2021 Legal Asset Report

A Survey of Finance Professionals

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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 principal offices in New York, London, Chicago, Washington, Singapore, Sydney and Hong Kong. For more information, please visit burfordcapital.com.

Companies are on the cusp of a paradigm shift in how they approach legal assets: Financial officers understand their value but are not yet fully leveraging tools to unlock them.

As CFOs collaborate more closely with legal teams to maximize the value of their legal assets and draw on available third-party data, expertise and capital, companies will enhance working capital, reduce risk and improve results.

Executive summary

Affirmative recovery and legal cost management programs are extensive—and can be better

- 73% of financial officers report extremely/very extensive affirmative recovery programs
- 84% report extremely/very extensive cost management programs
- 46% report a need for improvement in these programs
- Large-company financial officers (>$1 billion revenues) are most likely to report that recovery programs are large and need improvement

Companies routinely leave money on the table, but need not

- 49% reported they failed to enforce judgments due to cost in 2020, with half of those reporting the amounts at stake to total $20-$100 million
- 75% of large-company financial officers reported unenforced judgments worth $20-$100 million in 2020
- Those with inadequate affirmative recovery programs are 27% more likely to leave money on the table

Finance and legal have an opportunity to collaborate to add more value to the business

- The majority of financial officers report a high degree of control over legal budgeting, recovery targets, etc.
- However, just 24% report that they apply quantitative financial modeling as they do in other areas of the business to make decisions about litigation
- 59% who conduct qualitative instead of quantitative analysis report doing so because they do not get enough information from the legal department to model litigation value
- 39% say that they choose not to conduct modeling of litigation because litigation variables don't lend themselves to quantitative analysis suggesting an opportunity for greater use of legal finance and the expertise it offers in quantifying legal risk

Time is money, and financial officers who account for it can more precisely value litigation assets

- Time is the least likely primary factor to be considered when evaluating the impact of litigation, even though the long duration of commercial disputes is one of the key factors in valuation and modeling
- Financial officers are significantly more likely to base their minimum recovery target on return on investment (ROI) vs. internal rate of return (IRR)

Bringing a commercial mindset to legal will reinforce more commercial behaviors—benefiting legal and the business

- 56% believe legal departments should have commercial targets just like other departments
- 59% believe legal claims are assets because they represent future cash flow
- Financial officers who conduct quantitative analysis of litigation are more likely to believe that legal departments should have commercial targets
- Those who conduct quantitative analysis of litigation are significantly more likely to say that their companies need to place greater priority on their affirmative recovery programs—suggesting the kind of appetite for improved performance and financial innovation that leading companies value
- However, significant percentages of financial officers still don't view pending litigation as an asset, don't think commercial targets are possible and don't believe that litigation costs can be accurately predicted
- The majority (56%) don't think that 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

Summary takeaways: 5 Steps to unlock the legal asset opportunity that's hiding in plain sight

1. Promote collaboration and innovation in legal

The significant number of financial officers reporting a need to improve affirmative recovery and legal cost management programs suggests that a shift in approach is needed. This shift should combine a numbers-driven finance approach with the deep understanding of commercial disputes that legal brings.

2. Recognize that pending claims are corporate assets—and treat them as assets

Although most financial officers agree that pending claims are assets because they represent potential future cash flow, finance and legal teams need to take the next step—and utilize available financing tools that enable them to actually treat claims as assets, for example by better controlling the flow and timing of capital to and from claims and by utilizing quantitative analysis of litigation (see below).

3. Work with legal to set value-add goals alongside cost-control goals

A surprisingly tepid majority (56%) believe that legal departments should have commercial targets. Companies will gain more value from legal departments when finance and legal leaders encourage more commercial thinking about litigation—for example, by designing affirmative recovery programs that return value to the business through meritorious litigation. With outside legal financing in place, companies can do so in ways that eliminate affirmative litigation cost and also offset litigation defense costs.

4. Leverage quantitative modeling to make decisions about litigation—just as elsewhere in the enterprise

Quantifying legal risk is the bread and butter of legal finance, and the success of Burford Capital affirms the power of that expertise in generating real dollars. Yet very few financial officers are applying quantitative decision-making techniques to high-stakes litigation. Those that doubt quantitative modeling is possible for commercial claims can seek out this expertise from legal finance partners as needed.

5. Fill in gaps in expertise, data and capital

Just as companies routinely seek outside expertise and financing for areas that are not core to their business, they should have the same expectations for their legal assets. Few companies litigate with enough frequency to have built expertise in key aspects of case budgeting and quantitative modeling for litigation costs and outcomes, and their data sets will by definition be limited to their own experience. Along with capital to finance affirmative recovery efforts, this expertise and data are available from legal finance partners.

Introduction

The role of the Chief Financial Officer is changing and growing ever more strategic. Citing factors that range from the explosion of data about every facet of business performance to the rise of activist investors and the complexity of operating in a more transparent, connected and regulated climate, experts advocate for CFOs to step confidently into their new roles as "architects of business value" and "catalysts [ready to] instill a financial approach and mindset throughout the organization."[1]

As CFOs seek to maximize enterprise value and bring a finance outlook to the whole enterprise, they should appraise how they approach their companies' legal assets. Are they quantifying the potential cost and benefit to the organization of pending commercial disputes, which can represent scores if not hundreds of millions of dollars' worth of future value—albeit highly illiquid and contingent value? Are they using tools available to help them reduce the risk associated with these matters and to enhance liquidity for the business?

CFOs should bring a commercial mindset to the legal department, just as they do to other areas of the business. Legal departments are typically assumed to be only cost centers—but they can be treated as commercial centers with assets to leverage. To champion this value-generating mindset, finance and legal teams will need to agree on core principles—for example, that pending commercial claims are assets—and collaborate closely to maximize their value.

[1] See, for example, Harvard Business School, "A New Role for CFOs", an interview with Fritz Foley; Accenture, "CFO Now" (February 2021); *Harvard Business Review*, "The CFO's Changing Role: Building the Future" (October 2018).

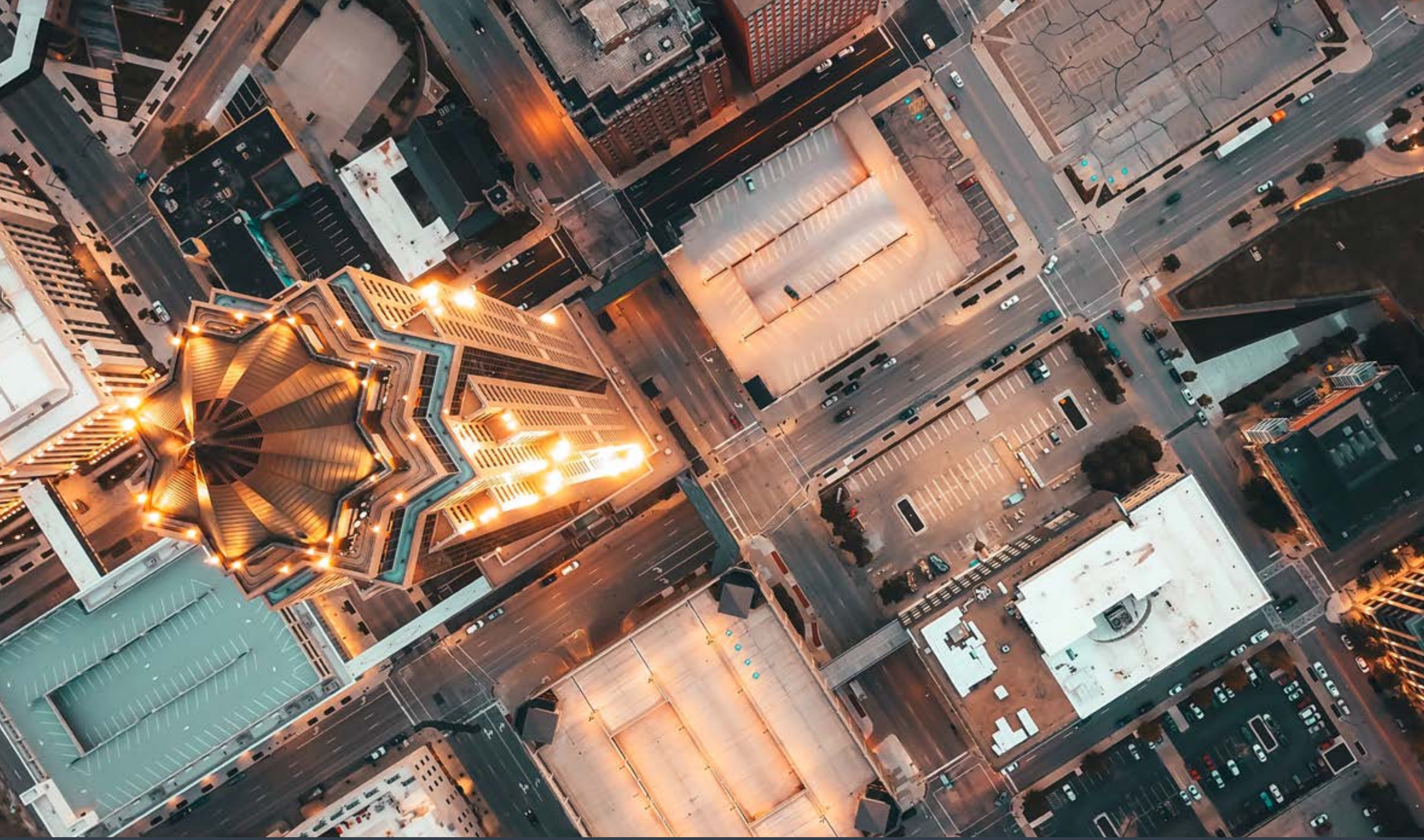
Burford Capital commissioned research to be conducted with senior financial officers in the US, the UK and Australia in order to probe these issues and to provide guidance to CFOs on how to benchmark their organizations' success in this area. The findings of this research are explored in the pages that follow.

Companies are on the cusp of a paradigm shift in how they approach legal assets. Over Burford's nearly 12-year history as the leading global finance firm focused on law, it has been our experience that highly valuable legal assets remain surprisingly invisible to finance and thus stubbornly illiquid for the organization. But it has also been our experience that as soon as we speak directly with CFOs about this topic, they tend to be immediate and passionate converts to the potential to enhance liquidity and reduce risk for the business by optimizing their portfolios of legal assets. We see evidence of that in our own business and in the growing number of companies approaching us to talk about their needs. We welcome those conversations, and we invite you to reach out to us with questions about how we can help you, or on the research that follows.

Ken Brause

Chief Financial Officer

Burford Capital



SECTION 1

What is at stake: Big litigation budgets, ambitious recovery programs and a desire for change

Reported legal department budgets and litigation spending

Companies are spending significant sums on legal budgets and litigation.

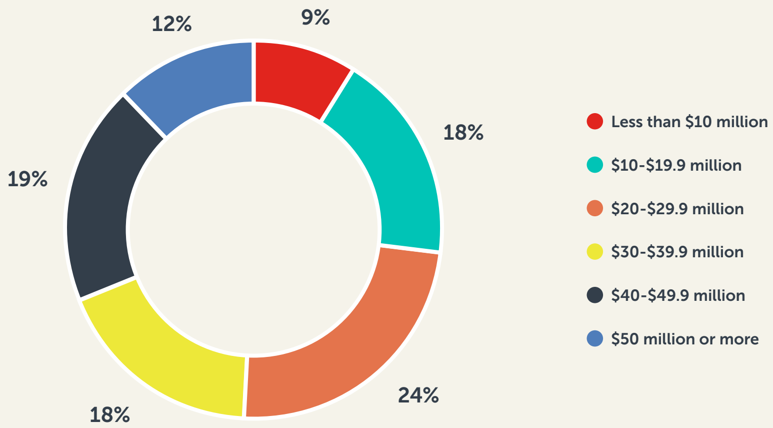
Among the obvious motivations for financial officers' engagement in the legal department is the sheer amount of money at stake

- Financial officers report their legal budgets for 2021 to be $30.8 million (mean)[2]
    - $34.4 million reported legal budget for companies with over $1 billion in annual revenue
    - $32.4 million reported legal budget for publicly traded companies
- Separately, financial officers report their litigation spend in 2020 to have been $26.3 million (mean)
    - $33.4 million reported litigation spend for companies with over $1 billion in annual revenue
    - $29.2 million reported litigation spend for publicly traded companies

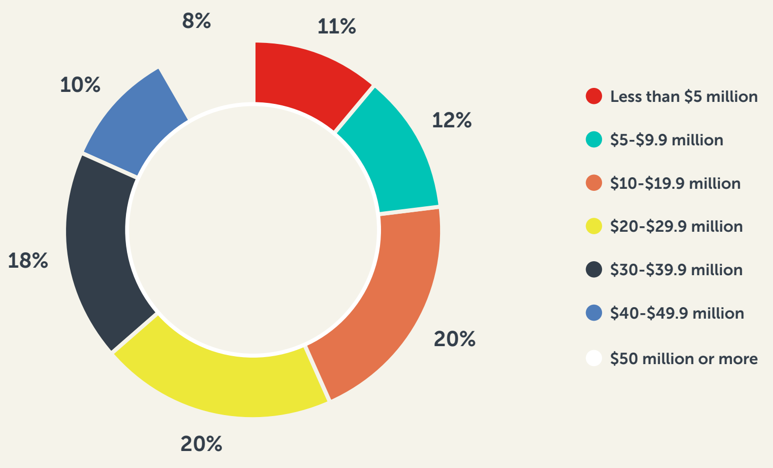
Managing this cost has the potential for significant impact on budgets and P&Ls—because every dollar spent on litigation increases expenses and thus reduces earnings, which is particularly harmful for public companies.

