

Building Retail Resilience Through Affirmative Recovery Strategies: Insights From the 2025 RILA Conference

By Aviva Will & Alyx Pattison

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Retailers are under increasing strain from compressed margins, vulnerable supply chains and evolving consumer behavior—prompting General Counsel to reassess how they safeguard enterprise value and reinforce resilience amid heightened volatility.

Retailers Facing a Shifting Operating Environment

Across the many discussions at this year's Retail Industry Leaders Association (RILA) annual conference, one message resonated throughout: The retail sector is confronting a growing array of complex challenges.

Having led a session at the conference, we saw firsthand how tariffs, and their knock-on effects on margins, sourcing and consumer demand, are intensifying pressures that retailers have long faced. Even well-capitalized organizations are finding the operating landscape more demanding. Against this backdrop, retail GCs and CFOs should view affirmative litigation and recovery initiatives not as reactive legal measures, but as strategic tools for financial resilience.



Supply Chain Management.

Managing Financial and Operational Pressures

Tariffs have introduced instability into global supply chains, driving uncertainty in cost structures. Simultaneously, rising logistics and transportation expenses have made it harder for retailers to absorb higher costs or pass them on in a market where consumers are increasingly price conscious.

Inflation has compounded these difficulties. Labor, freight and goods have all become more expensive, while consumers facing elevated living costs are cutting back on discretionary purchases. As essential spending consumes

more of household budgets, retailers are left with limited pricing flexibility.

Together, these dynamics are putting sustained pressure on margins across much of the retail landscape. Ongoing supply chain disruptions and uncertainty persist as industries continue to feel the secondary effects of tariff-driven sourcing shifts. Volatility in global manufacturing and shipping further reduces flexibility, magnifying the impact of external disruptions or losses.

These conditions extend beyond operational strain; they represent material financial stress. In such constrained environments, retailers must look beyond conventional financial levers to preserve and unlock value.

Affirmative Recovery Programs: Protecting Value and Generating Returns

As organizations seek ways to reduce costs and strengthen profitability, legal teams are uniquely positioned to contribute directly to liquidity and value creation. Affirmative recovery programs, structured efforts to pursue compensation when a business has been harmed, including through well-founded plaintiff-side litigation, enable legal departments to move from cost centers to strategic contributors.

Like any large enterprise, retailers hold valuable legal claims that frequently remain unidentified or unpursued. When treated strategically, these claims can be managed and monetized like other corporate assets. However, unlike traditional assets, litigation claims are often overlooked or left unvalued. A proactive, enterprise-wide approach to identifying and pursuing these opportunities should therefore form part of a broader financial and risk management strategy. When executed effectively, affirmative

recovery programs can help offset rising costs, support margins and unlock liquidity in a challenging market.

Current economic conditions only reinforce the importance of this approach. As margins narrow, recovering value from harm becomes increasingly impactful. While retailers cannot influence tariffs or inflation, they can decide whether to pursue recoveries that are rightfully theirs. Affirmative recovery initiatives often present low-risk, high-return opportunities—particularly when supported by external capital or risk-sharing arrangements. Legal finance providers such as Burford Capital offer tailored solutions aligned with a company's recovery objectives.

Case Study: Unlocking Liquidity in Practice

A regional retail company identified store rebranding as a clear growth driver, based on historical data showing strong returns through increased foot traffic and higher sales. The obstacle was access to capital. A significant portion of value was locked in an opt-out claim within an ongoing antitrust case, leaving the company unable to deploy that capital while the litigation unfolded.

Instead of waiting for a lengthy resolution, the retailer partnered with Burford to monetize part of the claim. Burford provided a \$10 million advance against the company's anticipated recovery, delivering immediate liquidity without sacrificing control of the litigation or its potential upside. An illiquid legal asset was converted into usable capital.

The results were immediate and measurable. The retailer invested the proceeds in rebranding initiatives and other revenue-generating projects that would otherwise have been postponed. By

unlocking value from its legal claim, the company reinvested directly into its core business rather than remaining constrained by the litigation timeline.

This example highlights a broader point: Affirmative litigation is not simply about pursuing claims—it is about unlocking value, enhancing capital efficiency and enabling timely investment where it matters most. When embedded within a broader financial strategy, affirmative recovery programs can positively impact earnings and deliver near-term value to shareholders.

Practical Steps for GCs and CFOs

Developing a successful affirmative recovery program requires a deliberate and coordinated approach. Effective programs begin with collaboration across legal, finance, procurement and compliance functions. Routine contract reviews and systematic monitoring of class action notices can surface potential recovery opportunities. Just as importantly, a company's claims strategy should align with its overall business priorities and risk tolerance. The goal is to generate consistent, predictable value, not sporadic one-off recoveries.

Knowing when to bring in external support is also critical. Legal finance can ease budget

constraints and manage risk, allowing companies to pursue strong claims that might otherwise be deprioritized. Experienced advisors, working alongside legal finance partners, can help leadership teams assess, prioritize and fund complex or portfolio-level claims.

Rethinking Resilience in Today's Retail Economy

Our primary takeaway from the 2025 RILA Conference is that while the retail sector faces undeniable challenges, it is also presented with meaningful opportunities. Although macroeconomic forces remain outside retailers' control, decisions about pursuing recoverable value are firmly within it.

By adopting a proactive, strategic approach to affirmative litigation, GCs and CFOs can strengthen resilience and support financial performance. Retailers that implement affirmative recovery programs and collaborate with experienced external partners will be better equipped to navigate ongoing uncertainty—and to create value even in difficult times.

Aviva Will is president and a member of Burford's Management and Commitments Committees. Alyx Pattison is a director with responsibility for originating new business with law firms and companies as part of Burford's US commercial investment team.