

Burford

# Introduction to Legal Finance

*Key concepts in financing commercial  
litigation & arbitration*



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# Key concepts in legal finance

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The use of outside capital in the legal industry is becoming increasingly widespread. Research shows that reported use of legal finance has doubled in recent years, and that the majority of lawyers understand that it allows companies and law firms to invest in growth and use capital efficiently.

Nonetheless, many potential users of legal finance still lack direct experience and need more understanding of legal finance solutions, how they work and the factors they should consider.

## **| Defining legal finance**

In its most common form, legal finance is provided to pay for costs associated with commercial litigation or arbitration (lawyers' fees, case expenses, etc.) or to accelerate the value of pending claims, judgments, awards or fees, in exchange for a portion of the ultimate recovery. Financing can be provided for a single commercial matter or for multiple matters combined in a cross-collateralized portfolio (which can include both plaintiff and defense matters).

# | Typical users of legal capital:

## **CORPORATIONS**

Companies from startups to the Fortune 500 use legal finance to defray the cost of pursuing significant litigation recoveries and to accelerate the value of those recoveries so that they can use their capital efficiently.

In essence, legal finance gives companies a P&L solution by removing the cost of paying lawyers from their expense line, and a cash flow solution by giving them the flexibility to unlock and accelerate value that would otherwise remain illiquid over the multiyear process of pursuing commercial claims. Legal finance is used in ways resembling any other form of specialty corporate finance. Companies use legal finance to move cost and risk off balance sheets, free up capital for other business purposes and improve risk management while adding budgetary certainty.

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## **LAW FIRMS**

Law firms use legal finance when they wish to offer clients flexible terms but can't or don't want to assume the entire risk of doing so. Rather than having to forgo service to a client, law firms can use legal finance to manage risk and generate new business.

Legal finance offers law firms a business development solution. Through portfolio finance, firms can gain access to a pool of capital that enables them to quickly offer competitive terms to prospective clients or to invest in the business.

Additionally, legal finance provides a law firm cash management solution for firms by enabling them to accelerate pending fees with remaining litigation risk or to advance pending client deliverables of any kind.

# Comparing funding options

Different legal finance products solve different business problems:

- Fees & expenses financing removes the cost of pursuing litigation and arbitration—enhancing budget and cost management
- Monetization advances capital tied to a pending matter—enhancing liquidity and reducing risk
- Relieve the claimholder of expense, delay and distraction

	FEES & EXPENSES	MONETIZATION	CLAIM PURCHASE
WHAT	Fund legal fees and expenses associated with the pursuit of commercial claims	Accelerate capital tied to pending commercial claims, judgments and awards	Outright purchase of a pending commercial claim, from the claimholder—a rarity in our business
TIMING OF CAPITAL FLOWS	Paid to client's law firm as incurred during the litigation or arbitration	100% of advance paid at deal close or on client's preferred schedule, with additional significant remaining upside when case resolves successfully	100% at deal close
TYPICAL TERMS	Non-recourse: Client need not repay unless matters win; if successful, Burford earns investment back and portion of upside	Non-recourse: Client need not repay unless matters win; if successful, Burford earns investment back and portion of upside	Purchase
KEY BENEFITS	<ul style="list-style-type: none"> <li>• Reduce costs</li> <li>• Manage budgets</li> <li>• Pursue valuable claims without downside risk to company</li> </ul>	<ul style="list-style-type: none"> <li>• Accelerate payment</li> <li>• Generate working capital</li> <li>• Lock in minimum benefit regardless of outcome, reducing risk</li> </ul>	<ul style="list-style-type: none"> <li>• Accelerate payment</li> <li>• Generate working capital</li> <li>• Lock in minimum benefit regardless of outcome</li> <li>• Offload administrative burden and cost of pursuing dispute</li> </ul>
CASE STUDIES	Industrial manufacturer preserved operating cash for its business with \$6 million in capital to pay for legal fees and expenses of a multi-year supplier dispute	Fortune 100 company accelerated \$75 million of a pending claim, thus guaranteeing minimum return ahead of case resolution with no downside risk to the company	A company in bankruptcy sold the right to assert a valuable claim, giving it an immediate cash infusion and relieving it of resources needed to pursue the claim

## | The cost of legal finance

Legal finance is not a loan; it is generally non-recourse, meaning that Burford assumes downside risk of loss and the client need not repay any investment or advance unless and until matters resolve successfully.

As a result, pricing for legal finance is proportional to risk. This may reflect the stage of the litigation, the type of matter, the likely duration or another factor. Like litigation itself, risk is idiosyncratic.

In assessing a potential investment, the finance provider's diligence function—which at Burford is an in-house team of experienced commercial litigators—will consider the range of factors that make up its risk profile.

The finance provider will assess the potential value of the underlying legal assets to craft financial solutions alongside the investment needed. Burford's investments range from \$3 million to well over \$100 million. We are flexible and approach every investment with terms tailored to meet clients' needs and highly specific to the underlying matter or matters.

Companies and law firms should be skeptical of any off-the-shelf terms offered prior to diligence, as these will almost always vary (sometimes significantly) from initial terms. Completing diligence before we offer terms enables Burford to listen to our clients' needs and offer realistic terms informed by our understanding of the risk. During this initial period, we do not seek exclusivity.

