



## 2019 Managing Legal Risk Report

A survey of CFOs and finance professionals



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# Executive summary

#### HOW CFOS THINK ABOUT MANAGING LEGAL COST AND RISK

- CFOs see legal cost management as an urgent issue that requires innovative solutions.
- The overwhelming majority of CFOs understand that legal assets have value and can be financed.
- A clear majority of CFOs say that their companies have chosen to forgo claims due to the impact of associated legal expenses on the bottom line—and large companies are the most likely to have neglected to pursue recoveries for this reason.
- Over three fourths say their companies have unenforced judgments individually valued at \$10 million or more.

#### WHAT CFOS THINK ABOUT THE LEGAL FUNCTION

- The majority of CFOs cite managing legal cost and risk as a critical competency for GCs and legal teams—and recognize that managing legal risk and uncertainty is a critical challenge for the business.
- The inherent unpredictability of the GC's job—that the legal department can't predict how much it will cost or how long it will take to resolve expensive disputes—is recognized as a major challenge.
- As it pertains to decisions about the legal budget and how it is financed, CFOs wish neither to exercise nor to seek control—but rather to work collaboratively with legal teams.

#### WHY CFOS-ESPECIALLY AT LARGER COMPANIES-ADVOCATE LEGAL FINANCE

- Most CFOs say that they are aware of legal finance, and an overwhelming majority say that they would recommend its use by their companies.
- The overwhelming majority of finance professionals expect their companies to use legal finance in the next two years.
- CFOs see legal finance as "corporate finance for law"—a tool that helps them bring value to the business, invest in growth and use their capital wisely.
- Finance professionals see legal finance as a solution to the persistent legal budget and risk management challenges companies face, and as a means of creating certainty around legal spend.

#### ABOUT THE RESEARCH

*The 2019 Managing Legal Risk Report: A Survey of CFOs and Finance Professionals* is based on an online survey of 502 CFOs and other senior finance professionals from the US, UK and Canada that was conducted by Censuswide from April 18 to May 8, 2019. Respondents to the survey met criteria for seniority and for company size (see survey demographics, page 39). Censuswide also conducted one-on-one telephone interviews with senior finance professionals from the US and UK; quotes in this report are drawn from those interviews. All percentages contained in the report have been rounded to the nearest tenth of a percent.

### Introduction

#### We need to rethink how we think about managing legal cost and risk.

Too often, we regard as a "niche" legal topic the billions of dollars companies pay out-of-pocket on commercial litigation and arbitration and the inherent uncertainty this creates for their budgets and risk profiles. We likewise tend to consider as "niche" the extent to which companies simply fail to recover valuable legal assets due to the impact of legal spend on their businesses.

But far from niche, these are essential business problems with broad corporate implications ultimately impacting businesses across industries as well as millions of shareholders, employees and customers. And these problems are likely to become all the more urgent as a potential recession looms.

For this reason, the present report considers the problem of managing legal cost and risk and its possible solutions by going beyond the legal department to survey Chief Financial Officers and other finance leaders. These professionals may be stereotyped as antagonists to the legal team's budget challenges, but as the following survey reveals, they are sensitive to these challenges and eager to be part of the solution. CFOs are also advocates of innovative solutions like legal finance—which is clearly embraced beyond the legal department as a tool with broad corporate benefits.

Indeed, CFOs at the largest companies are the most likely to be active advocates of legal finance. This flies in the face of the assumption that legal finance is a tool of necessity used by small companies without other, better choices. As the following survey reveals, CFOs at big companies are especially likely to embrace legal finance as corporate finance for law. CFOs are also more likely than their GC peers to view legal finance as simply another form of financing, analogous to financing real estate or other corporate purchases in other words as a sensible and smart business practice that helps their companies increase efficiency.

Far from being esoteric, managing legal cost and risk is a crucial topic which all businesses must address. We hope the following report enhances your understanding, and we encourage you to contact us to discuss the implications for your business.



and and



### **SECTION 1**

What CFOs think about managing legal cost and risk



Finance professionals approach the challenge of managing legal cost and risk as an urgent but strategic challenge and embrace the fundamental principle that commercial disputes are assets that can be financed—a far better alternative than continuing to leave many millions of dollars on the table in unpursued claims and unenforced judgments.

