

2022 Affirmative Recovery Programs Report

From cost center to revenue generator:
Legal departments managing the risk and
maximizing the value of commercial
litigation and arbitration

“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 are very appealing.”

—GC, MULTINATIONAL LOGISTICS COMPANY

2022 Affirmative Recovery Programs Report

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Preface

General counsel and senior in-house lawyers across nearly every industry must weigh myriad quantitative and qualitative factors when deciding whether to pursue affirmative litigation. Certainly, chief among those considerations are business relationships, but economic factors such as cost management and accurate budget predictions remain major barriers for both in-house legal departments and their outside counsel. ***Increasingly, however, in-house legal teams are discovering that by establishing more systematic affirmative recovery programs, they can manage the cost and risk of commercial litigation and arbitration—and by adding legal finance to the mix, greatly increase certainty around their litigation budgets and cash flows.***

Further, affirmative recovery programs can better align the legal department's goals with those of corporate finance and other business units. Such programs have the potential to transform in-house legal departments from cost centers to revenue generators, and many senior legal leaders who are seeing the benefits have shared their insights with us.

This report, which looks at the rapid development of affirmative recovery programs in legal departments, offers insights that we hope will be of interest not only to legal teams but also to the law firms that serve them. Our research draws on extensive one-on-one interviews with 52 general counsel, heads of litigation and other senior legal leaders at major corporations around the world. We are grateful for their time and perspective.

From our earliest days, Burford's success has been built on listening to in-house and law firm lawyers and then evolving our legal finance solutions to meet their most pressing needs. More than a decade since our founding, we continue to invest in regular independent research designed to shed light on trends in the dynamic business of law. Specifically, we analyze developments that relate to how lawyers and finance professionals deal with the very real challenges of managing the cost and risk of commercial litigation and arbitration. We hope you will find these insights useful, and we welcome your comments and ideas at researchfeedback@burfordcapital.com.



Aviva Will
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Executive summary

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.
- 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.**

Legal finance has a role to play

- 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.
- In-house lawyers whose companies use legal finance consistently say their companies have **robust affirmative recovery programs that meet their needs.**
- **Reputation and experience** top in-house lawyers' priorities when selecting legal finance partners.

Four fundamentals of effective affirmative recovery programs

- To build more effective affirmative recovery programs, interviews suggest, legal leaders should adhere to four best practices:
 1. Adopt a **systematic approach** to pursuing affirmative recoveries
 2. Leverage **data and insights**
 3. Collaborate with **finance and business unit** peers
 4. Increase **capital certainty** and efficiency

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.**

“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



**Affirmative recovery
programs are
expanding but are
still rarely robust**

The outcomes [of our affirmative recovery program] have exceeded our expectations, and our management is very confident in what we do. We are cutting edge in our approach and analysis. The challenge for us is to continue to improve.

—GROUP GC, PRIVATELY HELD CONSTRUCTION COMPANY

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.

- Most senior in-house lawyers confirm that **their companies have affirmative recovery programs**—that is, programs to recover money for the business by pursuing meritorious litigation and arbitration claims when their companies are harmed. Indeed, two of three senior in-house lawyers interviewed say their companies have such a program.
- Many are quick to offer that **their companies' affirmative litigation program is relatively limited**. They endeavor to pursue affirmative recoveries in ways that make business and financial sense for the enterprise, prioritizing matters that return the most value to the enterprise without damaging important relationships.
- Some suggest that **affirmative recovery efforts have become more important given the economic pressures of Covid** and their legal department's ongoing bid to be viewed as more than a cost center.

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GCs interviewed say their companies have an affirmative recovery program

“We are always looking at ways to be on the plaintiff’s side for recovery, such as antitrust violations. We focus on higher-dollar thresholds in legal, but the business units pursue lower-dollar matters themselves. Legal runs across all business units, but the litigation and investigations teams focus on the overall organization’s interests.”

—HEAD OF LITIGATION, MINERAL AND MINING COMPANY

“Risk tolerance and relationships intersect with affirmative litigation and recovery efforts. You need to know whether the left hand works with someone that you want to punch with the right hand.”