## | Creating economic structures to match client needs

Financing arrangements can be structured to reflect specific client needs:

- **Variable:** A variable return structure (comparable to a percentage-based contingency fee arrangement) is most attractive to clients when the potential for recovery isn't inordinately large in relation to Burford's investment commitment.
- **Fixed:** At the opposite end of the spectrum, a fixed return structure is based on an investment back plus a multiple (or fixed) return on that investment.
- **Hybrid:** Many Burford clients prefer a structure that marries these approaches, and we earn our investment back with both fixed return and variable return elements, but on a smaller scale.
- **Return waterfall:** Structures also lay out the order and increments by which we and our counterparties earn returns from successful matters.

See ["Pricing risk, structuring agreements and the cost of legal finance capital"](#) on Burford's blog for more detail.

# Common questions about legal finance

## Control

Clients are understandably eager to learn whether using outside funding will impact their control over their matters.

Use of legal finance does not alter control of decision-making or attorney-client relationships. Burford is a passive outside investor. Our financing agreements are written to make explicit that we have no rights to manage the litigation in which we invest. We do not seek to stand in clients' shoes.

Just as a leasing company does not tell you how to drive your car, legal finance companies don't drive the litigation. Nor do they get any rights to control settlement of the litigation, which remains wholly in the litigant's purview.

## Work product & privilege

Since legal finance providers do not control matters and typically provide non-recourse capital, they must carefully diligence potential investments, often requiring the sharing of some attorney work product. Happily, materials created for and provided to the potential financier as a consequence of the litigation are protected under the work product doctrine in the US and are considered privileged materials in other jurisdictions. Similarly, deal documents are protected because they were created due to the litigation, and the terms of such agreements reflect the information provided in work product protected documents, such as lawyers' mental impressions, theories and strategies about the underlying litigation.

As a first step of Burford's diligence process, parties execute a confidentiality agreement that protects communications from discovery. Nonetheless, we are circumspect about what we request in the diligence process to avoid any risk of waiver.

## Disclosure

The vast majority of courts do not require disclosure of legal finance arrangements in commercial matters. While rules vary by jurisdiction, those that exist generally share the limited purpose of ensuring that adjudicators are not inadvertently deciding a matter in which they have a conflict. In declining to force disclosure or to add additional rules or regulations, courts and legislatures implicitly recognize that commercial legal finance arrangements are like any other type of corporate finance.

## Champerty

The ancient legal issues of champerty, maintenance and barratry either do not exist or do not interfere with legal finance as practiced by Burford in the jurisdictions in which we provide financing.

# How the funding process works

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Emily Slater is a Managing Director with over a decade of experience structuring and underwriting legal finance deals and has played a significant role in building Burford's globally recognized, industry-leading investment and underwriting processes. Prior to joining Burford, she was a litigator at Debevoise & Plimpton, where she specialized in complex securities and other bet-the-company litigation and regulatory investigations involving billions in damages.



**It's human nature to want to start a journey knowing where you're going, how you'll get there and when you'll arrive. And this line of inquiry is typical of our initial conversations with clients and law firms about legal finance, when we are often asked:**

1. What are Burford's investment criteria?
2. What do I need to do to secure financing?
3. How long will it take?
4. What happens after Burford provides financing?

The journey to legal finance is more straightforward than it may seem to those new to the practice. We work hard to make that journey clear, even as we recognize that securing non-recourse financing for multi-million-dollar, high-stakes commercial litigation and arbitration requires expertise and effort. In that spirit we offer this guidance to demystify the process for new users of legal finance.

# | What are Burford's commitment criteria?

- **Type of matter:** We finance complex commercial litigation and arbitration at any stage.
- **Strong merits:** Cases must succeed for us to recoup funding and earn a return, so we will carefully assess facts and legal merits.
- **Counsel:** We value cases led by legal counsel with experience, strong track records and a strategic approach.
- **Jurisdiction:** We finance matters filed in domestic courts in common law jurisdictions or in internationally recognized arbitration centers.
- **Capital requirement:** Legal finance is best suited to commercial matters in which our clients need at least \$3 million in financing.
- **Damages:** Damages must be supported by solid evidence of loss, and large enough to ensure that the client keeps most of the litigation proceeds and our investment return is met. While the ratio of investment to expected recovery varies, a \$3 million investment should have expected compensatory damages of around \$30 million.

Some of the characteristics we look for include:

- Case does not turn on a “he-said-she-said” credibility determination
- More than one viable legal theory that could lead to recovery
- Legal theory is tested and has good support in statutory or case law
- Case theory makes sense in the commercial context of the transaction or course of dealing
- Damages theory can be reasonably extrapolated from past performance of the damaged company or there is an established contract, statutory or royalty rate
- Investment economics do not depend on early settlement or obtaining treble damages

## | What do I need to do to secure financing?

At Burford, we work hard to provide the best expertise and client experience in addition to the largest pool of available capital. Ultimately, we approach the investment diligence process as a collaboration, not a transaction.