## Legal cost management is an urgent issue

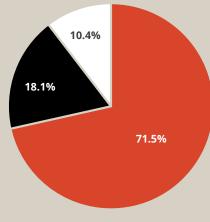
- CFOs don't see legal cost management as either a minor or narrow issue: They see it as an urgent issue that requires innovative solutions.
- The great majority of CFOs and finance professionals (71.5%) share this view, with just one in ten disagreeing.

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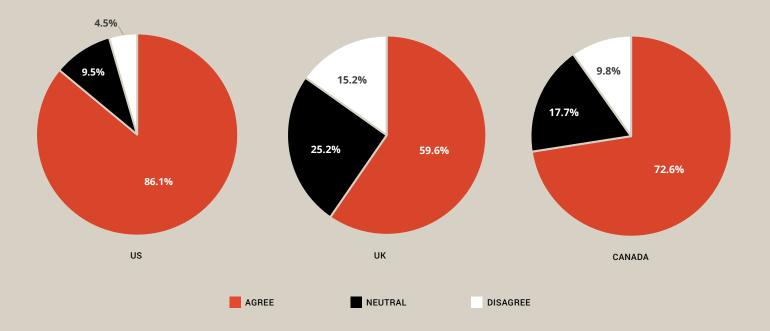
• Although CFOs and finance professionals regard legal cost management as requiring urgent attention, those in the US are most likely to agree.

These cases seem to come out of nowhere. And you're pushing a lot of money from other departments, and it's suddenly out of your budget... There are a lot of issues with using your own budget to fund a litigation case.

#### "Legal cost management is an urgent issue for companies and requires innovative solutions."



ALL RESPONDENTS

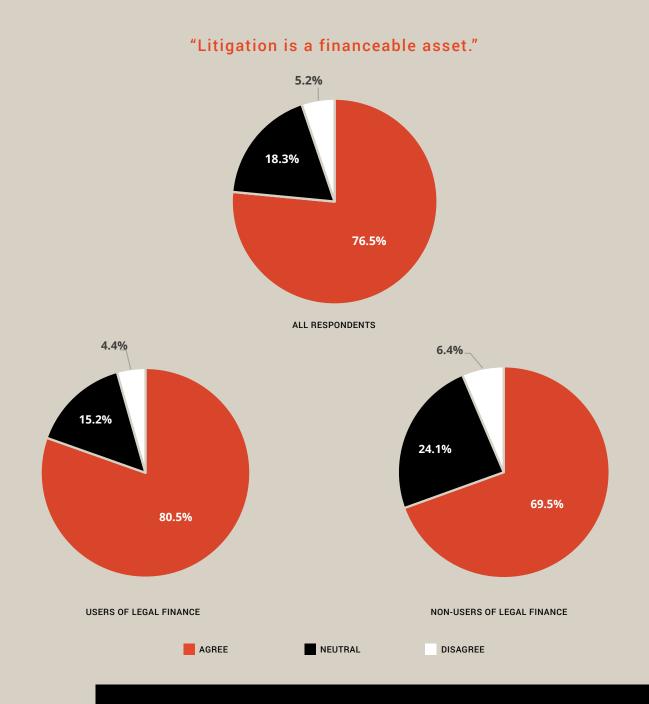


### Takeaway

Managing legal cost and risk is an issue with broad and strategic relevance to corporations, and CFOs will welcome the efforts of GCs and law firm lawyers who address it with the urgency it requires.

## Legal assets have value and can be financed

- The data show that CFOs and finance professionals see a path to legal cost management.
- Simply put, they understand that legal assets have value and can be financed: More than three-fourths (76.5%) of finance professionals agree with this view.
- This high level of agreement indicates a concurrently high level of sophistication in the way CFOs view litigation and legal spend.
- Not surprisingly, this sophisticated view is highest among finance professionals whose companies have used legal finance (80.5%), but even among non-users more than two thirds (69.5%) agree.



