGALIST LOOK FOR?

Legalist evaluates commercial cases of all varieties, including but not limited to breach of contract, employment, trademark, trade secrets, business torts, and class actions. Our investments span both portfolios and single cases, contingency and hourly, boutique law firms and Am Law 100 counsel. We have funded both public companies and small businesses, and are sector and industry agnostic.

Legalist can fund up to \$10M per investment. We are the only funder in the market without a minimum investment size.

HOW DOES LEGALIST'S UNDERWRITING PROCESS WORK?

Legalist evaluates cases based on millions of past court records, and our proprietary algorithm aids us in determining case pricing and portfolio risk. Our legal team will also conduct reviews of case progression and documents, as well as hold interviews with litigation counsel and plaintiffs.

These two processes allow us to create an effective and time-efficient diligence process. Our standard diligence process takes only approximately 14 days.

WHAT REQUIREMENTS EXIST FOR LITIGATION COUNSEL?

Many litigation financiers ask litigation counsel to also take a portion of their fees on contingency in order to align key incentives throughout the progression of the case.

Legalist similarly prefers aligned arrangements, but works with law firms to find terms that fit within their financial constraints.

HOW DOES LEGALIST DIFFER FROM TRADITIONAL LITIGATION FINANCIERS?

Traditional Financiers

- Investment size:
\$2M and up
- Diligence process:
1-6 months
- Underwriting:
Based on human expertise
- Case status:
Stage-agnostic

Legalist

- Investment size:
Up to \$10M, no minimum
- Diligence process:
1-2 weeks
- Underwriting:
Based on human and machine-
based insights
- Case status:
must already be filed



POST-FUNDING

IS THE COURT ENTITLED TO KNOW IF MY CLIENT RECEIVES LITIGATION FINANCING?

There is virtually no law directly on this matter, so any party seeking information about your client's litigation budget would have to demonstrate in discovery that this information is relevant to the issues in the case.

The mere fact of providing financing to a company does not make the financier party to the case, as any company with a financial interest in the company has interest in the outcome of the litigation.

ONCE FUNDED, WHAT CONTROL DO LITIGATION FINANCIERS HAVE OVER THE CASE?

Reputable litigation financiers do not control the management of the case, including any discussions over settlement.

Legalist makes this lack of control explicit in all financing documents.

As litigation counsel, lawyers have no professional obligations to the financing provider beyond informational rights specified in financing documents.

WHAT LEGAL AND REGULATORY RISKS ARE THERE REGARDING CHAMPERTY?

Champerty is medieval doctrine designed to prevent frivolous litigation funded by feudal lords. While the broad doctrine of champerty sounds a bit like litigation financing, courts in modern years have limited champerty laws to cases in which frivolous litigation is instigated by a funder or the funder is directly involved in the management of the case.

In many states, champerty laws have been abolished, limited in scope, or never adopted. Even for states with champerty laws, litigation funders have systemic measures and wide latitude to avoid falling under its scope.



TESTIMONIALS



LAWRENCE ASHE
PARTNER AT BOIES SCHILLER FLEXNER

"Depending on the potential damages recovery, litigation funding allows the potential client to consider the feasibility of litigation with minimal downside risk."



JAMES BERGER
PARTNER AT KING & SPALDING

"I think it's been truly a revolutionary thing to have third party funding come in and enable people, enable small companies, for example, to be able to bring clients against larger adversaries that they would not have been able to bring before. By taking the cost element not out of the picture but changing it in a social way so that clients don't have to put as much money upfront to be able to afford counsel."



JERRY OSHINSKY
PARTNER AT KASOWITZ BENSON TORRES

"I think the fact that there is a financing industry like Legalist is very important, because there are cases where issues cry out to be heard and cry out to be decided, but people can't afford to bring them. By having a financing mechanism, you get both the objective evaluation and the financing. Without that, there are many cases that can't be pursued. I think litigation finance is a great addition to our culture."



NICHOLAS KAJAN
PARTNER AT STEVENS & LEE

"One important role that a litigation funder plays is that they serve as a reality check or a cold slap in the face. Funders are objective by nature, because they don't have an emotional attachment to the case or to any of the parties involved. The prospective funder often identifies a number of problem areas for me. Sometimes, their questions will prompt me to do further research into potential case weaknesses."



CRAIG MAYFIELD
PARTNER AT BRADLEY ARANT

"I think that litigation funding is something to consider and is another tool that young lawyers and even more senior lawyers probably need to consider with their client as an avenue for getting justice. It might not work in every case but it is certainly something to discuss particularly if you're on the plaintiff side of the matter."



TIMOTHY RAY
PARTNER AT HOLLAND AND KNIGHT

"When I first started practicing, [litigation funding] wasn't an option that is widely used. In today's age, If I were an associate building my practice for the first time, I would look towards litigation finance to help with client acquisition."



ALEX BROWN
PARTNER AT LATHROP GPM

"If you need the funding to be able to make good decisions and not have to rush yourself, then litigation funding could be a good resource for someone who needs that support to make sure they litigate the case successfully."



MATTHEW FENDER
PARTNER AT MCGUIREWOODS

"I am incredibly excited about litigation funding. It gives us opportunities to represent some folks we otherwise couldn't. In my practice in particular, since I put a lot of focus on contract claims and insurance recovery, it is not uncommon at all to run across a client who just doesn't have the ready cash or doesn't want to spend the ready cash to go after that claim. Litigation funding lets us partner with someone else to make that feasible."



JONATHAN POLAK
PARTNER AT TAFT STETTINIUS & HOLLISTER

"Litigation finance is an incredibly timely issue right now. I've had probably no less than 10 conversations in the last month on that very issue. I'm continuing to find clients that are open to it."



FREDERICK TECCE
PARTNER AT ICE MILLER

"For over a decade, I had my own firm and my practice consisted primarily of contingency cases. When I joined a larger firm, I got out of the contingency fee practice. Despite that, I still would get calls from around the country seeking representation. For years, I would simply turn those cases down. However, the growth of litigation funding has afforded me the opportunity to review those types of cases for eventual representation."



GARY EISENBERG
PARTNER AT PERKINS COIE

"One area where litigation funding is very attractive is where the attorney has started the case but it has become more expensive than originally intended. That allows you to continue the case all the way, without the defendant outspending you. There's been a couple times where we've used it because it's been beneficial to keep a case going."



STEVEN W. DAVIS
PARTNER AT BOIES SCHILLER FLEXNER

"Litigation funding opens doors. I see it as the wave of the future on the plaintiffs' side, and I've even seen some defense uses for it. It opens up opportunities for plaintiffs' firms to level the playing field with defense lawyers. I'm already a believer."

Legalist is a tech-enabled legal assets firm founded in San Francisco.

To find out whether Legalist is a good fit for your case, please visit www.legalist.com and fill out our brief questionnaire.

San Francisco

58 West Portal Ave #747

San Francisco, CA 94127, USA

+1 (415) 570-7878

Las Vegas

10120 W Flamingo Rd Ste 4 #3015

Las Vegas, NV 89147, USA

1 (415) 570-7878

London

10 John St, Holborn

London WC1N 2EB, UK

+1 (415) 570-7878