Clients seeking financing can aid the process in four important ways:

- **Organize documents:** Active diligence requires review of the key documents underlying the dispute as well as financial information about the businesses involved. We work more efficiently when clients provide documentation quickly.
- **Be responsive:** Clients can aid the process by responding quickly to questions and document requests—a commitment we make in turn.
- **Understand the risk profile of the case:** Burford is in the business of taking risk, but we invest in cases that have strong risk profiles, and we may have a different risk tolerance from others.
- **Prepare a realistic budget:** When we are providing fees and expenses financing, matters must be equipped to get to the finish line. That requires a realistic, conservative budget through trial that does not assume early settlement. We may reject good cases because the ratio of financing to expected return is too narrow.

## | How long will it take?

The time frame to secure legal finance depends on several factors. Although we have financed cases in a matter of a few days, as a general rule, if cases are well worked up and information is provided in a timely fashion, commercial matters typically take about a month from initial case review to investment.

A variety of factors influence how long the process takes:

- **Client:** Clients' responsiveness in answering questions and providing documents is among the most significant factors.
- **Stage:** Matters with fewer unknowns (e.g., matters on appeal) require the least time (as little as a week to 10 days); yet-to-be-filed matters require more time.
- **Case type:** International arbitration and patent matters typically require more time.

When a portfolio is in place, the diligence process for new matters can be completed extremely quickly. This greatly benefits law firms that must be responsive to urgent client needs, and helps legal teams stay aligned with the commercial imperatives of the businesses they represent.

# | What happens after Burford provides financing?

After financing commences, Burford and our clients are in an ongoing business relationship that requires regular care and tending. Happily, case monitoring can help maximize returns for clients and Burford.

CLIENT	BURFORD
<p>Regular reporting</p> <ul style="list-style-type: none"><li>• Draft monthly summaries to be reviewed by senior Burford management and Burford's board of directors</li></ul>	<p>Case monitoring</p> <ul style="list-style-type: none"><li>• Receive electronic docket notices</li><li>• Review filings</li><li>• Track court deadlines</li></ul>
BURFORD + CLIENT	
<p>Discuss case progress and potential challenges on at least a monthly basis</p> <ul style="list-style-type: none"><li>• Budget monitoring</li><li>• Review legal bills on a regular basis</li><li>• Consult on budget allocation to maximize potential returns</li></ul>	

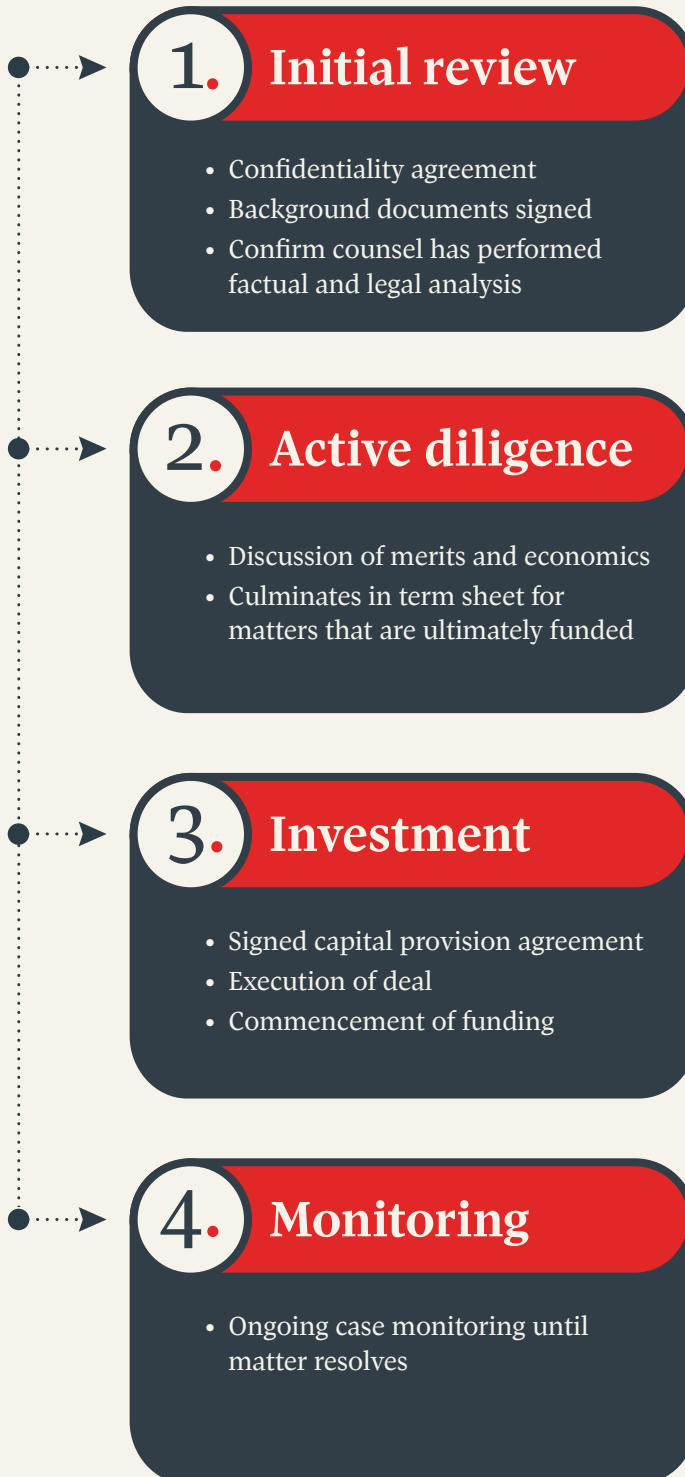
## | Adding value beyond capital

We stand ready to provide expertise in addition to capital, from funding inquiry through case resolution. Clients routinely ask for our help:

- Providing perspective based on decades of in-house and litigation expertise
- Building litigation budgets
- Developing damages theories and legal theories
- Offering consulting expertise at critical junctures post-investment
- Assisting in expense management

Burford acts as a true partner to companies and law firms at every stage of the legal finance process.

