Legal Finance Case Studies

Real world examples of how we help companies enhance liquidity and reduce risk

Burford

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Burford is the leading global finance and asset management firm focused on law. Its businesses include litigation finance and risk management, asset recovery and a wide range of legal finance and advisory activities. Burford is publicly traded on the New York Stock Exchange (NYSE:BUR) and the London Stock Exchange (LSE:BUR), and it works with companies and law firms around the world from its principal offices in New York, London, Chicago, Washington, Singapore, Sydney and Hong Kong. For more information, please visit burfordcapital.com.

INTRODUCTION

How companies use legal finance

As more and more corporate finance departments and in-house legal teams become aware of legal finance, case studies that explain how it works are especially powerful—and for that reason we have gathered a selection of recent precedent transactions as well as worked examples in the pages that follow.

CFOs and GCs routinely receive examples of precedent transactions from their banks for deals in the public domain, but the particulars of legal finance transactions are almost always kept private. Legal finance capital is used by companies to pay for commercial litigation or arbitration to proceed, or to accelerate the value of pending claims, awards or judgments—and until no litigation risk remains, details of pending matters cannot be disclosed unless the client chooses to do so for strategic reasons. Even after settlement, disclosure is vanishingly rare.

But the fact that legal finance case studies are relatively hard to come by and that few CFOs and GCs speak publicly about its use is misleading: Use of legal finance by corporations is on the rise, as businesses from startups to the Fortune 500 discover its potential to enhance liquidity and reduce risk. Burford's capital commitments—57% of which are with corporations—reflect that reality.

As the world's largest finance firm focused on law, Burford has built a $4.5 billion legal finance portfolio and reviewed some 10,000 requests for funding in our almost 12 years in business. Every client faces different challenges and our solutions are varied. But we hope that the following examples demystify legal finance—which is really just a specialized form of corporate finance—and we encourage you to get in touch to discuss how we can help.

> "We have a good relationship with Burford. I am being credited internally because management thinks the legal team is being creative by monetizing its claims."
>
> – HEAD OF LITIGATION, FORTUNE 100 COMPANY

CASE STUDY

Accelerating Fortune 100 company's claim value for immediate working capital

CHALLENGE: FORTUNE 100 DIDN'T WANT TO WAIT TO ACCESS CAPITAL TIED UP IN CLAIM

A US-based Fortune 100 company with a global footprint was pursuing a high-stakes litigation claim. The case had strong merits and was worth hundreds of millions of dollars but was in a relatively early stage and was expected to take two or more years to resolve. Until then, the company couldn't recognize either the litigation value as an intangible asset or the expected future cash value of the litigation. The company did not need funding to pay for legal fees for the case, but it did want to accelerate into the current year a portion of the cash that it expected would result from a successful litigation outcome.

SOLUTION: $75 MILLION ADVANCE TO TURN ILLIQUID ASSET INTO WORKING CAPITAL

Burford provided $75 million in cash to the company at year end. If and when the company won the case and collected cash damages, the company would pay the $75 million plus a return to Burford and retain the expected significant remaining recovery from the case. In the meantime, the company could use the $75 million in working capital for any corporate purpose, allowing it to invest in growth, use the cash to defend unrelated litigation or any other business need.

Burford's $75 million of non-recourse capital delivered an accelerated and guaranteed financial result ahead of the resolution of the case. This "monetization" was a complement to the client's existing full contingency arrangement with its outside law firm resulting in the company simultaneously financing the cost of pursuing the high-value claim and generating significant liquidity for the company—all with no downside risk. If the case lost, the company would keep the $75 million in financing from Burford and have expended no legal fees to litigate the case.

IMPACT: IMMEDIATE CASH INFUSION TO REDUCE OPPORTUNITY COST AND INCREASE LIQUIDITY

Zero-cost pursuit of litigation and an immediate $75 million increase in liquidity—reducing the company's opportunity cost and increasing its liquidity and growth trajectory.

CLIENT

Fortune 100 company

AMOUNT

$75 million

DISPUTE

Antitrust claim

FINANCING

Monetization

CASE STUDY

Preserving OPEX while pursuing bet-the-company litigation

CHALLENGE: COMPANY NEEDED TO PURSUE CLAIM BUT PRESERVE CASH FOR OPERATIONS

An industrial engineering company was involved in a high-value, multi-year dispute over a supplier's alleged professional malpractice. The dispute was damaging, leading to lost customers and business, significant reputational damage and reduced cash flow and liquidity. Following an unsuccessful mediation attempt, the company initiated an AAA arbitration. The company stood to recover damages valued in the low nine figures but needed to preserve its budget for use in day-to-day operations rather than paying legal fees and expenses out of pocket.

