



2020 Equity Project Study:

General Counsel & the Gender Gap in Law



Burford Capital is a 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 London Stock Exchange and it works with law firms and clients around the world from its principal offices in New York, London, Chicago, Washington, Singapore and Sydney.

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Executive summary.

- In the last few years, **many general counsel have spoken out about the lack of gender diversity at law firms**, including 170 GCs who in 2019 signed an open letter advising law firms that diversity will influence which firms they hire.
- Given this, Burford undertook the 2020 Equity Project study **to understand how GCs are using their “power of the purse” to influence the law firms they hire** to address the gender gap in law.
- We found that many GCs lack key information about one of the essential issues in the gender gap in law: **52% say they are entirely unaware of how origination credit is awarded** when they hire a law firm.
- We asked GCs and senior in-house lawyers whether the legal department has a formal policy that law firms they hire must meet gender diversity requirements; **80% say their companies lack such policies.**
- 48% of GCs and senior in-house lawyers say their **companies have asked a firm to put a woman on a litigation or arbitration team.**
- 84% say that the quality of women litigators’ work is equal to that of men and 64% say that the efficiency of their work (speed to resolution, cost management) is equal to that of men; **21% say that women litigators’ work is more efficient.**
- Many GCs are eager to collaborate with their firms on addressing the external obstacles they see as barriers to change (bias, inertia, law firm culture), and **some see an opportunity for today’s remote working reality to benefit women.**
- 55% of GCs say knowing about The Equity Project will change how they think about future affirmative litigation.
- The 2020 Equity Project study suggests to us that **more collaboration and transparency are needed to ensure that the gender gap in law continues to narrow.**

**Progress is needed—
especially now**

Aviva Will

As we go to press, the world is understandably preoccupied by the Covid-19 pandemic and its devastating human and economic toll. But even in the midst of this crisis, closing the gender gap in law should remain a priority for business—in no small part because it’s good for business.

Indeed, history suggests that it is exactly at times like these that we need more women in leadership positions, including in law. There is a strong business case: Studies by McKinsey and others suggest that companies with greater gender diversity perform better.¹ Gender diversity has no doubt benefited Burford’s business and has been a priority since its founding. The business of managing legal risk requires collaboration by a team with a range of perspectives and experiences and having a diverse team has led to better decision making and better results.

The business of law has been frustratingly slow to close its gender gap, and that gap is most evident in the relatively small number of women who hold leadership positions and become equity partners at top firms—leadership positions and equity partnerships that could translate not only into more pay, but also lead to a virtuous cycle of leaders and mentors for others. The situation has improved since I became a lawyer 25 years ago, but according to research conducted by Diversity Lab, we will reach gender parity in AmLaw 200 equity partnerships in 2057²—an unacceptable delay.

What can we do to close law's gender gap more quickly and decisively?

At Burford we are committed through The Equity Project to provide an economic incentive to help close the gender gap in law by backing women-led commercial litigation and arbitration (see pages 42-50). The Equity Project incentivizes women lawyers to seek out opportunities to take risk and law firms to support those women using Burford's capital.

Of course, the companies that hire law firms to represent them have a significant role to play in bringing about change. By exercising their considerable influence, clients can provide law firms a compelling incentive to promote more women to leadership roles. It's clear that many clients are aware of their potential to drive change: Indeed, in January 2019, more than 170 US general counsel and corporate legal officers signed an open letter to big law firms, lamenting new partner classes that “remain largely male and largely white”, and implying that failure to address this problem would result in a loss of business. In 2013, the ABA Presidential Task Force on Gender Equity and the Commission on Women in the Profession published “Power of the Purse: How General Counsel Can Influence Pay Equity for Women Lawyers,” a guidebook of best practices.

What's less clear is whether and how companies are in fact exercising their “power of the purse”—and that's why we commissioned the report that follows.

The 2020 Equity Project study seeks to understand how clients are leveraging their economic influence to close the gender gap in law. The report is based on one-on-one telephone interviews with over 75 general counsel and senior in-house lawyers at large companies (median revenue of \$8b) in 12 countries. The interviews were conducted by independent analyst Ari Kaplan between March 23 and May 1, 2020. In the pages that follow, we share quotes and highlight trends that were reflected across the range of participants, among them:

- GCs and senior in-house lawyers recognize the business case for having a diverse team of external counsel.
- Many GCs and senior in-house lawyers say they routinely make decisions based on diversity.
- Yet over half of GCs and senior in-house lawyers say they don't know how origination credit is awarded at the firms they hire.
- A significant majority of companies do not have a formal policy—whether in the form of an incentive system, representation benchmarks or another measure—to reward gender-based diversity among the outside law firms they hire.
- GCs and senior in-house lawyers deem the quality of women litigators' work equally as good as that of their male counterparts—and they are significantly more likely to say that women litigators are more efficient based on factors such as speed to resolution and cost management.
- Many GCs and senior in-house lawyers say diversity remains a priority even as their companies and the world deal with the economic turmoil triggered by the Covid-19 pandemic—and indeed many of them point to the unique opportunities that law firms have now to address some of the structural barriers to closing the gender gap on their teams.

Arguably, legal departments will be hindered in their ability to influence the change that so many of them say is needed until there is greater transparency about meaningful metrics—including origination credit—as well as collaboration. Law firms should take note of the many excellent ideas that their clients have for closing the gender gap—for example, many GCs’ expressed desire to build relationships with and mentor women at firms—and know that clients are both paying attention and ready to utilize non-traditional tools.

Burford welcomes feedback on this study, and we stand ready to join law firms and clients in bringing about change for women in law. We’re grateful for the willingness of the GCs involved in this study, named and unnamed, to share their views on this important topic, as well as for the ongoing support of our outstanding Equity Project Champions.



Aviva Will

Co-COO, Burford Capital

As Burford’s Co-Chief Operating Officer, Aviva Will has helped lead its growth through its first decade. Before joining Burford in 2010, she was a senior litigation manager and Assistant General Counsel at Time Warner Inc., where she managed a portfolio of significant antitrust, intellectual property and complex commercial litigation, and a litigator at Cravath, Swaine & Moore.

¹ Delivering through Diversity, McKinsey & Company (January 2018)

² Predictive modeling by Diversity Lab, based on the past 5 years of AmLaw 200 data as reported by ALM, available at mtnfund2025.com/

93%

of law firms say their most highly compensated partner is a man; most firms report no women among their top 10 most highly compensated partners.