# | Four stages to secure legal finance



## CASE STUDIES

# Fees & expenses financing

As the world's largest provider of commercial legal finance, Burford has worked with Fortune 500 companies and 93 of the AmLaw 100, and we have reviewed well over 11,000 requests for funding since our founding. We approach every client as unique, but we offer the following examples—including both anonymized case studies as well as hypothetical worked examples—to illustrate how fees and expenses financing can help solve a range of common client challenges

On an obvious level, fees and expenses finance enables companies and firms to pursue meritorious, high value recoveries while removing the cost of doing so—providing a P&L benefit.

## 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

# Bridging the gap between a firm's billing model and its client's budget

### CHALLENGE: CASH-STRAPPED CLIENT AT RISK OF PARTING WAYS WITH ITS FIRM

A major law firm—and one of the best trial lawyers in the US—were representing a corporate client with a significant claim at stake. The case had gone on for quite some time with the client paying the firm's fees, but the case had become expensive and the client faced liquidity challenges after being hit hard by the decline in the real estate market. The law firm simply did not do contingent fee arrangements and the client and law firm were on the verge of needing to part company over fees as the trial date rapidly approached.

### SOLUTION: \$7 MILLION TO MAINTAIN ITS FIRM OF CHOICE

As an alternative to parting ways, the law firm introduced its client to Burford. Six months before trial, Burford provided \$7 million in capital that enabled the client to pay the law firm's arrears and take the matter to trial. Because the capital was provided on a non-recourse basis—meaning the client would repay Burford its investment plus a return if and only if the matter was successful—the client was able to do so without any added risk.

With financing in place, the law firm was made whole and the client obtained justice using the lawyers of its choice. Without Burford's capital, the case would likely have gone to another firm on a contingency fee basis—which, given the late timing, would be less certain to achieve as good a result. The original law firm would likely have been forced to write off the fee arrears.

### IMPACT: COUNSEL OF CHOICE WON A \$110 MILLION AWARD

The law firm secured a \$110 million award from a jury that found the defendant in breach of contract, with the two parties later settling.

#### CLIENT

AmLaw 100  
law firm

#### AMOUNT

\$7 million

#### DISPUTE

Contract

#### FINANCING

Fees and  
expenses

## WORKED EXAMPLE

# Keeping an hourly client with fees and expenses financing

### CHALLENGE: LAW FIRM AND CLIENT RISK PARTING WAYS

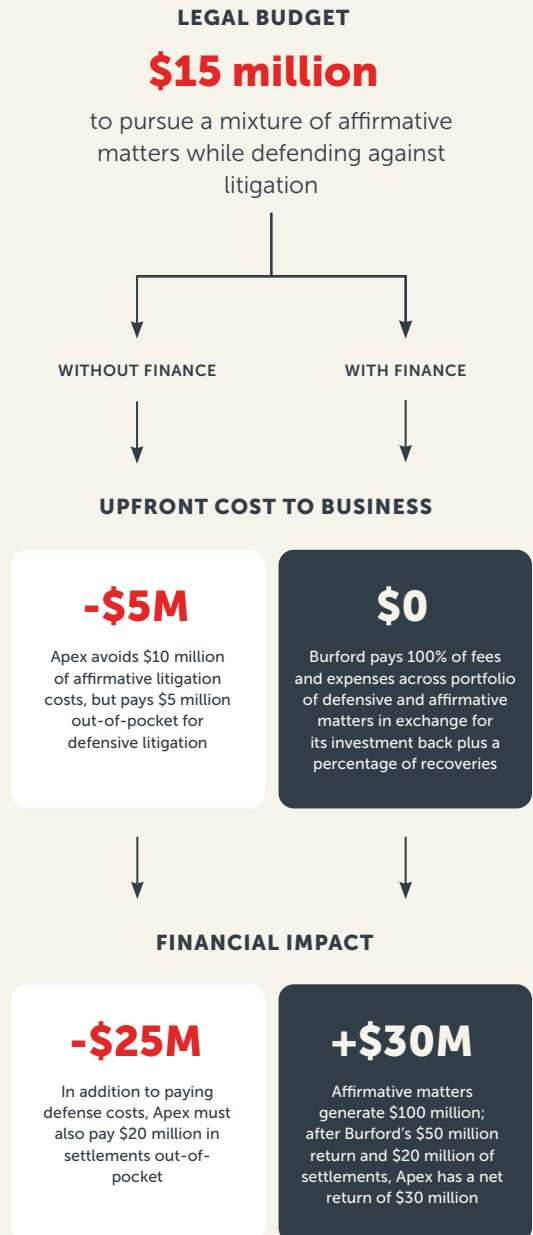
ABC LLC represents Innovation Inc. in a significant claim. The case has gone on for several years with the client paying the firm's fees, but the client faces now liquidity challenges and is on the verge of needing to part company over fees.