—ASSOCIATE GC, LITIGATION, INSURANCE AND FINANCIAL SERVICES COMPANY

“Affirmative litigation is a great example of how an in-house legal team can be more cost effective, both from an economic standpoint and substantively given that we know the business better than any outside lawyers.”

—CO-HEAD OF LITIGATION, FINANCIAL SERVICES FIRM

“We are a defense shop, but there are recoveries that we pursue in class actions or in our fraud, waste, and abuse unit. When there is an affirmative recovery that we need, we are set up to do it, but it is not common.”

—ASSISTANT GC AND DIRECTOR OF LITIGATION, HEALTH INSURANCE PROVIDER

“Every legal department should have an affirmative recovery practice.”

—ASSISTANT GC, LITIGATION, HEALTH INSURANCE COMPANY

“There is an expectation to show that we have done as much as we can to bring in dollars and to save dollars. I’m not sure it was the same emphasis prior to the pandemic.”

—HEAD OF LITIGATION, MULTINATIONAL INSURANCE AND FINANCIAL SERVICES CORPORATION

“For the health insurance industry, there should absolutely be [affirmative recovery] targets for insurance fraud, waste, and abuse. We have subrogation from members and a mass tort recovery effort, and multiple antitrust claims against drug manufacturers against anti-competitive pricing. It should absolutely be a benchmark and a metric for health insurance companies.”

—ASSISTANT GC, LITIGATION, HEALTH INSURANCE CONGLOMERATE

However, only a few legal leaders say their companies have robust affirmative recovery programs.

- Although most senior in-house lawyers say their companies have affirmative recovery programs, **only about one in three says that their company's affirmative recovery program is very or extremely extensive.**
- Interestingly, a similar number—just one in three—says their company's legal cost management program is very or extremely extensive. Both responses suggest “room to grow”, given the inexorable push in business to minimize cost and maximize value. Interviews suggest that these factors indicate **a trend toward increasing the scale and ambition of affirmative recovery programs.**
- Three of five in-house lawyers interviewed say that their companies have neglected to pursue meritorious recoveries in the prior year, with the cost of pursuing claims, judgments and awards a deciding factor. This financial deterrent suggests that many **companies would benefit from pursuing recoveries with a risk-sharing partner.**

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GCs interviewed say their companies neglected to pursue meritorious recoveries

“[To increase value of legal assets], create a recovery program in the law department. Start with one case and build a team.”

—CHIEF LITIGATION COUNSEL, HEALTHCARE AND INSURANCE COMPANY

“We have eight team members dedicated to the company’s affirmative recovery program, with four lawyers leading different areas.”

—ASSISTANT GC, LITIGATION, HEALTH INSURANCE 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 affirmative recovery program was established six to seven years ago. Each lawyer in the group is challenged to find opportunities to pursue potential revenue, whether following up on class action matters or pursuing claims from suppliers if commercial conditions allow. We look for opportunities if there is unclaimed property or fee-sharing with third parties that allow us to offset the costs.”

—SENIOR MANAGING COUNSEL, LITIGATION, MULTINATIONAL MACHINERY COMPANY

“We have doubled the number of major cases we pursue given the healthcare environment.”

—CHIEF LITIGATION COUNSEL, HEALTHCARE AND INSURANCE COMPANY

“We do it as well or better than our peer companies. We have three litigators who focus a portion of their time on actively working with procurement on pre-litigation claims with vendors and who also monitor antitrust matters. We take it seriously and we have been successful at it.”

—CHIEF LITIGATION COUNSEL, MULTINATIONAL FOOD COMPANY

“We don’t leave a dime on the table.”

—GC, CAPITAL MARKET COMPANY

“We want to potentially find opportunities to turn the legal department into a revenue generator rather than a cost center.”

—DEPUTY GC, LITIGATION, MULTINATIONAL CHEMICAL COMPANY

“We hope in a year that it is a five [extremely extensive], but [our affirmative recovery program] is currently in its infancy.”

—HEAD OF LITIGATION, MULTINATIONAL RETAIL CORPORATION

In-house lawyers recognize that when they do pursue affirmative recoveries, new tools to increase certainty and manage costs will lead to better results.

