

Burford

# An introduction to legal finance

*Transforming the legal department from  
cost center to capital source*





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to capital source*

## CONTENTS

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Key legal finance concepts	2
Common questions about legal finance	5
Business benefits of legal finance	6
How GCs are evolving—and financing—their litigation strategies	8
How CFOs are generating value from litigation assets	10
Key trends in legal departments	12
Case study: Building—and financing—an affirmative recovery program	16
How the funding process works	18
Why business leaders choose Burford	22

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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 offices in New York, London, Chicago, Washington, Singapore, Hong Kong and Dubai. For more information, please visit [burfordcapital.com](http://burfordcapital.com).

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Since our founding in 2009, Burford Capital has worked with legal and finance leaders at the world's best companies help them better manage legal cost and risk.

In our experience, companies want to keep their cash to grow their businesses. With legal finance, Burford pays for expensive litigation and arbitration so companies can pursue high value recoveries without increasing costs or diverting funds from other areas of their operations. By focusing resources on their core business, they can thereby improve financial efficiency.

Companies often have a lot of captive value tied up in pending litigation. We routinely work with Fortune 500 companies to give them greater control over the timing and cash flows associated with their valuable litigation and arbitration assets. Burford recently helped a Fortune 500 accelerate hundreds of millions of dollars tied to a number of its large pending claims.

With legal finance, the legal department can be a capital source, not a cost center. GCs can pursue high value recoveries without increasing costs. And CFOs get more certainty about their litigation spend.

In the pages that follow, we gather articles and case studies that explain the basics of legal finance and some trends in how leading companies are using it to advance their business goals.

We welcome the opportunity to discuss how Burford can help.

# Key concepts in legal finance

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The use of outside capital in the legal industry is becoming increasingly widespread.

Nonetheless, many potential users of legal finance still lack direct experience and need more understanding of legal finance solutions, how they work and the factors they should consider.

## | Defining legal finance

In its most common form, legal finance is provided to pay for costs associated with commercial litigation or arbitration (lawyers' fees, case expenses, etc.) or to accelerate or "monetize" the value of pending claims, judgments, awards or fees, in exchange for a portion of the ultimate recovery. Financing can be provided for a single commercial matter or for multiple matters combined in a cross-collateralized portfolio (which can include both plaintiff and defense matters).

# Comparing funding options

Different legal finance products solve different business problems:

- Fees & expenses financing removes the cost of pursuing litigation and arbitration—enhancing budget and cost management
- Monetization advances capital tied to a pending matter—enhancing liquidity and reducing risk
- Assignment or purchase of a claim, while rare, relieves the claimholder of expense, delay and distraction

	Fees & expenses	Monetization	Claim purchase
WHAT	Fund legal fees and expenses associated with the pursuit of commercial claims	Accelerate capital tied to pending commercial claims, judgments and awards	Outright purchase of a pending commercial claim, from the claimholder—a rarity in our business
TIMING OF CAPITAL FLOWS	Paid to client’s law firm as incurred during the litigation or arbitration	100% of advance paid at deal close or on client’s preferred schedule, with additional significant remaining upside when case resolves successfully	100% at deal close, but with flexibility as to timing and structure depending on client needs
TYPICAL TERMS	Non-recourse: Client need not repay unless matters win; if successful, Burford earns investment back and portion of upside	Non-recourse: Client need not repay unless matters win; if successful, Burford earns investment back and portion of upside	Purchase
KEY BENEFITS	<ul style="list-style-type: none"> <li>• Reduce costs</li> <li>• Manage budgets</li> <li>• Pursue valuable claims without downside risk</li> </ul>	<ul style="list-style-type: none"> <li>• Accelerate payment</li> <li>• Generate working capital</li> <li>• Lock in minimum benefit regardless of outcome, reducing risk</li> </ul>	<ul style="list-style-type: none"> <li>• Accelerate payment</li> <li>• Generate working capital</li> <li>• Lock in minimum benefit regardless of outcome</li> <li>• Offload administrative burden and cost of pursuing dispute</li> </ul>
CASE STUDIES	Industrial manufacturer preserved operating cash for its business with \$6 million in capital to pay for legal fees and expenses of a multi-year supplier dispute	Fortune 100 company accelerated \$75 million of a pending claim, thus guaranteeing minimum return ahead of case resolution with no downside risk to the company	A company in bankruptcy sold the right to assert a valuable claim, giving it an immediate cash infusion and relieving it of resources needed to pursue the claim

## | The cost of legal finance

Legal finance is not a loan; it is generally non-recourse, meaning that Burford assumes downside risk of loss and the client need not repay any investment or advance unless and until matters resolve successfully.