### SOLUTION: \$5 MILLION TO FUND LEGAL FEES AND EXPENSES

Burford performs preliminary diligence on the claim and determines that the claim meets Burford's investment criteria. Burford agrees to finance the \$5 million legal budget to cover legal fees and expenses for the matter. The capital is provided on a non-recourse basis, meaning that Innovation must repay Burford only if the underlying matter is successful. The availability of financing makes the client's decision clear: Pursue the financed case with ABC, its counsel of choice.

### IMPACT: COUNSEL WINS \$40 MILLION ON BEHALF OF CLIENT

The case results in a \$40 million settlement in just under two years, offering ABC's client a speedy path to a \$30 million recovery, after it returns Burford's initial investment and pre-defined multiple.



## WORKED EXAMPLE

# Managing budget risk while pursuing a valuable recovery

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

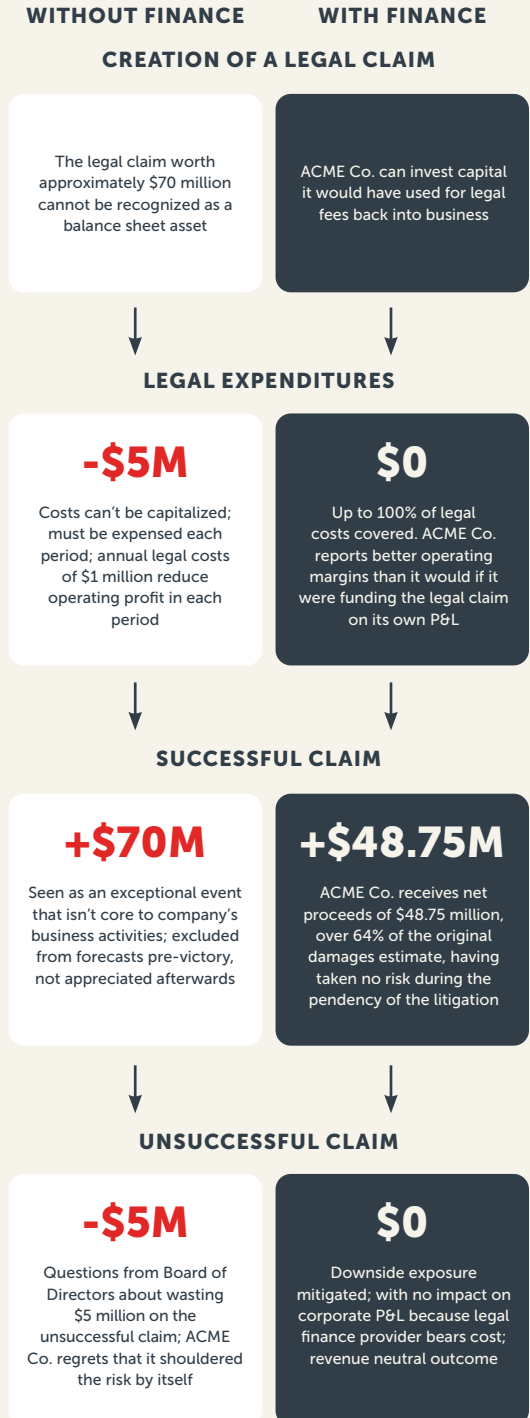
ACME Co., a publicly traded company, has a \$70 million construction claim that will cost approximately \$5 million to litigate. Its GC recommends moving forward with the claim, but the budget is already under considerable stress and the CFO is concerned about the negative impact of litigation spending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



# Unlocking the captive value of legal assets to enhance liquidity and reduce risk

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Kelly Daley is a Managing 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.



Here's a paradox: Even as more lawyers become more aware of legal finance as a tool to offload cost and risk, too many of them remain unfamiliar with one of its most potent uses, the monetization of pending claims.

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Lack of awareness of claim monetization is all the more surprising given that it alleviates one of the biggest frustrations faced by companies involved in major commercial disputes: Their inability to control the timing and certainty of cash flows back to the business when they pursue recoveries through litigation. This has relevance in the broader C-suite. According to the 2021 Legal Asset Report, the majority (59%) of financial officers don't think they are able to control timing of cash flows from litigation—suggesting a lack of exposure to tools like legal finance that make this possible.

Arguably, many companies and their lawyers remain unaware of claim monetization because so much discussion of legal finance focuses on fees and expenses financing. In-house lawyers who only see legal finance as a tool to pay their lawyers may then mistakenly conclude that unless they can't or don't want to pay their lawyers out of pocket, legal finance isn't for them. Far from it: Legal finance enables companies to unlock the asset value of pending claims—including companies that can afford to and do pay their lawyers out of pocket. In doing so, monetization gives companies (and their firms) the ability to control the timing and certainty of cash flows back to the business by accelerating a portion of a pending claim.