SOLUTION: $6 MILLION IN NON-RECOURSE FUNDING OF LEGAL FEES AND EXPENSES

The company needed capital as well as expertise, and Burford provided both, including almost $6 million to cover case-related fees and expenses. At the company's request, Burford also introduced several potential replacement law firms when its original counsel withdrew after filing the arbitration.

The $6 million was non-recourse, not a loan: Burford's investment did not add to the company's debt load and would be paid back only if and when the company achieved a successful outcome in the dispute. The company would keep any excess funds recovered after paying Burford's return. If the case was unsuccessful, the company would owe nothing to Burford or its lawyers—eliminating the cost and risk of the litigation.

Burford's $6 million of non-recourse capital guaranteed that the company could assert its right for relief under the contract with its suppliers, without having to redirect precious operating cash to its outside lawyers.

IMPACT: NO-RISK CAPITAL TO PURSUE CLAIM WHILE PRIORITIZING THE BUSINESS

Able to pursue a critical recovery at no cost, the company could keep its focus on continuing to rebuild its business while it waited for its matter to resolve.

CLIENT

Industrial engineering company

AMOUNT

$6 million

DISPUTE

AAA arbitration

FINANCING

Fees and expenses

CASE STUDY

Equipping a company to reach its target settlement

CHALLENGE: CASH-STRAPPED COMPANY RISKED SETTLING PREMATURELY

A UK-based private equity firm was seeking recoveries in multiple litigation and arbitration matters relating to a dispute with its former joint venture partner. The defendant was litigious and had considerable resources—presenting the private equity firm with a protracted legal battle and likely enforcement challenges to any eventual settlement or award. As legal bills mounted, the company recognized that it would be unable to adequately pursue its claim over the long haul—but it did not want to be forced to accept a premature settlement offer.

SOLUTION: $10 MILLION FACILITY TO PAY LEGAL FEES GLOBALLY

Burford provided $10 million across a portfolio of ongoing and future commercial litigations and arbitrations in Europe and the US. The company used the capital to pay ongoing legal fees and avoid incurring additional expenses during its protracted claim. The private equity firm preserved significant upside in an eventual settlement, without added cost or risk to the company.

Given the non-recourse nature of Burford's financing, the private equity firm would repay Burford its investment plus a return if and only if Burford enforced any successful judgment or award against the defendant, or from the proceeds of the sale of the investee company—and the company would keep any excess funds recovered after paying Burford's return. If the matters were unsuccessful, the company would owe Burford nothing and would have paid nothing out of pocket to pursue its cases.

IMPACT: CLIENT AVOIDED EARLY SETTLEMENT AND WORKED WITH COUNSEL OF CHOICE

The company avoided being forced into early settlements—and, able to work with its counsel of choice, had already won two awards against the defendant within a year of securing finance.

CLIENT

UK-based private equity firm

AMOUNT

$10 million

DISPUTE

Multiple litigations and arbitrations arising from a contract

FINANCING

Portfolio-based facility to fund fees and expenses

Worked examples

The confidential nature of Burford’s work means that we are rarely if ever in a position to unpack the details of how a particular deal worked. To fill this gap—and because our clients have told us how much they value them—we offer the following hypothetical “worked examples” to educate in-house lawyers and finance teams and help quantify and compare the relative benefits of legal finance.

WORKED EXAMPLE

Managing budget risk while pursuing a valuable recovery

CHALLENGE: COMPANY WANTS TO PURSUE CLAIM WITHOUT NEGATIVE P&L IMPACT

ACME Co., a publicly traded company, has a $70 million construction claim that will cost approximately $5 million to litigate. Its GC recommends moving forward with the claim, but the budget is already under considerable stress and the CFO is concerned about the negative impact of litigation spending on ACME's P&L and market value.

SOLUTION: $5 MILLION TO FUND FEES AND EXPENSES

ACME Co. seeks financing for the entire $5 million litigation budget. Burford agrees to take on these costs on a non-recourse basis. In the case of a win, Burford will earn its investment back and a return, which is priced based on risk at 25% of the net proceeds. ACME Co. compares the cost of proceeding without financing and the cost of proceeding with legal finance. Ultimately, it determines that it prefers to give up some eventual potential upside in exchange for shifting the entirety of its budget burden to Burford.