—DESTINY PEERY, 2019 NAWL ANNUAL SURVEY ON THE PROMOTION AND RETENTION OF WOMEN IN LAW FIRMS, NATIONAL ASSOCIATION OF WOMEN LAWYERS (MAY 2019)





How big is the gender
gap in law?

Representation

- About half of entering AmLaw 200 associates are women, but for every 100 women promoted to partner, 142 men are promoted.³
- Women are 29% less likely to reach the first level of partnership than men.⁴
- In the US, women account for 20% of equity partners at large firms.⁵
- In the UK, women represent 20% of partners in the top 10 law firms and 18% in the next 15 firms.⁶

Compensation

- Male partners out-earn women by 24% in the UK⁷ and 53% in the US.⁸
- 93% of law firms say their most highly compensated partner is a man; most firms report no women among their top 10 most highly compensated partners.⁹

Origination credit

- Because women lawyers tend to inherit fewer client relationships and law firms often award origination credit on a perpetual basis, female partners report lower average compensation nearly 80% of the time.¹⁰
- 67% of senior women report that they have experienced a lack of access to business development opportunities due to gender.¹¹

Unconscious bias

- 32% of women lawyers report being dissatisfied with recognition received for their work, compared to 13% of men.¹²
- 82% of senior women (and none of their male peers) report that they have been mistaken for a lower level employee.¹³
- 63% of women report being perceived as less committed than men at the firm.¹⁴

Other economic impacts

- 58% of US women lawyers say domestic and caregiving commitments (which interfere with billable hours and create biases regarding commitment to work) are an important reason why experienced women leave law firms.¹⁵
- Because women are overrepresented in lower ranking positions, they are disproportionately harmed by law firm cuts; in the 2008 financial crisis, 80% of those laid off were associates.¹⁶
- Despite there being very few women equity partners, 50% of the equity partners terminated in 2008 were women.¹⁷

³ Marc Brodherson, Laura McGee, Mariana Pires dos Reis, Women in law firms, McKinsey & Company (October 2017)

⁴ Ibid

⁵ Roberta D Liebenberg and Stephanie A Scharf, Walking out the door, The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice, ALM Intelligence and the American Bar Association (November 27, 2019)

⁶ Kate Wolstenholme, Charlie Mirrington, Leon Hutchinson, Catherine Usher, Tony Hodgson, Stephen Tebbett, Adapting to a new world, PwC Law Firms' Survey 2019, PwC (November 2019)

⁷ Acritas, 2017 London Partner Compensation Survey, Major, Lindsey & Africa (January 29, 2018)

⁸ Jeffery A. Lowe, 2018 partner compensation survey, Major, Lindsey & Africa (December 06, 2018)

⁹ Destiny Peery, 2019 NAWL Annual Survey on the promotion and retention of women in law firms, National Association of Women Lawyers (May 2019)

¹⁰ 2018 partner compensation survey

¹¹ Walking out the door, The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice

¹²⁻¹⁵ Ibid

¹⁶ Stephanie A. Scharf, Cheryl Tama Oblander, Marianne Trost, Elizabeth Tipton, 2009 NAWL Annual Survey on retention and promotion of women in law firms, The National Association of Women Lawyers (October 2009)

¹⁷ Ibid

52%

of GCs and senior in-house
lawyers say they are entirely
unaware of how origination
credit is awarded.

“
*I don't think we need the business case [for promoting diversity]; we need
the vision and execution.*

”
—DEPUTY GENERAL COUNSEL, PRIVATELY
OWNED FOOD MANUFACTURER

How GCs and senior in-house lawyers see the gender gap.

GCs and senior in-house lawyers are largely unaware of how origination credit is awarded.

Most companies lack a formal policy that outside counsel must meet gender-based diversity requirements.

Although the legal department is responsible for vendor diversity, GCs and senior in-house lawyers cite practical challenges to implementation.

GCs and senior in-house lawyers say lack of diversity is a business problem that impacts law firm selection.

GCs and senior in-house lawyers are largely unaware of how origination credit is awarded

17% of GCs say they are always aware of how origination credit is awarded when they hire a law firm and 26% say they are sometimes aware.

52% say they are entirely unaware of how origination credit is awarded.

Origination credit remains a critical means by which law firm lawyers advance in their careers and increase their earnings, but GCs and senior in-house lawyers are not tracking this metric for the work they award—and thus are neglecting to exercise one of their most important economic levers to close the gender gap in law. Based on GCs and senior in-house lawyers' comments, the challenge is not one of understanding or accepting the importance of origination credit, but rather of understanding the details of how that credit is actually awarded at outside counsel law firms. This is an area where greater collaboration with and transparency from law firms is needed, but GCs and senior in-house lawyers can also prioritize seeking out and using this information.

“You have to follow the money. Lawyers cannot succeed in a law firm unless they receive origination credit. If you are not asking this question as a client, you are not helping.”

—ASSISTANT GC, FORTUNE 100
ENERGY COMPANY

“That is a sticky subject with many firms because it seems to get too close to their internal operations. We think that this has a great deal of influence so we will explore it and think it will make a difference going forward.”

—DEPUTY GC, FORTUNE 500
TECHNOLOGY COMPANY

“We ask the question and get the answer. Sometimes we are politely told that the firm will not share the information. If it is a partner who simply signs bills and does nothing else, we ask origination credit to be moved in different directions. It is a huge factor that we ask and care about... It is a massive culture problem requiring an important shift, and we need to do more.”

—DEPUTY GC, PRIVATE FINANCIAL SERVICES
COMPANY WITH OVER \$30B ANNUAL REVENUE

“More and more firms are moving toward a more egalitarian model of origination, with no incentive for partners to own the relationship. On our scoring metrics, we award points if the partner receiving origination credit is diverse.”

—CHIEF COUNSEL, FORTUNE 100 FOOD &
BEVERAGE COMPANY

“We usually do not know because laundry like that is not done in front of the clients. I do ask about it and can usually tell from their non-answers that firms prefer not to disclose that information.”

—MANAGING COUNSEL, OIL & ENERGY COMPANY
WITH OVER \$30B ANNUAL REVENUE

“In certain situations, the firm will disclose that information and the award allocations if we ask, but they do not volunteer [it]... It impacts women harder because of the need for originations to earn promotion to partnership.”

—ASSISTANT GC, PUBLIC INFORMATION
TECHNOLOGY & SERVICES COMPANY
WITH OVER \$15B ANNUAL REVENUE

“If one of my goals is to ensure that I am doing what I can to get to a diversified set of lawyers representing us, and if I am hiring female lawyers yet none are receiving origination credit, with all of it going to male partners at the firm, I would feel defeated and it would be incredibly frustrating to me.”