[2] For context, mean 2018 legal spend was reported to be $16,664,691 in the ACC 2019 Global Legal Department Benchmarking Report; KPMG's Global Legal Department Benchmarking Survey 2021 Report cites average legal spend of $2,592,421 for each $1 billion of sales.

What is your organization's legal department budget for 2021?[3]



What did your organization spend on litigation in 2020?



[3] All values represent US dollars.

Incidence, size and coincidence of affirmative recovery and cost management programs

Affirmative recovery programs are prevalent, significant and generally paired with legal cost management.

Litigation is a cost of doing business for most businesses of scale, but in recent years, the necessity of defending against weak claims has been balanced with increasing recognition that affirmative recovery programs—that is, initiatives focused on pursuing meritorious claims that will return value to the organization—have a role to play. For example, a 2014 paper in the MIT Sloan Management Review posited that legal departments could become contributors to the bottom line by creating tangible and identifiable value as opposed to cutting costs alone.[4]

- 99% of financial officers report that their organizations have affirmative recovery programs
- 73% of financial officers report that their affirmative recovery programs are extremely or very extensive
- Large-company financial officers (those with revenues over $1 billion) are most likely to report that their affirmative recovery programs are extremely or very extensive

Legal cost management programs, which are focused on reducing the cost of the legal department rather than on generating value through recoveries as with affirmative recovery programs, are ubiquitous.

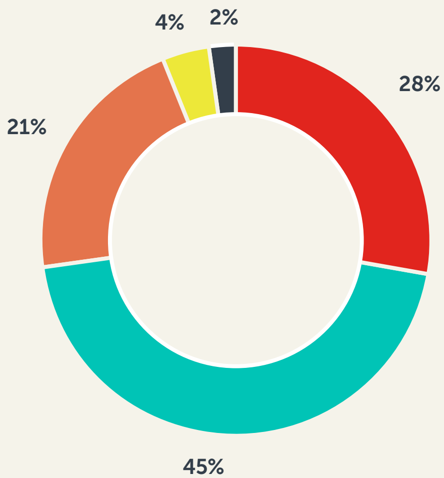
- 100% of financial officers report that their organizations have legal cost management programs

- 84% of financial officers report that their cost management programs are extremely or very extensive

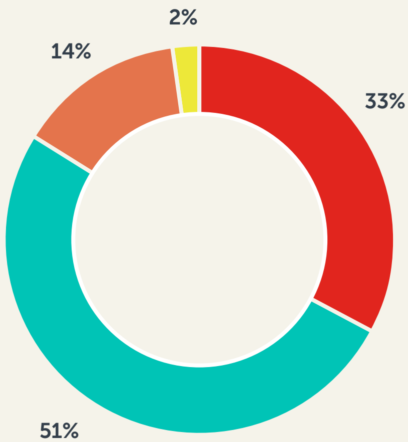
Least surprising of all, affirmative recovery and cost management programs go hand-in-hand.

- Companies with extensive affirmative recovery programs are more likely to have extensive cost management programs (94% vs. 55% of those with less extensive recovery programs)
- Companies with extensive cost management programs are more likely to have extensive affirmative recovery programs (82% vs. 26% of those with less extensive cost management programs)

How extensive is your legal department's affirmative recovery program?



How extensive is your legal department's cost management program?



Extremely extensive
Somewhat extensive
Very extensive
Not too extensive
Minimal/Not at all extensive

[4] Robert C. Bird and David Orozco, "Finding the Right Corporate Strategy", MIT Sloan Management Review (October 2014).

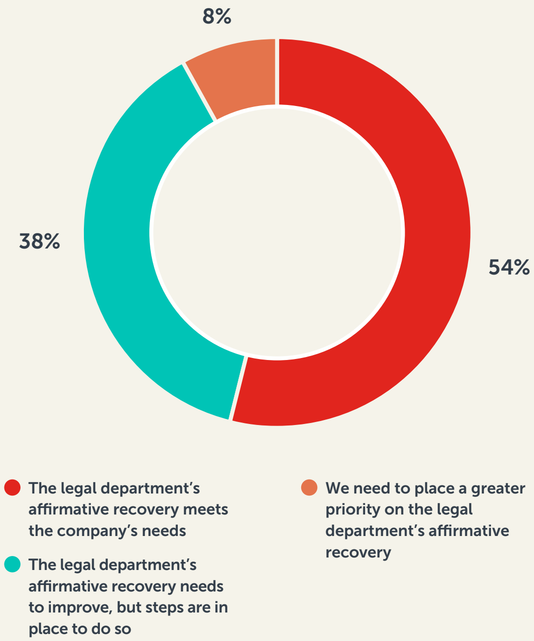
Opportunity to optimize recovery and cost management programs

Almost half of financial officers see opportunity to improve both their affirmative recovery and legal cost management programs.

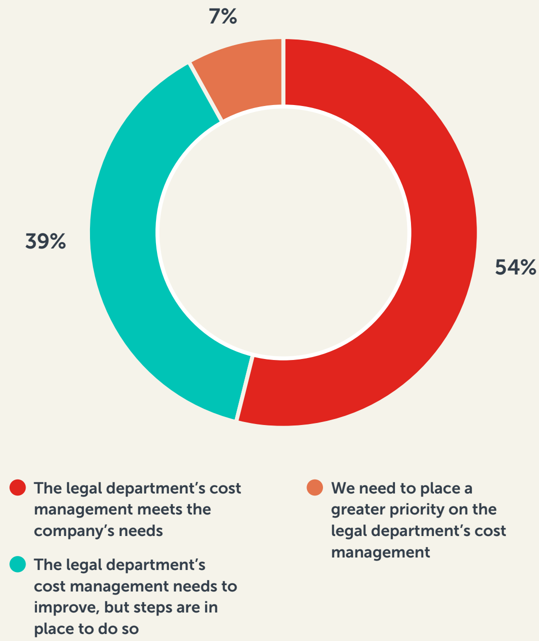
Given reporting by financial officers that their organizations are investing resources in affirmative recovery and legal cost management programs at a near-ubiquitous scale, this significant performance gap reflects a serious need for change and perhaps a shift in mindset.

- 46% of financial officers report a need for improvement in their companies' affirmative recovery programs
- Large-company financial officers (those with revenues over $1 billion) are most likely to report that their affirmative recovery programs need improvement (51% vs. 39% of companies with revenues of less than $1 billion)
- An equal number of financial officers report a need for improvement in their companies' legal cost management programs—and again, large-company financial officers are most likely to point to a gap in performance

Which of the following best describes your view of the legal department's affirmative recovery efforts?



Which of the following best describes your view of the legal department's cost management efforts?



CFO INSIGHT

The need for change is unquestionable for the almost half of financial officers who report a desire to improve affirmative recovery and cost management programs. In addition, even the 54% reporting that they are satisfied with these programs may not be entirely aware of the opportunities they have to quantify and thus leverage their legal assets. And what they don't know could certainly be harming them and the businesses they lead.

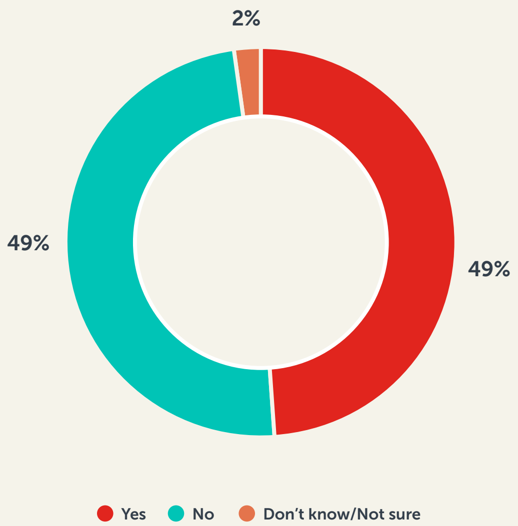
Leaving money on the table

When companies' affirmative recovery and cost management programs don't meet their needs, they may miss opportunities to maximize legal asset value.

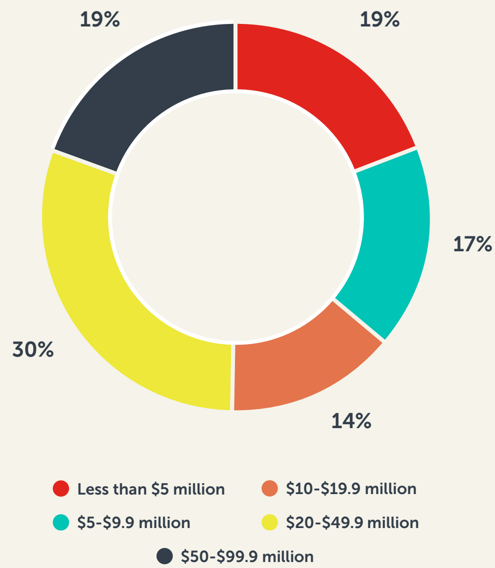
Financial officers are all too aware from other areas of the business of the opportunity costs of failing to invest in revenue-generating activities, and they are equally attuned to the impact of poor cost management in any extensive area of activity. The same principles—and the same negative impacts—apply to the legal department. Financial officers' concerns about their affirmative recovery and cost management programs are not mere abstractions; they have consequences.

- Those reporting that their affirmative recovery programs don't meet business needs are 27% more likely to report that they are leaving money on the table by neglecting to pursue judgments due to cost (56% vs. 44% of those that report adequate affirmative recovery programs)
- Those with inadequate cost management programs that need improvement are 22% more likely to report that they are leaving money on the table by neglecting to pursue judgments due to cost (55% vs. 45% of those that report adequate cost management programs)
- 49% of financial officers reported they failed to pursue judgments due to cost in 2020, with half of those reporting the amounts at stake to total $20 million or more; nearly one in five reported unrealized judgments of between $50 and $100 million

In the past year, has your organization decided not to pursue enforcement of judgments because of the cost of doing so?



What was the total value of judgments in 2020 whose enforcement you did not pursue?



CFO INSIGHT

Judgments, claims and awards can generate significant working capital. This and other research suggest that companies routinely neglect to enforce them due to concerns about budget impact, but this is not an either-or choice: They can utilize cost- and risk-shifting tools to both pursue and enforce valuable claims with zero impact on budgets.

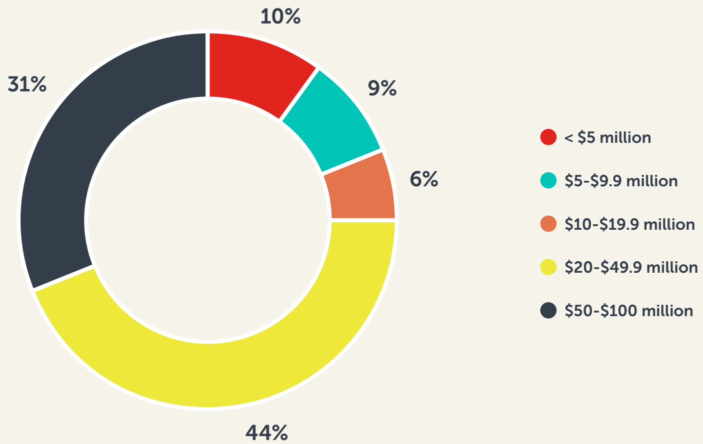
Large companies are leaving scores of millions on the table

75% of financial officers at companies with more than $1 billion in revenue had unenforced judgments worth between $20 and $100 million in 2020.

The impact of failing to bring the same financial approach to legal as they do to other parts of the organization is captured in the tremendous value of unenforced judgments left unpursued by large companies.