IMPACT: OPPORTUNITY TO GENERATE REVENUE WITHOUT RISK OR P&L IMPACT

Without adding any budget risk, ACME Co. can pursue a valuable legal claim that will potentially bring a significant sum of cash into the business.

	WITHOUT FINANCE	WITH FINANCE
CREATION OF A LEGAL CLAIM	The legal claim worth approximately $70 million cannot be recognized as a balance sheet asset	ACME Co. can invest capital it would have used for legal fees back into business
LEGAL EXPENDITURES	**-$5M** Costs can't be capitalized; must be expensed each period; annual legal costs of $1 million reduce operating profit in each period	**$0** Up to 100% of legal costs covered. ACME Co. reports better operating margins than it would if it were funding the legal claim on its own P&L
SUCCESSFUL CLAIM	**+$70M** Seen as an exceptional event that isn't core to company's business activities; excluded from forecasts pre-victory, not appreciated afterwards	**+$48.75M** ACME Co. receives net proceeds of $48.75 million, over 64% of the original damages estimate, having taken no risk during the pendency of the litigation
UNSUCCESSFUL CLAIM	**-$5M** Questions from Board of Directors about wasting $5 million on the unsuccessful claim; ACME Co. regrets that it shouldered the risk by itself	**$0** Downside exposure mitigated; with no impact on corporate P&L because legal finance provider bears cost; revenue neutral outcome

WORKED EXAMPLE

Enhancing liquidity by advancing an expected recovery

CHALLENGE: WORKING CAPITAL IS NEEDED NOW, NOT WHEN CLAIMS RESOLVE

Pinnacle Co is involved in large-scale litigation claims relating to price fixing allegations against suppliers and could be entitled to some $250 million once the claims resolve in 48 months—assuming the outcome is not a loss. In the interim, Pinnacle would like to expand its business operations by investing in opportunities where it can expect at least 15% growth, and the CFO has told senior executives that increasing access to working capital to fuel that growth is a priority.

SOLUTION: $25 MILLION CASH ADVANCE

The GC works with Burford to determine whether advancing a portion of the claim could help finance the company's growth plans. Burford advances $25 million to Pinnacle, guaranteeing the company immediate access to cash that may be used to invest in highly profitable opportunities while it pursues its $250 million claims. Pinnacle will need to repay Burford its $25 million plus an agreed percentage only after one or both cases wins and generates cash for the company, with Pinnacle retaining the remaining damages, net Burford's return. If neither case is successful, Pinnacle keeps the $25 million and the benefit to its business—and owes Burford nothing. Pinnacle decides to use Burford's financing.

IMPACT: NO-RISK ADVANCE TO GROW BUSINESS, PLUS FUTURE UPSIDE

In the following years, the cases resolve at $250 million and Pinnacle recovers over $163 million. And because the company had access to $25 million of its recovery early—equivalent to $37 million after four years at the 12% annual rate of growth for its target opportunities—it was able to continue to grow its business (and its profits) while the litigation was ongoing.

ESTIMATED VALUE OF PENDING CLAIMS

$250 million

WITHOUT FINANCE | WITH FINANCE

IMMEDIATE IMPACT

WITHOUT FINANCE	WITH FINANCE
$0 The claims remain illiquid and provide no capital to reinvest in the business	**+$25M** Pinnacle gains $25 million that can be put to immediate use to expand in markets yielding 12%+ growth

Cumulative impact after 48 month claim resolution
SUCCESSFUL OUTCOME SCENARIO

WITHOUT FINANCE	WITH FINANCE
+$250M Pinnacle's claim ultimately results in a win, but the company suffers from the opportunity cost of waiting 48 months to earn its recovery	**+$200M** Pinnacle earns a net return of over $163 million when its cases resolve, and assuming a 12% annual growth rate, has also generated $37 million in impact on its business from the $25 million advance

Cumulative impact after 48 month claim resolution
LOSS SCENARIO

WITHOUT FINANCE	WITH FINANCE
$0 Pinnacle earns nothing from its claims	**+$37M** Despite the loss, Pinnacle need not repay the $25 million advance and has still benefited from investing it in the business, equivalent to $37 million assuming a 12% growth rate

WORKED EXAMPLE

Zeroing out the budget for defense and plaintiff matters with a portfolio solution

CHALLENGE: NEED TO REDUCE LEGAL BUDGET

Apex Corporation's litigation budget has expanded to handle a growing slate of litigation matters on both sides of the "v". The CFO is anxious to keep expenses in check and the GC is exploring options to do so. Apex's law firm of choice will consider a discount to fees with a corresponding uplift but will not take material contingency risk. Further, the GC has now identified an additional slate of valuable claims to pursue, but despite the potential for significant eventual recoveries, the CFO lacks the risk tolerance to support the plan, preferring to allocate resources solely to defense matters, which are viewed as necessary expenses.