### Takeaway

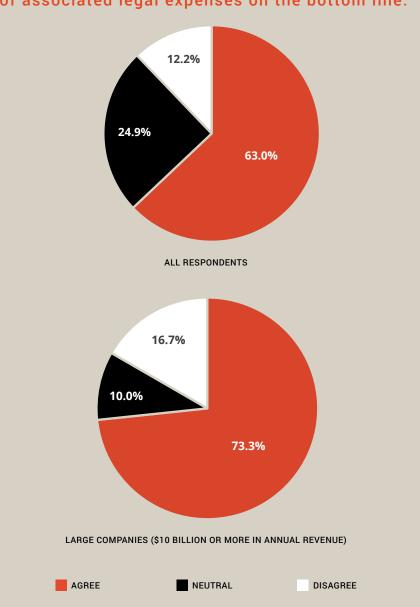
CFOs are disposed to viewing legal spend through a financial lens, and GCs and in-house teams can use this to their advantage in pushing through new ideas around managing and financing litigation expenditures.

## The bottom-line impact of legal costs is a barrier to recoveries, regardless of company size

- Paying out millions of dollars to pursue a meritorious recovery effort can be a challenge for companies with liquidity issues, but the data show that even companies with plenty of cash are likely to forgo claims due to legal expenses.
- A clear majority of CFOs and finance professionals (63.0%) say that their companies have chosen to forgo claims due to the impact of associated legal expenses on the bottom line.
- Respondents from the largest companies surveyed, those with annual revenues over \$10 billion, are most likely to say that their companies have chosen not to pursue claims due to costs (73.3%).

Companies are hesitant to get into any legal [dispute] because of the cost involved. So if you can solve those costs, then that's certainly a potential benefit.

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### "Our company has chosen to forgo claims due to the impact of associated legal expenses on the bottom line."

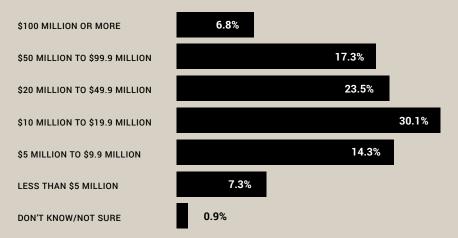
### Takeaway

Companies need not lose out on millions of dollars' worth of recoveries due to the upfront costs of pursuing claims—and the extent of these lost opportunities demands new thinking.

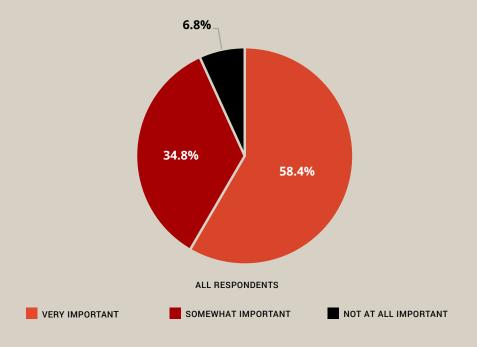
## Unenforced judgments cost companies millions in lost value

- According to CFOs and finance professionals, even when companies pursue and win awards, they may not be able to collect the money they are owed by judgment debtors, resulting in millions in lost value.
- A significant majority of finance professionals (77.6%) say their companies have unenforced judgments valued at \$10 million or more, and about half say their companies have unenforced judgments valued at \$20 million or more.
- Not surprisingly, finance professionals who understand that legal finance can be used to finance enforcement of unpaid judgment debts consider this a very important benefit.
- Despite this, just one-third of finance professionals whose companies have used legal finance have done so in the context of asset recovery or award monetization.

#### "What would you estimate to be the average value of unenforced judgments for which your company could potentially seek financing to recover assets?"



#### "How important is it that litigation finance can be used to finance enforcement of unpaid judgment debts?"



### Takeaway

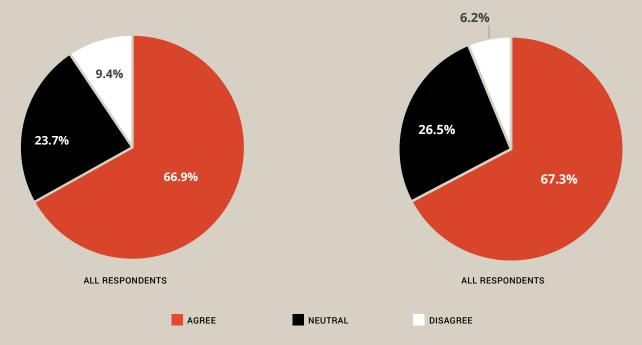
Legal finance can help companies recover millions in otherwise lost value, either through judgment enforcement or award monetization.