As a result, pricing for legal finance is proportional to risk. This may reflect the stage of the litigation, the type of matter, the likely duration or another factor. Like litigation itself, risk is idiosyncratic.

In assessing a potential investment, the finance provider's diligence function—which at Burford is an in-house team of experienced commercial litigators—will consider the range of factors that make up its risk profile.

The finance provider will assess the potential value of the underlying legal assets to craft financial solutions alongside the investment needed. Burford's investments range from \$5 million to well over \$100 million. We are flexible and approach every investment with terms tailored to meet clients' needs and highly specific to the underlying matter or matters.

Companies and law firms should be skeptical of any off-the-shelf terms offered by other funders prior to diligence, as later post-diligence terms will almost always vary (sometimes significantly). Completing diligence before we offer terms enables Burford to listen to our clients' needs and offer realistic terms informed by our understanding of the risk. During this initial period, we do not seek exclusivity.

## | Creating economic structures to match client needs

Financing arrangements can be structured to reflect specific client needs:

- **Variable:** A variable return structure (comparable to a percentage-based contingency fee arrangement) is most attractive to clients when the potential for recovery isn't inordinately large in relation to Burford's investment commitment.
- **Fixed:** At the opposite end of the spectrum, a fixed return structure is based on an investment back plus a multiple (or fixed) return on that investment.
- **Hybrid:** Many Burford clients prefer a structure that marries these approaches, and we earn our investment back with both fixed return and variable return elements, but on a smaller scale.
- **Return waterfall:** Structures also lay out the order and increments by which we and our counterparties earn returns from successful matters.

# Common questions about legal finance

## | Control

Clients are understandably eager to learn whether using outside funding will impact their control over their matters.

Use of legal finance does not alter control of decision-making or attorney-client relationships. Burford is a passive outside investor. Our financing agreements are written to make explicit that we have no rights to manage the litigation in which we invest. We do not seek to stand in clients' shoes.

Just as a leasing company does not tell you how to drive your car, legal finance companies don't drive the litigation. Nor do they get any rights to control settlement of the litigation, which remains wholly in the litigant's purview.

## | Work product & privilege

Since legal finance providers do not control matters and typically provide non-recourse capital, they must carefully diligence potential investments, often requiring the sharing of some attorney work product. Happily, materials created for and provided to the potential financier as a consequence of the litigation are protected under the work product doctrine in the US and are considered privileged materials in other jurisdictions. Similarly, deal documents are protected because they were created due to the litigation, and the terms of such agreements reflect the information provided in work product protected documents, such as lawyers' mental impressions, theories and strategies about the underlying litigation.

As a first step of Burford's diligence process, parties execute a confidentiality agreement that protects communications from discovery. Nonetheless, we are circumspect about what we request in the diligence process to avoid any risk of waiver.

## | Disclosure

The vast majority of courts do not require disclosure of legal finance arrangements in commercial matters. While rules vary by jurisdiction, those that exist generally share the limited purpose of ensuring that adjudicators are not inadvertently deciding a matter in which they have a conflict. In declining to force disclosure or to add additional rules or regulations, courts and legislatures implicitly recognize that commercial legal finance arrangements are like any other type of corporate finance.

## | Champerty

The ancient legal issues of champerty, maintenance and barratry either do not exist or do not interfere with legal finance as practiced by Burford in the jurisdictions in which we provide financing.

# Business benefits of legal finance

Businesses often have significant value hidden in their legal departments. Burford can offer holistic solutions for clients across different sectors, reflecting their unique needs, risks and priorities.

We help clients across a range of experience levels with affirmative litigation.

## **Businesses that have less experience with affirmative litigation**

- Prioritize high value claims based on modeling
- Navigate processes as well as internal politics
- Understand optimal financing structures to minimize costs and optimize returns

## **Businesses that have more experience with affirmative litigation**

- Identify emerging claims
- Design financing structures to meet specific business needs, such as generating significant immediate liquidity or funding a business transaction
- Best practices for establishing and financing more systematic affirmative recovery programs



## Fund claims and recoveries

We take on the financial burden of pursuing claims, enabling companies to pursue opportunities based on merits.