## | Defining monetization

Pending claims often represent vast latent value to the organization. Unfortunately, they carry a tremendous amount of uncertainty as to both outcome and timing—and because litigation and arbitration claims are highly illiquid, traditional capital sources historically have been unable to assign asset value to them. Because legal finance providers have experience and expertise in assessing the value of legal assets, however, they can help companies unlock value through monetization.

Monetization accelerates an organization's access to capital. Capital is provided upfront, without the company needing to wait for outstanding claims to resolve—offering immediate liquidity that may be used for virtually any business purpose.

Unlike fees and expenses financing, in which money flows from the finance provider to pay lawyers as costs are incrementally incurred, capital provided through a monetization is provided in a lump sum upon investment and can be redirected to fund defensive positions in the legal department—or to build warehouses, hire staff, shore up corporate balance sheets or any other corporate purpose. And because the company is obligated to repay the investment only if and when the matter resolves successfully, monetization locks in a guaranteed minimum return.

**“Legal finance providers can help companies unlock value through monetization.”**



## | Matters suited to monetization

Claims suited for monetization tend to be large-scale matters with significant damages. For companies with high-value claims, there are several obvious benefits to monetization:

- **Mitigating risk:** Companies can reduce their exposure to the risk of loss, a reduction of damages or a reversal set aside of a judgment.
- **Controlling timing:** Companies gain access to capital based on their preferred timeline—cash they can then invest in the business without delay.
- **Freeing up capital:** Outside capital from a monetization allows the claimant to invest in its business, even as it waits for a matter to resolve.
- **Unlocking better pricing:** Should companies have multiple claims suitable for monetization, financing can be offered through a portfolio-based facility that provides more competitive pricing.



## | Finding the right legal finance partner

Companies seeking to monetize claims should take care in identifying a reliable legal finance partner with a good reputation and quality capital sources—respectively the top two most important factors cited by lawyers in choosing a funder, according to the 2020 Legal Finance Report.

By definition, monetization will require a special quality of finance provider. Many well-capitalized finance firms lack the expertise or the willingness to provide a lump sum investment for a legal claim because they lack the expertise to value that claim; conversely, few specialist legal funders have the capital to monetize significant claims.

It is important for companies to work with a finance provider with sufficient valuation expertise and talent, and with sufficient resources to provide the requisite capital—and when timing is of the essence, working with a provider that has access to its own permanent capital (as Burford does) helps ensure the process moves swiftly and smoothly.

## CASE STUDIES

# Monetization

Burford routinely works with Fortune 500 companies and the firms that represent them to advance the value of their pending claims, judgments and awards, often accelerating tens of millions in expected value. While use cases vary, we commonly hear from clients that the ability to put their capital to immediate use (rather than waiting for matters to resolve through the normal course of litigation or arbitration) offers a highly attractive balance sheet solution.

Following are case studies describing how a handful of anonymized clients have benefited from monetization solutions.

## 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

# Helping a Fortune 500 monetize a valuable antitrust claim

### CHALLENGE: FORTUNE 500 FACED PRESSURE TO CUT COSTS

A household name Fortune 500 company had a large meritorious opt-out antitrust claim against producers for anticompetitive collusion. Simultaneously, the company was looking to cut costs due to revenue generation pressures following a brief decline in profits.

### SOLUTION: \$29 MILLION ADVANCE TO PURSUE LITIGATION WITHOUT INCURRING ADDITIONAL RISK

Without ceding control of the matter, the client was able to monetize a meaningful portion of the expected proceeds from its opt-out claim and Burford provided \$29 million in capital. Burford provided upfront capital for a portion of the opt-out claim, allowing the client to pursue the meritorious litigation without incurring additional downside risk.

### IMPACT: IMMEDIATE CASH INFUSION TO OFFSET REVENUE GENERATION PRESSURES

The company was able to realize the value locked away in the contingent legal assets significantly in advance of a litigation resolution and was able to use the immediate cash injection for strategic business purposes on the company's schedule when it was needed.

#### CLIENT

Fortune 100  
company

#### AMOUNT

\$29 million

#### DISPUTE

Antitrust  
claim

#### FINANCING

Monetization

# Enforcing and retrieving judgment debts

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Michael Redman is a Managing Director and co-leads Burford's global asset recovery and enforcement business. He has worked in complex asset recovery and enforcement for well over a decade, holding senior positions in both Moscow and London before co-founding Focus Intelligence Ltd, a leading asset recovery advisory boutique acquired by Burford in 2015.

## | Asset recovery defined

Asset recovery helps clients overcome the factual and legal hurdles that stand in the way of recovering money once a favorable judgment or award has been made but the opponent hides assets or fails to pay. Essentially, asset recovery delivers actionable intelligence and transforms judgment debt from “legal paper” into cash.



## | Financing structures

Burford’s asset recovery practice specializes in the funding, enforcement and collection of judgments, awards and debts through international litigation, using one of several models:

- **Funded asset recovery:** Burford provides financing to cover all legal, enforcement and investigative costs for the collection proceedings, with repayment following only successful resolution—offloading both the cost and risk of enforcement and recovery
- **Fee-based advisory:** Burford can perform asset tracing and evidence-gathering on a consultancy basis when legal finance is not required—providing both cost and timing flexibility
- **Debt acquisition:** Burford can immediately monetize a judgment by acquiring debts, either outright or by partnering with a creditor

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Asset recovery delivers actionable intelligence and transforms judgment debt from “legal paper” into cash.”