—GENERAL COUNSEL, PRIVATE
CONSUMER GOODS COMPANY

Most companies lack a formal policy that outside counsel must meet gender-based diversity requirements.

14% of GCs and senior in-house lawyers say that their legal department has a formal policy that law firms they hire must meet gender diversity requirements.

80% of GCs and senior in-house lawyers say their companies lack such a policy.

Companies like Microsoft have established formal law firm gender diversity programs that set goals for the firms they hire, their teams and the matters they work on. Most GCs and senior in-house lawyers say their legal departments do not have a formal policy that law firms they hire must meet gender diversity requirements. Instead, many say they apply informal assessments to guide diversity efforts, or they prioritize the diversity of their own internal legal team over those of law firms whose staffing decisions they see as outside their control. Many GCs and senior in-house lawyers also say that their ultimate responsibility is to hire the best lawyers and firms for their needs, suggesting perceived inabilities to find women lawyers to meet those needs.

“We have a diversity requirement that includes gender, race, and related classes... Law firm composition is an easy area on which we can push the lever to promote diversity. Every year or two, our outside counsel firms are required to renew their applications to be on the company’s panel. If you are selected, in addition to agreed-upon rates, the company expects that you will source a diverse slate of candidates for any particular project and we are encouraged to evaluate the teams through that lens as well.”

—SENIOR MANAGING COUNSEL, FORTUNE 500 FINANCIAL SERVICES COMPANY

“We do not have a policy [or] a scorecard, [but] I have been committed to intentionally promoting gender diversity and diversity in general.”

—GC, PRIVATELY OWNED
AUTOMOBILES & COMPONENTS
COMPANY

“We have several diversity guidelines and encourage our firms to become Mansfield-plus certified....We use the ABA’s diversity scorecard and also have our own scorecard that includes gender diversity, promotion of women, and women in management, among other factors.... It has been a very effective campaign in terms of promoting women and none of our firms have pushed back in any way.”

— SENIOR LITIGATION COUNSEL,
FORTUNE 100 HEALTHCARE COMPANY

“
Our focus is retaining the best, most cost-effective counsel that we can, rather than leading with diversity.
”

—DIVISION GC, PUBLICLY TRADED
MANUFACTURING COMPANY

“We have always had very good luck at achieving a natural balance on diversity. We have almost always approached hiring our counsel on the basis of hiring the lawyer, rather than the law firm... I would bet that 40-45% of our outside lawyers are women, so we have not found a need to dictate through a policy an extra layer of consideration for that.”

—GC, PRIVATELY HELD
SOFTWARE COMPANY

“It is an individual choice... I am just doing the right thing and we don’t have a formal policy, nor do we impose one on others. If they are not smart enough to realize they should be recruiting diverse talent, that is their problem.”

—GROUP GENERAL COUNSEL, FORTUNE 500
CONSTRUCTION ENGINEERING COMPANY

“Our head of litigation feels a personal responsibility to ensure that women are a part of every job. We feel the need to demand it because if the client is not calling for diversity, it will not change. We can command that and we do.”

—SENIOR LITIGATION COUNSEL,
FORTUNE 100 HEALTHCARE COMPANY

Although the legal department is responsible for vendor diversity, GCs & senior in-house lawyers cite practical challenges to implementation

Almost 9 out of 10 GCs and senior in-house lawyers say that the legal team is responsible for tracking and ensuring the gender diversity of the firms their companies hire.

Only 1 out of 10 says that the lack of a formal diversity policy for law firms reflects the lack of a business case.

Although just 7% say the lack of a formal policy relates to achievability, many GCs and senior in-house lawyers cite practical challenges.

GCs and senior in-house lawyers agree that the legal team (not procurement, Diversity & Inclusion or another function) owns responsibility for tracking and ensuring that the law firms they hire meet diversity criteria. Few say that the lack of a measurable policy reflects the lack of a business case, and even fewer cite achievability as the reason for the lack of a policy—and yet GCs and senior in-house lawyers cite a range of practical and internal obstacles to mandating gender diversity.

“

I'm not a big believer in quotas. I would rather set goals and ensure that we work with diverse lawyers, who can do the best work... Gender-based diversity is an important initiative for us, but we would rather achieve it organically, and not with quotas.

”

—CHIEF LEGAL OFFICER, PRIVATELY OWNED
MEDIA PRODUCTION COMPANY

“We have proposed targets for the diversity of our firms, but recognize that not all firms can meet that. Also, in a global company, having metrics that apply across the board may seem fair in the US but possibly not in other jurisdictions.”

—GLOBAL LITIGATION COUNSEL, GLOBAL
100 OIL AND GAS COMPANY

“We want to make sure that our firms reflect the communities in which we operate. The question is how we would structure a policy that makes sense; I don't know if you could. The firms reflect the communities in which they operate...and smaller firms may be in communities that are less diverse.”

—DEPUTY GC, FORTUNE 100 TECH COMPANY

“There is a presumption in a purpose-driven organization like ours that diversity doesn't need to be a focus because it will succeed organically... but the reality is that it is an issue and will remain [so] until you are intentional about addressing it.”

—GENERAL COUNSEL, PRIVATELY OWNED
CONSUMER GOODS COMPANY

“We have a number of longstanding relationships with our outside law firms and if we imposed certain gender-based diversity requirements on them, they might not be able to work with us. When you have worked with a firm with longstanding, legacy knowledge of the company, it is difficult to leave them.”

—LITIGATION COUNSEL, FORTUNE 500
PACKAGED FOOD AND BEVERAGE COMPANY

“

**Bandwidth [is a challenge].
I am all for gender and overall diversity. We do everything we can to include diverse candidates.**

”

—GENERAL COUNSEL, GLOBAL 500
MINING & MINERALS COMPANY

“I have a heavy focus on gender diversity, but it is not reduced to a policy. I think policies are often simply lip service and the HR department creating window dressing, rather than teams feeling passionate about an issue.”

—GENERAL COUNSEL, PUBLIC
PHARMACEUTICAL COMPANY

GCs & senior in-house lawyers say lack of diversity is a business problem that impacts law firm selection

60% say their companies' gender-based diversity requirements pertain to the composition of the teams assigned to their business.

56% say gender diversity expectations pertain to the composition of the teams assigned to represent them in litigation or arbitration.

45% say those expectations reside at the firm level.