**Financing product:**

Fees & expenses

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## Accelerate cash flow

We monetize expected entitlements so companies can time cash flows from pending claims and awards based on their desired schedules, enhancing liquidity.

**Financing product:**

Monetization

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## Manage exposure

We can provide a hedge for litigation risk in the company's portfolio.

**Financing product:**

Monetization, fees & expenses, portfolio finance

## Eliminate downside risk

As non-recourse financing, our investment and return are contingent on a client win, so clients can lock in guaranteed minimum returns and shift legal risk off their books.

**Financing product:**

Fees & expenses; portfolio finance

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## Identify opportunity

Our proprietary data and industry-leading insights help legal teams set priorities for their commercial litigation and arbitration portfolios.

**Financing product:**

Portfolio finance

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## Enforce judgments

Funded enforcement and asset recovery transforms unenforced judgments and nonperforming loans from "legal paper" into cash.

**Financing product:**

Asset recovery

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# How GCs are evolving—and financing—their litigation strategies

Businesses aren't in business to litigate, but litigation can be unavoidable, as when a legal team works to defend the organization from claims lacking merit. Increasingly, businesses that have sustained significant financial harm are also proactively pursuing meritorious claims in order to be made whole when no better course exists—and given the continued economic uncertainty of the past few years, proactive commercial litigation and arbitration to recover significant damages can be unavoidable.

Against this backdrop, we are seeing a significant evolution in litigation strategy. First, businesses are putting in place measures to ensure that when they must litigate, they do so in the most efficient and effective manner. The goal is to become more strategic and systematic in navigating the litigation process while ensuring that the interests of the organization are served and the focus remains on core revenue-generating operations. Second, we are seeing more businesses consider novel financing solutions to remove cost and uncertainty and optimize the timing of cash flows within their legal departments.

## A more organized and systematic litigation strategy

Whether harmed through anticompetitive behavior, fraud, breach of contract, the theft of intellectual property or other malfeasant activity, businesses have the right (and sometimes the fiduciary responsibility) to seek to be made whole and to enforce the obligations owed to them. Fundamentally, the ability to rely on the enforcement of rules and contracts is crucial for businesses and their stakeholders, on which the functioning of the markets relies. Businesses that have increased the number of high-value claims they pursue are making efforts to apply best practices and to proceed in a more organized and systematic way. While some businesses are doing so more informally, others are setting up formal programs to proactively pursue meritorious

litigation and arbitration claims. Often described as “affirmative recovery programs”, they are a growing phenomenon as an uncertain economy gives GCs and other business leaders more reasons to optimize commercial outcomes in the legal department as in other corporate functions and to reduce costs and enhance liquidity for the business by pursuing recoveries, including through meritorious claimant-side litigation.

Research shows these types of programs are increasingly common. In a recent survey, more than half (55%) of GCs and CFOs at businesses worldwide said they currently have an affirmative recovery program in place or that they are developing one.<sup>1</sup> This reflects a growing desire among businesses to be proactive and assertive in pursuing their claims, shifting from a purely defensive stance. In 2022, the co-head of litigation at a financial services firm told a researcher: “There is more of a desire to also be aggressive on affirmative litigation and to go on the offensive, rather than the defensive.”<sup>2</sup>

This trend is not isolated to small or mid-sized businesses. Global blue-chip companies that have publicly discussed their affirmative recovery efforts include Coca-Cola, Ford, Tyco, Michelin, Dupont, The Home Depot, Keurig, Dr. Pepper, Standard Life and CNH Industrial. Burford's clients (whose identity almost always remains confidential) regularly tell us they're exploring a more systematic approach, and they welcome the insights and expertise as well as the financing we can provide as they pursue these new strategies.

## Financing to maximize litigation returns and minimize costs

Affirmative recoveries can be a valuable source of revenue for businesses, but they present significant upfront costs and downside risks. Legal finance plays a crucial role in helping businesses maximize affirmative recoveries while minimizing

associated costs, and it is welcomed by CFOs as a tool enabling their legal teams to generate cash recoveries without adding costs to the bottom line. As one general counsel of a global food and beverage company said: “[Legal finance] gave the CFO the opportunity to time recoveries as he needed them and use that funding to invest in the company.”