SOLUTION: $15 MILLION PORTFOLIO

To enable Apex to pursue its valuable claims as well as pay for its defense expenses—thus satisfying the needs of both the CFO and the GC—Burford recommends a portfolio solution. After reviewing Apex's pending matters, Burford confirms a path to $100 million in recoveries—a number that dwarfs projected settlements from Apex's defense matters. Burford offers a $15 million blended portfolio to cover the $5 million budget for defensive litigation costs and an additional $10 million of costs to pursue claims in exchange for its investment back plus a percentage return of the eventual recovery net of its investment. This return structure resembles the contingency arrangement with which Apex is familiar: Burford receives a defined entitlement from successful recoveries and Apex will owe nothing if the claims are unsuccessful.

IMPACT: REDUCE COSTS AND GENERATE VALUE WITHOUT ADDING RISK

Over the next several years, Apex generates $100 million of recoveries. Meanwhile, the defense matters financed through Burford settle for $20 million. Apex nets $30 million in proceeds, and without having risked a single dollar from its own budget it able to transform the legal department to a revenue generator.

LEGAL BUDGET

$15 million

to pursue a mixture of affirmative matters while defending against litigation

WITHOUT FINANCE | WITH FINANCE

UPFRONT COST TO BUSINESS

WITHOUT FINANCE	WITH FINANCE
-$5M Apex avoids $10 million of affirmative litigation costs, but pays $5 million out-of-pocket for defensive litigation	**$0** Burford pays 100% of fees and expenses across portfolio of defensive and affirmative matters in exchange for its investment back plus a percentage of recoveries

FINANCIAL IMPACT

WITHOUT FINANCE	WITH FINANCE
-$25M In addition to paying defense costs, Apex must also pay $20 million in settlements out-of-pocket	**+$30M** Affirmative matters generate $100 million; after Burford's $50 million return and $20 million of settlements, Apex has a net return of $30 million

The gold standard in legal finance.

"Working with Burford, you have sophisticated people... who really understand litigation risk and how to assess cases."

—JOHN B. QUINN, CO-FOUNDER, QUINN EMANUEL URQUHART & SULLIVAN LLP

"Burford, as one of the earliest and most successful funds, has attracted really smart, talented lawyers and that has helped them gain a reputation for being able to pick winning cases and assess cases that are likely to win."

—PARTNER, AMLAW 100 LAW FIRM

"Burford [was] not there just to provide financial muscle. They also played a crucial and significant role."

—PARTNER, LEADING LAW FIRM

"Burford's integrity, professionalism and legal skill are second to none."

—BARRISTER, LEADING LONDON CHAMBERS

"[Burford was] quick to pick up on important points that could turn a case in either a negative or positive way and also the key strategic issues that would have to be decided. As funders I believe that they would bring value to the table by virtue of the varied experience that they have across jurisdictions and also types of cases."

—PARTNER, LEADING LAW FIRM

Burford Capital has earned a reputation as the leading provider of commercial legal finance in the world. Since its founding in 2009, hundreds of corporations from startups to the Fortune 500 have worked with Burford.

Award-winning team

Band 1
ranked by *Chambers* in the US and UK for litigation finance, asset tracing & recovery

8
Lawdragon 100 global leaders in legal finance

1
Financial Times top 10 innovator

Three
New York Law Journal trailblazers

Industry-leading expertise

96%
In 2021, Burford predicted returns on concluded matters in its portfolio with 96% accuracy

140+
employees drawn from top firms and corporations

55+
Lawyers

Institutional-quality finance partner

NYSE-listed
the only finance provider to be publicly listed in New York and London

93 & **89**
AmLaw 100 firms **Global 100 firms**
have sought our funding for their clients or firms

Unmatched scale

$1.1B
committed in 2021

$5.1B
current investment portfolio

Multiples larger than next largest publicly traded competitor[1]

[1] Based on reporting of combined litigation finance investments, unfunded core litigation finance investments and other investments as of March 28, 2022.

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