While the majority of GCs and senior in-house lawyers say their companies have no formal gender diversity requirements, many say they track the relative gender diversity of firms and make decisions based on that diversity. They are more focused on the teams that represent them, including in litigation and arbitration, than they are on the makeup of firms.

“We have seen token women added to matters, but if you just have a female associate being added to a matter, that will not fly. It is so easy to spot that it would better not to have anyone at all. It is offensive to us to see that. We frequently see pitches of all men, who say they are promoting diversity, but don't have contributing women.”

—SENIOR COUNSEL, FORTUNE 100 HEALTH
INSURANCE COMPANY

“We require our outside lawyers to submit periodic reports on the composition of their teams; however, I do not know the consequences of the results if they do not meet our expectations. We also have regular conversations with our outside lawyers and request more diversity if we don't feel that our expectations are being met.”

—SENIOR MANAGING COUNSEL, FORTUNE 500
INFORMATION TECHNOLOGY & SERVICES COMPANY

“We don't have a formal tracking mechanism, but if our law firms only assign non-diverse teams to our matters, they will receive less work over time.”

—MANAGING COUNSEL, OIL AND ENERGY COMPANY

“Every two years we conduct an assessment of the diversity programs at our law firms. We review every diversity category and study specific issues, such as the total number of women vs. men, the number of women in specific positions, promotion rates of women, number of women that lead practice groups and offices, number of women that are on management committees. We also look at the top 10 billers, including origination. We also ask firms to provide narrative descriptions of their overall diversity programs followed by two-hour meetings to provide feedback, as well as comparisons to other firms. We then provide an award to firms that exceed our expectations in different categories.”

—ASSOCIATE GC, FORTUNE 500 FINANCIAL SERVICES COMPANY

“We track it and provide reports to the general counsel. It is also factored into the company's goals regarding engaging with minority- and women-owned businesses. We include this usage [in] our firm assessment process.”

—DEPUTY GC, PRIVATELY OWNED
FINANCIAL SERVICES COMPANY

“The company requires its law firm providers to track diversity in accordance with certain diversity metrics we established, and this past quarter our firms reached 100% compliance. It's a collaborative effort. I don't know if the firms enjoy compiling the quarterly metrics, but it's something we require.”

—DEPUTY GC, GLOBAL 500 TECHNOLOGY COMPANY

36%

of GCs and senior in-house lawyers
say that to improve gender equity
law firms should improve how
they handle origination credit and
business development.

“

It is important for in-house counsel to help elevate the visibility of women-led teams and women-owned firms. As the holder of the purse strings, legal teams need to set gender and diversity expectations and encourage our firms to support diverse professionals.

”

— SENIOR LEGAL COUNSEL, PUBLIC MEDICAL DEVICE COMPANY

How GCs and senior in-house lawyers make the business case for gender diversity.

GCs and senior in-house lawyers admire companies they regard as diversity leaders.

Many GCs and senior in-house lawyers have asked for women lawyers to be added to their teams.

Women litigators' work is seen as equal in quality and superior in efficiency.

GCs and senior in-house lawyers admire companies they think are diversity leaders

46% of GCs and senior in-house lawyers say they admire other companies for how they have approached gender-based diversity on their teams or their vendors' teams.

Of those who named a company they admire, 18% cited Microsoft.

GCs and senior in-house lawyers highlight dozens of companies for their outstanding diversity efforts, but just eight are mentioned at least twice. All have garnered public attention for gender-diversity efforts that include setting and measuring goals for the outside law firms they hire. Microsoft, which interviewees name significantly more than any other company, prominently lists its expectations for outside counsel on its legal department website and notes that the percentage of diverse attorneys working on its behalf increased from 33% to 48.2% in six years, thereby demonstrating accountability and creating transparency. Walmart, another company cited by GCs and senior in-house lawyers, has been highlighted by The National Association of Minority and Women Owned Law Firms (NAMWOLF) and others as exemplary.

**“There are people
spearheading
these issues more
than companies.”**

—GLOBAL LITIGATION COUNSEL,
GLOBAL 100 OIL & ENERGY COMPANY

“I appreciate Microsoft’s approach to reward firms that achieve diversity requirements. I think it is a brilliant strategy and hope we can emulate it in some way.”

—CHIEF LEGAL OFFICER, PRIVATELY
OWNED MEDIA PRODUCTION COMPANY

“Shell...has been on the forefront of ensuring diversity on their legal teams, particularly in the energy industry.”

—CHIEF LITIGATION COUNSEL,
FORTUNE 500 ENERGY COMPANY

“We admire [Walmart] because we are not quite sure how they are able to maintain such a robust outside counsel diversity program.”

—ASSISTANT GC, FORTUNE 500
INSURANCE COMPANY

“Toyota... has a measurable program run by the general counsel to ensure gender equity and it has had a positive impact on the local market.”

—COMPLIANCE COUNSEL, INSURANCE COMPANY

Many GCs and senior in-house lawyers have asked for women lawyers to be added to their teams

95% of GCs and senior in-house lawyers say their companies have been represented by a woman lawyer or a woman-led legal team in a dispute.

Almost half of all interviewees (48%) say that their companies have asked their law firm to put a woman on a litigation or arbitration team; 1 out of 3 (36%) say they have not.

Even without formal gender diversity policies, nearly all GCs and senior in-house lawyers say their companies have been represented by a woman lawyer or woman-led legal team in a dispute. Nonetheless, nearly half have explicitly asked their law firm to put a woman lawyer on a litigation or arbitration matter. Their reasons for doing so range widely: Some say they asked for the best lawyer who happened to be a woman; others for strategic reasons such as relevance to a jury or type of matter; and others for diversity of perspective. GCs' responses suggest that for the most part, clients are not mandating that a firm put a woman in a leadership position on a dispute as part of a stated commitment to closing the gender gap in law.

“We have asked to add a woman to a team, but not because she was a woman. Rather, the request was made because she was an excellent lawyer.”

—CHIEF LEGAL OFFICER,
INSURANCE COMPANY

“
I hired the best lawyer for the task and that lawyer happened to be a woman.
”

—ASSISTANT GC, GLOBAL 100 BANK

“I believe in being a champion for gender diversity. I have women on my team who are strong and accomplished and want them to see and work with women at our outside counsel firms. I also want to be part of the change.”

—GC, PUBLIC PHARMACEUTICAL COMPANY

“I consciously want to create opportunities for female professionals.”

