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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

The consultative potential of legal finance in maximizing the value of corporate litigation portfolios

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Now that legal finance is part of the financial toolset of an increasing number of in-house and law firm lawyers in all of the leading jurisdictions for commercial disputes worldwide, the days of legal finance being new or novel are clearly behind us.

Nonetheless, legal finance is still only partially understood by most. It is still the case that few lawyers—and even fewer finance and other corporate leaders—are fully aware of the ways that legal finance firms can help them beyond simply providing capital, specifically by providing expertise to help them maximize the value of the legal assets in their portfolios.

It is certainly true that legal finance capital solves real money problems, from removing the risk and expense of fees and expenses associated with pursuing claims to accelerating or "monetizing" pending claims, judgments and awards. But equally as valuable to companies and law firms is the fact that, alongside the funding it provides, Burford has deep insights and voluminous data sets that enable it to identify, prioritize and extract greater value from litigation assets.

Much of this is a matter of scale and focus. Most companies are infrequent litigators, but even those whose businesses require them to routinely pursue commercial disputes lack the perspective of a global legal finance company like Burford, which reviews hundreds of billions of dollars' worth of commercial disputes every year and has done so for well over a decade. Thus, just as companies expect their investment banks to provide capital and expertise, so, too, should they think about their legal finance partners as capital providers and simultaneously as strategic consultants.

How does legal finance expertise benefit companies and law firms? Below we sketch out in brief some scenarios in which a legal finance provider can provide valuable insights to maximize the value of corporate litigation portfolios for which it provides financing.

#1. IDENTIFYING MERITORIOUS AND VALUABLE ASSETS

Like the proverbial Picasso in the attic, an extremely valuable litigation asset may be hiding in plain sight in a company's portfolio. In a scenario we have encountered many times, a large company with complex business relationships may have been significantly harmed by anticompetitive behavior and yet remain entirely unaware that it has a claim worth tens or hundreds of millions of dollars, or more, in damages. And even after becoming aware of such a claim, for example in a class action context, that company may not be well-versed in the relative advantages of seeking an even larger recovery by opting out of a class and bringing its own claim with the benefit of legal finance capital that offsets the cost and risk of litigation.

Burford routinely helps companies understand what legal assets they are sitting on by identifying existing actions and claims relevant to their businesses. If and when such claims present the option of opting out of or joining a class, Burford may also provide its perspective on the relative risks and rewards of doing so.

#2. PRIORITIZING LEGAL ASSETS TO YIELD THE MOST EFFICIENT RECOVERY

Companies may be aware—and painfully so—that they have valuable legal assets but need guidance on where to focus and prioritize. Two examples in particular stand out.

An increasing number of companies are working toward establishing affirmative recovery programs—that is, efforts to realize more value from their meritorious claims. But even companies with this level of ambition and sophistication may still need guidance on which among their matters are most likely to succeed with the most economic impact. As a funding partner with deep expertise in commercial disputes, Burford can provide guidance to help clients prioritize matters most likely to be most successful. When clients don't neglect to pursue meritorious claims, and when they aim their focus on the most high-return matters, better economic outcomes for their businesses follow.

Another obvious instance of the need for guidance on prioritizing legal assets is enforcement. Based on independent research commissioned by Burford, 75% of large-company financial officers (that is, companies with revenues over $1 billion annually) reported unenforced judgments worth $20-$100 million in 2020. Such companies typically have large portfolios of disputes in which they have won judgments but the defendants have simply failed to pay.

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