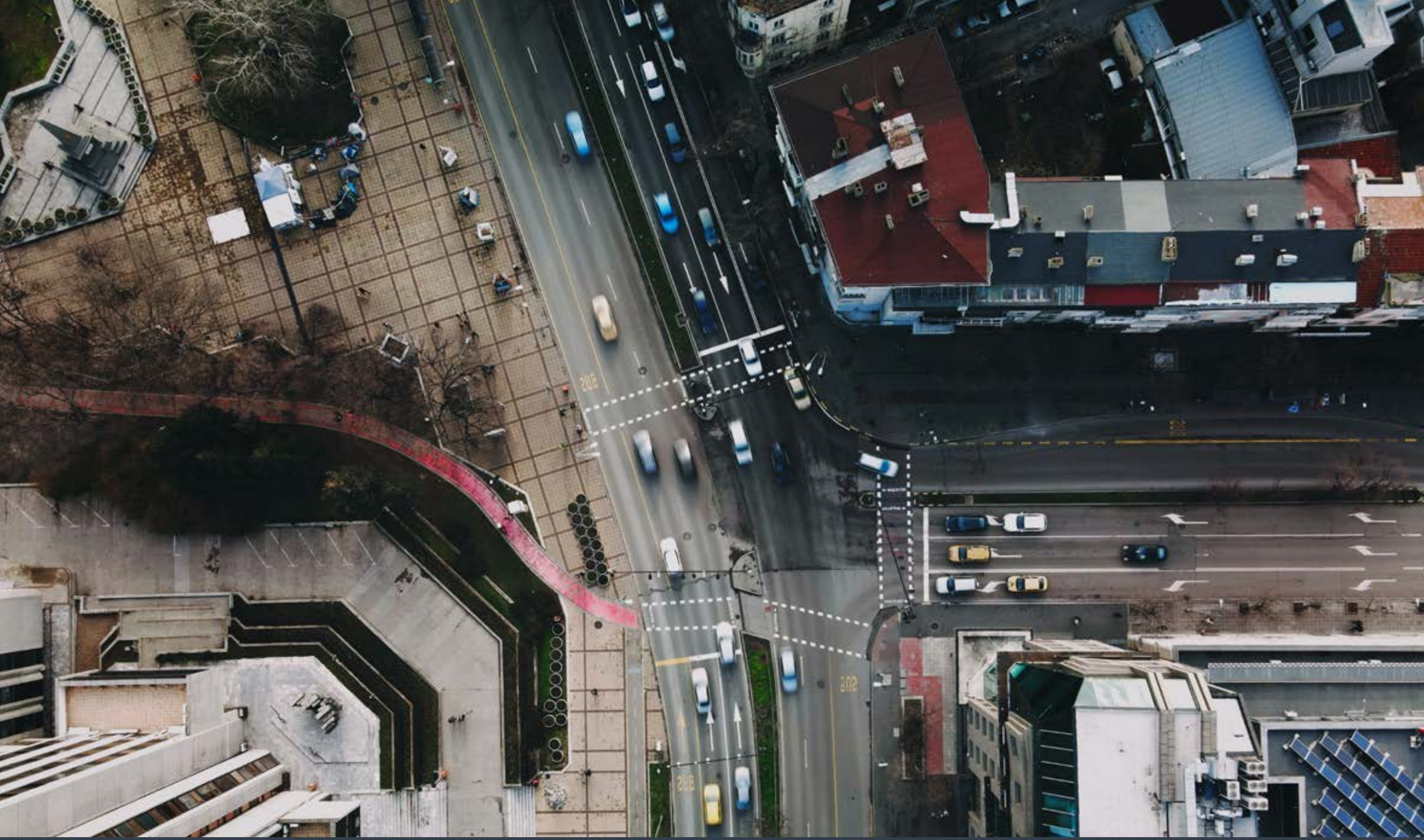
- Whereas just 10% of small companies and 39% of medium-sized companies report unenforced judgments worth between $20 and $100 million in 2020, 75% of large company financial officers admit to leaving sums this large on the table
- Nearly one in three large company financial officers reports unenforced claims worth between $50 and $100 million

What was the total value of judgments in 2020 whose enforcement you did not pursue?



$50-$100m

Almost one in three large company financial officers reports unenforced judgments worth $50-$100 million



SECTION 2

Quantifying legal assets: How decisions are made

How finance collaborates with legal

Financial officers report considerable influence on legal departments.

Much of the day-to-day responsibility for managing risk within a company falls jointly on the organization's financial and legal leadership. It is thus important to understand the relationship between the two groups, particularly where their remits overlap in the management of litigation risk and cost. It is even more important to understand where control resides and how decision-making occurs.

- The majority of financial officers were likely to report that finance exerts control over key areas of the legal department
- Nearly two thirds (65%) said that finance exerts control over legal cost management strategies and a similar number (62%) exert control over legal department budgets
- 62% of financial officers report that finance exerts control over setting recovery goals for the legal department, and over half (56%) said that finance exerts control over which big-ticket litigation matters to pursue

Percentage reporting high level of control by finance

	All
Implementation of cost management strategies	65%
Implementation of new technologies	64%
Setting the legal department budget	62%
Setting recovery goals for the legal department	62%
Deciding which big-ticket litigation matters to pursue	56%

Percentage reporting high level of control by finance

	Public companies	Non-public companies
Implementation of cost management strategies	69%	48%
Implementation of new technologies	67%	45%
Setting the legal department budget	66%	60%
Setting recovery goals for the legal department	63%	56%
Deciding which big-ticket litigation matters to pursue	59%	44%

CFO INSIGHT

Given the extent of finance's involvement in legal department decision-making—specifically around managing costs to the organization and maximizing return from recoveries and specific litigations—it is essential that financial officers and general counsels have robust sources of data to make informed decisions about legal assets.

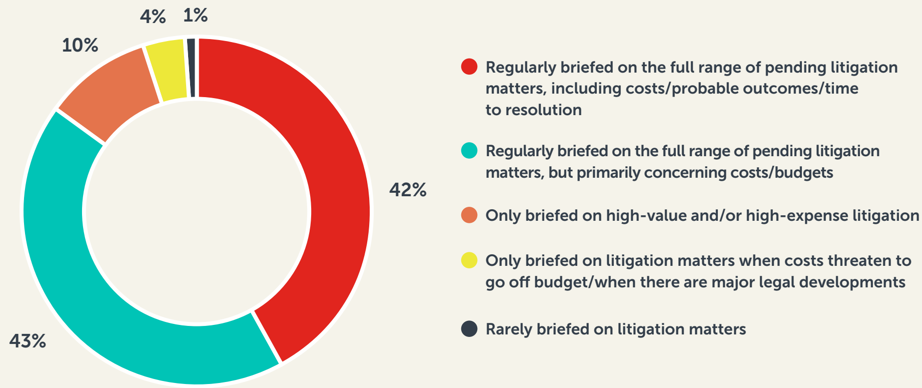
How finance is briefed about litigation spend

With more information, financial officers can enhance decision-making about litigation and recovery efforts.

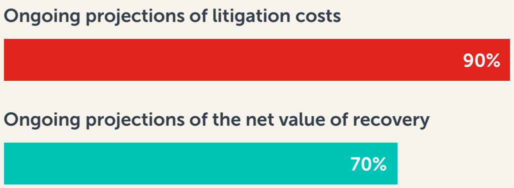
Litigation is inherently risky—and as companies make decisions about how best to manage the expense associated with their litigations and their recovery efforts, they can and should draw upon a range of information inputs to make sound decisions. These include not just what it will cost to pursue a recovery claim, but also the likely damages or settlement amount. Further, financial officers should track the probable time to resolution (which they need to make considered decisions about the actual opportunity costs of using the company's working capital) and the probable outcome (which can be difficult to determine given the limited data sets available to most individual commercial claimants).

- Financial officers may not be using all available sources of information to maximize the value of that litigation: While financial officers are regularly briefed by their legal departments on pending litigation matters, some are briefed more thoroughly than others
- 42% of respondents say their finance departments are regularly briefed on the full range of litigation matters, including probable litigation outcomes and timelines
- 43% say they are regularly briefed, but primarily on costs and budgets
- Additionally, finance teams may not be tracking enough decision-making data: Whereas 90% of financial officers say the finance team tracks projected costs of litigations, just 70% say the finance team tracks projected recoveries

Which of the following best describes how the finance department is briefed on litigation matters?



Which of the following does the finance department track?



CFO INSIGHT

Companies don't maximize the value of their legal assets when financial officers have insufficient inputs to make sound decisions about litigation. Tracking only the cost of pursuing a claim reduces a CFO's ability to understand the probable ROI of an individual recovery or portfolio of claims, and not calculating time to resolution reduces the company's ability to measure IRR and the net present value of the company's legal assets.

Resources to model litigation risk

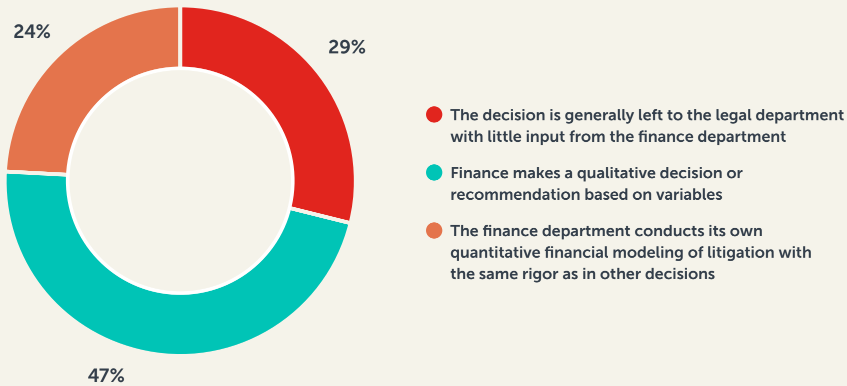
Most financial officers are helping their organizations make decisions about high-value litigation—but few base their decision-making on quantitative modeling.

Among the ways that financial officers act as "architects of business value" who "instill a financial approach and mindset throughout the organization"[5] is by modeling decisions about how to use the company's resources—and how to use its available capital. Because high-stakes commercial litigation involves significant capital flowing out of and into the organization, one might easily assume that they are modeling their decisions about litigation, just as they do other areas of the business. The research shows otherwise: Few financial officers are using quantitative modeling to make decisions about litigation risks and rewards.

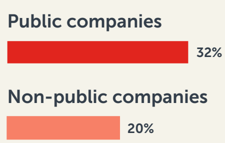
- Just 24% of financial officers report that they use quantitative financial modeling to make decisions about litigation with the same rigor as in other decisions
- About twice as many financial officers (47%) say they make qualitative decisions
- 29% report that they generally leave the decision to the legal department

[5] Harvard Business School, "A New Role for CFOs", an interview with Fritz Foley; Accenture, "CFO Now" (February 2021); *Harvard Business Review*, "The CFO's Changing Role: Building the Future" (October 2018).

Which of the following best describes the process when you or others in the finance function have evaluated whether to pursue litigation?



The decision is generally left to the legal department with little input from the finance department



CFO INSIGHT

The fact that most finance teams do not model litigation risks and awards suggests that they have a significant opportunity to reframe how they pay for, value and leverage their legal assets. High-stakes litigation presents important decisions not just about whether to pursue a recovery but about how to fund its pursuit—out of pocket, through a contingent law firm or via third-party legal finance—and how to value, monetize, de-risk and time capital flows from recoveries to best complement the company's capital stack and serve its business needs. All of these decisions merit quantitative financial modeling. Legal finance partners can fill in this expertise for companies.

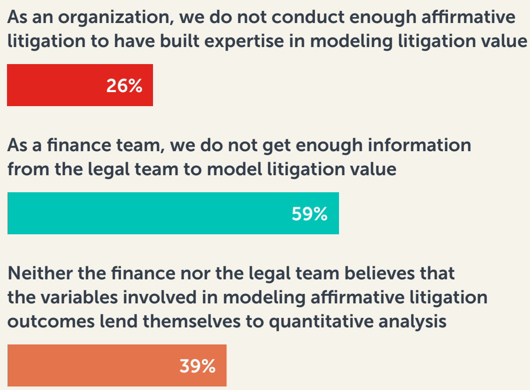
Missing the opportunity to quantify litigation risk

How financial officers are briefed and their assumptions about litigation impact how they evaluate and whether they model the financial impact of litigation.

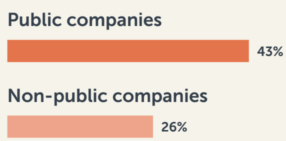
The research suggests that a more robust information exchange between the finance and legal teams about legal assets could lead to quantitative modeling and to more robust decision-making. With more inputs on more aspects of litigation risk, better decisions can be made. But before this elevation of decision-making can be made, a shift in mindset needs to occur.

- 59% of financial officers who conduct qualitative instead of quantitative analysis say they do so because they do not get enough information from the legal department to model litigation value
- Financial officers who conduct quantitative analysis are 44% more likely to be briefed on more factors impacting pending litigation matters, including costs, probable outcomes and time to resolution (52% vs. 36% of those who rely on qualitative decision-making)
- Financial officers who conduct qualitative analysis are more likely to be briefed only about litigation costs and budgets, but not about probable outcomes or time to resolution (52% vs. 29% of those who use quantitative modeling)
- Just over a quarter (26%) of those who do not model litigation risk do so because of a lack of experience and expertise
- 39% of financial officers say that they choose not to conduct modeling of litigation because litigation variables don't lend themselves to quantitative analysis—suggesting they have not used legal finance, for which it is foundational

Which of the below describe why you do not conduct quantitative financial modeling of litigation recovery?



Neither the finance nor the legal team believes that the variables involved in modeling affirmative litigation outcomes lend themselves to quantitative analysis



CFO INSIGHT

Modeling litigation risk presents the opportunity for a different—and more commercial—mindset about legal assets. This can be aided by greater engagement between legal and finance as well as with professionals outside the company—including law firms and legal finance firms with significant experience and expertise in quantifying risk and modeling litigation outcomes and value.

Company size and litigation modeling

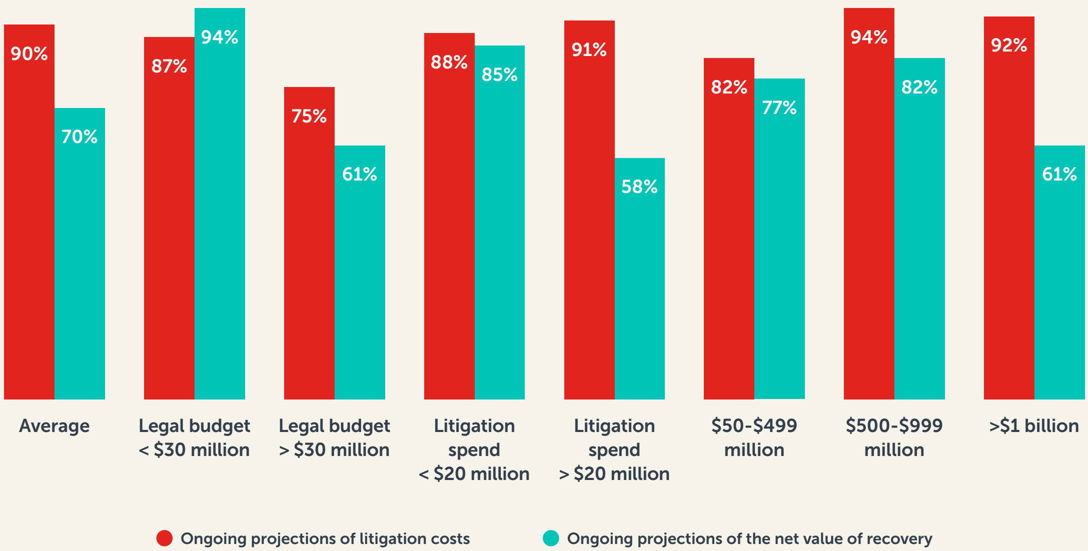
Large company financial officers make decisions about high-value litigation with less commercial-mindedness than would be expected elsewhere in the business.