—SENIOR COUNSEL LITIGATION,
PUBLIC OIL & ENERGY COMPANY

“We want our company and our lawyers to look like the people we serve.”

—SENIOR COUNSEL LITIGATION,
PUBLIC OIL & ENERGY COMPANY

“If there are no female lawyers on a team, we will ask in an effort to help those women earn substantive experience.”

—LITIGATION COUNSEL,
INVESTMENT BANKING COMPANY

“We want juries to see that our team is representative of our community as they are.”

—CHIEF LITIGATION COUNSEL,
PUBLIC OIL & ENERGY COMPANY

“Diverse teams tend to work better, particularly when there is not a clear solution to a problem.”

—GC, PRIVATE FOOD PRODUCTION COMPANY

“I would not necessarily require a female leader because I don't think it helps diversity. Rather, I want the best lawyer to be the leader and it often happens to be female.”

— SENIOR LITIGATION COUNSEL, FORTUNE
100 HEALTH INSURANCE COMPANY

“We ask our firms to put a woman on every single matter.”

—ASSOCIATE GC, FORTUNE 500
FINANCIAL SERVICES COMPANY

Women litigators' work is seen as equal in quality and superior in efficiency

84% of GCs and senior in-house lawyers say that based on their experience the quality of work by women litigators is equal to that of men; 4% say it is better.

64% of GCs and senior in-house lawyers say that based on their experience the efficiency of work by women litigators, based on factors such as speed to resolution and/or cost management, is equal to that of men; 21% say that women litigators' work is more efficient.

Under 2% say women litigators' work is of lower quality and less than 3% say it is less efficient, but many GCs and senior in-house lawyers acknowledge that the commercial litigation space is dominated by men.

Although understandably reluctant to generalize, GCs and senior in-house lawyers highly rate the quality of work by women litigators—and even more so, the efficiency of work by women litigators. In characterizing this efficiency, many interviewees emphasize women's interest in building client relationships and understanding their budgets and business needs. Ultimately, efficiency toward a positive outcome provides yet another business case for promoting women litigators. The efficiency of women litigators' work is even more relevant in an environment in which GCs and senior in-house lawyers face increased pressures on litigation budgets and a potential increase in disputes.

“A woman is not going to get to the point where she is a partner or a senior partner at a firm where she is not really excellent. Men, however, can squeak through. If a woman is an equity partner at a firm, she has had to kick butt throughout her career.... The bar is higher for women. Firms make it harder for diverse professionals to rise up.”

—GENERAL COUNSEL, FORTUNE 100
FINANCIAL SERVICES COMPANY

“I am a working mom and collaborate with other working moms... If you want something done quickly, give it to a busy person.”

—GC, GLOBAL 500 MINING & MINERALS COMPANY

“Women are more efficient because they focus more on the relationship. For example, it is rare that I will see a 0.1 or 0.2 from a female litigator for responding to an email, but my male litigators will bill that time. The women with whom I work seem to be more interested in building the relationship than billing.”

—ASSISTANT GC, FORTUNE 100
ENERGY COMPANY

“The female attorneys are more likely to ask outright if the company has budgetary concerns to ensure that they don't exceed them.”

—ASSISTANT GENERAL COUNSEL,
FORTUNE 100 DEFENSE COMPANY

“Women tend to be more efficient. They are more sensitive to client cost pressures and often seek permission before undertaking significant billable work. That is a good thing for us to evaluate, i.e., the efficiency of the law firms generally.”

—ASSISTANT GC, FORTUNE 100
FINANCIAL SERVICES COMPANY

“Part of efficiency is responsiveness and in my experience, more often than not, but not always, the female lawyer will be more communicative and provide better, more frequent updates that allow us to provide quicker business decisions.”

—GENERAL LITIGATION COUNSEL, FORTUNE
100 FOOD & BEVERAGE COMPANY

55%

of GCs and senior in-house lawyers
say that knowing about The Equity
Project will change the way they
think about or prepare for future
affirmative litigation.

“

Clients with real bargaining power [are] not demanding greater equity. If the buyer of the service doesn't demand it, the seller of the service will not offer it.

”

—DEPUTY GC, PRIVATE FINANCIAL SERVICES COMPANY

Barriers and opportunities to bridge the gender gap in law.

Law firm culture and work-life balance are seen as barriers.

The move to remote working may be an opportunity for change.

GCs and senior in-house lawyers want to work with their law firms to foster change.

GCs and senior in-house lawyers are open to legal finance risk-sharing tools to promote women.

Law firm culture and work-life balance are seen as barriers

Almost 60% of GCs and senior in-house lawyers cite external factors—such as bias, historical inertia, law firm culture and especially work-life balance—when asked about the primary obstacle to improving gender equity as it pertains to high-stakes commercial litigation.

Many GCs and senior in-house lawyers emphasize that law firm expectations around face time in the office and with clients create an impossible barrier for women given enduring imbalances for domestic and caregiving responsibilities. Although some seemingly suggest that for these reasons it is outside their power to impact the gender gap, others note ways that they can help shift these expectations.

“Let's not, for example, schedule brief due dates on Mondays.”

—CHIEF LEGAL OFFICER, PRIVATELY OWNED MEDIA PRODUCTION COMPANY

“There is also a perception issue and a bias that men in higher positions either overlook or don't appreciate. That is a hard institutional issue to overcome for women. Breaking through that is a big cultural obstacle. The attributes that make women good litigators are not often prized or appreciated by men as good attributes.”

—LITIGATION COUNSEL, INVESTMENT BANKING COMPANY

“Men wildly outnumber women in high-stakes commercial litigation. I have worked with some of the greatest female litigators ever in high-stakes litigation, but there are not enough of them.... Even if everyone was treated equally, until childcare is a totally equal issue, women will still be vastly underrepresented... People who think it should be 50/50 because that is who graduates from law school are not living in the real world.”

—CHIEF LEGAL OFFICER, PRIVATELY OWNED MEDIA PRODUCTION COMPANY

“It is a law firm lifestyle problem. Law firms will tell clients and prospects that they are trying to promote gender equity and overall diversity, but women and diverse lawyers don't typically last, because... of the schedule. Becoming a high-stakes litigation partner requires a lot of hours... a big investment of time and lifestyle sacrifice.”

—COMPLIANCE COUNSEL, FORTUNE 100 INSURANCE COMPANY

“It is a circular problem. You need the experience to get the case, but you will not get the case without the experience. The way to address that is to diversify the teams so that the members each receive incrementally more experience and greater opportunities that result in key positions over the long term.”

