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New research on affirmative recovery programs reveals opportunity for legal departments to add value

Three of five GCs interviewed say their companies neglected to pursue meritorious recoveries

“We don’t leave a dime on the table,” says one GC

New York City, February 8, 2022 - Burford Capital, the leading global finance and asset management firm focused on law, today releases new independent research demonstrating that companies can unlock value in their legal departments through more systematic affirmative recovery programs.

As revealed by extensive one-on-one interviews with over 50 general counsel, heads of litigation and other senior legal leaders at major corporations globally, most companies have affirmative recovery programs to recover money for the business by pursuing meritorious litigation and arbitration claims when their companies are harmed. Still, many see room for improvement, with those with more systematic affirmative recovery programs showing the benefits of doing so.

Christopher Bogart, CEO of Burford Capital, said: “Our latest independent research is consistent with my own prior experience as a GC. Done right, affirmative recovery programs can transform in-house legal departments from cost centers to revenue generators, greatly enhancing the commercial standing of senior legal leaders in their companies.

“GCs benefit from hearing from their peers and from having the right tools and partners. In that spirit, we hope this new research helps companies and law firms alike realize the value of affirmative recovery programs in maximizing corporate value, and that by adding legal finance to the mix, they can greatly increase certainty around their litigation budget and cash flows.”

Key findings from the research include:

- **Affirmative recovery programs are expanding but are still rarely robust.**
 - ***Affirmative recovery programs are increasingly common***, with two of three GCs, heads of litigation and other senior in-house lawyers interviewed saying that their companies have an affirmative recovery program. However, only a few legal leaders say their programs are robust.
 - ***Three of five GCs interviewed say their companies neglected to pursue meritorious recoveries.***
 - ***Half*** of all GCs interviewed would exchange some upside on pending claims in exchange for removing costs and downside risk of loss.

- Senior in-house lawyers recognize that when they do pursue affirmative recoveries, ***new tools to increase certainty and manage costs will lead to better results.***
 - *Three of five GCs interviewed say quantitative financial modeling would be advantageous to affirmative litigation recoveries.*
- **Legal finance has a role to play.**
 - In-house lawyers whose companies use legal finance consistently say their companies have ***robust affirmative recovery programs that meet their needs.***
 - Senior in-house lawyers admit to varying levels of knowledge about legal finance, but many are ***hungry for more information***—and many remain unsure about how it works.
 - ***Reputation and experience*** top in-house lawyers’ priorities when selecting legal finance partners.
- **More systematic affirmative recovery programs benefit organizations, teams and leaders.**
 - Interviews with senior in-house lawyers suggest that more effective affirmative recovery programs ***benefit the overall enterprise, elevate legal within the organization and earn credit for legal teams for innovation and cost and risk management.***
- **Key quotes from the report:**
 - “Everything about what I do is about the value that the legal department generates for the company, so new creative ways of generating revenue and reducing risk is very appealing.” (GC, multinational logistics company)
 - “If you are on the plaintiff’s side, you can finance your claims through a legal finance company if the business does not want to lay out the expenses, which is great. The lawyers need to understand that this option is available.” (GC, capital market company)
 - “My peers are speaking about claims as assets, which was not part of the conversation five years ago.” (Head of litigation, multinational retail corporation)
 - “We don’t leave a dime on the table.” (GC, capital market company)
 - “In the last five years, we have probably recovered over \$1 billion in settlements or other recoveries.” (Group GC, privately held construction company)

The [2022 Affirmative Recovery Programs Report](#) can be downloaded on Burford’s website. The research report is based on 1:1 interviews conducted by phone with 52 general counsel, heads of litigation and other senior in-house lawyers with direct responsibility for their



companies' commercial litigation and arbitration. The interviews were conducted between October and December of 2021 by Ari Kaplan Advisors.

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About Burford Capital

Burford Capital 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, DC, Singapore and Sydney.

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