In its most common form, legal finance is provided to pay for costs associated with commercial litigation or arbitration (lawyers’ fees, case expenses, etc.) or to accelerate or “monetize” the estimated value of pending claims, judgments or awards, in exchange for a portion of the ultimate recovery. CFOs are especially likely to see value in monetization financing because the time-value of money dictates that more can be done to achieve business goals with dollars in the door today rather than several years from now when the litigation ultimately resolves.

Businesses can use legal finance to fund one case or many within their litigation and arbitration portfolios, enabling them to finance part or all of their affirmative recovery efforts, and defense as well as plaintiff matters.

Depending on their size and sophistication, legal finance providers can also offer value beyond capital. For example, they can leverage their expertise and access to proprietary data about dispute outcomes to empower clients to make informed decisions regarding their litigation matters. This information enables legal finance providers to offer insights on case prioritization, case progress and budgets, modeling economic outcomes and optimizing litigation strategy to achieve the best possible results.

## **Novel funding structures to fund defense and remove uncertainty**

A perennial issue for GCs and CFOs is the difficulty of planning with certainty the cash flows tied to their high-value commercial disputes. In the world of legal finance, this is driving more businesses to new uses of funding beyond basic fees and expenses funding, including portfolio-based financing and monetizations.

Legal teams can use portfolio-based financing, where multiple affirmative litigations as well as defense matters are financed in a single capital facility, to create predictability across the litigation budget. When budget certainty and cash-flow predictability is at a premium, a risk-sharing structure can be created to leverage recoveries to offset uneven or unpredictable costs around affirmative claims and defense matters.

Monetizations also help to increase budget certainty by providing businesses with immediate liquidity based on an expected future entitlement. When a company chooses to monetize a legal asset (whether a claim, judgment or award), the funder generally provides cash up front, which the client keeps regardless of the case outcome, thereby de-risking a portion of the matter while also removing duration risk for that portion of the entitlement. By receiving a timely and substantial cash infusion through monetization, companies can better manage their budgets, enhance liquidity and increase certainty in their financial planning.

Lastly, there is considerable innovation happening in the convergence of legal finance and insurance products such as judgment preservation insurance that, done right, can transform risk profiles for high-stakes commercial disputes. We see growing appetite from heads of litigation and especially CFOs in exploring the complementary use of legal finance and JPI.

## **Conclusion**

As businesses evolve their litigation strategies to more systematically recover damages, legal finance can play a crucial role. In addition to capital, legal finance providers like Burford can also help companies understand and value their potential claims, enabling them to make informed financial decisions that align with their business objectives. As a leading player in the legal finance market, Burford has valuable insights into the actions of peer companies, the valuation of claims and defendants’ settlement considerations. By leveraging this information, Burford can help its clients continue to evolve their litigation strategies to align with business needs.

<sup>1</sup> Burford Capital, Litigation economics: CFOs and GCs weigh in on best practices in optimizing legal department value, [www.burfordcapital.com/insights-news-events/insights-research/2024-research-litigation-economics-survey/](http://www.burfordcapital.com/insights-news-events/insights-research/2024-research-litigation-economics-survey/)

<sup>2</sup> Burford Capital, 2022 Affirmative Recovery Programs Report, [www.burfordcapital.com/insights-news-events/insights-research/2022-affirmative-recovery-programs-report/](http://www.burfordcapital.com/insights-news-events/insights-research/2022-affirmative-recovery-programs-report/)

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# How CFOs are generating value from litigation asset

Business disputes have in the past been viewed by finance leaders with understandable skepticism. CFOs know how to generate profits by investing in the business, but spending on a costly claim? That looks like an expensive headache that distracts money and attention from profit-generating activities.

Of course, CFOs think in numbers, and so they're able to see high value claims for what they are: Assets, albeit highly contingent ones. So when a business is harmed to the tune of scores of millions of dollars, any CFO is likely going to work with the GC to ensure the business recovers what it is owed in the most financially advantageous way.