—ASSOCIATE GC, PRIVATELY OWNED SAAS COMPANY

“People for the wrong reasons may fear that in a certain age period, a female lawyer may be less reliable because she takes parental leave... With a very outdated perspective, one might assume that men don't face that challenge.”

—GC, PUBLICLY TRADED ENTERPRISE SOFTWARE COMPANY

“Historical inertia may be the primary obstacle.... There is a stereotype that women don't want to sacrifice their family and work-life balance for their career. It is not necessarily true, but it is an impression that exists.”

—COUNSEL, LITIGATION, PRIVATELY OWNED TECHNOLOGY COMPANY

The move to remote working is seen as an opportunity for change

GCs and senior in-house lawyers say that the shift to remote working may benefit women in law by normalizing work from home arrangements.

Although GCs and senior in-house lawyers emphasize the degree to which traditional law firm culture and face time expectations create obstacles for women with caregiving and domestic responsibilities, several note that the shift to remote work due to the Coronavirus may be a step toward adjusting expectations that levels the playing field for women.

“We need to think more about work-life balance which will enable women to be more fairly represented. In light of the Covid-19 crisis, people will become more comfortable with remote work and more effectively balance productivity with personal responsibilities... We are more aware of each other's home lives now than before in the office, where our personal affairs were not as frequently discussed.”

—CHIEF LEGAL OFFICER, PRIVATELY OWNED
MEDIA PRODUCTION COMPANY

“Overall, the idea that every matter is based on billable hours at a predetermined rate must change dramatically. The Covid-19 crisis may lead to that change. One thing that will be interesting is that the idea of flexible work arrangements, e.g., working from home and flexible schedules, will become a bigger function of the workplace. I think women have been long more equipped to deal with the high levels of efficiency required by remote work so firms will embrace those models and female professionals will earn greater rewards as a result.”

—CHIEF LEGAL OFFICER, PRIVATELY OWNED
MEDIA PRODUCTION COMPANY

“

**We will also send out a note to our law firms
to think carefully about diversity initiatives
in light of Covid-19 to avoid disproportionately
impacting minorities and women.**

”

—DEPUTY GC, GLOBAL 500 TECH COMPANY

“Depending on the market, there is a lot of emphasis put on face time at law firms, including spending time with clients at lunches and dinners... If firms want to improve equity, they need to tackle these more difficult issues, such as what it takes to be successful. If it is about billable hours and face time, women will continue to be at a loss. Now, since no one has face time in the Coronavirus crisis, some people will step up and it could offer great opportunities for women.”

—CHIEF LEGAL OFFICER, PRIVATELY OWNED MEDIA PRODUCTION COMPANY

GCs and senior in-house lawyers want to work with their law firms to foster change

36% of GCs and senior in-house lawyers say that to improve gender equity law firms should improve how they handle origination credit and business development.

A similar fraction of GCs and senior in-house lawyers (35%) cite mentoring, increased client exposure and other ways of augmenting experience as priorities to improve equity.

GCs and senior in-house lawyers largely indicate that the gender gap in law will not go away until both the buy-side and sell-side of the legal market work collaboratively to close it. Many frame solutions in terms of rewarding diverse law firms, rather than simply penalizing firms that lack diversity. Similarly, GCs emphasize the need for two-way transparency, and note opportunities for collaboration on initiatives such as mentoring programs. When asked what they believe law firms should do differently, GCs and senior in-house lawyers emphasize the need for new thinking around origination and training for business development, as well as traditional expectations around work hours and face time. Many volunteer their interest in supporting mentoring programs for women and other diverse lawyers.

“Our internal sponsorship program requires outside firms to adopt it. The tagline is that the senior leadership of the organization needs to be accountable for the retention of the diverse talent at their firms. We need to be satisfied with the structures to ensure accountability that ensures the success of the diverse talent. If they cannot, we will remove them from our preferred provider list. We can also use incentive pay to use carrots instead of sticks.”

—GC, FORTUNE 100 FINANCIAL INSTITUTION

“Origination credit has historically rewarded the older partners, but... it stifles the ability of the younger partners to expand the range of services of the clients... There are more women of my generation and younger who are becoming the relationship partner, but if they are not able to take control of the client, they may never be able to gain the equity they deserve.”

—GROUP GC, FORTUNE 500 CONSTRUCTION
AND ENGINEERING COMPANY

“We have had cases that span multiple years, where a young female associate leaves for maternity and is replaced by a male associate. In those matters, we ask for [her] to be reassigned to our matters when she returns. We want to work with firms that share credit and work collaboratively, rather than awarding most of the credit to a single or small group of rainmakers.”

—CHIEF LITIGATION COUNSEL,
FORTUNE 500 ENERGY COMPANY

“Lots of organizations have been reluctant to award success fees or deduct fees based on diversity metrics and billings by diverse professionals to their matters. That said, money talks... Tying compensation to diversity metrics would go a long way to making firms equitable and inclusive environments for women.”

—GLOBAL LITIGATION COUNSEL, FORTUNE 100
OIL & NATURAL GAS COMPANY

“The company has discussed promoting mentorship for mid-level and senior associates at law firms in partnership with its own outside counsel to cultivate talent. We intend to have the senior professionals in our department mentor rising associates at one of our largest law firms.”

— ASSISTANT GC, FORTUNE 100 HEALTHCARE COMPANY

“Beyond demanding diversity on the teams, one of the easiest things that any company can do and that we do is to join forces with an outside counsel firm at an event. It is small, but drives dollars that support these efforts. If you really want to impact change, it has to be down in the weeds.”

—SENIOR MANAGING COUNSEL, FORTUNE
100 FINANCIAL INSTITUTION

GCs and senior in-house lawyers are open to legal finance risk-sharing tools to promote women

GCs and senior in-house lawyers are divided on whether their company would be more likely to hire a female litigator to represent it if Equity Project capital meant they could shift their risk of loss: 36% say they would, 34% say they would not and 29% are unsure.

55% of GCs and senior in-house lawyers say that knowing about The Equity Project will change the way they think about or prepare for future affirmative litigation; just 32% say it will not, and 13% are unsure.

Most of the GCs and senior in-house lawyers interviewed were unaware of the availability of Equity Project capital to back commercial litigation and arbitration led by women—and the majority said just knowing about it would change how they think about preparing for future affirmative litigation. Some pushed back on the idea of needing an economic incentive to justify engaging a woman litigator, or because as infrequent plaintiffs they have not been users of legal finance. Many, however, noted that all things being equal—especially as litigation and legal budgets tighten in the downturn—a risk-sharing tool like The Equity Project could provide an extra incentive to put women litigators on a case. Interviewees note that legal finance providers may be able to help their companies identify and cultivate relationships with strong women lawyers—a challenge identified earlier in the research.

