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ADDING VALUE THROUGH LITIGATION FUNDING

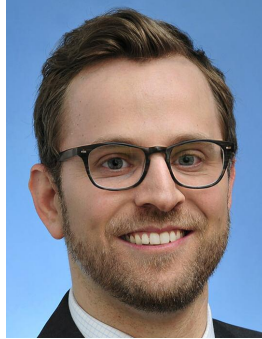
Unique solutions can help your firm, clients

By Justin A. Maleson, Cindy S. Ahn and John T. Ruskusky

Litigation funding won't make you faster. It won't make you stronger. It won't give you superhero-good looks.

But it will make you a better and more valuable partner to your clients.

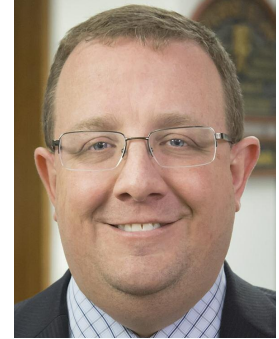
Competition in the legal industry is intense, and rightfully so. Earning a client's trust and business is no easy feat, and confers great power and influence on the chosen attorney. But "with great power comes great responsibility," and being the best possible partner includes arming yourself with knowledge that can bring real benefit to your client.



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This is where litigation funding can help.

Most attorneys (at least those reading this article) generally understand that litigation funding can be used to pay attorneys' fees and expenses in exchange for a return if litigation is successful. But the reality is that many attorneys have had little (if any) meaningful exposure to litigation funding (beyond reading the occasional article).

Even among attorneys who have, what we've found is that they often view litigation funding as a limited-use tool applicable only in a narrow band of real-world situations, or don't realize litigation funding is more than fees and expenses, and has far-reaching applications from a more general business development/client-service perspective. While this is completely understandable — because unlike two of the authors of this article who spend every day immersed in the funding universe, lawyers spend their days actually practicing law — it nevertheless results in attorneys missing opportunities to help their clients and generate business.

With that backdrop, here are some of the too often-overlooked client-service benefits of litigation funding. We're going to focus on three practical ways it can make you a better partner to your clients.

Takeaway No. 1: Be a hero to your clients by bringing them unique financial solutions no attorney alone can bring

Attorneys are always looking for ways to add value and stand out to their current and prospective clients. To that point, one of the primary competitive advantages of partnering with a funder is that it provides attorneys access to financial solutions that simply aren't available to attorneys working alone. Among the most powerful is a category of solutions that can be used to make monetary payments directly to clients in exchange for a portion of future litigation recovery.

These direct-to-client payments are both immediate (before litigation is resolved) and non-recourse (meaning your client pays nothing if litigation is unsuccessful). Three of the most common are:

- *Claims monetization (immediate cash infusion)*: This involves the funder making a lump-sum payment (or series of payments) to your client in exchange for a portion of the client's future litigation recovery, if any. Besides enabling your client to realize and book an immediate recovery, this has the added benefit of guaranteeing a financial return even if the case is ultimately unsuccessful.
- *Catch-up payments (for previously incurred fees and expenses)*: This comes into play where the funder gets involved mid-litigation, after your client has already paid some attorneys' fees and/or expenses. In this situation, the funder will often make a lump-sum catch-up payment to make your client whole upon the signing a funding agreement. Relatedly, catch-up payments can also be made directly to the law firm for any unpaid bills.
- *Covering operating expenses (ongoing payment of non-litigation business expenses)*: This involves the funder agreeing to pay certain of your client's operating expenses on a monthly basis. This mechanism is typically used in conjunction with other types of funding arrangements (for example, where the funder is also paying attorneys' fees and expenses to pursue a litigation).

There are many applications for these direct-to-client solutions, including, for example, alleviating short-term cash flow/liquidity issues, relieving fee fatigue, lessening financial pressures or budgetary constraints, providing growth capital or supporting core business operations, or simply hedging risk. And these are just some of many ways direct payment solutions can help your clients.

They also give attorneys a powerful new way of engaging with clients by bringing solutions to them, as opposed to always asking for something (for example, hire me and pay me).

One day, maybe every lawyer will incorporate litigation funding into their client-service/business development toolkits (probably not, but don't begrudge a funder for dreaming). Until that day, however, partnering with a funder offers attorneys a novel platform for differentiating themselves by presenting their clients with solutions of real and tangible value that other attorneys do not offer.

It's like taking the Batmobile to a car show; it doesn't matter how impressive the other cars are, you'll always stand out.