## A recession will lead CFOs to advocate smaller legal budgets and more legal finance

- A majority of finance professionals (66.9%) agree that if the economy enters a recession, they will advocate the reduction of legal budgets.
- Not at all surprisingly, a slightly greater majority (67.3%) say that under such economic conditions they will be even more likely to advocate the use of legal finance.
- Finance professionals who say their companies have used legal finance or are likely to use it in the next two years cite "general economic conditions outside my company" as a primary factor.

#### "If the economy were to move into recession, I would be more likely to advocate reducing our legal budget."

"If the economy were to move into recession, I would be more likely to advocate the use of litigation finance."



### "What is the primary reason use of litigation finance increased or decreased?"



### Takeaway

Although even companies with plenty of liquidity embrace legal finance in strong economies, legal finance allows corporate legal teams to "recessionproof" their budgets in an uncertain economy.



**SECTION 2** 

## How CFOs view the legal function



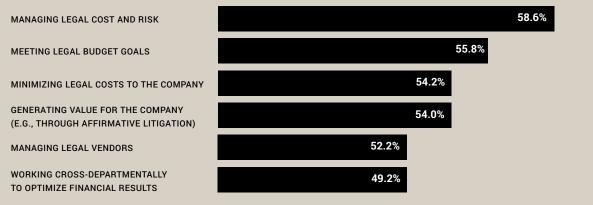




## CFOs see managing legal cost and risk as the GC's #1 competency

- The largest majority of finance professionals (58.6%) cite "managing legal cost and risk" as a very critical competency for GCs and legal teams.
- This view is particularly notable in the US, where over two thirds of finance professionals (69.7%) prioritize legal cost and risk management.

#### "How critical to your company are the following competencies for your company's legal team and leadership?"



MULTIPLE SELECTIONS ALLOWED

#### "How critical a competency for the GC is managing legal cost and risk?"



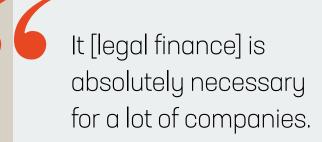
"VERY IMPORTANT" RESPONSES ONLY

### Takeaway

CFOs see the GC's task as more strategic and proactive than tactical and reactive—as protectors of corporate wealth and shields against risk.

## CFOs acknowledge that managing risk and uncertainty is challenging

- In addition to naming risk management as the most important competency for GCs, CFOs acknowledge that doing so is not easy. In considering the top challenges faced by their companies, finance professionals are most likely to identify "managing legal risk and uncertainty" as a critical business challenge.
- They also cite as a critical challenge that the "legal department can't predict how much it will cost/how long it will take to resolve expensive disputes" and point to the "need for innovation in how company finances and manages legal risk."



**"** 

#### "As you consider the impact of legal cost and risk, how critical are the following business challenges facing your company?"

MANAGING LEGAL RISK AND UNCERTAINTY

LEGAL DEPARTMENT CAN'T PREDICT HOW MUCH IT WILL COST/ HOW LONG IT WILL TAKE TO RESOLVE EXPENSIVE DISPUTES

ONGOING LEGAL EXPENSES DEPRESS FINANCIAL RESULTS

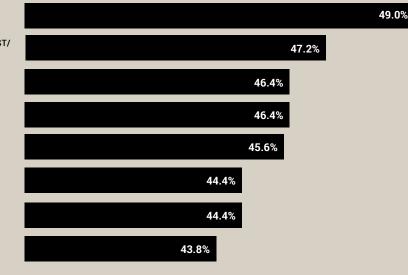
NEED FOR INNOVATION IN HOW COMPANY FINANCES AND MANAGES LEGAL RISK

NEED FOR GREATER FLEXIBILITY/MORE OPTIONS IN PRICING LEGAL SERVICES

NEED TO MONETIZE LEGAL ASSETS MORE QUICKLY (E.G., OUTSTANDING/UNENFORCED JUDGMENTS)