The challenge is that litigation is expensive, and getting more so. According to the 2024 Litigation Economics survey, 41% of CFOs think litigation spend will increase between 10% and 24% in the next five years, while 32% expect an increase of 25% or more. Another important factor for CFOs to consider when evaluating the risk and reward for commercial litigation is duration risk—it can take years for litigants to go through the courts, deal with appeals and eventually get paid.

Increasingly, however, businesses have more options than simply paying out of pocket to recover the value of large and meritorious claims, and CFOs are increasingly reviewing those financing options within the context of their legal department strategies. Alternative solutions can generate value by conserving cash for the business that would otherwise have been spent on lawyers, and indeed, almost four in ten (37%) finance leaders believe their organization could reallocate at least \$5 million elsewhere in the business by financing their disputes. As the CFO of HP once said: "If you save a dollar, you'll drop a dollar to the bottomline. But if you save a dollar and you reinvest that back into the business in a disciplined way, a returns-based way, that dollar is actually worth a lot more in the future. And that's really what running a business is all about." More importantly, when businesses win their claims, that can generate multiples more millions in recoveries.

Given options available to fund high value claims, CFOs increasingly appreciate that the legal department can be a source of hidden value—generating cash that can be reinvested in the business. Below, I explore what recent research reveals about where CFOs see opportunity in the legal department.

## CFOs see an opportunity to generate value from the legal department

Although they are most likely to say that cost containment should be a top priority for legal departments, a whopping 70% of CFOs said the legal department also needs to prioritize finding new ways to recover value. This is significant, and signals a desire among CFOs to reframe the legal department from cost center to capital source.

This sentiment also reinforces a trend we see at an increasing number of companies: The development of formal affirmative recovery programs. An affirmative recovery program is simply an organized effort undertaken by the legal department to recoup money that would otherwise be lost if the business's meritorious claims and judgments were left unpursued, and to do so in a systematic, numbers-driven way. These programs aim to identify and win meritorious litigation and arbitration claims that can generate revenue for the company.

According to recent research, more than half of businesses (55%) either have an affirmative recovery program in place currently or are currently developing one. However, only one of five (21%) in-house lawyers perceive their organization's affirmative recovery programs as robust, and even fewer finance professionals (16%) share the same view. If only one in six CFOs thinks the business's recovery program is operating at the level needed, that highlights the need for increased attention—and increased involvement by finance leaders.

## CFOs see the need to remove avoidable cost and risk—and a solution

Among the factors motivating CFOs to explore funding litigation rather than paying for it out of pocket are the significant risks associated with dedicating resources to pursuing litigation and arbitration claims. Disputes are inherently unpredictable and CFOs will only ever have imperfect, incomplete information about their probable outcomes.

Thus, not surprisingly, CFOs rightly voice the following concerns about spending working capital on disputes:

- **OPEX:** A large majority (85%) of finance professionals recognize that litigation is expensive, and even large companies can benefit from reducing its impact on their profit and loss statements.
- **Duration risk:** Since a company's financial circumstances might change drastically in the years waiting for matters to resolve, CFOs need to consider the impact of having working capital spent on litigation out the door for a potentially long period of time.
- **Opportunity cost:** CFOs also need to weigh the opportunity cost of allocating funds to litigation instead of other areas like R&D or marketing.

To address these challenges, the trick is to stop treating litigation as a liability and transform it into an asset by transforming these risks.

## Legal finance from a CFO perspective

According to the research, CFOs in particular advocate for innovative solutions like legal finance—which is clearly embraced beyond the legal department as a tool with broad corporate benefits.

Legal finance is the practice of valuing and monetizing legal assets, most often in the form of providing capital to finance meritorious claims to accelerate the expected value of claims, judgments and awards. Some of the most common legal finance solutions are:

- **Fees and expenses financing:** Legal finance arrangement in which a company shifts to a third party the cost of paying fees and expenses to pursue high value litigation and arbitration claims.
- **Monetization:** Legal finance arrangement in which a third party accelerates a portion of the expected entitlement of a pending claim, judgment or award, providing the claimant with immediate liquidity, often with a continuing back-end participation for the claimant company.
- **Portfolio finance:** Legal finance capital facility backed by multiple litigation and/or arbitration matters, which may include claims and defense matters and a mix of dispute types and sizes. Portfolios may be created to provide a pool of capital backed by existing and/or future matters and may offer lower financing costs because risk is diversified.
- **Asset recovery:** The practice of enforcing and collecting outstanding judgments and awards when the losing side fails to pay, which may be financed on a non-recourse basis (i.e., repayment contingent upon successful resolution or recovery).
- Finance professionals are champions of the use of legal finance within their organizations, with nearly half of CFOs (45%) saying they expect legal finance to become commonplace for businesses like theirs in the next 15 years. What's more, CFOs are consistently slightly more likely to predict increased use legal finance tools than their legal counterparts, suggesting that finance has a big role to play in the conversation about funding.