- When the only path to being made whole requires litigation or arbitration, many senior in-house lawyers say they would **value tools that provide greater certainty about case costs and duration.**
- Three of five senior in-house lawyers interviewed believe that it is **possible to predict with a high degree of accuracy what litigation matters will cost**, but nearly half say that **their outside law firms do not provide accurate and reliable litigation budgets.**
- About two of three senior in-house lawyers believe that **commercial litigation and arbitration claims constitute financial assets that represent future cash flow**—and see opportunities to maximize the value of these assets to the business.

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GCs interviewed say pending claims are financial assets that represent future cash flow

“[GCs] should make it clearer that [pending litigation and arbitration matters] do have value, even if it is discounted contingent value. Just as we would pay to avoid a million-dollar loss, we should consider paying to create a million-dollar gain.”

—ASSISTANT GC, LITIGATION, HEALTH INSURANCE COMPANY

“I have taken a few cases by using the “finger in the air” model, but we would have seen more benefit if we invited finance into the analysis phase to offer more formal quantitative financial modeling. As a public company, the finance teams should be involved in higher-value legal matters, though they are not required to do so.”

—GC, PUBLICLY TRADED MARKETING SERVICES COMPANY

“Law firms tend to give you overly optimistic budgets thinking that it will help them. I always add 50%...”

—GROUP GC, PRIVATELY HELD CONSTRUCTION COMPANY

“If you...regularly see a certain type of case, you can more easily make predictions. If you don't have similar matters, part of the allure of certain lawyers is that they can help with those predictions.”

—GC, ELECTRONICS MANUFACTURING COMPANY

“I have a hard time with managing costs in litigation because it is hard to make predictions, though the finance teams don't like to hear that. I don't have great resources for that, other than a lot of discussions with outside counsel, who charge for that time.”

—GC, PUBLICLY TRADED MARKETING SERVICES 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

“Like any asset, you need to know what the matter is and is worth. Once you do, you can make good decisions about investing to preserve and monetize that asset because it will drive decision-making.”

—GROUP GC, PRIVATELY HELD CONSTRUCTION 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

“[Law firms] do not take the time—because they don't get paid to take the time—to perform an evaluation and analysis of their matters collectively in order to provide a more granular analysis and thus an accurate and reliable budget.”

—GC, MULTINATIONAL LOGISTICS COMPANY

“I would like to increase our budget for litigation but am not sure what we can do to control outside counsel costs, especially in patent litigation.”

—ASSOCIATE GC, MULTINATIONAL TELECOMMUNICATIONS COMPANY

Four fundamentals of effective affirmative recovery programs

Interviews with senior in-house lawyers suggest that legal leaders *should employ best practices to build more effective affirmative recovery programs.*

#1: Adopt a systematic approach to affirmative recoveries

- Senior in-house lawyers emphasize the **value of adopting a programmatic approach to vetting potential affirmative recoveries**, with clear criteria for determining which matters should be prioritized and pursued.
- Nearly four of five interviewees describe **decision-making about the pursuit of affirmative litigation recoveries as a balance of quantitative and qualitative factors**, most frequently being likely financial return and impact on business relationships.
- Many acknowledge the **difficulty of establishing criteria for vetting their companies' high value claims given their relatively small data sets for similar previous matters**—and thus their need to seek such data outside their enterprise.

#2. Leverage data and insights

- Nearly four of five in-house lawyers interviewed say that their companies **do not utilize quantitative financial modeling to make decisions** about whether to pursue affirmative litigation recoveries.
- More than three of five in-house lawyers believe that **quantitative financial modeling would enable them to make better decisions** about affirmative litigation recoveries, benefiting their legal team, their finance team and their business.
- Many of those interviewed express **frustration at lack of access to insights that could help them make more data-driven decisions** and say that they would **welcome these insights from outside counsel or another third party**.

