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Twenty-two attorneys general, led by New York Attorney General Letitia James, filed an amicus brief in NetChoice, urging the Supreme Court to make it clear that states have the authority to regulate social media platforms, arguing that their laws do not impinge on the First Amendment or that social media companies are not immunized under the First Amendment. [6]

And in *Gonzalez v. Google*, which the Supreme Court decided in May 2023, a bipartisan coalition of more than two dozen state attorneys general filed an amicus brief, asserting that Section 230's far-reaching scope of immunity, as interpreted by the Ninth Circuit and other courts, prevents states from allocating "losses for internet-related wrongs," [7] going so far as to also argue that Section 230 of the Communications Decency Act should not protect social media platforms' editorial decisions.

Notably, these positions often make state attorneys general adverse to the U.S. Indeed, in NetChoice, the government sided with NetChoice.

NetChoice arms social media companies with another tool to combat encroachment upon content moderation. While NetChoice did not define the bounds of First Amendment protections for expressive compilations, it is clear that at least some products and platforms are protected.

Even if Congress does away with Section 230 or abridges it in the future — as some conservative members of Congress have threatened — some online companies should continue to have some First Amendment protections in their arsenal against regulatory or legislative incursions.

Conclusion

For now, the states have taken the mantle in legislating in this area.

In sending NetChoice back to the lower courts, the justices may have thought they had washed their hands of this issue — at least for a while. We don't think this will last for long: With varying state regulations in the books, we expect this issue to make its way back to the Supreme Court soon.

So, the Supreme Court may ultimately decide whether state regulation, as opposed to self-regulation or federal regulation, reigns supreme.

Footnotes

1 NetChoice, 630 U.S. ___ at slip op. at 2 (2024).

2 NetChoice, 630 U.S. ___ at slip op. at 3.

3 NetChoice, 630 U.S. ___ at slip op. at 10.

4 *https://www.thefire.org/sites/default/files/2022/12/Complaint%20-%20Volokh%20v.%20James.pdf* .

5 X Corp v. Bonta, 9th U.S. Circuit Court of Appeals, No. 24-271.

6 Attorney General James Urges U.S. Supreme Court to Ensure States Can Regulate Social Media Platforms (ny.gov): *https://ag.ny.gov/press-release/2023/attorney-general-james-urges-us-supreme-court-ensure-states-can-regulate-social* .

7 Brief for the States of Tennessee et al. as Amici Curiae in Support of Petitioners at 9, Gonzalez v. Google LLC, 143 S. Ct. 762 (2023) (no. 21-1333).

The Licensing Journal, *Legal Finance: A Strategic Solution For Modern Corporate Challenges*, (Jan. 1, 2025)

Legal Finance: A Strategic Solution For Modern Corporate Challenges

Alyx Pattison and Jörn Eschment

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Business leaders rarely value one-size-fits-all solutions—particularly now, at a time of ongoing economic uncertainty and with murky inflationary, interest rate and political and regulatory futures. Every business has fluctuating needs and distinct opportunities, and business leaders want to address them with precision and impact.

It's in that spirit that we often speak with GCs, CFOs and other senior legal and finance leaders about how commercial legal finance can specifically serve their business needs. Yes, legal finance is broadly valuable, but it is valuable in different ways to different businesses—businesses that present unique profiles and pressures, not to mention varying levels of comfort with pursuing commercial disputes.

We work closely with legal and finance teams at companies that have a wide range of approaches to litigation and diverse business needs, and below, we provide an overview of the spectrum of corporate clients we typically partner with—from companies with significant litigation portfolios to those with valuable but underutilized intellectual property rights, from startups to the Fortune 500 and FTSE 350 to those struggling with financial pressures. For all these types of businesses, legal finance has a role to play and is becoming an essential component of corporate finance and legal department strategy.

Well-Capitalized, Litigation-Savvy Companies Use Legal Finance to Optimize Commercial Impact

We meet a fair number of companies that actively engage in affirmative litigation and that have established internal processes for pursuing strong claims. Business leaders who have a high level of confidence in their ability to win such matters may wonder how legal finance can add value if they are already motivated to pursue these claims and do not need funding to pay their lawyers and experts. Indeed, they may fear doing so could dilute their potential recovery.

A legal finance partner like Burford can help by optimizing the success such companies are already achieving. To name one example: businesses in this category may sometimes have such a narrow focus on their existing litigation strategy that they overlook less obvious harms suffered by the business and thus overlook additional claims that could significantly enhance their recovery efforts. Legal finance firms bring a unique perspective and specialized expertise in identifying such "found money" claims that are often overlooked or undervalued within the company's existing framework. By partnering with legal finance providers, companies can uncover these harms and pursue these additional claims, thereby maximizing their potential recoveries while offloading the financial risk associated with litigation.

Further, legal finance can augment the success such businesses are already achieving by establishing capital facilities that fund the pursuit of additional matters without additional risk. Such facilities can also create certainty and predictability of cash flow across the whole litigation portfolio, emphasizing the positive commercial impact of the broader recovery efforts by minimizing costs and maximizing recoveries and by smoothing out any unforeseen costs and delays in litigation and recoveries.

