

The 21st Annual Law Firm COO & CFO FORUM

Partner Talk #4: Diversified Leverage: Enhancing Firm Profitability and Client Alignment through Litigation Finance



Allen Fagin
Board Member & Senior Advisor



Enhancing Firm Profitability and Client Alignment Through Litigation Finance

Allen Fagin, Validity Finance

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Allen Fagin is a board member and senior advisor to Validity Finance. He is the former Chairman of Proskauer Rose, LLP.

Allen began his career at Proskauer in 1976, and specialized in employment litigation, co-chairing the firm's Labor and Employment Law Department for many years. During his tenure as Chairman of Proskauer (2005-2011), the firm grew to over 750 lawyers and approximately 1,500 employees, and opened offices in London, Sao Paulo, Chicago, and Hong Kong.

Key Determinants of Law Firm Profitability

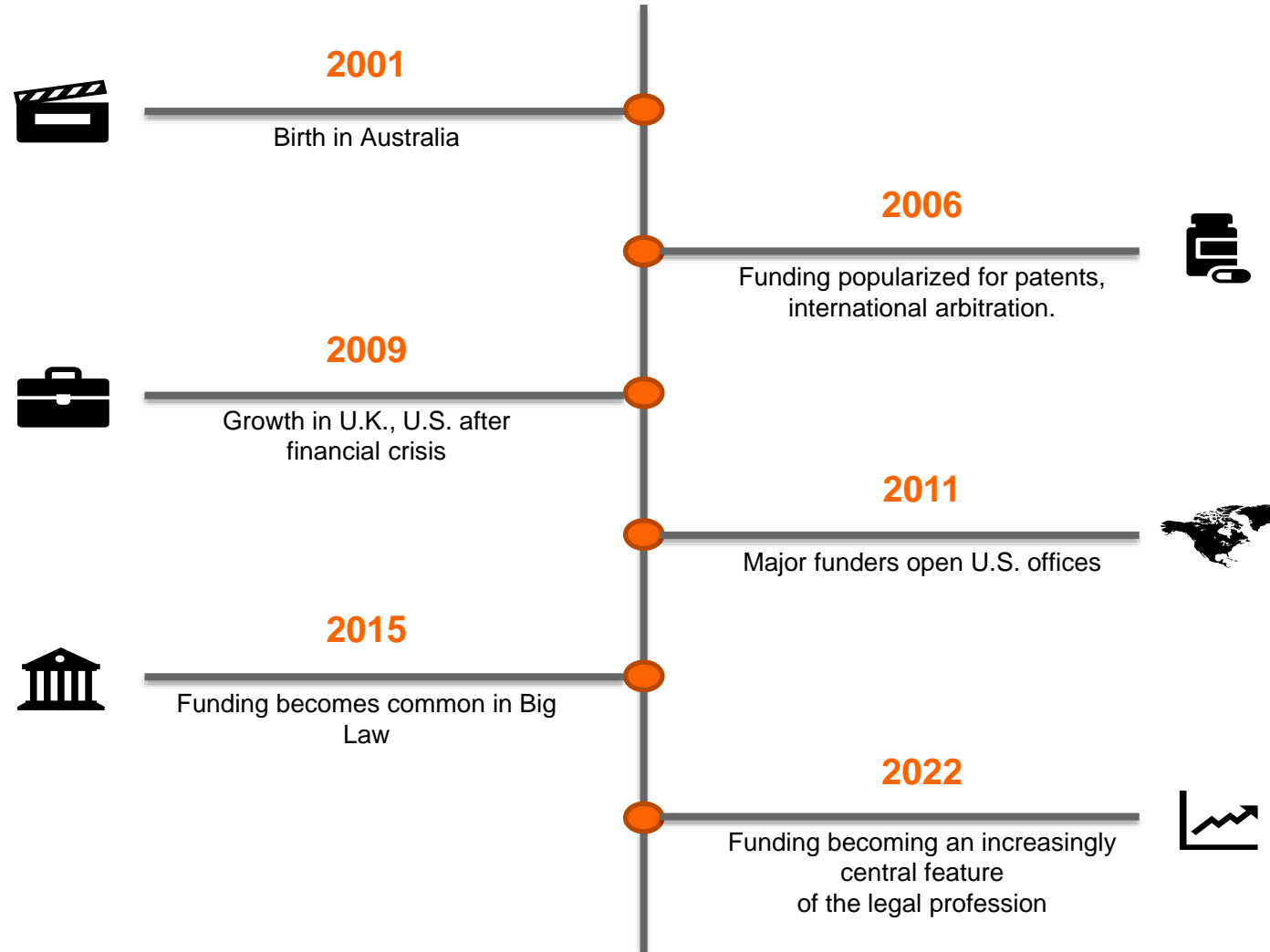
- Expenses
- Demand
 - Productivity
- Rates
- Revenue Per Lawyer
- Realization
 - Billed
 - Collected



Litigation Finance Can Help Align Firm Goals With Client Needs

Litigation Finance is any transaction where a litigation claim secures financing

History of Litigation Finance



“Litigation finance can be used by one company to sue another, so that the general counsel’s office can become a revenue generator instead of a cost center.”

