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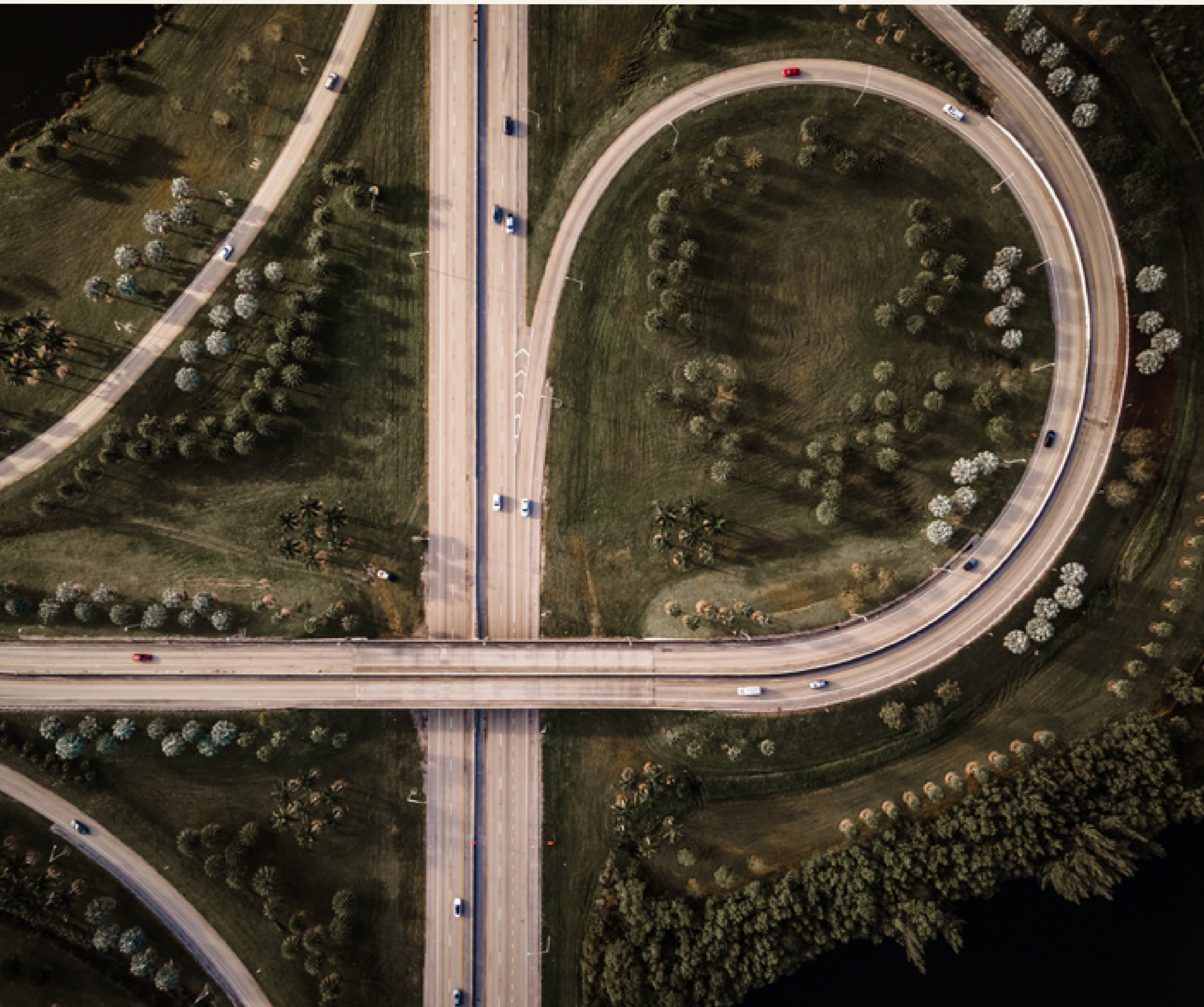
A REVIEW OF LEGAL FINANCE

LEGAL FINANCE & AFFIRMATIVE RECOVERY INSURANCE	EXPERT ROUNDTABLE: GENDER DIVERSITY IN IP	KEY LEGAL FINANCE DEVELOPMENTS ACROSS APAC



Legal finance and affirmative recovery insurance working together

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Kelly Daley is a Director and the head of the US commercial underwriting group at Burford, where she oversees the Chambers-ranked team that assesses US commercial litigation matters for financing. Prior to joining Burford, she was a senior litigator at Orrick Herrington, where her practice focused on the litigation needs of media and technology companies.

> *Among the many changes we have seen in the legal finance market in 2021 is the growth of a new finance-adjacent product: Litigation insurance policies on affirmative recoveries. The providers in this market are the same large insurance companies that for years have offered defense-side litigation products to insure litigation spend and liabilities.*

These carriers have now entered the affirmative recovery market with two primary products. The first of these are policies to protect the first tier (often 10-20% of total value) of a law firm or corporate affirmative recovery portfolio, and the second are "judgment preservation" policies that insure some portion of a judgment on appeal or pending collection. These policies operate much like traditional insurance, where the policyholder pays a premium at the outset of the policy, but they also usually include a backend participation for the insurer if and when the claim proceeds are received.

Affirmative recovery insurance policies can be a complementary product to traditional legal finance that, in some instances, allow companies to maximize the present cash value of a claim and reduce overall cost of capital. Below we discuss three ways that affirmative recovery insurance and legal finance can work together to meet a company's business needs.

1. Funding premiums

The upfront premium costs for affirmative recovery insurance can be substantial. If a company or firm is looking to insure the first $20 million of a $100 million judgment, the upfront premium cost for that insurance is likely to exceed $2 million. Legal finance providers are well-situated to advance these costs. The claimant can then choose whether to collateralize the funding with the insured layer of the judgment (thus reducing the cost of capital) or with the uninsured layer of the judgment (preserving the insured layer for the claimant).

2. Maximizing monetizations

Over the past several years, we have seen a rising trend among in-house legal and finance teams looking to take present value from contingent assets by accelerating or "monetizing" litigation claims with non-recourse legal finance capital. When monetizing a claim, a legal finance provider analyzes the total potential claim value, the amount of capital at risk and the margin from which the funder can take its return. Most monetization deals provide 10-30% of claim value. However, if a judgment preservation policy is in place to insure the first layer of the judgment, then the amount of capital at risk in the monetization is substantially decreased. Consider the $100 million judgment example from above: Without insurance, a funder might be willing to advance $20-25 million of the judgment; however, if the claimant has insured the first $20 million of the judgment, a funder might be able to monetize $40 million or more, knowing that only half that amount is subject to litigation risk.

3. Layer products to fund litigation

For law firms utilizing legal finance to fund a large portfolio of claims, layering an affirmative recovery insurance policy with traditional legal finance products can create flexibility in how the firm manages its cash flow needs. For example, a law firm that desires a financing agreement to cover out-of-pocket expenses across its contingent portfolio might secure an insurance policy for the first 20% of the expected fees from the portfolio. The firm could then choose to either pledge the policy as collateral, along with its portfolio, in order to reduce the cost of its capital, or it could secure financing backed only by proceeds above the policy limit in order to ensure a minimum level of recovery to the firm.

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