SHAREHOLDER OR OTHER INVESTOR PRESSURE TO CONTAIN LEGAL AND OTHER COSTS

LEGAL DEPARTMENT EXCEEDS ITS BUDGET



VERY CRITICAL" RESPONSES ONLY

MULTIPLE SELECTIONS ALLOWED

### Takeaway

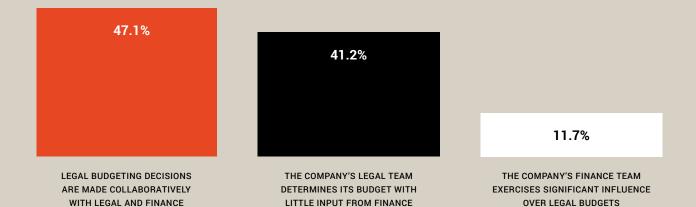
Finance professionals are sympathetic to the challenges that legal teams face, acknowledge the blunt reality that it can be difficult if not impossible to manage legal cost and risk given the inherent uncertainty of legal disputes and are open to innovative financial solutions that will bring greater budget certainty.

## CFOs approach legal budgets as ready partners

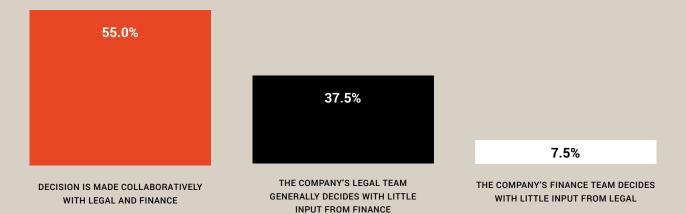
- CFOs say that there is significant collaboration in making decisions about legal budgets: Nearly half (47.1%) say that legal and finance teams make budgeting decisions collaboratively.
- An even greater number point to collaboration in the decision to use legal finance to offset the cost and risk of upcoming matters, with over half (55.0%) saying that the legal and finance teams make such decisions jointly.

We monitor all budgetary aspects of the organization, especially those that are fairly significant budgets. So legal is obviously very important. And there are some years it runs into the billions of dollars.

#### "Which of the following best describes the finance team's influence on overall decision-making concerning legal costs?"



### "Which of the following best describes the finance team's influence in choosing whether to use litigation finance for an upcoming case or matter?"



### Takeaway

Defying negative stereotypes that may depict them as imposing financial mandates on the legal team, CFOs see themselves as ready partners in helping GCs and legal teams manage legal cost and leverage financial tools.

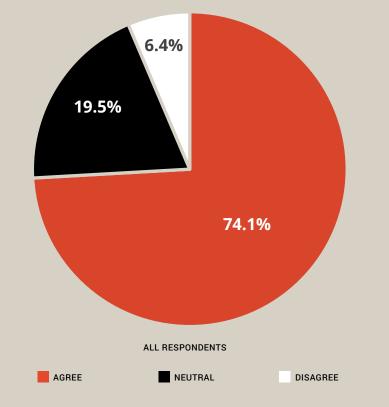
## Like GCs, CFOs want more innovation from outside counsel

- Nearly three-quarters (74.1%) of finance professionals either somewhat or strongly agree that when it comes to the impact of legal cost and risk, "more innovation is needed from outside counsel to help companies like mine manage legal costs." Fewer than one in ten (6.4%) disagree.
- The need for innovation is particularly acute in the US, where nearly nine out of ten finance professionals (85.6%) share this view.

If in fact you know a good legal team usually earns their fee, you know [legal finance] would be something where both parties would be able to prosper and benefit together.



### "More innovation is needed from outside counsel to help companies like mine manage legal costs."



NEED FOR INNOVATION BY GEOGRAPHY



### Takeaway

CFOs expect law firms to bring innovative pricing and financing solutions to help them manage the impact of legal costs on their businesses.