— Above the Law

Who is Using Litigation Funding?

A 2022 *Above the Law* survey* of in-house counsel and law firm attorney opinions on litigation finance reported that:

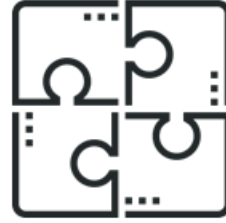
- **73%** of law firm partners and **59%** of in-house counsel surveyed have firsthand experience working with a litigation finance firm.
- More than **80%** of respondents at firms whose sizes range between 26 and 250 attorneys said they had firsthand experience with litigation financiers.
- **94%** of those who reported having used litigation funding said they would turn to litigation funding again themselves.

*Source: <https://abovethelaw.com/2022/06/the-2022-litigation-finance-survey-report/>

Litigation Finance is an Investment, not a Loan



Single Case Fee
and Cost Funding



Portfolio
Funding



Working
Capital



Defense
Funding



Claim
Monetization



Bespoke
Programs

Single Case Funding

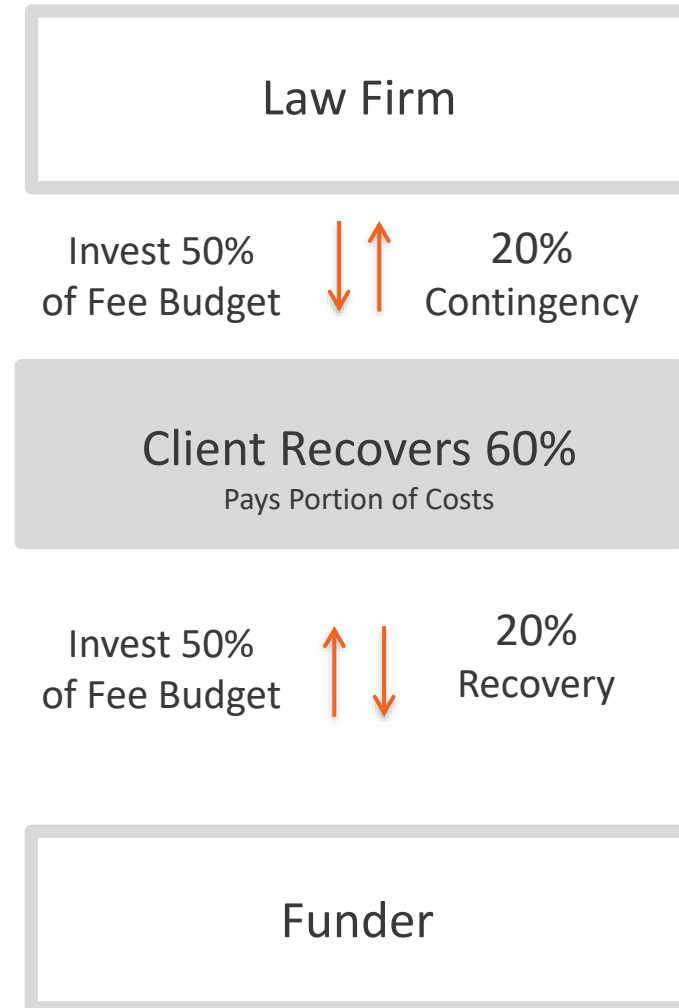
Typical Cases

- Commercial Litigation
- Patent
- Copyright
- Trademark
- Trade Secret Misappropriation
- Antitrust
- Commercial Arbitration
- International Arbitration
- Asset Enforcement
- Bankruptcy
- Breach of Contract
- Breach of Fiduciary Duty

Single-Case Risk Sharing

A typical structure:

1. Client reduces fee/cost risk
2. Firm and funder's risk and interests are aligned
3. Returns can be tiered





Meet Sophia

- **CEO of Drone On**, a designer and manufacturer of drones
- **Breach of contract claim** against her supplier, Bad Drone
- **The cost of litigation:**
 - Legal fees: \$3,000,000
 - Costs: \$500,000
- **Estimated Damages: \$35 million**

Drone On's Case – Two Financial Scenarios

Without Funding

Client:

- Invests \$3.05M
- Win: 10x ROI and \$31.95M net recovery
- Loss: Loses \$3.05M

With Funding

Client:

- Invests \$0.1M (fees)
- Win: 209x ROI and \$20.9M net recovery
- Loss: Loses \$0.1M

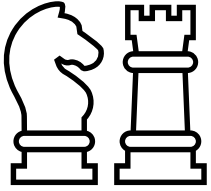
Law Firm:

- Win: \$2.55M with 85% realization
- Loss: \$2.55M with 85% realization

Law Firm:

- Win = \$1.5M (funded)
 \$7.0M (20% contingency)
 \$8.5M (283% realization)
- Loss: \$1.5M (funded) (50% realization)

Why Do Many Clients Seek Litigation Finance?