#3. Collaborate with finance peers

- The majority of in-house lawyers interviewed say that **more communication and collaboration between the legal and finance departments** would benefit their companies' litigation outcomes.
- Some in-house lawyers reported **strong interest from the company CFO to pursue an affirmative recovery program**.
- Interestingly, **senior in-house lawyers are less likely than senior finance leaders to say that their company's affirmative recovery program requires improvement**. Whereas nearly half of finance leaders surveyed for a 2021 report say improvement is needed, only about one in four senior in-house lawyers agree that improvement is needed.

#4. Increase capital certainty and efficiency

- Many senior in-house lawyers interviewed described **financing as an important component of affirmative recoveries**, given the need to balance the pursuit of valuable claims and awards with risk-sharing partners and tools to increase certainty around costs and capital flows.
- Over half of those interviewed say that it would be **appealing to their companies to exchange some upside on pending affirmative litigation and arbitration claims in exchange for removing costs and downside risk of loss**.
- One of three interviewed say that it would be **appealing to exchange some upside in exchange for accelerating the timing of recovering money tied to pending claims** or to judgments and awards instead of waiting for resolution.

#1: Adopt a systematic approach to affirmative recoveries

“Our vetting process is pretty extensive... We need to look at the implications of bringing a matter in terms of reputation and relationship.... It is a lot of work, but very lucrative.”

—ASSISTANT GC, LITIGATION, HEALTHCARE AND INSURANCE COMPANY

“The decision to pursue litigation is often based on a gut check and a back-of-the-envelope calculation, and it would be helpful to add some rigor and a scientific approach to maximize the recovery and minimize wasted effort.”

—GC, PRIVATELY HELD WELLNESS COMPANY

“We evaluate the chances of success, the potential recovery, the necessary evidence, the strength of the claims, the repercussions should we not bring the suit (such as piracy), and the costs to bring the suit. We are also making a lengthy assessment of whether we should pursue patent infringement claims, and that analysis can take months.”

—SENIOR CORPORATE COUNSEL, MEDIA COMPANY

“If [meritorious claims] arise with any frequency, [legal teams] should implement some type of program to identify those claims and evaluate whether they are worth pursuing, particularly if the environment is one where those claims could be missed, resulting in a missed revenue opportunity. If there is a particular business with repeat claims, why wouldn't you put in place a system to evaluate these cases and your probability of success balanced against reputational risk, the likelihood of success, and value? Simply requiring the business to ask a standard set of questions will allow the company to benefit from affirmative litigation.”

—LITIGATION COUNSEL, MULTINATIONAL INVESTMENT BANK

“We must make sure that the potential recovery justifies the investment of time and resources, but also... ensure that we are not stepping on any stakeholder relationships. It is a rigorous process for us to engage in affirmative litigation.”

—SENIOR MANAGING COUNSEL, LITIGATION, HEALTHCARE AND INSURANCE COMPANY

“We don't allow business units to add items to our budget... If we settle items favorably, the legal department shares in the credit, whether defensive for risk mitigation or offensive for revenue generation.”

—HEAD OF LITIGATION, MULTINATIONAL AEROSPACE COMPANY

“The process of educating the business units about what to do when an issue arises and letting the litigation team help them pursue a claim is a challenge and something on which we are routinely focused.”

—CHIEF LITIGATION COUNSEL, MULTINATIONAL FOOD COMPANY

“You do have the ability to monetize claims... The challenge is identifying those claims... Someone with experience needs to evaluate it. Also... having a strategy to turn that asset into dollars and cash in an appropriate timeframe makes it difficult to fall on the right side of the risk profile. Lawyers are by nature risk-averse, so I want to be fairly certain that what I have identified as an asset will bear fruit.”

—GC, ELECTRONICS MANUFACTURING COMPANY

#2. Leverage data and insights

“We have some data, but we don’t know what to do with it and what it means in its entirety, but quantitative financial modeling can help provide clarity.”

—HEAD OF LITIGATION, MULTINATIONAL RETAIL CORPORATION

“It is hard to believe that firms that have a big enough presence and data cannot develop a matrix to help increase the predictability of their matters.”

—GC, MARKETING SERVICES COMPANY

“If you are building an affirmative recovery program, you want that capability [quantitative financial modeling].”