Ultimately, Burford works to provide a solution that addresses the needs of each client and the challenges it is facing.

## | Suitable matters

- Unenforced commercial judgments
- Unenforced international arbitration awards
- Uncollected debt claims arising from defaulted loans and associated guarantees
- Recovery claims brought by office-holders arising from insolvency and bankruptcy
- Trust disputes focusing on the reconstitution, control and recovery of assets

## | How companies and law firms use asset recovery services

- Gather intelligence to inform engagement strategy and affect settlement
- Trace assets of individuals, commercial entities or sovereign states
- Prove legal and beneficial ownership, risk of dissipation and bars to enforcement
- Investigate fraud or white-collar crime
- Retrieve primary evidence—documentary or digital—and interview witnesses of fact
- Distinguish strategically important assets
- Select local counsel and advisors in novel and challenging jurisdictions
- Provide legal counsel when needed and appropriate

## | How asset recovery works

Just as litigation is variable and unpredictable, the cost and timing of judgment debt enforcement depend on a company or law firm's specific circumstances (e.g., claimant's expectations, judgment debtor, jurisdictions involved).

Burford invests in recoveries where the size of the debt in question is \$20 million or more. This threshold increases the probability that a debtor is more likely to have an international footprint, which means there is greater opportunity to enforce in friendly jurisdictions. However, it also means this kind of significant debtor is going to be more recalcitrant than others, thereby increasing potential time and cost. Once the debt gets into the hundreds of millions of dollars, it increases the likelihood that any recovery will take longer and be more expensive than a smaller debt.

Furthermore, the amount the claimant wishes to recover also impacts the recovery timing and costs. Burford often advises claimants to take a commercial view of their judgment debt and evaluate the risk-reward profile. For example, if a client is chasing a \$50 million judgment or award and is ready to settle for \$10 million, that will likely be a fairly swift process, whereas if the claimant won't settle for less than \$40 million, it will be a longer and more expensive process.

Broadly speaking, Burford maps out the debtor's asset profile, proxies and nominees to ensure that any intelligence it develops can be used as evidence in international litigation. Everything we do must be suitable for use in courts around the world. One of the strategies we use on every matter when searching for bank accounts is gathering niche bits of legal discovery in multiple jurisdictions. It is important to remember that there is a difference between where assets sit and where information sits, and often bank account data exists in references in jurisdictions unconnected to where the debtor lives or even where the bank account in question may be. If the judgment debtor has a bank account in an offshore haven, it is common that the information about that bank account will sit in a different jurisdiction.

**“Burford maps out the debtor's asset profile, proxies and nominees to ensure that any intelligence it develops can be used as evidence in international litigation.”**

## Dealing with judgment debtors in unfriendly or opaque jurisdictions

There is a crucial distinction between assets' physical location and their legal location. The view Burford takes from the outset is: If a debtor owes a relatively small debt, say \$1 million, it's quite conceivable that its assets exist in its home jurisdiction, posing recovery challenges in less amiable jurisdictions. But a debtor with north of \$20 million in debt is much more likely to have geographically dispersed assets, incentivized by domestic tax and other issues. Also, judgment debtors with this profile often have international assets such as yachts, jets, properties and offshore accounts. With an international profile, there is more opportunity to restrain and recover assets.

When dealing with hostile or opaque jurisdictions, Burford attempts to find a non-hostile solution to get debtors to settle. Often the key to successful collection is not necessarily enforcing against a single

bank account or asset but developing a multi-prong strategy that likely involves investigation and proceedings in multiple jurisdictions to gain leverage and incentivize the debtor to settle.

Our expertise isn't just in finding a bank account—it's in understanding how bad guys think, how they hide assets and how to bring them to the table. When dealing with debtors in hostile jurisdictions, we find solutions outside of those jurisdictions, restraining their assets in international locations.

## Choosing the right partner

When evaluating asset recovery services, it's essential to choose a team that can effectively trace assets and use that information to realize the full potential of a legal judgment. Even better is a partner that can provide a variety of financing models for that offering, as Burford can, in providing asset recovery on a fee for service or contingent basis, as well as purchasing judgments outright.

Burford's team combines commercial experience with data-driven analysis (including our own proprietary databases) to gather actionable intelligence on judgment debtors. Our lawyer-led team then deploys a multi-jurisdictional strategy based on that intelligence.

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**“Our expertise isn't just in finding a bank account—it's in understanding how bad guys think.”**



## CASE STUDIES

# Asset Recovery

Burford is the only major legal finance provider with its own in-house global asset recovery and enforcement business, giving our clients the benefit of our combined capital and investment expertise and top-level global judgment enforcement.

Following are case studies illustrating how we enforce judgment debts and help clients find and collect the money they are owed.

## CASE STUDY

# Helping a company recover a potentially lucrative asset from a sovereign state

### **CHALLENGE: COMPANY FACED A GOVERNMENT-DEBTOR DETERMINED TO RESIST PAYMENT**

An international extractives company won a significant arbitral award after being dispossessed of a local mining license by a sovereign state. But, when the award was not immediately satisfied, the company faced a costly, time-consuming road to recovery.