## Conclusion

Research shows that CFOs are interested in exploring the potential value of their legal assets, especially as litigation costs are expected to increase. And since CFOs may have concerns about dedicating financial resources to litigation, legal finance offers innovative solutions to transform litigation into an asset by removing financial risk.

# Key trends in legal departments

Burford sees hundreds of billions' of dollars worth of commercial litigation every year. Given that, we have a front row seat to trends in how legal and finance leaders from startups to the Fortune 500 are managing cost and risk and maximizing value. We highlight some of the most salient trends below.

## **Achieve greater certainty around cash flows tied to litigation**

Litigation is unpredictable, and GCs face the difficulty of budgeting for matters that can take years to resolve; meanwhile, CFOs cannot rely on the timing or certainty of cash flows tied to successful outcomes. Novel funding structures can help legal teams offset these challenges.

Burford sees growing interest from legal and finance leaders in portfolio-based financing, where multiple matters can be financed in a single capital facility to create predictability across the litigation budget. Additionally, we see significant appetite to accelerate or “monetize” a portion of one or multiple pending claims, judgments or awards, increasing certainty and (because finance is non-recourse) de-risking matters.

## **Provide non-debt solutions that CFOs value**

CFOs are increasingly considering legal finance as a non-debt financing solution that leverages their businesses' litigations and arbitrations. Such a solution is particularly attractive for margin-pressured businesses that took on significant debt when rates were low and that now face the challenge of servicing existing debt and with banks tightening terms for commercial lending.

Banks and other traditional capital lenders aren't equipped to monetize litigation and arbitration assets as a source of liquidity, but Burford routinely works with CFOs to unlock their often significant value.

## Optimize the commercial impact of the legal department

While the entry point to using legal finance is almost always funding a single high value case, businesses that have experienced the benefits of financing often seek opportunities to extend its impact still further. One area of opportunity is the funding of affirmative recovery programs. More than half of legal and finance executives (55%) say their businesses either have an affirmative recovery program or intend to build one.<sup>3</sup>

As GCs and CFOs develop systematic programs for their affirmative litigation recoveries, legal finance from Burford is an important tool to manage their often substantial upfront costs. As a partner to businesses building such programs, Burford can help clients identify and prioritize high value claims as well as cover the costs of building and maintaining an affirmative recovery program.

## Mitigate the high costs of antitrust and competition litigation

Various factors are contributing to potentially increased competition disputes activity around the world: With the EU's Digital Markets Act now fully in force, digital "gatekeepers" must begin complying or face steep fines; follow-on claims from companies impacted in the marketplace are likely to be brought against Big Tech; and the 2024 US presidential election could upend federal enforcement priorities.

Regardless of jurisdiction, antitrust and competition claims are costly and time-consuming for businesses to pursue. Burford can help monetize claims in antitrust and competition litigation, thereby converting a portion of a pending claim into cash and freeing up capital that companies can use for growth or other business purposes. In the US, more businesses are choosing to pursue high value antitrust claims on an opt out basis and leveraging funding to offset the cost of doing so.

# 55%

of legal and finance executives say their businesses either have an affirmative recovery program or intend to build one



## Transform commercial disputes with data analytics and AI

In the business of law as in virtually every other industry, AI remains a critical area of focus and exploration. But while most legal teams and law firms utilize some form of AI, its use is largely restricted to streamlining high volume tasks like parsing documents and generating first drafts for routinized content.

In commercial disputes, data analytics is the missing link to achieving more with AI. Because roughly 90% of disputes settle,<sup>4</sup> data about the terms and economics of final resolution generally remains confidential to all but the parties involved as litigants, insurers or legal finance providers. Burford has 15 years of economic data about the outcomes of high value commercial disputes. Burford leverages this data to help clients prioritize high value matters and predict budgets and recoveries.

