The New Economics of Litigation

Costs are up.

Budgets are under pressure.

Spending on litigation isn’t popular.

We’re the world’s leader in litigation finance.

We can help.
Litigation financing is the new black.

As reported in Corporate Counsel
Burford Capital is the world’s leader in litigation finance.

We help businesses manage budget and cost pressures by treating commercial litigation as a financeable asset, enabling them to unlock capital to fuel growth.

We’re publicly traded with more than a half-billion dollars devoted to litigation and arbitration.

Our team is made up of lawyers, investment bankers, and veterans of the world’s largest firms and companies. We’re experts in the economics of law.

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THE NEW ECONOMICS OF LITIGATION

Litigation is a necessary part of doing business—and yet it has never been more expensive.

It’s not just that litigation costs are higher—it’s that businesses need new financing solutions to address fundamental challenges:

In-house counsel are under ever greater pressure to manage litigation budgets—and negotiating discounted law firm fees isn’t enough to solve the problem.

Smaller companies that spend precious capital on litigation may be at a competitive disadvantage—because it’s money they aren’t investing in their businesses. And larger companies often have more desirable ways to spend than on lawyers.

Corporate accounting rules mean that legal expenses are immediately recorded as a hit to profit and can permanently depress earnings.

Burford has helped companies of all sizes address these challenges.
“Litigation financing, a way to fund corporate lawsuits without risking cash, gains favor.”

As reported in CFO Magazine

62% of CFOs expect demand for litigation finance to increase.

80% of CFOs say their number one challenge is cost-cutting.

Source: 3rd Annual Survey of Litigation Finance (2014)
HOW WE HELP

We help clients treat legal claims as financeable assets—freeing capital that can be used when and where it’s needed.

We finance legal fees and expenses, monetize claims, transfer risk, provide operating expenses, and acquire judgments. We act as an investment banker to fund case expenses, offer risk sharing solutions, and provide working capital.

We provide a broad range of finance solutions to businesses engaged in significant commercial litigation and arbitration around the world.

BURFORD HELPS CLIENTS

• Fund legal fees or expenses
• Finance portfolios of pending litigation
• Transfer or share risk in pending matters
• Monetize litigation assets at the beginning of a case or after judgment or appeal
• Secure corporate debt facilities linked to a legal claim
• Finance, sell, or collect uncollected judgments
• Secure litigation-related insurance and risk solutions
• Accelerate receipt of award or judgment proceeds
• Reach terms with law firm of choice
A notable percentage of the Fortune 100 has engaged in some kind of funded litigation.

As reported in The Wall Street Journal.
“Having an outside funder can be a game-changer.”

As reported in The Washington Post
Businesses are subject to enormous pressure to reduce or at least manage legal spending—and given the growing cost and duration of complex commercial cases, that’s harder than ever to do.

Litigation finance means that no general counsel or CFO ever has to walk away from—or struggle to finance—a meritorious case because of budgetary constraints or fear of risk.

We fund commercial cases at any stage of the litigation process, and provide financing that helps clients pay fees to their firm of choice or cover expenses associated with litigation. Typically, we provide financing in the form of a non-recourse investment, for a portion of the settlement or award should the case be successful. Should the case be unsuccessful, Burford loses its investment, so capital is priced accordingly.

We can also provide financing across a portfolio of litigation matters, enabling businesses to manage risk across multiple actions. Burford’s terms for portfolio financing vary widely, depending not only on the strength and stage of the underlying cases, but also whether a transaction would be based on the outcome of only one case or a pool of cases. High risk matters such as international arbitration, insolvency, and patents are particularly amenable to portfolio financing. Because risk is diversified, Burford can offer better pricing for capital.

CASE STUDY: Helping a client afford counsel of choice

A major firm was representing a client with a $100 million claim. As the case dragged on, the client faced budget and liquidity issues. Significant arrears developed that the firm was unwilling to shoulder. The client faced the specter of having to move to a contingent fee firm against its will; the firm was facing a large write-off. A significant investment from Burford enabled the client to make the firm whole and bring the case successfully to trial with original counsel.
Among the many reasons CFOs should embrace litigation financing is this: the negative accounting impact of litigation spending.

Put simply, without financing, litigation may be permanently injurious to financial performance given how accounting rules require businesses to record litigation expenses and awards. Often the smartest move a business can make is to finance a piece of litigation rather than paying the expenses of the case itself.

At present, legal expenses paid by a company directly are immediately recorded as expenses. That means that any legal fees paid out immediately reduce a company’s profits; for a commercial case of any complexity, that reduction is likely to be substantial and last for years.

Litigation financing removes that hit to profits.

Even more significantly, without litigation financing, large recoveries from litigation are often recorded “below the line” as non-recurring or extraordinary items. That is an unhappy result for many businesses—particularly for EBITDA-based businesses—as the accounting result of pursuing a successful claim can perversely be a permanent reduction in EBITDA (because legal fees paid reduce EBITDA but recoveries occur below the EBITDA line).

Litigation financing allows clients to avoid these negative accounting effects.

Is litigation damaging your financial performance?