Takeaway No. 2: Litigation funding gives attorneys the super flexibility to customize solutions for each client's individual needs

Lawyers know that every client has different needs, and every situation has its unique considerations. Good lawyers understand and anticipate the challenges their clients are facing. Great lawyers take action and are constantly looking for ways to help their clients overcome those challenges.

This is where litigation finance fits in.

An often overlooked and under appreciated benefit of litigation finance is that each funding arrangement is unique and customizable — there is no one-size-fits-all agreement or “off the shelf” solution. This is because every arrangement can be precisely tailored to the specific needs of each client and situation. To be clear, certain funding concepts are regularly used in structuring funding arrangements, but with few exceptions (like first money out to the funder to recoup its investment), everything is modifiable. This super flexibility opens up a new universe of problem-solving options for creative lawyers to use in crafting solutions that are laser-focused on the precise challenges your clients are facing.

For years, attorneys have noted the challenges of using the same handful of basic tools for structuring alternative fee arrangements; namely, discounted hourly rates, fixed fee budgets/caps, contingencies, and variations thereof. For many attorneys, that's basically it. On top of that, an attorney's ability to actually use those alternative fee tools depends greatly on their particular firm (more on this later).

Because of these limitations, lawyers are often prevented from crafting truly client-specific solutions. And while creative lawyers have developed inventive ways to maximize mileage over the years, even the best are limited by what can be done with the tools they've had available.

Partnering with a funder changes the dynamic by putting more tools in your hands and supercharging the tools you

already have, thus positioning you to develop more creative, practical and client-centric solutions. For example, by combining funding of fees and expenses with a direct-to-client payment, you're able to reduce your client's legal budget and provide an infusion of working capital.

Of course, litigation funding won't make sense for every client or every situation. It can't fix every problem. But there are plenty of problems it can fix (or at least help with). By understanding even the basics, it makes you a more valuable partner to your clients simply because you'll have more and better tools available whenever you may need them.

Look at Marvel's Tony Stark. He's a genius, a billionaire and a captain of industry. But there are some problems even he can't solve without the Iron Man suit. Litigation funding is your Iron Man suit. You won't need it every day or for every problem, but think about how many more problems you'll be able to solve when you put it on.

Takeaway No. 3: Because practicality matters, the flexibility of litigation funding ensures that your client-centric solutions are also firm-friendly

Unfortunately, developing and maintaining a book of business isn't quite as simple as crafting solutions tailored to your client's specific needs because there are also practical considerations every lawyer must account for — most notably, your law firm's business model.

In other words, if the client's needs were the only thing that mattered, all lawyers would be working for free. But that's not realistic, and because every law firm is set up differently (for example, varying risk tolerances, contingency profiles, alternative fee flexibility, etc.), the reality is that firm-specific considerations often constrain what attorneys are able to offer their clients. Depending on your firm's specific model, there's a good chance you've missed out on some opportunities, or didn't even pursue them, because of firm-level limitations.

This is another place where the flexibility of litigation finance can help.

By further aligning the interests of your firm and your client, the funder can help structure an arrangement that works for everyone involved. The quintessential example is where your client has a promising plaintiff-side case but lacks the budget or interest to pay you to litigate the case, and your firm doesn't take cases on full contingency. In that situation, the competing interests of your client and firm means your client will almost certainly hire a different firm to take the case on a full contingency, even if the client would have preferred to hire you. Enter litigation finance, which enables you to bridge the gap by providing the tools to structure a solution that looks like a full contingency to the client, and looks like a low-risk hybrid to the firm, with at least 50% of fees paid monthly and no out-of-pocket spend (all covered by the funder).

Conversely, if your firm prefers to take cases on contingency to keep the upside, and therefore your client has no need for funding of fees and expenses, claims monetization gives you a new way to generate opportunities and differentiate yourself by providing immediate value to your clients and not having them wait until the end of litigation for a potential payout.

These are just two examples, but they highlight the key point that the flexibility and adaptability of litigation finance enables attorneys to maximize their opportunities within the framework of whatever firm they're in. By providing solutions that can directly address firm-level limitations, litigation funding provides a path to expand your business development efforts by giving you the flexibility to craft and deploy the best possible solutions for both your clients and your firm.

Because sometimes, the only thing preventing Clark Kent from saving Metropolis is a phone booth.

Litigation funding won't save the world, but it will make you a better partner to your clients. Don't let preconceived notions about litigation funding be the kryptonite that keeps you from being a super-partner.

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