



Professional Perspective

Litigation Finance & the Benefit of Brokers

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Litigation Finance & the Benefit of Brokers

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It is generally well accepted that litigants profit from the use of litigation finance, but lawyers can also reap great benefits from litigation finance. A capital injection into a case or portfolio allows law firms to build broader books of businesses to bring cases that clients otherwise could not afford or would pass on, receive periodic payments while also maintaining upside potential, and reduce or eliminate credit risk.

What some lawyers may not know is that can be in their best interest—and that of their clients—to consider using an intermediary when exploring financing. Using a broker can give litigators and their clients visibility into the capital market without risking conflicts, wasting time, or losing money. Further, as litigation finance brokers most often get paid on contingency out of funders' capital commitments, their fees have no impact on the lawyers; essentially, brokers are free to law firms. A trusted litigation broker can be a valuable tool to help lawyers provide value by offering their clients the best solutions.

This article explores three benefits that law firms and their clients can gain by hiring an outside expert when they are considering taking on litigation finance: avoiding conflicts, leveraging expertise, and saving time.

Background

The litigation funding industry is slowly but surely becoming [mainstream](#). There are billions of dollars available to invest in claims, and new funds with novel strategies, pricing, and risk tolerances are entering the market regularly. Further, with only three publicly-listed dedicated litigation funders, the vast majority of the capital available is privately held, making researching this opaque industry a job in itself.

Several years ago, it was uncommon to see competition for deals in the litigation finance market. There might be one offer for a litigant to get a matter financed, and often the choice was whether to accept the capital or move forward without it. Today, the opposite is true—if a case or portfolio is promising, there can be multiple offers—often with varied creative economic and legal structures to suit the needs of each party. With the market growing and evolving at a fast clip, how can lawyers successfully and ethically navigate this industry on behalf of their clients?

Avoid Conflicts

A lawyers' compensation is directly tied to the results of a litigation finance deal, as the capital financed is used in large part to pay legal fees. Therefore, unlike making recommendations to clients about case experts or local lawyers to use, litigators may financially benefit from the terms of these agreements. This leads to an inherent conflict when a client's lawyer also sources the deal or negotiates its terms. Unfortunately, this practice can—and, in my own experience, has—poisoned deals after closing, leading to significant economic losses, not to mention substantial aggravation and destruction of relationships.

Because of this possibility, it is advisable to avoid suggesting particular funders and financing terms. Instead, lawyers can step out of the funding process and let an experienced broker source capital and manage deals, ensuring a beneficial and conflict-free process for each of the parties involved.

Leverage Expertise

While lawyers can provide unmatched expertise with respect to winning cases, solving problems, and providing legal advice, they do not spend their time researching the nuances of litigation finance firms. For instance, they might not know the various funds' particular interests, internal pressures for allocation, decision structures, or investment preferences. While litigators can certainly provide expertise on the merits and pitfalls of a case, or transactional lawyers can expound on documentation of terms, how do they know they can get the best deal?

As the litigation finance market matures, it is akin to the M&A market: Companies who want to maximize value through a sale do not ask their lawyers to recommend potential buyers—they go through investment bankers as intermediaries. Even if a lawyer has used litigation finance in the past and knows a few funders, they are unlikely to know the vast funding

possibilities available, both in terms of sources and structures. Expertise is required to find the right funder with matching investment objectives.

There are effective and skilled brokers in the litigation finance market that have years of experience working in the industry and specialize in running litigation finance deal processes. A litigation finance intermediaries' entire business focus is using their experience to efficiently enhance deal value for all parties involved by finding the right capital partner and running the deal process as smoothly as possible.

Save Time

A litigation funding deal takes time—often between two to four months—to close. While of course litigators are key to the deal and will need to dedicate effort to the process, they are often unable to devote the many hours necessary to organize a data room, schedule meetings, respond to the same question multiple times from a variety of funders, handle the politics and personalities involved, etc. Plus, it is not common for lawyers to get paid for their time devoted to litigation finance deal development. It simply makes economic sense to bring in an expert litigation finance broker to manage the deal bidding process, saving legal time and money.