ACCOUNTING BENEFITS

CASE STUDY: Financing litigation expenses

Burford provided financing for a client that chose to use its capital to improve its operations even though it was capable of paying the legal fees of its antitrust case. The investment transferred the litigation cost and risk in a way that helped the client justify hiring a top litigation boutique with a national reputation. Litigation financing aided short-term profitability and long-term growth.
Litigation is the last frontier of corporate finance—perhaps the only area where businesses regularly pay in cash for a sizeable and ongoing expense without considering the alternatives.

In fact, they should be doing just the opposite: financing litigation (as they do most other areas of business), preserving their capital to invest in growth, and leveraging the value of meritorious claims to gain access to additional capital.

Litigation finance is premised on the fact that legal claims are assets with inherent value. Treating those claims as financeable assets shifts the burden of risk from client to financier and frees capital that can be used by the business when and where it’s needed.

Burford works with clients to unlock the value of litigation assets, which can often be tied up in court for years. Once seen as an asset, a piece of litigation can naturally be used to collateralize an investment—even if the use of capital obtained has little or nothing to do with the piece of litigation. This separation between the use of funds and the claim that is serving as security is an important recent advancement in litigation finance.
Do you need to unlock the value of your litigation or arbitration matters?

CASE STUDY: Monetizing arbitration to reduce borrowing costs

Rurelec PLC, a listed international power generation firm, came to Burford with a request that required special expertise and savvy from a litigation finance partner.

Bolivia had expropriated Rurelec’s facilities—and as the company was pursuing its claim through international arbitration, its credit profile had declined. Neither its expropriated properties nor its pending arbitration claim, however valuable or meritorious, were recognized as assets by traditional lenders. As a result, it faced increased costs to borrow, hindering its growth.

Burford was able to fashion an innovative solution that met Rurelec’s business needs: crediting the value of the arbitration claim against Bolivia, Burford provided a full recourse debt facility at rates well below market levels, with the debt discount balanced by a contingent interest in the arbitration outcome.

Able to borrow at historical rates, Rurelec was able to invest in its growth even as it pursued—and later won—its arbitration claim.

Rurelec’s Chairman, Colin Emson, said of its work with Burford: “We were able to use a pending arbitration claim to obtain innovative corporate financing from Burford that lowered our cost of capital and helped our business expand. The Burford team was smart, fast, and decisive. The ability to monetize a pending claim is something that we could only have achieved with Burford.”

“We were able to use a pending arbitration claim to obtain innovative corporate financing from Burford that lowered our cost of capital and helped our business expand.”

MONETIZING LITIGATION
Burford also finances the defense of corporate actions—an idea increasingly appealing to businesses trying to manage current costs.

When working to finance defense matters, the capital we supply is often used to pay legal fees or expenses in defending the claim. Because our capital is typically non-recourse, litigation expenses no longer hit the client’s P&L. We agree in advance on what constitutes a "win"—perhaps a dismissal, perhaps a settlement below a certain level. If a win occurs, the client then repays Burford the capital it has provided plus a return; if a loss, Burford recovers nothing.

Defense funding is less common than claimant funding because companies often don’t like the idea of paying a premium over actual cost to get rid of a case they believe would be dismissed anyway, and Burford’s returns are high. But instead of making a financial decision based on an emotional reaction, the best course of action is to run the numbers and consider the other benefits to the business of not spending money currently on defending litigation.

More and more companies are concluding that there are significant benefits to holding onto their cash and transferring their risk.
Burford offers specialized assistance to overcome this challenge. We’ve acquired one of the leading corporate intelligence firms that specializes in finding hidden assets and enforcing judgments. Combined with Burford’s financial resources, we can offer a complete solution to this often difficult problem—with customized financial options ranging from standard professional services relationships, to contingent arrangements, to Burford purchasing the judgment or award outright and taking on the risk of collection and enforcement itself.

Our global judgment enforcement team can help:

- Trace and recover assets
- Prove legal and beneficial ownership, risk of dissipation, and other bars to recovery
- Gather enforcement intelligence
- Identify strategic importance of individual assets or classes of assets
- Determine interlocutors most able to achieve early settlement and other vital contextual considerations
- Support litigation and arbitration support
- Retrieve primary evidence and interview witnesses of fact
- Forensic capture, recovery, and analysis of all aspects of the digital trail
- Advise on the feasibility of enforcing any potential judgment or award
- Customize solutions based on client needs—including fee-for-service, contingent arrangements, and purchase of judgment or award

Do you need to track down recalcitrant judgment debtors and difficult-to-locate assets?
Nothing’s worse than winning and not being able to collect—except spending still more trying to do so.
$500 million committed to litigation

$2 – $30 million commitment range

75% of the AmLaw 100 have worked with Burford

50 staff in offices on 2 continents

9 days our record for closing a deal

100 financed cases and portfolios
Burford is the global leader in the litigation and arbitration finance field. Here’s what makes us different:

**Significant Capital Immediately Available**

Burford has raised over $500 million and is traded on the London Stock Exchange. Having our own permanent capital means we can make substantial investments and we can move quickly (we’ve closed and funded investments in days). It also means we are not subject to the limitations and restrictions of private investment funds.