Given large company financial officers' greater degree of reported control over legal operations, it is surprising that they are the least likely to track key data points concerning valuable legal assets, and that they are the least likely to apply quantitative modeling to decision-making about high-stakes litigation.

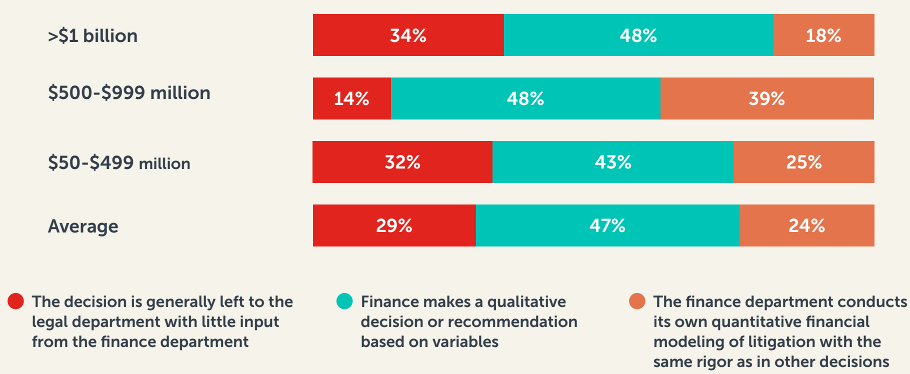
- Larger companies—and those with larger legal and litigation budgets—show a bigger gap between financial officers who report that finance tracks litigation cost projections and those who also track projections of the net value of recovery
- Financial officers at large companies are least likely to report that they use quantitative modeling to make decisions about high-value litigation
- Indeed they are alone in reporting that they are more likely to cede decision-making about high-value litigation entirely to the legal team than they are to use quantitative modeling techniques

Large company financial officers are significantly more likely than their peers to believe that modeling of litigation assets is not possible—a knowledge gap that could negatively impact the value they are able to extract from those assets.

Which of the following does the finance department track?

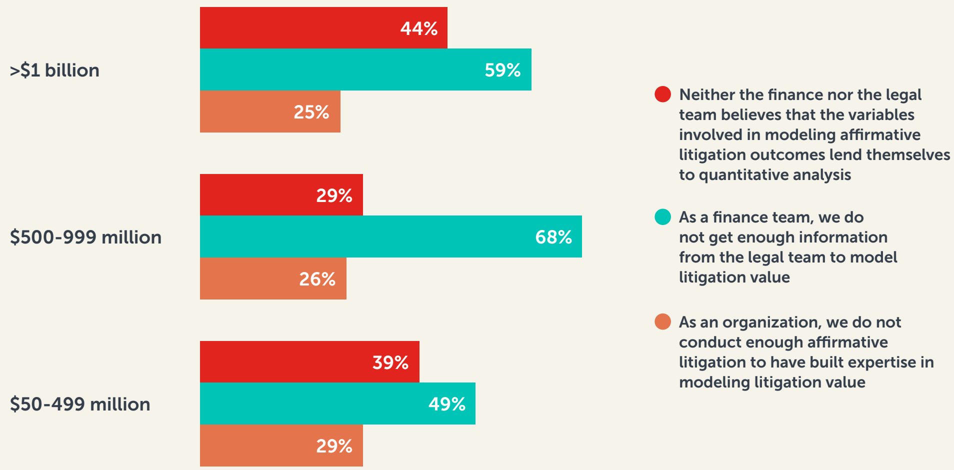


Which of the following best describes the process when you or others in the finance function have evaluated whether to pursue litigation?*



* Total equals 101% due to rounding.

Which of the following explains why you do not conduct quantitative financial modeling of litigation recovery?



QUANTITATIVE MODELING OF LITIGATION

With a $4.5 billion portfolio of commercial legal assets, Burford has built extensive statistical models and decision science tools to predict return on these assets.

We use internally developed models and other tools to assist in valuing legal assets, with our modeling reflecting and relying upon the amount of information we have about the litigation matter in question at any given time. We also draw on extensive historical information and data from other matters. Although this data may not be indicative of the characteristics of subsequent cases or portfolios of cases within the same industry or with comparable other characteristics, our ability to reference internal databases and external statistical data, combined with our proprietary modeling and tools, are valued by clients seeking to understand and optimize their legal assets.

Clients also value Burford’s team of quantitative analysts that work hand in hand with experts in commercial litigation and arbitration to provide guidance and bring financial insight to legal assets.

Time is money

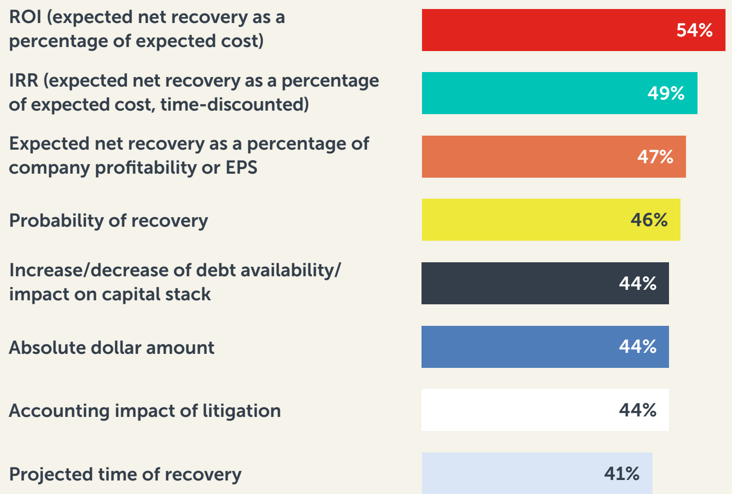
Even CFOs who do model the financial impact of litigation can expand their inputs about essential variables when they do so.

Duration risk—time to resolution—is among the most important factors in commercial disputes, given that litigation and arbitration may take years to resolve. To name one example, ICSID arbitrations take on average 46 months to resolve, and another 13.3 months may elapse between the close of a final hearing and payment of an award.[6] Thus, any CFO considering whether to proceed with an ICSID claim would need to model the cost to the business of capital spent on fees and expenses, along with any recoveries, being unavailable for other purposes for nearly five years.

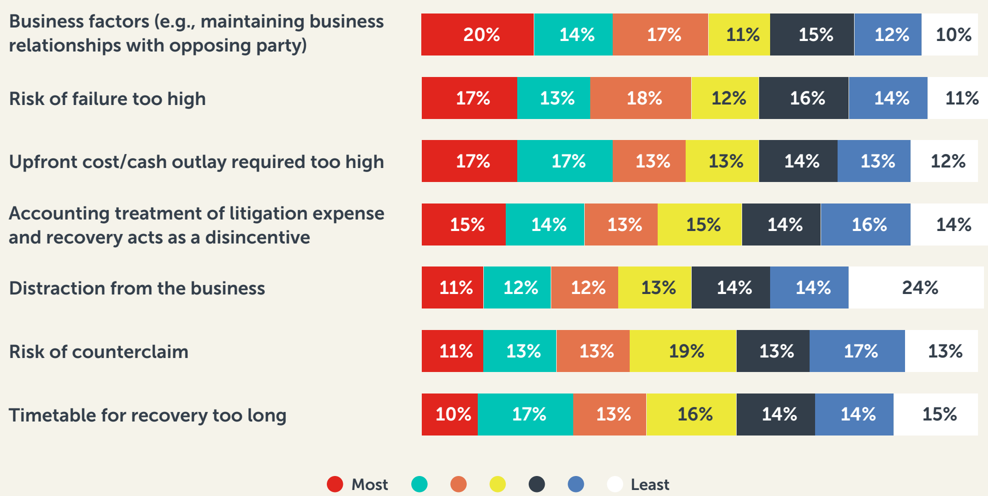
- Time is the least likely primary factor to be considered when evaluating the impact of litigation
- The length of time projected for recovery is given less weight than other factors when the decision is made not to proceed with litigation even though the recovery is otherwise compelling
- Financial officers are significantly more likely to base their minimum recovery target on return on investment (ROI) vs. internal rate of return (IRR)

[6] Procedural Issues in International Investment Arbitration, 2018 data.

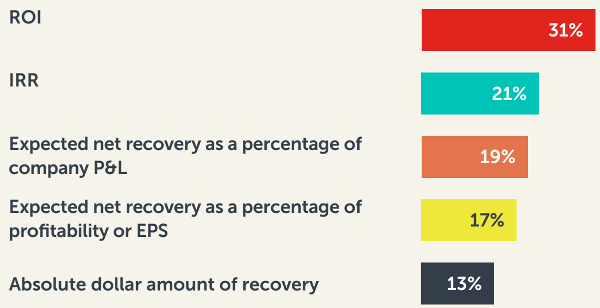
Which factors do you consider when evaluating or modeling the impact of litigation?



When a litigation matter meets your financial criteria for recovery but the company ultimately decides not to pursue litigation, rank the following reasons for doing so

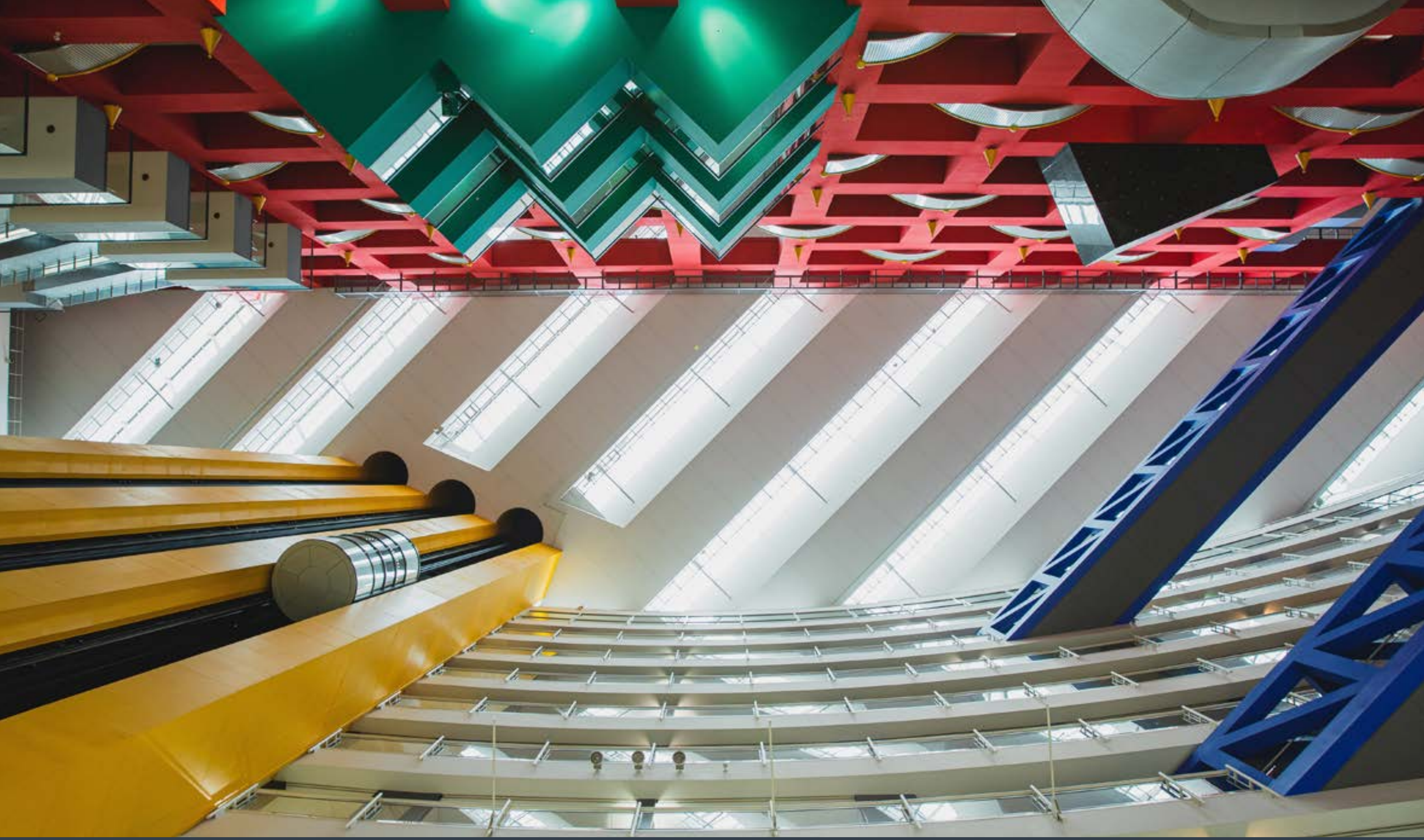


Which of the following best describes the terms in which you think of the minimum potential recovery that would make pursuing litigation attractive to you?