—HEAD OF LITIGATION, MULTINATIONAL RETAIL CORPORATION

“We are very interested in learning more about third parties that support this effort. The concept of doing [financial modeling of affirmative recoveries] internally has been challenging.”

—ASSOCIATE GC, CHIEF LITIGATION COUNSEL, INSURANCE COMPANY

“With enough data on past matters, you can project costs fairly accurately. The good law firms are doing this to support alternative billing models, as they need to make a certain amount of money notwithstanding a change in the billing structure.”

—SENIOR CORPORATE COUNSEL, MEDIA COMPANY

“Our group is trying to leverage metrics to drive better decision-making associated with both defense- and plaintiff-side litigation. Quantitative financial modeling helps us use metrics to make better decisions and is often prudent litigation management.”

—ASSOCIATE GC, CORPORATE LITIGATION, INSURANCE COMPANY

“I would have a high level of confidence in [modeling affirmative recoveries] if they were using large amounts of data and applying them to our matters, but since our matters are so distinct, it is hard to apply a mathematical formula. And the numbers are so large that a 10% swing would be a very material amount of money.”

—GROUP GC, PRIVATELY HELD CONSTRUCTION COMPANY

“It is helpful in that it allows the business people to understand legal matters in terms that are familiar to them. It also allows the lawyers to quantify the value of a matter considering the legal and reputational risks.”

—MANAGING COUNSEL, MULTINATIONAL RETAIL CORPORATION

“We don’t have a portfolio of cases from which we can create metrics for application to future matters. Many of these cases tend to be their own little unicorns.”

—ASSISTANT GC, DIRECTOR OF LITIGATION, HEALTH INSURANCE COMPANY

| #3. Collaborate with finance peers

“You are not doing your job as a legal department if you’re not working hand in hand with the finance department.”

—GC, PRIVATELY HELD PROPERTY MANAGEMENT COMPANY

“Corporate legal and corporate finance teams will get along better if there is more predictability in the amounts allocated to litigation.”

—GC, MARKETING SERVICES COMPANY

“We have increased the communication with the finance teams and meet with them quarterly.... ***We review the cases we are defending, but their eyes seem to glaze over until we talk about affirmative matters, which is of much greater interest. That is an area in which corporate finance wants focus and growth.*** It is a lever that corporate finance likes to pull when they need money. They have come to realize that the legal department is now a potential resource for generating revenue.”

—HEAD OF LITIGATION, MULTINATIONAL FOOD AND BEVERAGE COMPANY

“Corporate legal always needs to have a seat at the table at all relevant stages, not just at the litigation stage, [and] integrated at every step of the process, including risk avoidance. On the finance side, it is possible we would be buying a company with litigation, so we need to work closely with the finance team on a recovery analysis and future costs of any given matter.”

—GC, FINANCIAL SERVICES COMPANY

“We do not speak legalese to our business partners, though sometimes, the finance professionals speak finance-ese. We need them to understand us better so that they can use legal as a tool.”

—DEPUTY GC, LIFE INSURANCE COMPANY

“We work closely with the finance team, and they find it helpful for us to inform them about pending matters... and to identify the risks.... It is also helpful for legal to understand how finance values certain matters when determining its strategy.”

—CHIEF LITIGATION COUNSEL, MULTINATIONAL FOOD COMPANY

“I have always thought that litigation funding is interesting so the legal department can educate corporate finance teams about that option.”

—DIRECTOR AND LITIGATION COUNSEL, INTERNATIONAL BANKING GROUP

“It is always about the dollars, so legal needs to provide finance with accurate financial information for any matter. Aligning the controls that the finance and accounting team has with the ability to prove the costs that you are seeking to recover brings credibility to a claim that a certain event causes a particular amount of damages.”

—GROUP GC, PRIVATELY HELD CONSTRUCTION COMPANY

“Legal needs to do a better job of communicating value-add to the business generally. Finance can view legal as a cost or an impediment or a time constraint, but the collaboration could benefit if legal more effectively demonstrated how it adds value to the business.”