#### **SECTION 3**

## Why CFOs advocate legal finance





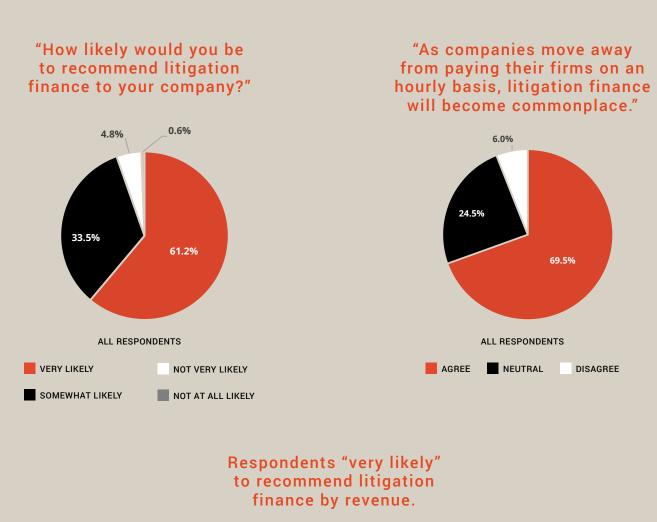


## In a changing legal market, CFOs recommend legal finance

- Most CFOs say that they are aware of legal finance; two thirds (66.3%) say they are "very familiar" with it.
- Similarly, an overwhelming majority (94.7%) say that they would be somewhat or very likely to recommend legal finance to their companies.
- Almost three out of four finance professionals (69.5%) agree that "as companies move away from paying their firms on an hourly basis, legal finance will become commonplace."
- Although finance professionals at companies of all sizes are likely to recommend legal finance, a slightly greater majority of those at larger companies are "very likely" to recommend legal finance.

#### A NOTE ABOUT SOCIAL DESIRABILITY BIAS

People responding to surveys tend to answer questions in ways that will be viewed favorably by others, and thus if people think they should exercise daily, they will tend to tell researchers that they exercise daily, true or not. Similarly, if CFOs and finance professionals perceive legal finance as an innovative tool that companies should use, they will naturally tend to over-report their understanding and experience. Thus, while we and our research partner stand confidently behind the directional implications of our online survey findings, we do feel compelled to note that the nature of the online survey medium allows for this kind of overstatement and that actual understanding and experience of legal finance is likely far lower.





### Takeaway

With a base of awareness of legal finance and a clear propensity to advocate for it, CFOs will support GCs' embrace of this new tool—especially as they move away from other models.

## Legal finance is a tool to generate value

- CFOs are understandably focused on tools that generate value for the organization, and thus it's not surprising that they are most likely to cite the ability "to pursue claims that will bring value to the business" as a factor that would motivate use of legal finance.
- The next most commonly cited circumstances are the desires to "hedge risk exposure" and to "preserve cash for other business priorities."
- Finance professionals from larger companies are more likely than those at smaller companies to use it to bring value to the business.

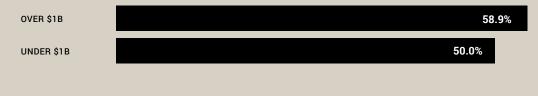
The company... [has] an opportunity to have their working capital now, rather than waiting later.

#### "Under what circumstances would your company be most likely to use litigation finance services?"

TO PURSUE CLAIMS THAT WILL 54.8% **BRING VALUE TO THE BUSINESS** 45.2% TO HEDGE RISK EXPOSURE TO PRESERVE OUR CASH FOR 45.0% **OTHER BUSINESS PRIORITIES** WHEN IT ALLOWS US TO INVEST IN GROWTH 44.4% AND USE OUR CAPITAL MORE EFFICIENTLY TO BRING OR SUSTAIN PROCEEDINGS 41.4% DESPITE INSUFFICIENT CASH TO MANAGE THE IMPACT OF LEGAL 39.9% COSTS ON FINANCIAL STATEMENTS TO MONETIZE LEGAL RECEIVABLES ACCORDING 32.2% TO OUR TIMEFRAME, NOT COURT CALENDARS TO IMPROVE ACCOUNTING AND 31.8% OTHER REPORTING OUTCOMES

MULTIPLE SELECTIONS ALLOWED

### Respondents "likely" to use litigation finance to pursue claims that will bring value to the business, by revenue.



### Takeaway

Reinforcing the extent to which using legal finance is a smart business choice versus one made reactively by those without other options, these results indicate that CFOs see legal finance as a proactive tool that can create value without adding risk or sacrificing cash.

## Legal finance helps companies grow and use their capital wisely

- CFOs are most likely to identify the fact that legal finance "helps us invest in growth and use our capital wisely" as an important benefit.
- Although specific benefits like financing unpaid judgment debts are also appealing to CFOs, it is noteworthy that what resonates most is legal finance as corporate finance—a tool with broad relevance for business.
- This is particularly evident in the top three benefits selected by finance professionals at companies with over \$10B in annual revenues: Investing in growth and using capital wisely; preserving capital for other business priorities; and "reporting and accounting benefits, like minimizing the impact of legal spend on profitability."

