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# Big Law Embraces Litigation Finance

By [Stephanie Russell-Kraft](#) - *Big Law Business*

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Litigation finance is booming, and Big Law is getting on board.

The practice originated in Australia in the 1990s and took hold in the U.K. soon thereafter. It has only recently come to the U.S., as law firms consider alternative financing models as a way to differentiate themselves.

Paul Hastings has offered litigation finance to its clients, by partnering with outside finance firms, for about a year now, according to Yar Chaikovsky, global co-chair of the firm's intellectual property practice. Many of his clients prefer to pay for their litigation the traditional way, but that others "don't want to pay full rates, and they're happy sharing the returns with the financier," he said.

Though Big Law may be slowly becoming more comfortable working with with litigation funders, the details of most deals remain closely guarded secrets. Little is known about which firms are using these third-party funders, and for which cases that money is being used, particularly in the U.S.

Such deals are somewhat less murky in England. In 2014, a commercial dispute publication [revealed](#) that White & Case had tapped into financing from London-based Vannin capital to represent Pakistani drinks manufacturer Gul Bottlers in a licencing dispute.

Vannin CEO Richard Hextall told Big Law Business that the firm has relationships with “top-tier law firms” in the U.S., U.K. and Australia, including Freshfields Bruckhaus Deringer, White & Case, Allen & Overy, Stewarts Law LLP and Quinn Emanuel. In 2016, Quinn Emanuel **announced** that it had received investment from Chicago-based Gerchen Keller Capital to represent a group of debit and credit card holders bringing a U.K. claim against MasterCard.

The lack of transparency around how much money is actually being funneled into litigation from third parties has attracted critics, many of whom come from the defense side of commercial litigation.

The U.S. Chamber of Commerce has been trying to regulate the use of litigation finance, which it argues increases the overall volume of litigation and presents ethical issues. It has lobbied for rules that would require parties to disclose the use of funding contracts in litigation. No one with a financial stake in the outcome of litigation, who might potentially have a conflict of interest, or who might influence settlement decisions should be able to remain anonymous, the Chamber argues.

The International Association of Defense Counsel has also endorsed disclosure rules for litigation funding.

“Investors are pumping huge amounts of money into financing litigation, basically gambling on others’ lawsuits,” said Mark Behrens, a lawyer at Shook Hardy & Bacon who chairs the IADC’s civil justice response committee. “Yet, thus far, these funders are operating in the shadows.”

Litigation financiers argue that the industry isn’t financing cases that don’t have merit.

“The theory is there are high quality meritorious commercial claims out there, but it’s not necessarily worth it to companies to take on the expense,” said Owen Cyrulnik, Managing Principal of Curiam Capital, a litigation finance firm that launched last month with \$100 million in initial funding. Cyrulnik and his partner Ross Wallin previously worked at Cravath and a small plaintiffs boutique focused on post-crisis mortgage-backed securities cases.

Cyrulnik believes the fears about transparency will subside as the industry matures. “I don’t think there’s any reason why, especially as this becomes more ubiquitous and more common, that transparency should be an issue,” he said.

Litigation financing has allowed some Big Law firms to take on riskier plaintiffs-side work than their traditional fee structures might allow.

By using litigation finance, Big Law firms can take on cases their clients don’t have the budgets to fund, but still get paid an hourly rate, Cyrulnik said.

“Let’s say you’re at a big firm, and you have an established relationship with a client, and a client comes to you with plaintiffs’ side work, you know to some extent they’re getting pushback internally,” he said. “And you can say to an in-house counsel, ‘If you want, we have relationships with funders, so we can get this financed for you.’”

In a shareholder [report](#) this month, Burford Capital, the world’s largest litigation finance firm, revealed that it had made new investment commitments of \$1.34 billion in 2017, three times more than the previous year. The firm now reports to have a total of \$3.4 billion invested in and available for legal finance. Burford claims to have over 40 different law firms with active investments, and that 70 of the AmLaw 100 firms sent funding inquiries to the firm in 2017.

As the field of litigation finance matures, new financing structures have also come into vogue. Increasingly, rather than funding one specific case at a time, funds are working with law firms to invest in multi-case portfolios. More than half of Burford’s new commitments in 2017 went towards portfolio financing.

Portfolio funding is attractive to both funders and law firms because it spreads out risk.

But when law firms bundle cases into portfolios, their relationships with finance firms tend to become closer, increasing the potential for conflict, according to Charles Agee, founder of Westfleet Advisors. Westfleet is an advisory firm that caters to law firms interested in financing.

“Before the massive shift into portfolio deals, we were brought in more frequently to serve almost in a broker capacity,” said Agee. “It’s more often now that the law firm has a relationship with a funder.”

Outside of publicly traded companies like Burford, the litigation finance industry still remains a black box. Agee estimates that there are currently 30 litigation funders with over \$5 billion in capital invested, most of which hasn’t yet been deployed.

“Some are litigation finance funds dedicated to this and they don’t do anything else, and some are multi-strategy hedge funds that have become very active in litigation funding,” he said.

Despite increased scrutiny of the practice, litigation finance is spreading, and some of its stigma is wearing off.

“Five years ago, law firms would say, ‘We just don’t need this because our clients will pay us,’” said Edward Reilly, a former Goodwin Procter partner who co-founded the litigation firm Themis Legal Capital in 2013. Now “almost all firms” are open to the idea, he said.

In 2017, a [study by ALM Media](#) found that 36 percent of U.S. law firms had used litigation finance in 2017, up from 28 percent in 2016.

More Big Law firms are looking to use litigation finance as a practice development tool, according to Reilly. “More and more entrepreneurial junior partners are seeing litigation finance as a marketing tool to enable them to find clients of their own who might be smaller clients that they can cultivate,” he said.

Overall, law firms have “gotten over the visceral, negative feeling about it,” he said.