—SENIOR LEGAL COUNSEL, PUBLICLY TRADED REINSURANCE COMPANY

#4. Increase capital certainty and efficiency

“If you have uncollected claims, you should sell the asset to its most efficient user. There is a lot to be done there. Most people still don’t understand it.”

—HEAD OF LITIGATION, MULTINATIONAL AEROSPACE COMPANY

“If you can give a discount and get certainty on payment... [monetizing claims and awards] is worth it. There is a great deal of appeal. I have a high degree of interest in it.”

—HEAD OF LITIGATION, MINERAL AND MINING COMPANY

“Litigation funding... could allow us to gain a revenue stream from the portfolio based on the outcome of the modeling.”

—ASSISTANT GC, LITIGATION, PUBLICLY TRADED HEALTHCARE SERVICES COMPANY

“We are not hitting our targets from a rate of recovery and the standpoint of timing our collection efforts.”

—DEPUTY GC, PUBLICLY TRADED SOFTWARE COMPANY

“I prefer the certainty of something to the risk of a complete loss.”

—ASSISTANT GC, LITIGATION, PETROLEUM COMPANY

“Our business loves risk management and certainty. So if you know going in that the risks are fixed in exchange for sharing some recovery, it would be appealing. It is all about certainty.”

—ASSOCIATE GC, LITIGATION, GLOBAL CHEMICAL COMPANY

“Pursue claims and monetize them through a litigation finance group... There are people who are willing to bet on you.”

—HEAD OF LITIGATION, MULTINATIONAL FOOD AND BEVERAGE COMPANY

Legal finance has a role to play

Fifteen years ago, if someone asked about funding litigation it sounded radical, but now it is mainstream.

—GC, MULTINATIONAL LOGISTICS COMPANY

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.

- Although the majority of senior in-house lawyers interviewed say they have **some knowledge of legal finance** products and structures, relatively few (just over one in ten) say they are extremely knowledgeable.
- Similarly, just over one in ten of those interviewed say their organizations currently use legal finance, with more reporting that they believe their competitors use it and many saying they **plan to begin using it in the future**.
- Many senior lawyers' comments reveal confusion about key aspects of legal finance. For example, many express concern about losing control of matters if they accept funding, but **no such loss of control occurs**. Additionally, many confuse legal finance with the sale of claims (only one of a much larger suite of potential available solutions).

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GCs interviewed say their companies currently use legal finance, but more believe their competitors are doing so



“Capital in the company can be invested and produce more money than waiting for payment... A third-party funding method where some portion of the recovery would come to us earlier? The culture of the company would appreciate that.”

—SENIOR CORPORATE COUNSEL,
MEDIA COMPANY

“To take something off the balance sheet and to protect your budget, the benefit is huge.”

—HEAD OF LITIGATION, MULTINATIONAL
RETAIL CORPORATION

“People need to offload liabilities, and if there is a way to reduce them while protecting earnings, all the better.”

—GC, MULTINATIONAL LOGISTICS COMPANY

“Legal teams should explore litigation financing and monetization.”

—DEPUTY GC, LITIGATION, MULTINATIONAL
CHEMICAL COMPANY

“[Legal finance] does make economic sense because you can remove negative downside and make the upside more predictable.”

—LITIGATION COUNSEL, MULTINATIONAL
INVESTMENT BANK

“If we can take the risk out of litigation, it would help our business.”

—GC, FINANCIAL SERVICES FIRM

“There may be an advantage to getting paid sooner to help our quarterly reporting. For litigation, you always want the money in the door sooner.”

—DEPUTY GC, LITIGATION, FINANCIAL
SERVICES COMPANY

“Legal finance would be helpful and something that actually helps the bottom line and takes the risk of loss away.”

—GC, TECHNOLOGY COMPANY

In-house lawyers whose companies use legal finance also consistently say that their companies have robust affirmative recovery programs that meet their needs.

- Senior in-house lawyers who say their companies use legal finance also report that their companies have **robust and effective affirmative recovery programs**.
- In-house lawyers who report that their companies use legal finance are likely to be aware of claim, judgment or award monetization as a means of accelerating or advancing future value and “locking in” a minimum outcome. **Companies with strong balance sheets may nonetheless use monetization** of claims, judgments and awards to offset the cost of legal or for other business needs.
- **Increased certainty around cost and risk** is cited as a major benefit of legal finance.