CFO INSIGHT

While financial officers are experts in enhancing liquidity across other areas of the business, if they are not factoring in duration risk in litigation, they will not have a full picture of potential liquidity challenges and opportunities in their litigation portfolios. They may also unnecessarily risk their own budget by spending out-of-pocket when financing litigation would deliver superior results by preserving capital for investment in the business and equipping the company to control timing of litigation capital flows, both outgoing expenses and incoming recoveries.



SECTION 3

Shifting to a commercial mindset: Finance’s opportunities to realize more value from legal assets

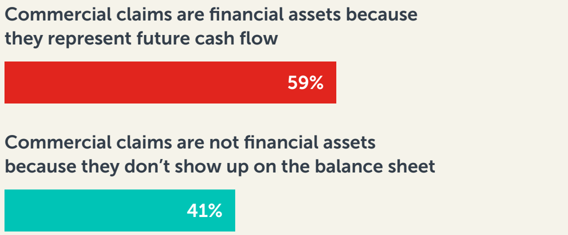
Bringing a commercial mindset to legal

Elements of a commercial mindset around legal have taken hold in some finance teams.

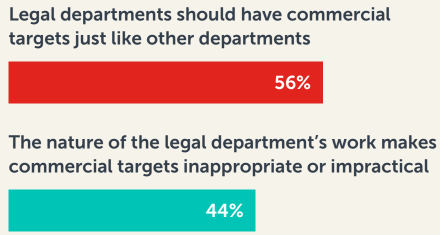
Financial officers with a commercial mindset regarding the legal department apply the same basic assumptions as they do in other areas—thinking in terms of commercial targets, assets, risk, liquidity and opportunities to maximize value. The research suggests some elements of this mindset have taken hold. However, there are significant points where there is no emerging consensus.

- The majority (59%) believe that pending litigations are assets because they represent future cash flow, even if they don't show up on the balance sheet
- The majority (56%) believe that the legal department should have commercial targets
- The majority (53%) believe that litigation costs can be accurately predicted
- However, significant percentages still don't think pending litigation is an asset, don't think commercial targets are possible and don't even agree that litigation costs can be accurately predicted (41%, 44% and 47%, respectively)
- The majority (56%) don't think that they are able to control timing of cash flows from litigation—suggesting a lack of exposure to tools like legal finance, and to quantitative modeling for litigation, that make this possible

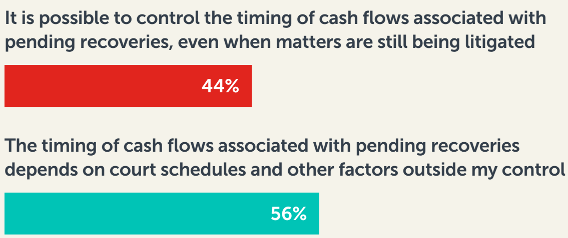
Are commercial claims financial assets?



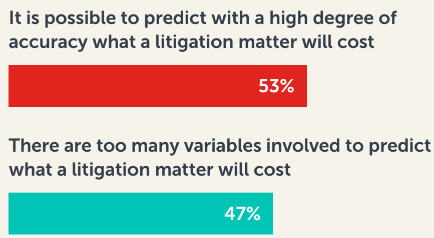
Should legal departments have commercial targets?



Can capital flows from litigation be timed?



Can litigation costs be predicted?



CFO INSIGHT

Companies that bring a commercial mindset to their legal departments—that is, those that set commercial targets for their legal departments, that treat their litigations as assets and that embrace notions of control over timing and the need for certainty as to budget—are better positioned to maximize value and liquidity while minimizing risk across their legal portfolios.

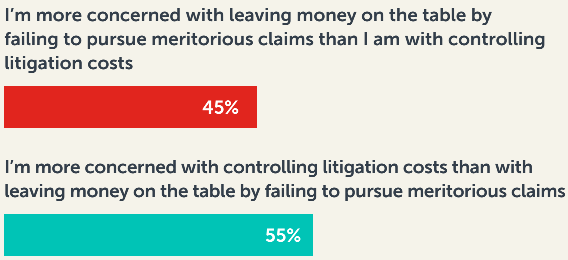
Controlling costs and reducing risk

Commercial mindedness requires a balance—first, of control over costs, and second, of identifying and maximizing opportunities to create value.

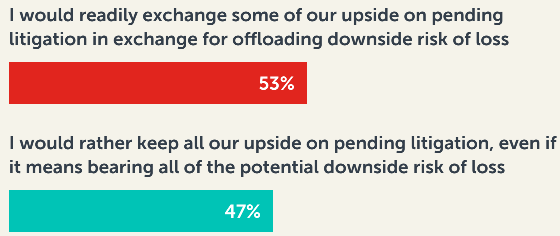
While it is entirely unsurprising that financial officers demonstrate a preference for keeping legal costs under control, this caution paired with a lack of awareness of their range of options to shift costs to others could result in missed opportunities and money left on the table.

- Over half are more concerned with controlling costs than they are with risking leaving money on the table—meaning that they might fail to pursue valuable meritorious claims if they were unaware of the availability to use legal finance to shift costs to a third party
- More than half would gladly exchange future potential upside from a litigation in exchange for removing downside risk—suggesting that they are motivated to remove risk from the litigations they do pursue by sharing it with firms working on contingency or legal finance partners
- Large and public companies are somewhat more evenly split on these choices

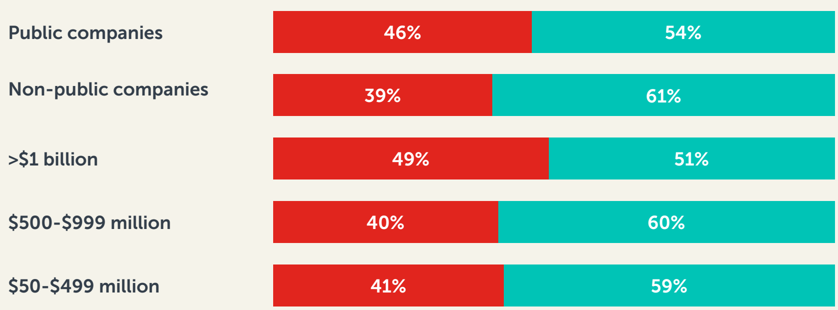
Although finance teams need not exchange opportunity for cost management, which of these do they prioritize?



How do financial officers think about managing downside risk?



Large and public companies are more closely split on opportunity vs. cost management



CFO INSIGHT

Financial officers are clearly united in an overall impulse to be cautious by controlling costs and removing risk. They should ensure that they are fully aware of financing tools that enable them to do both without sacrificing their ability to pursue valuable meritorious litigation or leaving money on the table.

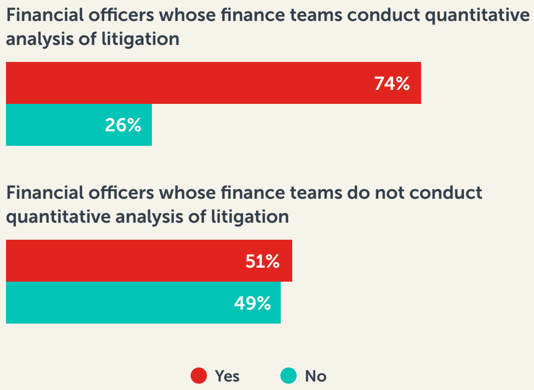
Commercial mindedness has consequences

Commercially minded behavior reinforces commercially minded beliefs in a virtuous circle.

The research suggests that the finance suite could be on the cusp of a paradigm shift in how it approaches legal assets—that with exposure to the opportunities and tools available to manage costs and leverage litigation, greater use will be made of those opportunities and tools, generating more value and reinforcing the trend.

- Financial officers who conduct quantitative analysis of litigation are 45% more likely to believe that legal departments should have commercial targets (74% vs. 51% of those who do not conduct quantitative analysis)
- Financial officers who conduct quantitative analysis of litigation are significantly more likely to say that their companies need to place greater priority on their affirmative recovery programs (18% vs. 6% of those who use qualitative analysis and just 3% of those who leave decision making to legal)
- Conversely, financial officers who typically leave the analysis of the financial impact of litigation to the legal department are more likely to feel that their affirmative recovery efforts meet their company's needs (63% vs. 51% of those whose finance teams assess litigation either quantitatively or qualitatively)—suggesting that an approach in which the finance team defers analysis of litigation assets to the legal department may result in a complacent acceptance of the status quo
- Financial officers whose companies have extensive affirmative recovery programs are 45% more likely to believe that it is possible to control the timing of incoming cash flows from litigation (48% vs. 33% of those with less extensive programs)

The legal department should have financial targets just like any other department



6x

Financial officers who conduct quantitative analysis of litigation are 6x more likely to say their companies need to prioritize their affirmative recovery programs than those who delegate decision-making to legal

CFO INSIGHT

If financial officers aren't yet fully leveraging their opportunities to bring a commercial mindset to their companies' legal departments and assets, there is every reason to believe that with additional education and exposure, they will trend in this direction. Just as quantifying litigation assets leads to a desire to raise the bar on companies' recovery programs, exposure to tools like legal finance and quantitative modeling of litigation outcomes helps financial officers develop a greater expectation of using these tools to generate still more value, reduce risk and enhance liquidity.

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

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

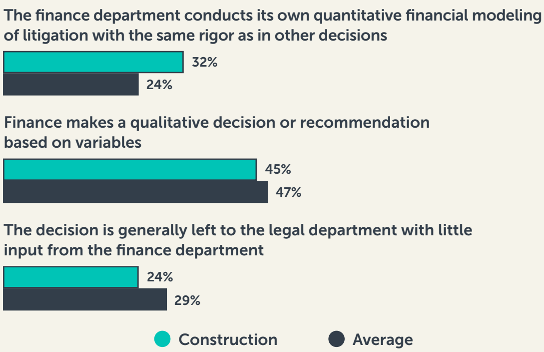
SECTION 4

Industry snapshots

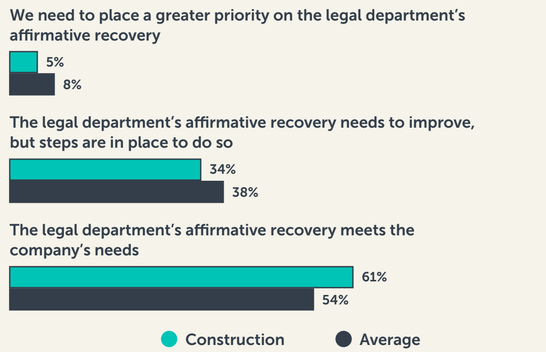
Construction

Financial officers at construction companies have a higher than average reported incidence of extensive affirmative recovery programs, and they are generally satisfied with these programs. Somewhat paradoxically, they are more likely than their peers in other industries to report that they base decision-making about litigation on quantitative modeling by the finance team but also report a lower level of control over legal department decision-making.

Modeling litigation risk



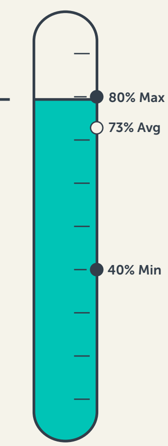
Effectiveness of affirmative recovery programs



Extensiveness of affirmative recovery programs

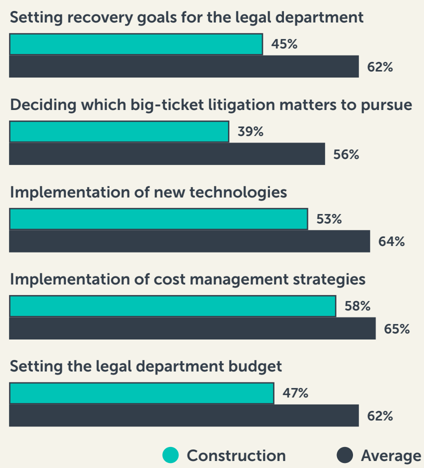
79%

of financial officers in this sector report extremely/ very extensive affirmative recovery programs



How finance influences the legal department

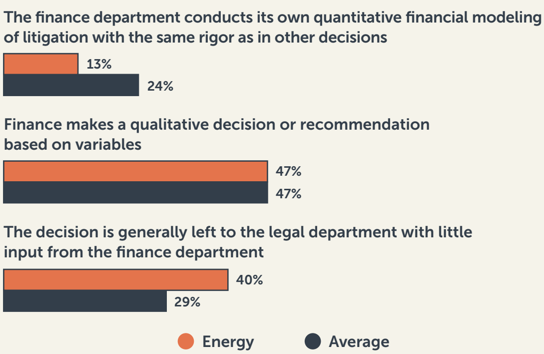
(Percent reporting high level of control by finance)



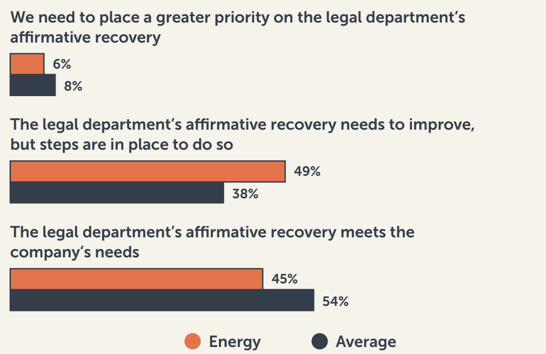
Energy

Energy company financial officers are more likely than average to report that affirmative recovery programs are extensive and need improvement. Similarly, finance teams in energy companies report a level of control over legal spend on par with other industries, but far fewer are conducting quantitative financial modeling or consider commercial claims to be financial assets—suggesting an opportunity to be more commercially minded about their legal portfolios.

