Case Studies: Generating Multi-Million Dollar Revenues and Preserving Company Solvency with Litigation Funding

Familiarity with litigation funding has ramped up across the legal and corporate communities in recent years, with lawyers and executives becoming knowledgeable about how funding works. However, since many funding deals are subject to non-disclosure agreements, companies have less access to information about the true bottom-line impact afforded by funding.

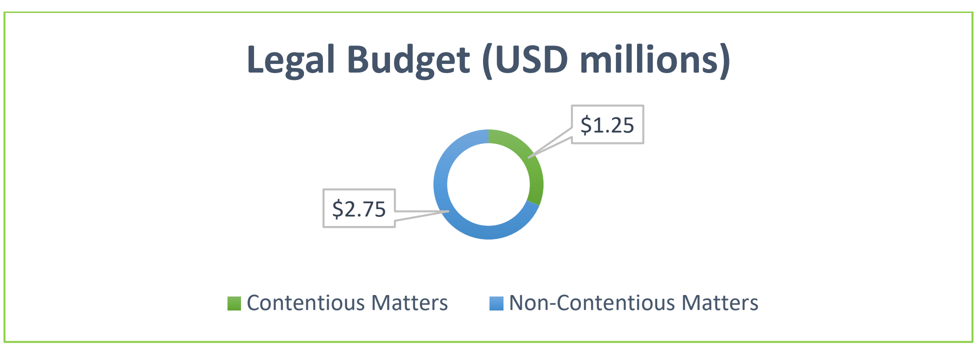
In this article, we explain how using litigation finance to pursue meritorious cases helps companies unlock access to capital that significantly increases their revenues without exposing them to the financial risks typically associated with litigation. We also explore how companies can use litigation claims as collateral for working capital to maintain operations during protracted legal battles.

Generating Multi-Million Dollar Revenues

First let's consider a scenario in which a company is debating whether to pursue two highly valuable claims, each of which could result in multi-million-dollar judgments. Each would require an investment of $2 million for attorneys' fees plus $250,000 in costs, and each could result in a recovery of $20 million.

Case 1	Case 2
$20M Potential Recovery $2m attorneys' fees $250,000 costs	$20M Potential Recovery $2m attorneys' fees $250,000 costs

The company has an annual legal budget of $4 million. But at least $2.75 million of that budget must be used to cover corporate legal matters -- from employment and tax issues to mergers and acquisitions -- and defensive litigation. In other words, no matter how much upside potential a claim may have, the company cannot spend more than $1.25 million to pursue it.



The law firm that the company wants to hire to handle the cases is not able to take them on full contingency, but could take them on partial contingency, being paid only 50% of its fees and all out-of-pocket costs throughout the cases, in exchange for a 20% contingency fee.

Given the constraints on its legal spend, should the company decide to hire the firm to pursue the litigation, it will be in the difficult position of dropping one of the claims, thus leaving millions of dollars in potential recoveries on the table. Meanwhile, the company will be assuming all the risk for the claim it decides to pursue and tying up capital that could be invested in other parts of the business. The risk is real. Litigation often takes years to resolve and one adverse ruling can diminish the value of even the strongest claims.

By leaving one of the claims on the cutting room floor, the company will also send a message to the marketplace that it is unable, or unwilling, to fight back against encroachment from competitors. A weak litigious position may invite other players to take advantage of the company.

Litigation funding could help solve these problems by furnishing the company with the capital necessary to hire the firm and maximize the value of both claims, rather than only pursuing one. The funder's investment could cover the $2 million needed to hire the firm on a partial contingency, in exchange for a return from the total recoveries. The company would likely be asked to cover the $250,000 in costs per case, so as to have some "skin in the game" to appropriately align incentives between all parties.