“It is an exciting project, but I hesitate to indicate that we are concerned in any way about retaining a woman to represent the company. We want a woman to lead the team. The limitation of the exposure to risk would be supported.”

—ASSISTANT GC, FORTUNE 100 AEROSPACE AND DEFENSE COMPANY

“We are focused on creating the best economic outcome for our stockholders and if we could also achieve equity goals in the process, we would think about it.”

—GC, PRIVATELY HELD SOFTWARE COMPANY

“[The Equity Project] may prompt us to ask additional questions of our outside counsel. Now that we are aware of it, it could change the way we approach litigation.”

—ASSOCIATE GENERAL COUNSEL, PUBLIC CHEMICAL ENGINEERING COMPANY

“I would certainly suggest it to my peers now that I know about it, but its application takes a certain type of litigation.”

—SENIOR COUNSEL, PRIVATELY HELD ENERGY COMPANY

“Anything to help improve diversity in law firms is something that we would support, especially if we could save money in the process.”

—ASSISTANT GC, FORTUNE 100 FINANCIAL SERVICES COMPANY

“It is a very good idea and my company would hire a woman for that.”

—SENIOR LEGAL COUNSEL, FORTUNE 500 TECHNOLOGY MANUFACTURING COMPANY

As we work to provide capital and promote ideas to enhance gender equity in law, Burford is honored to be joined by 22 Equity Project Champions drawn from leading law firms and organizations around the world. In conjunction with the present study, we asked our Champions for their perspective on what GCs can do to use their “power of the purse” to help close the gender gap in law. Some of their responses are excerpted on the following pages.

The Equity Project

*Perspectives from Equity
Project Champions*



Caren Ulrich Stacy
CEO, Diversity Lab

“My advice for legal department leaders is this: You hold the cards in good and in bad times. You have the power to reward law firms that manage their talent and sustain their diverse workforces, and to punish the ones that don’t. Use your power for the good of diversity and inclusion in law.”



Roberta Liebenberg
Partner, Fine, Kaplan & Black

“GCs should use their considerable economic clout to incentivize law firms to promote gender equity and to consider taking away business from those who fail to do so. They should insist upon gender diverse legal teams, with women being given leadership roles, and equitable treatment of the women who handle their matters in the firm’s origination credit and client succession decisions. RFPs should require firms to disclose gender diversity metrics, such as the percentage of women among the firm’s equity partners; on key firm committees; and among department and practice group chairs. Thereafter, the firms should be required to disclose the number or percentage of hours billed by women assigned to their matters. GCs should advise firms that demonstrations of progress on gender diversity metrics will lead to increased business from the client, while a lack of progress will jeopardize the firm’s ability to secure additional work. GCs are in the best position to truly move the needle and level the playing field for women lawyers. Increased gender diversity is not only the right thing to do, it should be a business imperative.”



Jonathan Goldin

General Counsel, Goldin Associates

“When confronting complex legal challenges, we in-house lawyers look to outside firms that offer the requisite person-power, specialized expertise and intellectual creativity. Hard-working lawyers abound and identifying subject matter experts can be relatively straightforward. Intellectual creativity can be harder to find. Firms comprised of diverse lawyers at all levels are more likely to develop institutional intellectual creativity. By refracting problems through varied lenses, diverse teams can be especially insightful. As clients of firms, we in-house lawyers should emphasize—both in terms of feedback and allocation of legal spend—how much we value the intellectual creativity that meaningful diversity, including more women in leadership positions, can promote.”



Sophie Nappert

Independent arbitrator & moderator, OGEMID

“Certain corporate users of arbitration select their outside counsel by demanding that the firms pitching for the work show their diversity numbers. How many women were promoted in the last two years? How does their remuneration compare to that of their male peers? What is done to promote junior female lawyers and to give them direct exposure to clients? How many women client partners? How many female arbitrators selected in the past year? This is a powerful and practical way to place gender diversity as a relevant factor at the center of the beauty parade, at the same level as industry expertise and legal excellence.”



Carolyn Lamm

Partner, White & Case

“One of the most important ways that GCs can use their ‘power of the purse’ is to retain women to run their cases and serve as first chairs in any disputes. If women are not provided with such opportunities and direct support by GCs, they will not significantly advance and the gender gap will persist. Indeed, studies and surveys from the American Bar Association, Catalyst and other sources repeatedly have shown the benefits of diverse perspectives and approaches to decision making, all of which are enhanced by women serving in leadership roles on a case team. Such diversity not only leads to favorable outcomes for clients, but also provides greater credibility and legitimacy to judicial systems and other dispute resolution mechanisms.”



Nicole D. Galli

*Managing Member, Law Offices of N.D. Galli,
Founder, Women Owned Law (WOL)*

“In speaking with in-house counsel, it appears that even those companies who issue public calls to action fall down in implementation. That is where I think GCs need to focus: What happens when matters are being staffed? Two areas I think are ripe for attention: First, who is getting the relationship credit in large law firms—is it the female or diverse lawyer or some non-diverse man you’ve never heard of? Second: Look for ways to incorporate women and diverse owned firms in your matters—whether by pairing them with larger firms (ideally having woman/diverse owned firm lead the matter to ensure that substantial quality work on the matter is handled by them) or by hiring them alone for the matter.”



Domitille Baizeau & Noradèle Radjai
Partners, Lalive



“We increasingly see outside counsel guidelines highlighting the importance of diversity in their legal team, but this could be taken further. For instance, GCs could actively raise the question of diversity with law firms by requesting information on the firm’s relevant data and policies (e.g. share of female equity partners and senior lawyers; gender pay gap; flexible work policy; etc.). GCs could also expressly require gender diversity in a firm’s proposed legal team, including at senior level (and, when not possible, ask law firms to explain why). In formal bidding processes, points could be allocated for the firm’s diversity policies and diversity in the proposed team. In arbitration, GCs could also require that any arbitrator shortlists contain at least one woman.”



How it works.

The Equity Project is an award-winning initiative designed to close the gender gap in law by providing an economic incentive for change through a \$50 million capital pool earmarked for financing commercial litigation and arbitration matters led by women.

This includes matters where a woman lawyer is first chair; serves as lead counsel; chairs the steering committee; earns the origination credit; is the client relationship manager; or a women-owned law firm is representing the client.