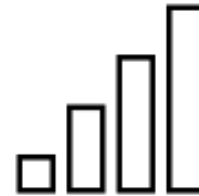
MANAGE RISK. Rather than taking litigation risk, companies can re-invest their capital back into their core business.



MANAGE LEGAL SPEND. Corporate claimholders can take legal spend off their balance sheets.



HIRE THE BEST COUNSEL. Funding lets litigants hire the very best lawyers who maximize the likelihood of victory.

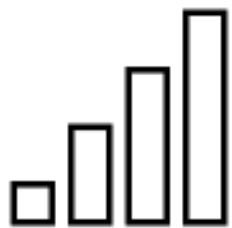


HIGHER ROI. Funding provides higher returns on capital invested in litigations.

Why Do Many Law Firms Utilize Litigation Finance?



CLIENT SERVICE. Your client wants funding. They have a great case but can't afford to hire you or want a risk-sharing arrangement.



LAW FIRM GROWTH & ENHANCED PROFITABILITY. The firm wants to win more clients, while managing / mitigating the risk of full contingent fee litigation with potential for substantially higher fee realization.



PREFERRED PARTNERSHIP. The firm wants to tap into the full range of ways funders add value (e.g. due diligence assistance, client pitches, mock trials, CLEs, etc.)

How to Get Your Case Funded: A Three Step Process

1

TERM SHEET
Under NDA

2

DILIGENCE
Under Term Sheet

3

APPROVAL
Monitoring and
Resolution

Is Your Case a Candidate for Funding?

LIABILITY. Strong liability case on at least one core claim. No case is perfect, but funders are looking for cases with 65%+ likelihood of success.

DAMAGES. 10:1 ratio between the expected damages and the funding amount.

COLLECTABILITY. Solvent defendant with a clear path to collection.

TIME TO RESOLUTION. Reasonable time to resolution (2-4 years).

Portfolio Funding

1. The funder's risk is reduced because it is spread over multiple cases. As a result, the funder's returns can be reduced, resulting in more favorable pricing.
2. Reduce transaction costs and time as new cases can be added to the portfolio.
3. Minimize firm's risk across contingency fee cases- enabling firm to take on new matters and expand base of client representations.



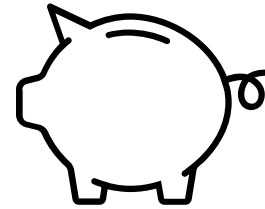
A Funder's Role in a Case Once a Case or Portfolio is Funded

- 1. NO CONTROL.** Funders do not control litigation strategy or settlement decisions.
- 2. THE FUNDING.** Funders should promptly pay invoices as agreed in the funding agreement (usually on a monthly basis).
- 3. CHECK-INS.** Regular check-ins with counsel (biweekly is the standard cadence; more or less often as the case moves along), plus quarterly monitoring. Strategic advice and counsel as appropriate.
- 4. STRATEGIC ASSISTANCE.**

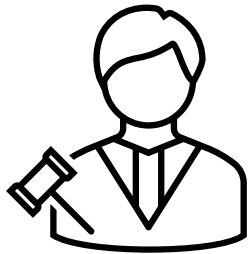
How Can Funders Add Value Beyond the Dollars Invested



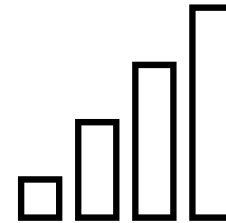
CASE ANALYSIS



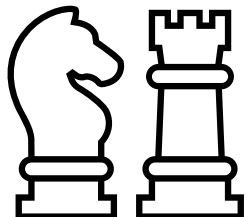
RESOLUTION



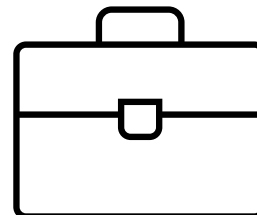
**MOCK TRIALS/
ARGUMENTS**



CLIENT DEVELOPMENT



STRATEGY



CASE REFERRALS

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