Case 1		
$1M invested by Funder for 20% of recoveries	$1M services invested by law firm for 20% of recoveries	$250,000 invested by company for 60% of recoveries

Case 2		
$1M invested by Funder for 20% of recoveries	$1M services invested by law firm for 20% of recoveries	$250,000 invested by company for 60% of recoveries

The funding would be provided on a non-recourse basis, meaning that the funder would receive a return from the total recovery only in the event of a successful resolution of a matter. Returns vary for each deal. If we assume for this hypothetical that the funder negotiates to receive a return of 20% of total recoveries, and the law firm also receives 20% of the total recoveries, the company's maximum potential returns could be $23.5 million ($24 million in recoveries in two cases, after paying returns to the funder and the law firm, less the company's investment).

As demonstrated by the numbers in the below table, this option costs the company $750,000 less than paying $1.25 million to hire the firm to handle only one case. The savings could be invested into operational or other expenses.

Meanwhile, using funding for both cases rather than paying the firm to handle only one case, also increases the company's potential net revenues from the litigation by $8.75M. If both cases are unsuccessful, the company loses only the amount invested in costs ($500,000) and owes nothing to the funder or the law firm.

Generating Multi-Million Dollar Revenues by Pursuing Claims with Litigation Funding		
	Proceeding without Funding	**Proceeding with Funding**
Action Plan	Self-funding one matter at $1.25M, with the law firm investing $1M in time in exchange for a 20% contingency fee.	Using non-recourse funding from a litigation funder in the amount of $1M per case in exchange for 20% of the recoveries, due upon successful conclusion of the matters. The law firm invests $1M in time per case in exchange for a 20% contingency fee.
Company Investment	$1.25M	$500,000 in costs
Funder Investment	$0	$2M
Company Gross Revenue Potential	$20M	$40M
Company Net Revenue Potential	$14.75M *Calculated as the company's gross revenue potential from investing in the claim ($20M) less the sum of the amount it must invest ($1.25M) plus the partial (20%) contingency fee it would owe to the law firm ($4M).*	$23.5M *Calculated as the company's total potential recoveries in the cases, which would be 60% of $40M ($24M) less the amount it must invest to cover costs ($500,000).*

There are further financial benefits of funding. From an accounting perspective, because the funding is non-recourse and a return to the funder is "contingent" on the cases succeeding, the company would not need to record the funder's payment of legal fees as an expense in its financials. This moves the costs of the litigation off the company's balance sheet.

Preserving Company Solvency

Shifting focus, we'll next consider a scenario involving a company facing financial ruin because of the anti-competitive behavior of a larger rival. The company has only two choices: pursue litigation against the rival or file for bankruptcy.

The company has good reasons to fight. Its lawyers have advised that its claim is strong and has an excellent chance of success should it make it to court. Recoveries could reach as high as $100 million, a huge potential windfall for the struggling company. Unfortunately, the costs associated with the litigation will be far greater than the cash the company has on hand, or will hope to earn, during the life of the case. Its lawyers anticipate the case will cost at least $8 million in attorneys' fees plus $500K in costs and will stretch for three years. The company will need another $3 million during that time to keep operating.

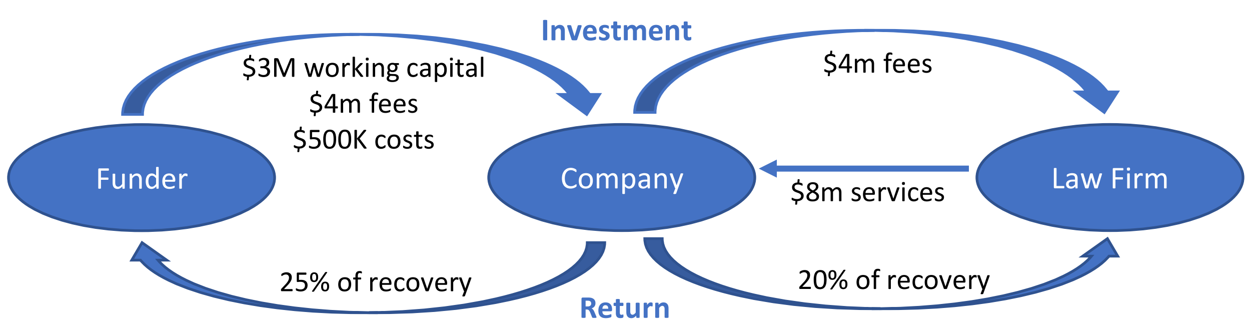
Antitrust Claim	Working Capital Needs
$100M Potential Recovery $8m attorneys' fees $500,000 costs 3 years expected duration	$3M per year for 3 years

Without financial assistance, the company would likely be forced to drop the litigation — a substantial loss in potential revenue. However, the company has no assets against which banks would be willing to lend due to its precarious financial position (caused by the anti-competitive activities of its rival).