**The Most Experienced Team in the Field**

Leaders in the economics of litigation finance and creative deal structuring, Burford is staffed by lawyers and investment bankers with expertise in underwriting a wide range of complex matters. Co-founded by a former general counsel of Time Warner and a Georgetown University law professor, we’re veterans of Cravath, Latham, Debevoise, Credit Suisse, Merrill Lynch, and other top-performing firms.

**Leading Innovation in Litigation Finance**

Burford goes beyond what people think litigation finance can do—far beyond the many “outside funders” merely able to pay the legal expenses of a given claim. We innovate solutions to address firms’ and clients’ unique needs, and work with them at any stage in the litigation cycle.

**Agility**

Because we’ve built the finest in-house team in the field, we’re able to assess very quickly whether and how to finance a deal. And because we invest our own money, our clients don’t wait for us to raise funds to finance their needs.
5 THINGS TO KNOW ABOUT LITIGATION FINANCE

Here are 5 things in-house counsel and financial executives should know when considering litigation finance.

1. **We don’t manage or control** litigation. And no, this isn’t champerty.

   We don’t get any rights to manage the litigation in which we invest. Just as a leasing company does not tell you how to drive your car, we don’t drive the litigation. Nor do we get any rights to control the settlement of the litigation, which remains wholly in the litigant’s control.

   And the courts and legislatures have been clear about the legality (and non-champertous nature) of this business.

2. **No impact on** attorney work product

   Our passive role as an outside investor does not in any way alter attorney-client relationships or put work product at risk. The policy underlying the work product doctrine and court decisions that have thoroughly considered the matter consistently permit litigation financiers to access work product without any waiver of work product protection.
Financial executives may balk at the costs of litigation—not only because those costs are higher than ever, but also because of how litigation expenses impact corporate balance sheets.

Litigation finance is a solution to the challenge of helping in-house counsel and CFOs overcome overwhelming case expenses—both because it provides a means of managing how those expenses are paid and because it avoids the injurious accounting rules for recording litigation expenses.

Burford’s team is adept at unlocking the value of litigation assets—and we’re also sensitive to the impact of litigation expenses on balance sheets. Often the smartest move a business can make is to finance a piece of litigation rather than paying the expenses of the case itself. Litigation financing gives in-house counsel an alternative to paying hourly fees, paving the way for profit-enhancing claims with little or no downside risks if those claims are unsuccessful—and it also provides in-house counsel a means to be positioned as heroes within their businesses.

Our capital is almost always non-recourse—meaning that we do not earn an investment return if the underlying litigation is unsuccessful.

We are extraordinarily flexible and approach every investment with terms tailored to meet your needs and ours.

Our individually negotiated investment transactions often entitle us to the return of our invested capital, a minimum return on that capital, and a portion of the total proceeds of the litigation. The economics are not dissimilar from those of major contingency fee law firms that receive their expenses and a share of the recovery. However, following our preferred return, we typically take a smaller portion of the total result than a contingent fee lawyer might, and our structures are far more flexible.

We use other structures, too, especially for investments where the litigation is well advanced. For example, we will make investments based on existing judgments where we seek a fixed return on our capital as opposed to a portion of the ultimate recovery. For law firms, we can provide financing on a fixed return basis.

Our capital is expensive, with Burford’s overall financial return expectations consistent with private equity and venture capital funds, not commercial banks.
Burford was founded in 2009 by Chief Executive Officer Chris Bogart and Chief Investment Officer Jon Molot. As former general counsel of Time Warner, Bogart had already structured what may be the largest corporate contingency fee in history. He had observed the frustrations of both law firms and their clients with the economics of modern legal practice, and to find an alternative that worked for both, he crafted the $35 million fee paid to Cravath for its work on the AOL/Time Warner merger. Bogart went on to run an investment firm, but he remained interested in legal economics, and as a side project created a financing solution for the arbitration practice of an AmLaw 10 firm.

Molot, a professor at the Georgetown University Law Center, had been researching the troubling impact on litigation outcomes of situations in which parties to litigation possess unequal financial resources. His academic work investigated whether a market solution could more effectively solve the problem than procedural reforms. Molot opened a consultancy focused on insurance-based litigation risk transfer used by the largest insurers in the world.

Bogart and Molot met at a RAND conference and realized their shared commitment to litigation finance by forming Burford. They raised the capital to fund Burford Capital, which joined the London Stock Exchange’s AIM market in late 2009.

Burford began with its founders, half a dozen employees, and a great idea—and within five years has grown to a staff of 50 with more than $500 million committed to litigation worldwide.
WHAT TO EXPECT WHEN YOU CONTACT BURFORD

After some quick initial details to try to ensure that the potential transaction is appropriate for us, we will send you an NDA specific to litigation finance. You should only provide confidential material pursuant to such an NDA, and you should not “shop” matters widely even under NDA.

We’ll then work with you to understand your needs and the financial challenge you’re trying to solve.

We can move as quickly as you need us to.
Please call or email to learn more about Burford and how we can help.

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