### "How important are these legal finance benefits to your company?"

ALLOWS US TO INVEST IN GROWTH AND USE OUR CAPITAL EFFICIENTLY

HELPS US HEDGE RISK EXPOSURE

CAN BE USED TO FINANCE ENFORCEMENT OF UNPAID JUDGMENT DEBTS

HAS REPORTING AND ACCOUNTING BENEFITS, LIKE MINIMIZING THE IMPACT OF LEGAL SPEND ON PROFITABILITY

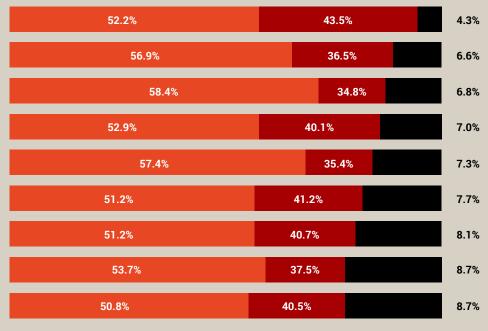
ALLOWS US PURSUE CLAIMS THAT WILL BRING VALUE TO THE BUSINESS

ALLOWS US TO BRING OR SUSTAIN PROCEEDINGS REGARDLESS OF OUR CASH POSITION

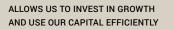
PROVIDES GREATER CONTROL OVER TIMING AND ALLOWS US TO MONETIZE LEGAL ASSETS ON OUR SCHEDULE

ALLOWS US TO PRESERVE OUR CAPITAL TO PURSUE OTHER BUSINESS PRIORITIES

MAKES US COMPETITIVE IN THE MARKETPLACE

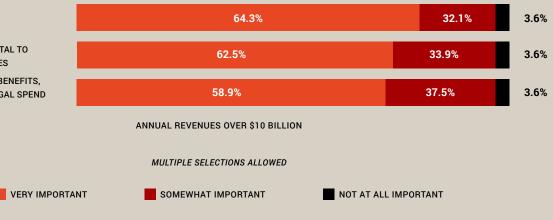






ALLOWS US TO PRESERVE OUR CAPITAL TO PURSUE OTHER BUSINESS PRIORITIES

HAS REPORTING AND ACCOUNTING BENEFITS, LIKE MINIMIZING THE IMPACT OF LEGAL SPEND ON PROFITABILITY



### Takeaway

CFOs get it: Legal finance is corporate finance for law. Just as companies finance so many other aspects of their business, financing the legal department's bigger disputes represents a smarter and more efficient way to use capital.

### How CFOs expect to use legal finance capital

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Financing is financing... whether you're going to finance an acquisition or a piece of real estate or an automobile. So you have to look into the metrics of their particular financing. But aside from that... I think [legal finance is] an interesting concept..."

#### Respondents seeking \$5 million or more per matter.\*

Finance professionals at larger companies are more likely to seek more money per matter. About one out of three finance professionals (32.2%) expect to use more than \$5 million in legal finance per case per year, but that number rises significantly (41.5%) for companies with revenues over \$1 billion.



### Respondents seeking financing for 10+ matters per year.

The larger the company, the greater the number of matters finance professionals expect to finance. Finance professionals at companies with annual revenues over \$10 billion are about four times more likely to say they would finance 10 or more matters per year than those at companies with annual revenues under \$1 billion.



### Top 3 challenges to using litigation finance services.\*\*

Not surprisingly, the top three "very critical" challenges finance professionals face in using legal finance emphasize pragmatic concerns: The perceived cost of legal finance capital, the lack of an internal policy on working with providers, and the time required to secure financing.



\*\*MULTIPLE SELECTIONS ALLOWED; SHOWS THOSE MARKED "VERY IMPORTANT"

These challenges are real but solvable: Given the extent to which CFOs surveyed say they value the ability to offload risk to a third-party, as CFOs become better educated about legal finance the perceived cost of financing that risk is likely to diminish. And as they develop experience and relationships with premium legal finance partners, concerns about policy and timing are also likely to fade.