GCs cite more certainty about cost and risk as a major benefit of legal finance

“I suspect there are corporate law departments that have claims, but don’t know how to monetize them.”

—HEAD OF LITIGATION, MULTINATIONAL
RETAIL CORPORATION

“[Monetization] eliminates the uncertainty in payment, which is worth the loss of some of the upside.”

—GC, TECHNOLOGY COMPANY

“We are using litigation funding to pursue opportunities that we otherwise would not pursue because of the cost... We want to potentially find opportunities to turn the legal department into a revenue generator rather than a cost center. From individual business units, there is some cost management because the expenses would be easier to manage with a funder involved.”

—DEPUTY GC, LITIGATION, MULTINATIONAL
CHEMICAL COMPANY

“Legal teams should explore opportunities to finance their assets and monetize their claims.”

—DEPUTY GC, LIFE INSURANCE COMPANY

“Cash is king and cash has value, so there is a lot of value in getting paid earlier. It is no different from us having payment terms [that] offer [clients] a reduction to get paid sooner. We will take that.”

—GC, MULTINATIONAL LOGISTICS COMPANY

“

[Monetization] is appealing for accountants and the finance team, who can book it immediately rather than when a judge or arbitrator issues a decision. The certainty is appealing, but so is the risk-sharing. The time value of money is inherent in any litigation matter.

”

—ASSISTANT GC, LITIGATION,
HEALTH INSURANCE COMPANY

Reputation and experience top in-house lawyers' priorities when selecting legal finance partners.

- As in their decision-making around the hiring of outside law firms, senior in-house lawyers are most likely to **cite reputation and experience as the most important factors in choosing a legal finance partner**, followed by cost of capital.
- Most of those interviewed say they would **welcome the opportunity to be educated about legal finance**, particularly with use cases that relate to their businesses.
- About eight of ten senior in-house lawyers able to name any legal finance companies cite **Burford as the commercial legal finance company with which they are most familiar**.

GCs' number 1 reason to choose a legal finance partner is reputation and experience

“Reputation is critical.”

—ASSOCIATE GC, PRODUCT LITIGATION,
TECHNOLOGY COMPANY

“We care about whom we do business with, whether it is a financing company or a law firm, and typically want to work with best-of-breed organizations.”

—ASSOCIATE GC, LITIGATION, GLOBAL
CHEMICAL COMPANY

“Thinking about litigation finance, access to the best experts must be worth something and have significant value.”

—HEAD OF LITIGATION, MULTINATIONAL
RETAIL CORPORATION

“Reputation and value-add would be paramount.”

—SENIOR LEGAL COUNSEL, PUBLICLY TRADED
REINSURANCE COMPANY

“If someone I know used a funder or explored a matter to great effect, that would be a huge validation. That is everything and would demystify the process, helping me identify the questions to ask.”

—DEPUTY GC, ENERGY STORAGE COMPANY

“Reputation is critical because just as we use reputable law firms we want to make sure we are using reputable funders.”

—DEPUTY GC, LITIGATION, MULTINATIONAL
CHEMICAL COMPANY

**More systematic
affirmative recovery
programs benefit
organizations, teams
and leaders**

*You are only as good as what you
accomplished yesterday so we need to
continue to evolve.*

—ASSOCIATE GC, LITIGATION, TECHNOLOGY COMPANY

Interviews with senior in-house lawyers suggest that more effective affirmative recovery programs benefit the overall enterprise, elevate legal within the organization and earn in-house lawyers credit for innovation and cost and risk management.

- Many senior in-house lawyers welcome the opportunity to demonstrate through their affirmative recoveries and affirmative recovery programs how the legal department can balance protecting the company with contributing to positive financial outcomes.
- Educating business units about how to leverage the legal department for affirmative as well as defensive litigation is cited as a goal.
- Not surprisingly, repositioning the legal department as more than a cost center is frequently mentioned as a goal—and one that becomes less elusive with the use of tools like legal finance.