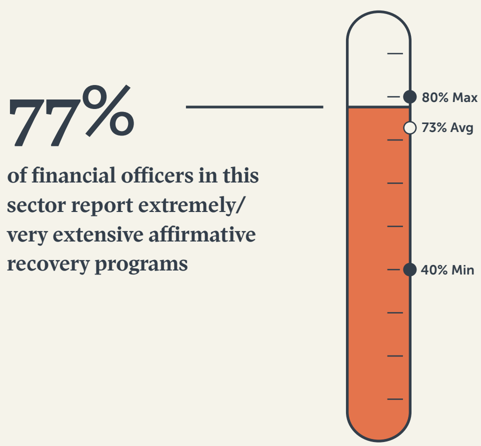
Modeling litigation risk



Effectiveness of affirmative recovery programs

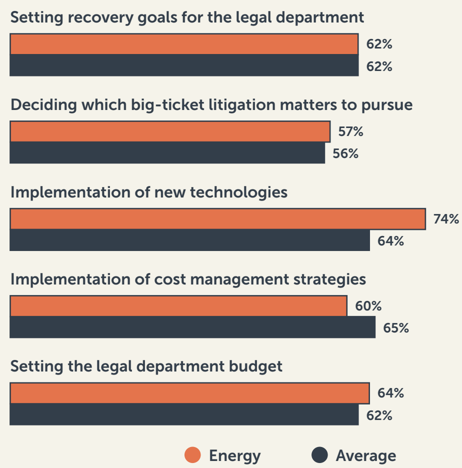


Extensiveness of affirmative recovery programs



How finance influences the legal department

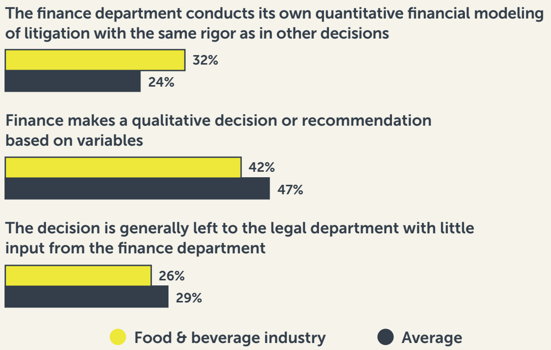
(Percent reporting high level of control by finance)



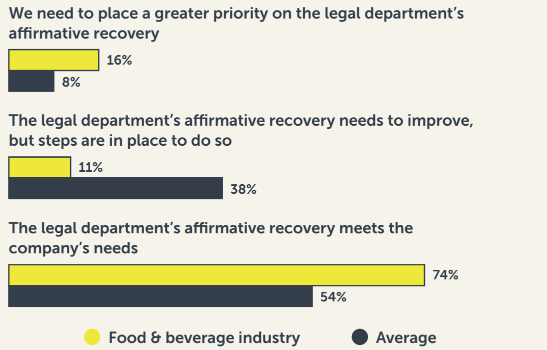
Food and beverage

The food and beverage industry has been involved in significant disputes in recent years, including high-profile allegations of price-fixing as well as business interruptions claims, supply chain contract disputes and food safety litigation. Yet just over half (53%) of food and beverage companies report having an extensive affirmative recovery program, and twice as many say their company needs to place a greater priority on affirmative recoveries. This suggests invisible assets with significant untapped value for the sector.

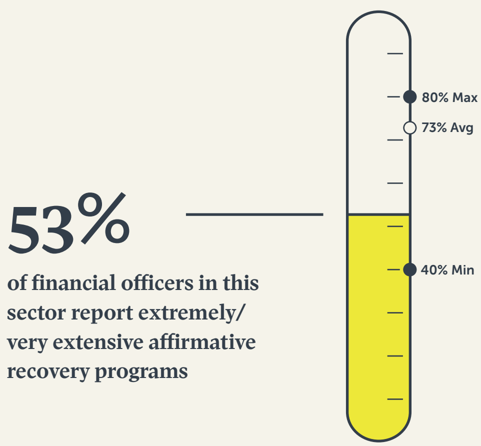
Modeling litigation risk



Effectiveness of affirmative recovery programs

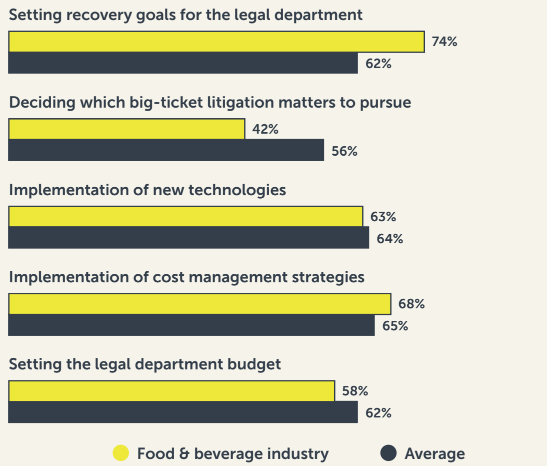


Extensiveness of affirmative recovery programs



How finance influences the legal department

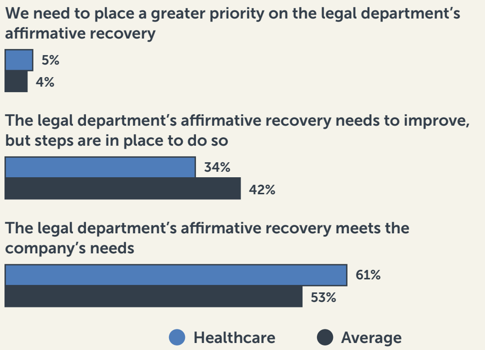
(Percent reporting high level of control by finance)



Healthcare

Financial officers at healthcare companies report affirmative recovery programs of average size and effectiveness, and their influence over legal is on par with others'. But they are significantly more likely than their peers to delegate decision-making about high risk litigation and are also less likely to agree that legal departments should have commercial targets.

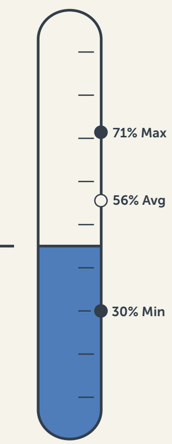
Effectiveness of affirmative recovery programs



Should legal departments have commercial targets?

45%

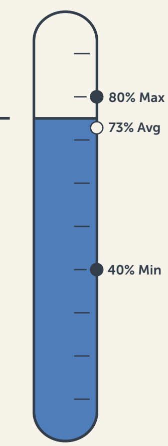
of financial officers in this sector agree that legal departments should have commercial targets, just like other departments



Extensiveness of affirmative recovery programs

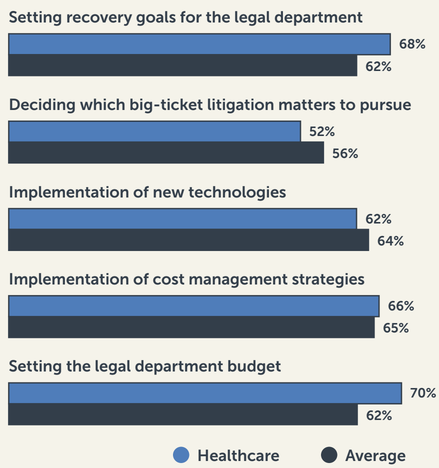
75%

of financial officers in this sector report extremely/ very extensive affirmative recovery programs



How finance influences the legal department

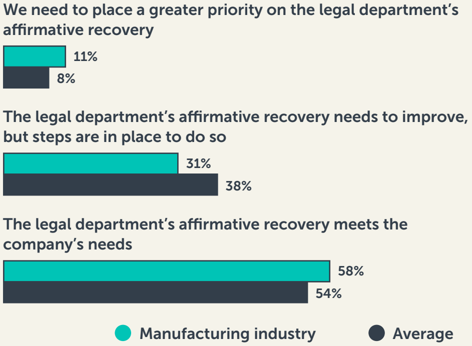
(Percent reporting high level of control by finance)



Manufacturing

Financial officers in the manufacturing industry largely recognize that the legal department should have commercial targets, just like any other department. However, they are much less likely to recognize commercial claims as financial assets. Only 44% are involved in setting recovery goals for the legal department, highlighting a potential area of opportunity for unlocking further business value.

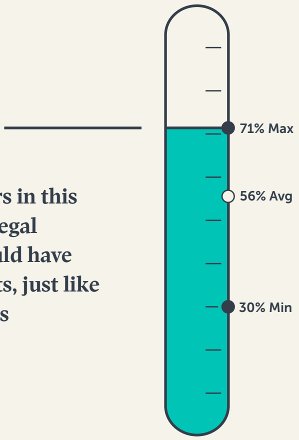
Effectiveness of affirmative recovery programs



Should legal departments have commercial targets?

71%

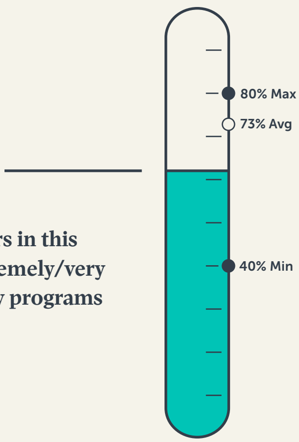
of financial officers in this sector agree that legal departments should have commercial targets, just like other departments



Extensiveness of affirmative recovery programs

62%

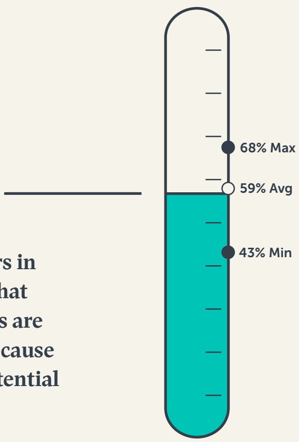
of financial officers in this sector report extremely/very extensive recovery programs



Are commercial claims financial assets?

58%

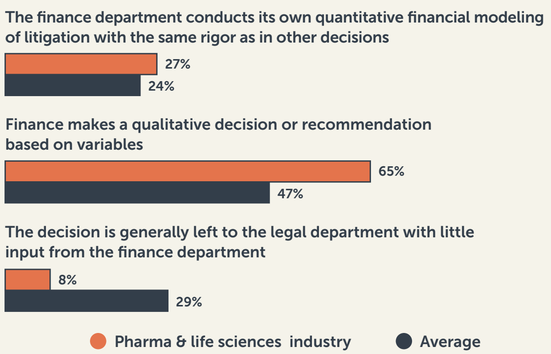
of financial officers in this sector agree that commercial claims are financial assets because they represent potential future cash flow



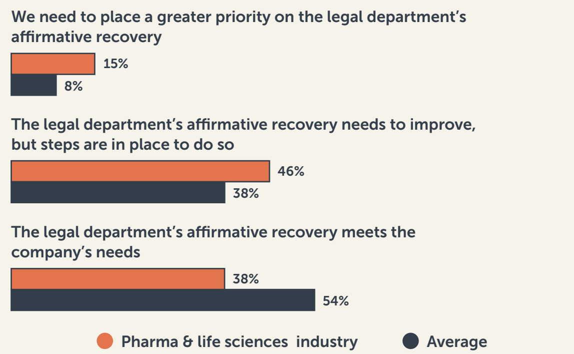
Pharma and life sciences

Product development presents enormous cost and risk to pharma and life sciences companies, and patent enforcement through litigation is necessary and regular. It's not surprising then that finance professionals report more extensive affirmative recovery programs. What is surprising is that so few are satisfied with them: Just 38% of finance professionals in the sector say their recovery program meets the company's needs, significantly below average.

Modeling litigation risk



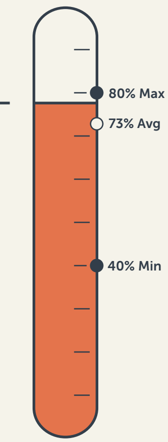
Effectiveness of affirmative recovery programs



Extensiveness of affirmative recovery programs

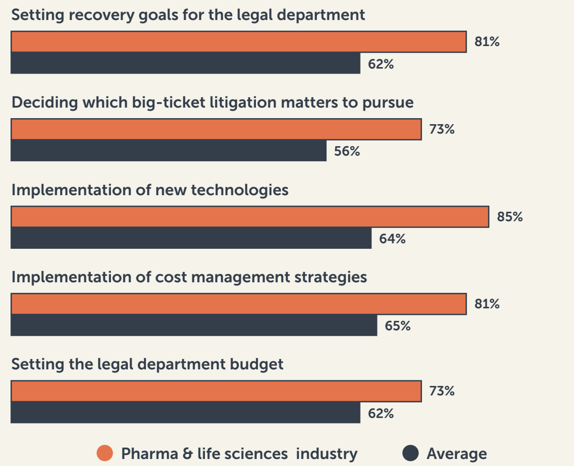
77%

of financial officers in this sector report extremely/ very extensive affirmative recovery programs



How finance influences the legal department

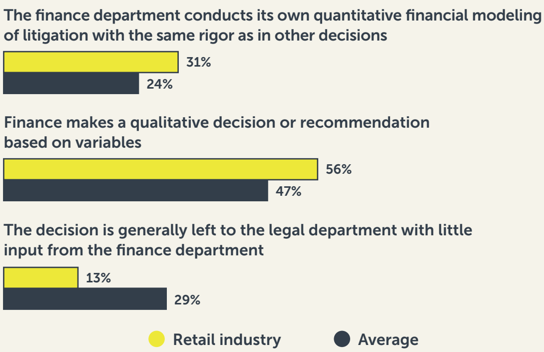
(Percent reporting high level of control by finance)



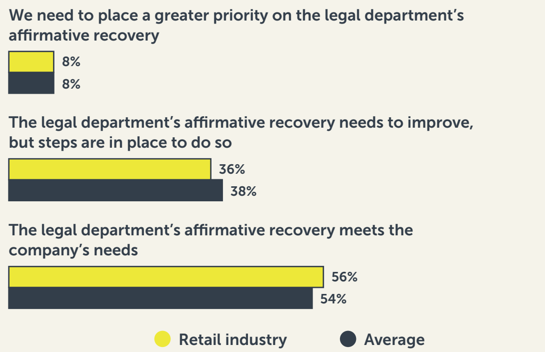
Retail

Retail sector finance professionals report significant influence especially with regard to implementing cost management strategies (77%) and setting recovery goals (77%). Yet most retail sector finance professionals (56%) make decisions about litigation based on qualitative inputs rather than quantitative financial modeling (31%). A shift in approach could help them better leverage corporate legal assets, enhancing liquidity and complementing the company's capital stack.