By working with a litigation funder, the company could fundamentally change its circumstances such that it is able to pursue the claim against its rival and remain solvent for the duration of the litigation. Funding allows it to hire the best-possible counsel, which, in turn, should help the company maximize its potential return.

In addition, the potential recovery would allow the funder to offer the company working capital to fund operations and avoid potential bankruptcy during the course of the litigation. The additional non-recourse financing would also give the company the breathing room it needs to focus on its business and aid in the prosecution of its claims against its rival.

In this scenario, let's assume the company hires counsel willing to take the case on partial contingency, being paid 50% of the $8 million in projected attorneys' fees in exchange for 20% of the recoveries. Assume also that a funder provides funding in the amount of $7.5 million - $4M for the attorneys' fees, $500K of costs plus $3 million in working capital - in exchange for 25% of the recoveries in the event of a successful resolution of the matter.



As demonstrated in the table below, a successful result in the case would position the company to earn $58 million in net revenue after paying returns to the funder and the law firm (and accounting for the $3 million working capital investment from the funder).

Preserving Company Solvency by Using Litigation Funding to Access Working Capital and Pursue Protracted Legal Battles		
	Proceeding without Funding	**Proceeding with Funding**
Action Plan	Forgo the claim	Use litigation funding for anticipated legal fees and costs for the matter plus $1M in working capital per year for three years, on a non-recourse basis, with an agreed return to the funder of 25% of total recoveries, upon successful conclusion of the matter.
Company Investment	$0	$0
Funder Investment	$0	$7.5M
Company Gross Revenue Potential	$0	$103M *Calculated as the total claim value ($100M) plus the funder's working capital investment ($3M).*
Company Net Revenue Potential	$0	$58M *Calculated as the gross revenue potential ($103M) less the sum of returns owed to the funder ($25M) and the law firm ($20M).*

This course of action would also enable the company to preserve its solvency while assuming no financial risk, since the company will have invested nothing to pursue the case. In fact, the company will have gained working capital to help keep its operations on track — money that would not need to be repaid even if the case proved unsuccessful.

Finally, the company sends an important message to the market by pursuing this course of action: It will aggressively fight to protect its assets – and has access to the necessary means and legal talent to pursue those cases.

Conclusion

Litigation finance has long served as a tool for companies to gain greater leverage in litigation. As these case studies demonstrate, funding serves many additional purposes, including: helping companies realize accounting benefits, unlocking capital for a variety of business purposes, reducing litigation risk and limiting spend on outside counsel. These benefits, combined with the advantages gained from outsourcing claims diligence and valuation to a company that is in the business of engaging in such practices, are causing companies of all sizes and means to avail themselves of opportunities to unlock the hidden value of litigation assets.

Companies interested in learning more about revenue-driving, risk-reducing litigation solutions offered by litigation funders can access valuable tips in Bentham IMF's blog series entitled *"How to Get Your Case Financed"*.

About Bentham IMF

Bentham IMF is the US arm of publicly listed IMF Bentham Limited (ASX: IMF), one of the most successful litigation funding companies in the world, with a portfolio that has a total claim size value of $3.8 billion AUD. Together, our companies have 14 offices throughout the US, UK, Australia, Canada and Asia and provide funding to clients in jurisdictions including the US, UK, Europe, Australia, Canada, New Zealand, Hong Kong and Singapore. We have reviewed thousands of commercial cases in the past 16 years, funding to completion 166 cases and generating $2.1 billion AUD in recoveries. We have achieved a 90% success rate, with clients utilizing our funding retaining an average of 62% of all case proceeds.