Monetization financing can also enhance the success litigation-savvy businesses are already achieving. Unlike fees and expenses financing in which a legal finance provider pays a business's outside counsel, with monetization financing the legal finance provider pays claimants themselves. Thus, a business can receive immediate capital based on the projected value of its future entitlements, converting uncertain future outcomes into cash today. This infusion of capital can be used to fund ongoing litigation and thus enhance the commercial impact a litigation-savvy company is already achieving, finance other strategic initiatives or simply strengthen the company's balance sheet.

Companies With Financial Obstacles Use Legal Finance to Overcome Them

For companies with an identified financial need or opportunity, legal finance can provide a simple but powerful financial solution. In our experience, businesses may want to increase cash flow, address operational shortfalls or fund strategic initiatives such as acquisitions or rebranding. Traditional funding sources, such as bank loans or equity financing, may not be readily available or sufficient, especially for companies already under financial stress or those in industries perceived as high-risk. This leaves these companies in a difficult position, potentially missing out on opportunities. In such instances, legal finance can fill a financial hole that would otherwise limit the company's success.

Legal finance provides that solution in a few ways. On the most obvious level, business leaders may have identified high-value claims that are likely to generate significant cash recoveries for the business yet lack or be unwilling to reallocate the funds to pay their lawyers of choice to pursue those claims. As is well known, legal finance in its simplest form enables such claims to be pursued without cost to the business.

In our experience, monetization is an even more valuable tool for businesses seeking to address such financial shortfalls and boost their liquidity. Monetization allows companies to convert the projected value of their claims into upfront cash, often in significant amounts, which can be used to bridge financial gaps, stabilize operations, fund strategic business initiatives or simply increase working capital. Unlike traditional financing, legal finance does not require companies to take on debt or dilute their equity, making it an attractive alternative.

Companies That Are Newer to Affirmative Litigation Benefit From Legal Finance Firm Expertise

Smaller or less experienced companies often recognize the potential value of affirmative litigation recoveries but struggle with implementation. Internal challenges such as politics, slow decision-making processes, or limited experience with complex cases can make high-stakes affirmative litigation feel overwhelming. These barriers can prevent companies from fully capitalizing on opportunities that could significantly benefit their businesses by generating substantial recoveries.

This is where legal finance firms, like Burford, can be invaluable partners. Beyond funding, they provide crucial guidance and strategic advice, helping companies navigate the complexities of affirmative litigation. By partnering with a legal finance firm, smaller companies gain access to seasoned professionals who understand the commercial intricacies of litigation and can offer tailored advice on how to approach and manage their cases effectively.

Legal finance firms do not, of course, act as counsel, but they do act as strategic partners, offering education on the commercial aspects of litigation, including strategies, best practices, and risk management. They guide companies through the decision-making process, helping them to align their litigation efforts with their broader business goals.

Companies With Unused IP Use Legal Finance to Monetize It

Many corporations hold valuable patents or intellectual property that are unused and thus represent untapped potential within their portfolios. These assets, often worth millions, are frequently overlooked because companies lack the expertise, resources, or experience to fully monetize them. This is particularly relevant in the context of the European patent landscape, where the recent establishment of the Unified Patent Court (UPC) offers new opportunities and challenges for patent holders.

The UPC centralizes patent litigation across participating EU member states, offering a streamlined enforcement process that allows a single judgment to apply across multiple jurisdictions—potentially boosting the value of European patents. However, navigating this new legal landscape requires specialized knowledge and strategic foresight.

Legal finance can assist in monetizing patents through litigation, licensing, or outright sale, providing the company with immediate capital. In addition to direct monetization strategies, legal finance firms can help companies divest non-core patents. These are patents that, while valuable, may not align with the company's core business strategy. By selling or licensing these patents, companies can unlock capital that can be reinvested into more strategic business areas. Legal finance firms bring their expertise in structuring these deals to ensure that companies receive immediate financial benefits while retaining future upside, maximizing the overall value of their IP portfolios.

Companies with Pending Judgments and Awards Use Legal Finance to Realize Their Value

Unenforced judgments and arbitration awards often represent significant unrealized financial opportunities for businesses, especially in complex or cross-border cases. The challenges of enforcement—navigating legal, logistical, and jurisdictional hurdles—can leave substantial resources untapped.

Even after securing a judgment or award, uncertainty around collecting the full amount can discourage companies from pursuing enforcement, leaving valuable resources shelved indefinitely. The costs and risks associated with enforcement often deter businesses from further investment in enforcing judgments and awards.

Legal finance provides the capital needed to enforce judgments and awards, covering the costs associated with enforcement actions, including locating and seizing assets. By offering upfront capital in exchange for a portion of the proceeds from successfully enforced judgments, legal finance reduces the financial burden and risk for businesses, allowing them to realize value from their awards without bearing the cost and risk of enforcement that would otherwise deter them.

Conclusion

For all kinds of businesses, legal finance can be a strategic corporate finance tool. Whether dealing with well-capitalized, litigation-savvy businesses, companies facing financial challenges or those new to affirmative litigation, legal finance is an invaluable corporate finance tool. By providing strategic expertise, risk management, and capital solutions, legal finance firms like Burford enable businesses to optimize their litigation strategies, monetize underutilized assets, and unlock the value of unenforced judgments and awards.

As businesses navigate growing financial and operational pressures, incorporating legal finance into their broader corporate finance strategy is becoming increasingly vital. In a competitive environment where success often depends on managing both financial and legal resources effectively, legal finance emerges as a powerful tool for businesses.

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