Modeling litigation risk



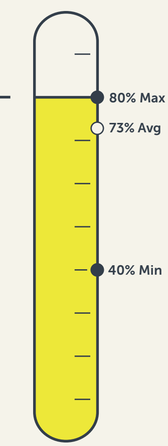
Effectiveness of affirmative recovery programs



Extensiveness of affirmative recovery programs

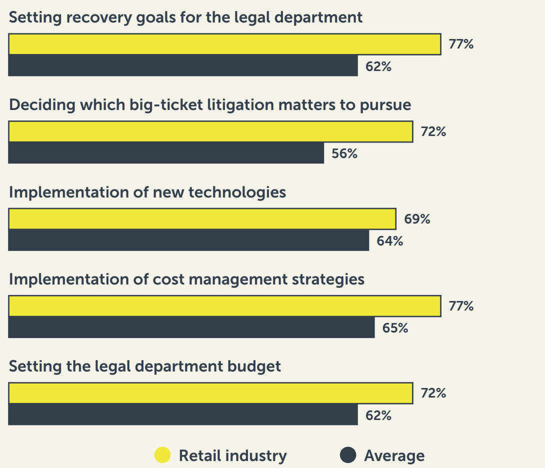
80%

of financial officers in this sector report extremely/ very extensive affirmative recovery programs



How finance influences the legal department

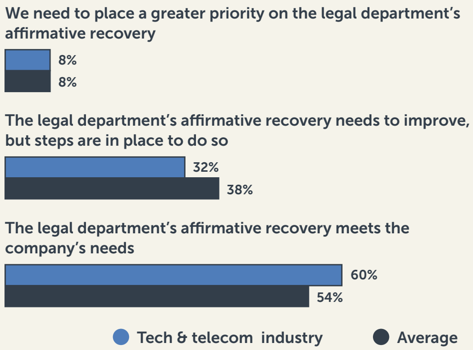
(Percent reporting high level of control by finance)



Technology & telecommunications

Technology and telecommunications finance teams are significantly less likely to report control over legal department cost management and budget setting, and they are somewhat more likely to report dissatisfaction with their companies' legal cost management programs. More cede decision-making about high-risk litigation to the legal team (30%) than apply quantitative financial modeling (25%).

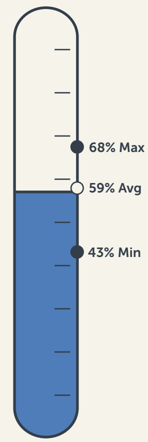
Effectiveness of affirmative recovery programs



Are commercial claims financial assets?

58%

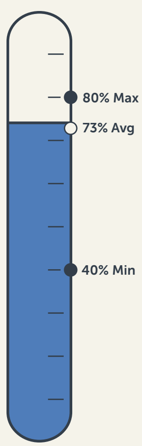
of financial officers in this sector agree that commercial claims are financial asset because they represent potential future cash flow



Extensiveness of affirmative recovery programs

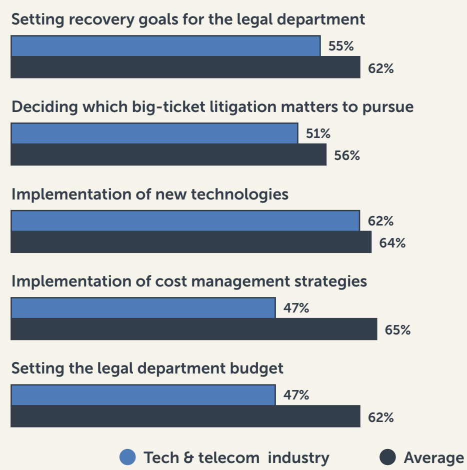
74%

of financial officers in this sector report extremely/ very extensive affirmative recovery programs



How finance influences the legal department

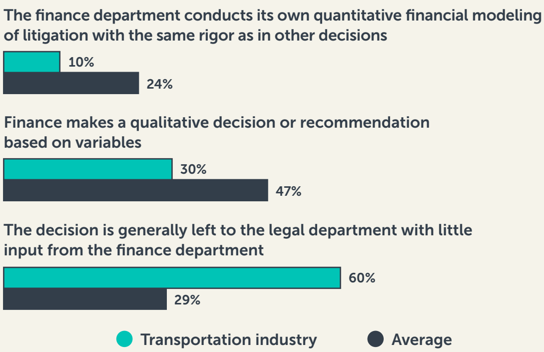
(Percent reporting high level of control by finance)



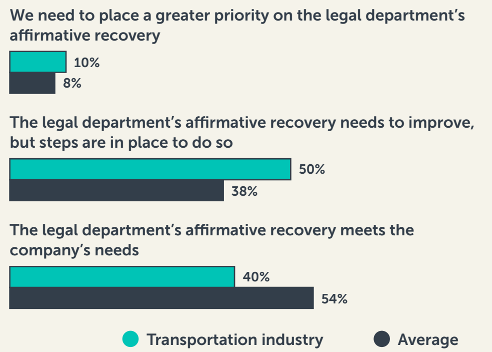
Transportation

Just 40% of finance officers in the transportation sector report extensive affirmative recovery programs—the lowest across industries—yet 90% report extensive cost management programs. Interestingly, financial officers exert relatively little control over legal decision-making and are less likely than their peers to say that legal departments should have commercial targets. With more collaboration and greater commercial-mindedness around legal assets, finance professionals in the transportation industry could find new sources of value.

Modeling litigation risk



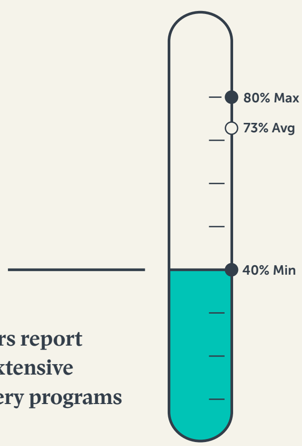
Effectiveness of affirmative recovery programs



Extensiveness of affirmative recovery programs

40%

of financial officers report extremely/very extensive affirmative recovery programs



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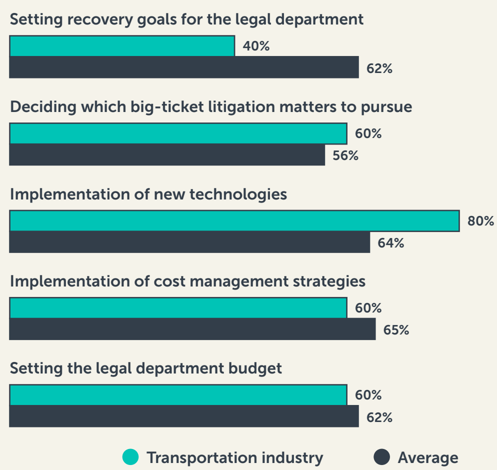


SECTION 5

Regional overviews

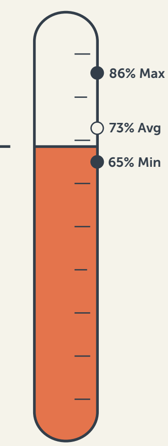
US

Given that the US is the largest market for legal services in the world, it is surprising that financial officers are not more commercially minded in their thinking around legal assets. The majority of US financial officers (64%) agree that litigation is a financial asset that represents potential future cash flow, but just one in four (25%) apply quantitative modeling to decision-making around high-risk litigation, and they report below average influence over legal department decision-making. Further, they are least likely among their peers in other geographies to be concerned with leaving money on the table by failing to pursue meritorious claims. This suggests that US finance teams have the potential to work more closely with legal to unlock the captive value of corporate legal assets that will otherwise remain illiquid or a drain on the business.

Extensiveness of affirmative recovery programs

69%

of financial officers in the US report extremely/ very extensive affirmative recovery programs



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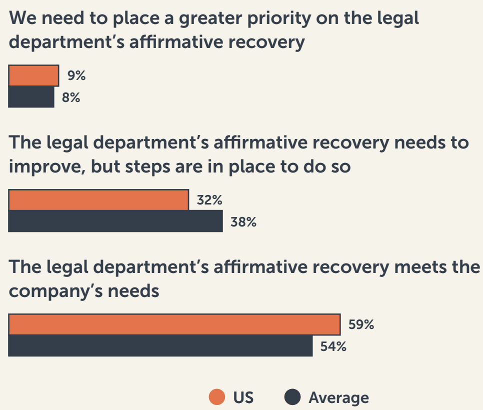
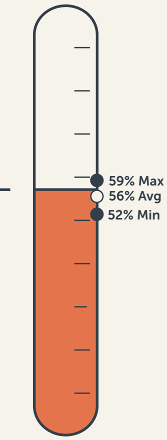


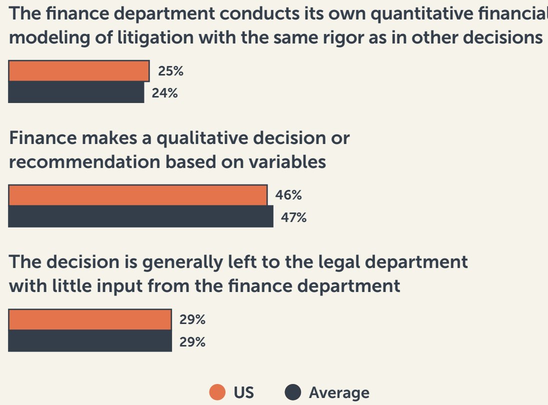
Should legal departments have commercial targets?

58%

of financial officers in the US agree that legal department should have commercial targets, just like other departments



Modeling litigation risk



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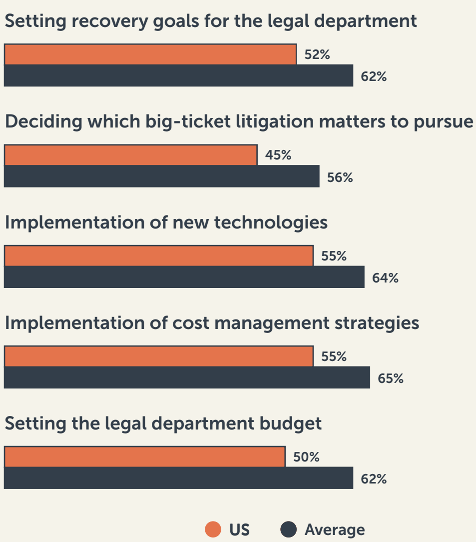
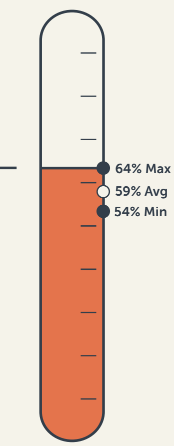


Are commercial claims financial assets?

64%

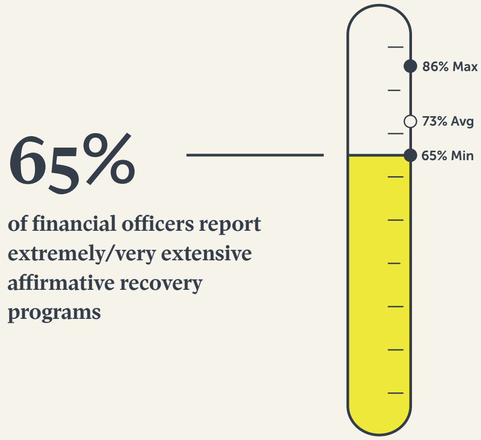
of financial officers in the US agree that commercial claims are financial asset because they represent potential future cash flow



UK

Finance professionals in the UK bring a clearly commercial mindset to some aspects of legal. The majority (54%) see legal claims as financial assets, and a similar number (59%) agree that the legal department should have commercial targets. Yet only 22% report using quantitative financial modeling to make litigation decisions. Further, they report generally less control over decision-making about legal budgets and they are more likely to report that their companies' affirmative recovery and cost management programs need improvement. In order to improve these programs, UK financial officers will need to collaborate with their legal teams and external partners to better quantify and optimize the value of their legal assets.