## Following growth in the last two years, legal finance looks poised for more

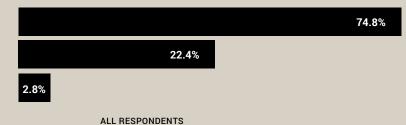
- Of the finance professionals who report that their companies have used legal finance, the overwhelming majority say they either somewhat or significantly increased their use of the tool in the last two years; a mere 2.8% cite a decrease in use of legal finance.
- Nine out of ten (93.0%) finance professionals expect their companies to use legal finance in the next two years; nearly two-thirds (65.1%) say their companies are "very likely" to do so.
- Of those surveyed, those from larger companies are most likely to say they are "very likely" to use legal finance in the near future.

#### "Over the past two years, has your company's use of litigation finance services increased, decreased or stayed the same?"

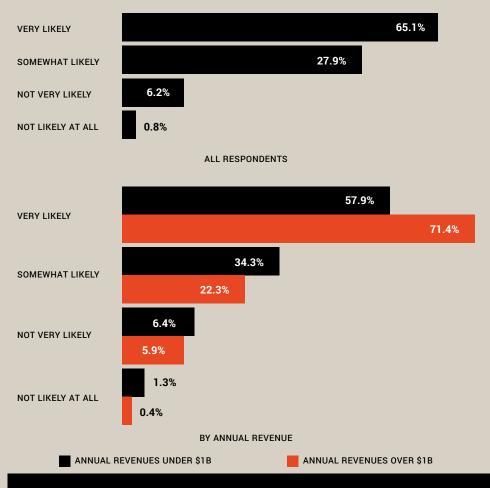
COMPANY INCREASED ITS USE OF LITIGATION FINANCE SERVICES

COMPANY MAINTAINED ITS USE OF LITIGATION FINANCE SERVICES

COMPANY DECREASED ITS USE OF LITIGATION FINANCE SERVICES



### "How likely would your company be to consider using litigation finance in the next two years?"

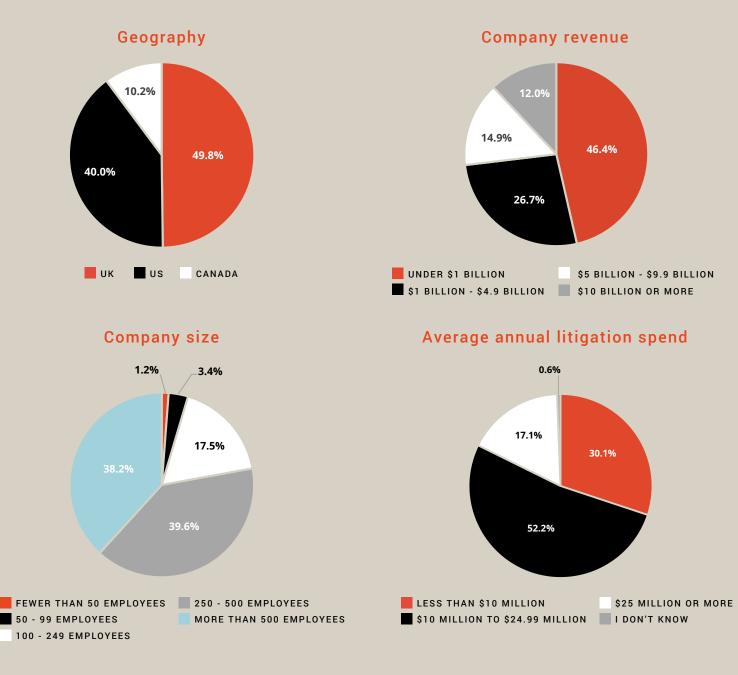


### Takeaway

With strong growth in the use of legal capital and the prospect of more, especially at the largest companies, neither legal teams nor their law firm partners can afford to be complacent about understanding how and when to use it.

## **Survey demographics**

- All 502 participants in the online survey were finance professionals at US, UK and Canadian companies with at least \$50 million in annual revenue; 55.8% held the title CFO, and the remaining respondents had a seniority level of VP or higher.
- Respondents overwhelmingly came from companies with 250+ employees (77.9%), and the majority of respondents (53.6%) came from companies with over \$1 billion in annual revenue.
- All respondents were CFOs or heads of finance for US, UK or Canadian companies with annual revenue of at least \$50 million.



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