A top goal for GCs is repositioning the legal department as more than a cost center

“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

“It would be helpful for people to understand the role that the legal department should have in an organization. Many people are afraid to have legal departments at the table because of the impression that it is the “deal-killing” department, but we are our own worst enemy because we don’t show what we bring to the table.”

—GC, FINANCIAL SERVICES FIRM

“[We are] getting the word out that we are here for affirmative litigation as well as defensive litigation. If you have an issue, let us know and let us look at it. Over the past few years, we have been better about this. We need to make sure that business leaders have a place to go in those situations.”

—DEPUTY GC, LITIGATION AND EMPLOYMENT,
FINANCIAL SERVICES COMPANY

“If you are not at all commercially friendly, you could lose credibility.”

—GC, PRIVATELY HELD WELLNESS COMPANY

“Business units [should] see legal as aligned with them, rather than as a cost center. If you are managing your litigation and set a reasonable goal to achieve asset and litigation recovery, it will resonate with the business because each unit is doing that as well.”

—ASSISTANT GC, LITIGATION, PETROLEUM COMPANY

“The legal department [should] be less reviled as a cost center and considered more of a contributor to the organization, which could bring legal into alignment with the other business units. Legal as a cost center is a concern.”

—ASSOCIATE GC, MULTINATIONAL BROKERAGE FIRM

“[Business] leaders don’t always recognize that legal teams generate revenue, so if you do not have a target, people do not recognize the full breadth of the work you are doing.”

—GC, FINANCIAL SERVICES COMPANY

“When we receive a recovery, it goes directly to the corporate treasury.”

—ASSOCIATE GC, CORPORATE LITIGATION,
INSURANCE COMPANY

Glossary

Affirmative recovery program: Efforts to return money to the business by pursuing meritorious litigation and arbitration claims when companies are harmed, often through litigation or arbitration.

Legal finance: Specialty finance used by corporations to shift the cost and risk of their commercial litigation and arbitration without losing control of their claims; typically structured not as a loan but as non-recourse financing, with repayment only from a successful outcome.

Monetization: Legal finance arrangement in which a company accelerates the value of a pending claim, judgment or award, benefiting the balance sheet by enhancing liquidity and reducing risk.

Fees and expenses financing: Legal finance arrangement in which a company shifts the cost of paying its legal fees and expenses to pursue high value claims to a funder, benefiting the P&L by reducing costs and removing downside risk.

Portfolio finance: Legal finance arrangement in which a company accesses a capital facility backed by multiple litigation and/or arbitration matters, including affirmative claims and defense matters.

About the research

This 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.

The gold standard for legal finance

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.

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| <table border="1"><tr><td data-bbox="220 762 450 931">Band 1 ranked by <i>Chambers</i> in the US and UK for litigation finance, asset tracing & recovery</td><td data-bbox="523 802 753 903">9 Lawdragon 100 global leaders in legal finance</td></tr><tr><td data-bbox="220 1044 450 1145">1 <i>Financial Times</i> top 10 innovator</td><td data-bbox="523 1032 753 1153">Three <i>New York Law Journal</i> trailblazers</td></tr></table> | Band 1 ranked by <i>Chambers</i> in the US and UK for litigation finance, asset tracing & recovery | 9 Lawdragon 100 global leaders in legal finance | 1 <i>Financial Times</i> top 10 innovator | Three <i>New York Law Journal</i> trailblazers | <table border="1"><tr><td colspan="2" data-bbox="922 782 1295 911">72% of clients who bring Burford matters return to do business again</td></tr><tr><td data-bbox="858 1012 1056 1173">140+ employees drawn from top firms and corporations</td><td data-bbox="1168 1012 1359 1165">60+ lawyers perform in-house diligence</td></tr></table> | 72% of clients who bring Burford matters return to do business again | | 140+ employees drawn from top firms and corporations | 60+ lawyers perform in-house diligence |
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¹ Based on reporting of combined litigation finance investments, unfunded core litigation finance investments and other investments as of 22 September 2021.

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