Extensiveness of affirmative recovery programs



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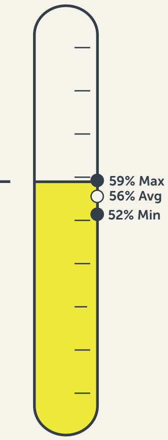
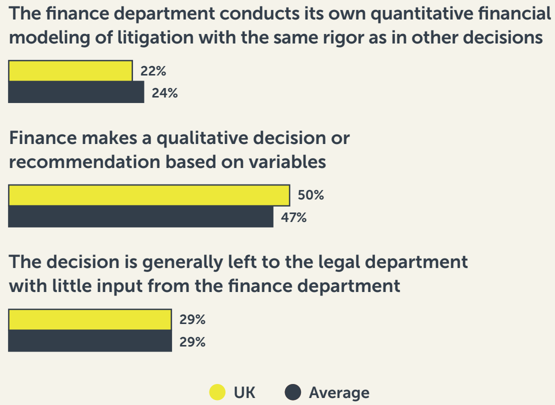


Modeling litigation risk



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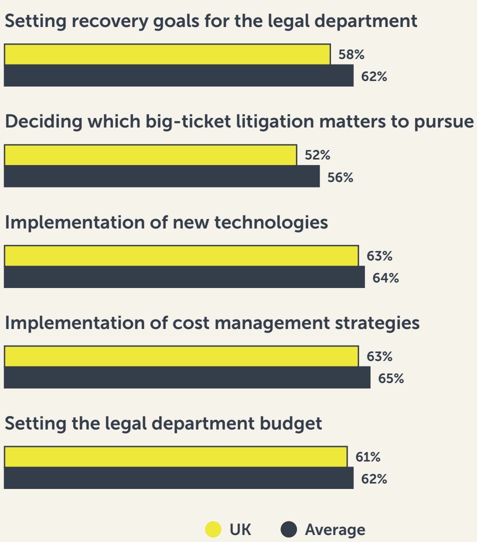

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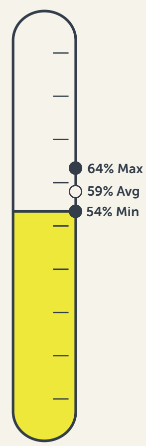


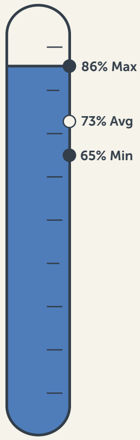
Australia

Compared to their peers in the US and UK, Australian financial officers were most likely to report that their companies have extensive recovery and cost management programs (86% and 96%, respectively). That said, finance officers in Australia reported the highest dollar amount of unpursued judgments due to the impact of associated legal expenses on the bottom line. Even with the most robust recovery programs, Australian companies may be leaving money and valuable legal assets on the table.

Extensiveness of affirmative recovery programs

86%

of financial officers in Australia report extremely/ very extensive affirmative recovery programs



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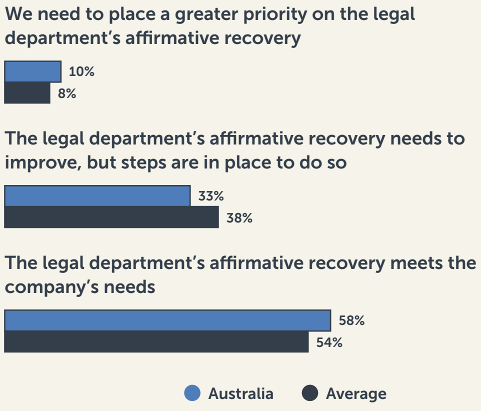
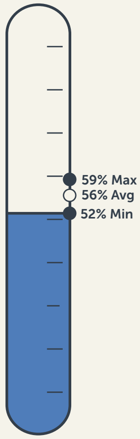


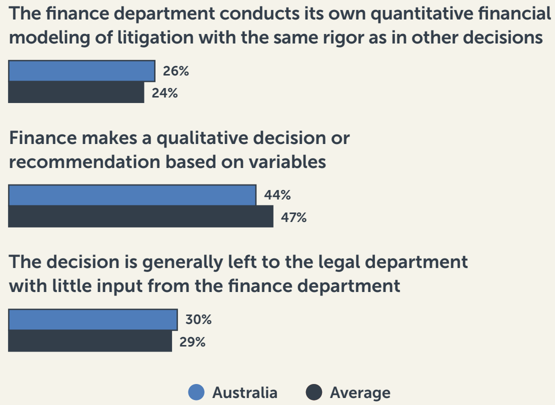
Should legal departments have commercial targets?

52%

of financial officers in Australia agree that legal departments should have commercial targets, just like other departments



Modeling litigation risk



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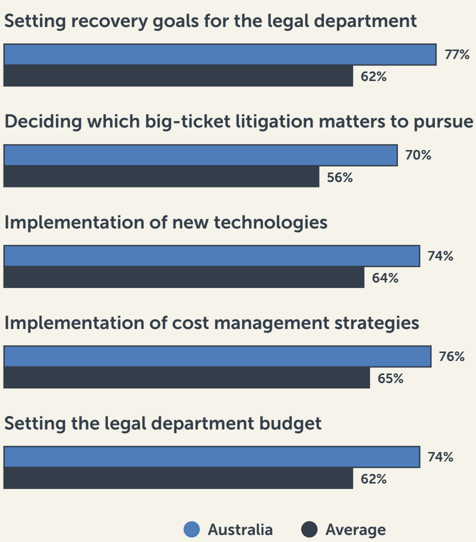

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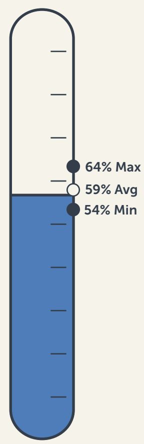
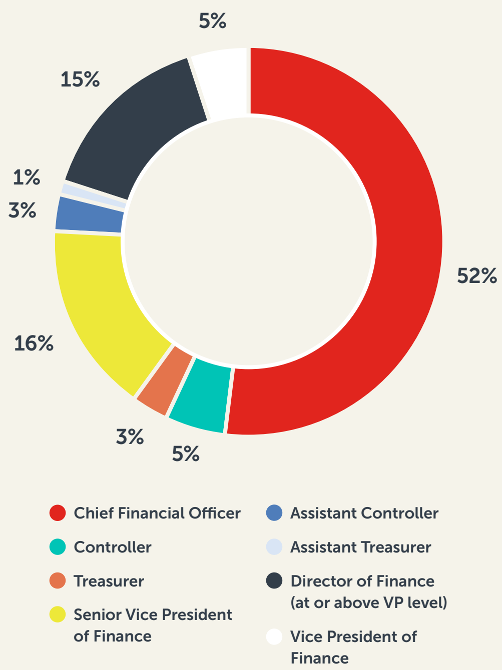


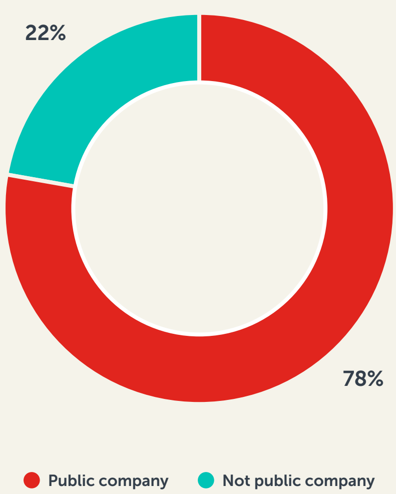
About the research

The report is based on an online survey of 378 senior financial officers of companies with annual revenues of $50 million or more in the US the UK and Australia, conducted in March and April 2021 for Burford Capital by Bauman Research and Consulting. All respondents are in roles that include knowledge of their companies' litigation expenditures.

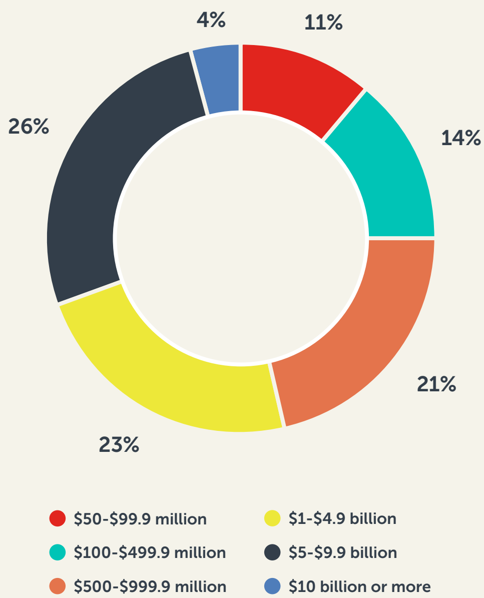
Title: Most respondents are CFOs



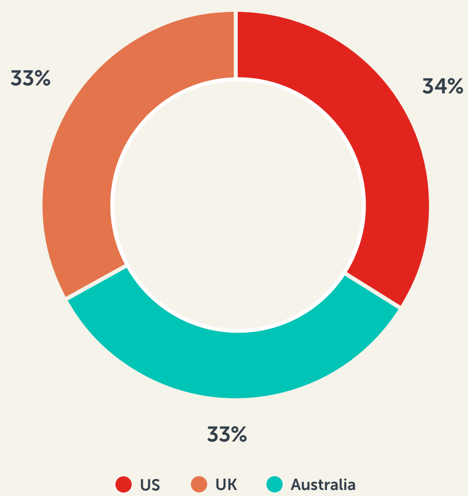
Company type: Most respondents are at public companies

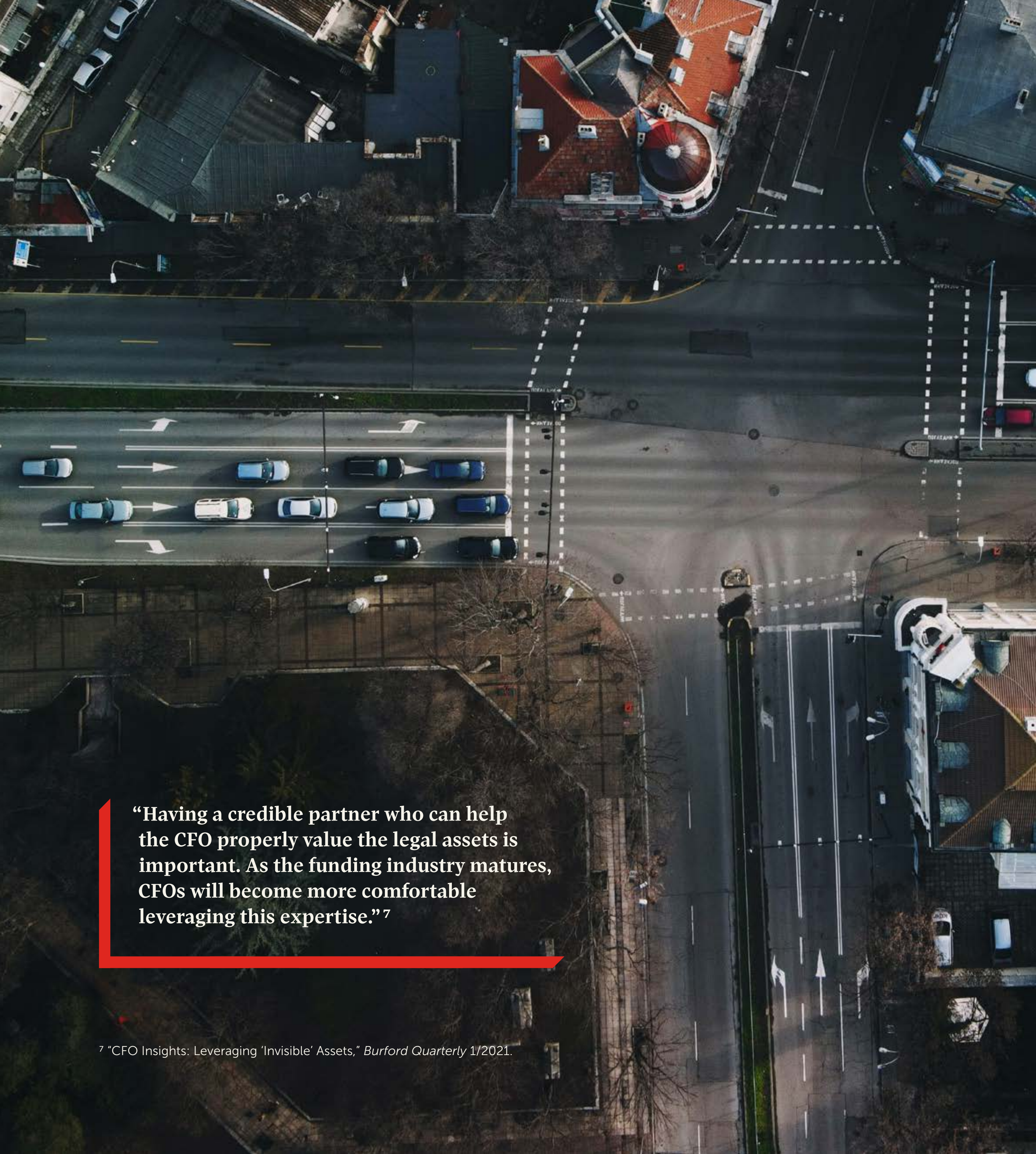


Annual revenue: Most respondents come from companies with >$1 billion in annual revenue



Geography





> **"Having a credible partner who can help the CFO properly value the legal assets is important. As the funding industry matures, CFOs will become more comfortable leveraging this expertise."[7]**

[7] "CFO Insights: Leveraging 'Invisible' Assets," *Burford Quarterly* 1/2021.

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* Based on public reporting of combined core litigation finance investments, unfunded core litigation finance investments and other investments as of March 22, 2021

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