### **SOLUTION: JUDGMENT ENFORCEMENT ADVISORY**

Burford's asset recovery and enforcement team developed a comprehensive understanding of the sovereign's worldwide asset position. Burford provided detailed and actionable insight into state-held commercial operations, prepared evidence for enforcement proceedings and supplied strategic intelligence to help the counterparty develop a greater understanding of its debtor and their own drivers.

### **IMPACT: INTERIM RELIEF TO RESTORE POWER BALANCE BETWEEN PARTIES**

Burford identified key commercial operations outside the debtor's home jurisdiction, and then worked with legal teams to demonstrate state control over these assets. These actions contributed to creating the appropriate atmosphere for settlement, with the state eventually offering a significant compromise consisting of both cash and commercial concessions.

## **CLIENT**

Extractives company

## **AMOUNT**

N/A

## **DISPUTE**

Arbitration

## **FINANCING**

Judgment enforcement advisory

## CASE STUDY

# Equipping a plaintiff to enforce a judgment against a well-heeled opponent

### CHALLENGE: A BILLIONAIRE DEFENDANT REFUSES TO COMPLY WITH A COURT-ORDERED JUDGMENT

Former partners of an oil trading company were involved in a contracts dispute after two of the three partners failed to share profits resulting from a venture involving oil activities in Iraq. The plaintiff had hired lawyers from a major US law firm (including the head of the firm's global litigation department) to face off against his ex-partner, a high-profile Florida billionaire. The case eventually went to trial, and the plaintiff won a significant jury verdict which was then affirmed by the Florida Supreme Court—along with a further \$10 million in interest and costs. Instead of paying, the defendant used phalanxes of lawyers and multi-jurisdictional structuring to avoid paying, while openly living in his mansion and flying in his private jet.

### SOLUTION: \$13 MILLION IN FEES & EXPENSES FINANCING, PLUS ASSET RECOVERY EXPERTISE

In the beginning, Burford provided \$13 million in financing to cover litigation costs throughout the duration of the trial. Then, when the defendant made it clear that he had no intention of paying the judgment against him, Burford's asset recovery team mounted its own multi-jurisdictional offense, following the money trail and using its strategic and tactical expertise to freeze and seize assets. Burford pursued leads all over the world, from Dubai to Venezuela, and litigated, froze assets or forced intermediate entities into receivership or bankruptcy in England, the Bahamas, Canada, Florida, Texas, Delaware and Cyprus. The defendant tried to stay one step ahead by moving assets around the world, even as Burford showed up with court orders against secret safety deposit boxes in high-end London hotels and planes on private airstrips.

### IMPACT: NEAR TOTAL RECOVERY FOR PLAINTIFF

After several years of pursuit, the pressure Burford brought to bear was too much, and the defendant gave in, resulting in an almost total recovery for the plaintiff. With the combination of legal finance and asset recovery services, plaintiffs facing recalcitrant debtors no longer have to choose between spending substantial sums on enforcement activities or giving up.

#### CLIENT

Oil industry executive

#### AMOUNT

\$13 million

#### DISPUTE

Contract

#### FINANCING

Fees & expenses financing, plus judgment enforcement advisory

*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 for litigation funding, asset tracing & recovery and international arbitration by *Chambers*

**9**

*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

**160+**

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

**\$5.5B**

current investment portfolio

**Multiples larger** than next largest publicly traded competitor<sup>1</sup>

<sup>1</sup> Based on reporting of combined litigation finance investments, unfunded core litigation finance investments and other investments as of March 28, 2022.

This communication shall not constitute an offer to sell or the solicitation of an offer to buy any ordinary shares or other securities of Burford.

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 offices in New York, London, Chicago, Washington, Singapore, Sydney, Hong Kong and Dubai. For more information, please visit [burfordcapital.com](http://burfordcapital.com).

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“Burford... is now the first legal finance firm to be dual-listed. Its entry into the NYSE, known for its prestige and strong regulations, enables it to access a deeper capital market and demonstrate the level of sophistication it has.”

– BUSINESS INSIDER, “HOW BURFORD’S US LISTINGS TRANSFORMING LITIGATION FINANCE,” OCTOBER 22, 2020

“The idea of creating certainty around cost and de-risking investments in litigation is appealing, because it has an immediate impact on the business.”

– MICHAEL CURRAN, CHIEF FINANCIAL OFFICER AND CHIEF OPERATING OFFICER, COLEMAN RESEARCH

“When I raised [legal finance] with management, they loved the idea of monetizing claims.”

– HEAD OF LITIGATION, GLOBAL 500 FOOD COMPANY

“Litigation is just breathtakingly expensive and that cost concern drives a lot of decisions that a legal team may be uncomfortable with, such as settling cases...to avoid that expense. Commercial legal finance does not force you to...[settle] prematurely.”

– ASSOCIATE GENERAL COUNSEL, PUBLICLY TRADED TECHNOLOGY COMPANY

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“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

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“Burford 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

“In a fiercely competitive market, Burford differentiates itself by its financial strength, but also by providing a specialized and responsive service to both law firms and to ultimate users of funding.”

– PARTNER, INTERNATIONAL DISPUTES TEAM

**Burford**

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