With capital from The Equity Project, women can:

- Pitch clients with attractive alternative fee arrangements—and a built-in competitive edge
- Pursue leadership positions in significant matters
- Persuade firm contingency fee committees to take on matters that require significant investment but offer substantial success fees
- Ease pathways towards origination and client relationship credit
- Demonstrate innovation and ambition to land new clients and serve them well
- In-house lawyers can use litigation finance to showcase her financial savvy and leadership ability by meeting recovery targets without cost or risk to the business

For more information about The Equity Project, visit burfordcapital.com or contact info@burfordcapital.com



Case study.

Challenge

A relatively new litigation boutique wanted to launch nationally and take leadership positions in several high-profile litigations, to be led by the firm's woman co-founder. However, it was constrained by capital needs to pay salaries and operating expenses as it waited on case resolutions. The gender gap in the specific area of litigation was particularly pronounced, with leadership of cases largely determined by informal, male-dominated networks.

Solution

The firm sought Equity Project capital to shoulder the risk and duration of its ongoing matters, equipping it to compete with some of the biggest and most established firms in the country.

Impact

The lead woman partner in the firm was appointed to the case committee of a high-profile matter and was able to parlay that experience into several more appointments. As the woman partner noted, "Equity Project capital allowed our firm to compete in a playing field that was very inequitable because it was primarily led by established firms mainly run by men, with the capital to aggressively pursue new business."

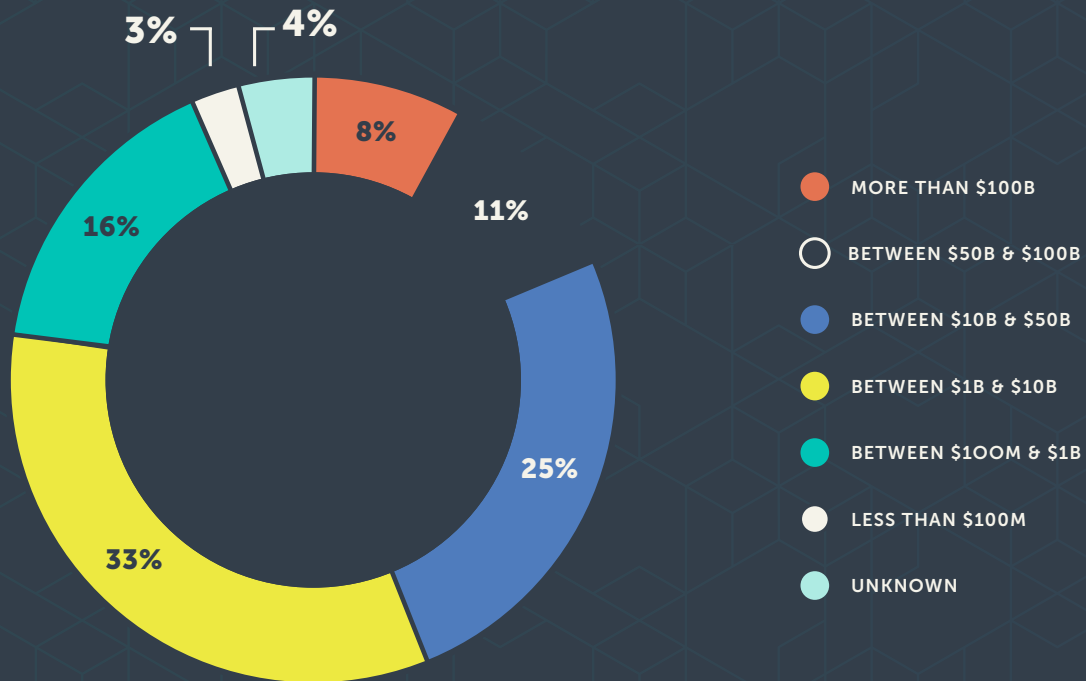


Study participants.

We thank the 77 GCs and senior in-house lawyers who participated in one-on-one interviews with Ari Kaplan of Ari Kaplan Advisors, including, among others:

- Jes Alexander, Compliance Counsel, Esurance
- David S. Allen, Head of Litigation & Legal Operations, MassMutual
- Arleigh Closser, Associate General Counsel, Juniper Networks
- Talita R. Erickson, General Counsel (Americas), Barilla Group
- Michael Eurich, Principal & Legal Counsel, Avison Young
- Karl Hennessee, SVP, Head of Litigation, Investigations & Regulatory Affairs, Airbus SAS
- Ashley A. Miller, Assistant General Counsel, Capgemini North America
- Elliot I. Molk, VP, Associate General Counsel, Corelle Brands LLC
- Barry Parsons, Associate General Counsel, Freddie Mac
- Celia Perez, Division Counsel – Global Plumbing Group, Fortune Brands Home & Security, Inc.
- Kelvin F. Sellers, VP & General Counsel, Interstate Batteries
- Paulo Varnieri, General Counsel – North America, CCR Airports
- Michelle VonderHaar, Deputy General Counsel, HP Inc.
- Monica Wahba, General Counsel North America, Suitsupply
- Timothy Williams, SVP, General Counsel and Secretary, Vanda Pharmaceuticals

Participant demographics



In addition to those named above, we note the following about the interview participants:

- All 77 interviewees held senior legal department titles such as General Counsel, Senior Legal Counsel or Head of Litigation.
- Respondents mostly came from companies with 10,000+ employees (53.3%) and overwhelmingly came from companies with over 5,000 employees (73.3%).
- Median company revenue was \$8b, and 37% of interviewees' companies belonged to the Global or Fortune 500.
- Respondents came from 12 countries across four continents.



Methodology.

The study is based on 77 telephone interviews conducted by Ari Kaplan Advisors between March 23 and May 1, 2020. Interviewees responded to 23 questions, most of which included a multiple-choice answer but all of which allowed for substantive response. All quotes presented in the research are drawn from those responses.

Figures in the research, presented as percentages, are based on the fraction of interviewees who answered a particular question, not on the total population of interviewees, although most questions with a multiple choice component were answered by all interviewees. All percentages drawn from the research are rounded to the nearest whole number.

Burford Capital is a 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 London Stock Exchange, and it works with law firms and clients around the world from its principal offices in New York, London, Chicago, Washington, Singapore and Sydney.

Lawyers choose Burford because we have more capital and more capacity to invest quickly and efficiently than any other legal finance provider. Our respected team includes more than 60 lawyers who are experienced, fast and easy to work with.

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