## Monetize corporate IP

Companies with significant intellectual property (including very large name brands) have increasingly been exploring the range of options available to them to monetize their patent portfolios, from direct monetization through to partial or full divestitures of IP assets that are redundant, non-core or merit divestiture for other strategic or tactical reasons.

Companies seeking to extract value from their IP portfolios should understand the range of options and the sophistication of financial structures currently available to them. Burford has helped name brand companies develop and fund their patent monetization strategies; legal finance mitigates the risk associated with both direct enforcement through litigation and with various divestiture options.

**“ Past performances are not reliable indicators of what's going to happen in the future. For that you usually need an expert like Burford Capital; you need a human analyst who can look at the past data and predict using that.”**

— LEGAL TECHNOLOGY COMPANY FOUNDER

<sup>3</sup> 2024 Litigation Economics Survey.

<sup>4</sup> 2022 Affirmative Recovery Programs Report, available at <https://www.burfordcapital.com/insights/insights-container/2022-affirmative-recovery-programs-report/>.



# Burford's business reflects growing corporate use of legal finance

# 58%

Portfolios represent three out of five of Burford's new commitments<sup>5</sup>

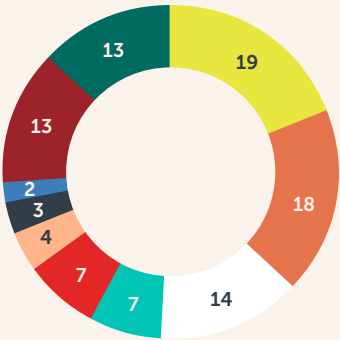
## More than half of Burford's clients are corporates

Percentage of corporate vs. law firm clients



● 55% CORPORATES ● 41% LAW FIRMS ● 4% OTHER

2023 Total commitments by case type<sup>6</sup>  
(Capital provision - Direct)  
(%)



- ANTITRUST
- ASSET RECOVERY
- MIXED PORTFOLIO
- SECURITIES
- IP
- BANKRUPTCY/INSOLVENCY
- CONTRACT
- COMPLEX STRATEGIES
- ARBITRATION
- OTHER

# \$7.1B

Investment portfolio with over 200 litigation and arbitration matters<sup>7</sup>

# 13,000

matters reviewed since inception<sup>8</sup>

<sup>5</sup> Since Burford launched with its October 21, 2009 IPO through December 31, 2023.  
<sup>6</sup> Based on new capital provision-direct commitments made in 2023.  
<sup>7</sup> Current as of March 31, 2024.  
<sup>8</sup> Approximate number of requests reviewed between October 21, 2009 and December 31, 2023

## CASE STUDY

# Building—and financing—an affirmative recovery program

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Research conducted in 2022 revealed that affirmative recovery programs are an increasingly common phenomenon for businesses, with two of three senior in-house lawyers interviewed saying that their companies have such a program. However, research also revealed that GCs see significant opportunity to optimize such programs, with the great majority acknowledging that their businesses would benefit from developing a more systematic approach to affirmative litigation recoveries and from leveraging tools to manage the often substantial upfront costs associated with them.

A Fortune 500 company that recently secured \$325 million in financing from Burford is exemplary of the benefits to be had by building and financing an affirmative recovery program.

The company determined some years ago that it would begin to invest resources in recovering damages through litigation where necessary, and built an internal team to do so. After some success in pursuing claims through its affirmative recovery program, the company decided to explore legal finance to offset some of the associated legal costs. Ultimately, it chose to work with Burford and entered into what became an eight-figure financing deal for a group of claims in its portfolio. The deal was positively regarded not only inside the legal department but also won praise in the broader C-suite, especially from the company CFO.

In 2023, the company identified an additional capital need. In the ordinary course, this would be the CFO's problem to solve. But because the legal department for this particular Fortune 500 had an affirmative recovery program in place, the CFO contacted the legal department—usually a cost center—to see if the company's high value litigation assets and legal finance could provide a solution.

The company's affirmative recovery team was indeed able to provide a solution to the gap. The GC approached Burford for financing in the form of a monetization portfolio, which would be collateralized by several of the existing claims in the affirmative recovery program. With rapid, continued attention from Burford's underwriting team, an innovative deal was structured in which Burford would provide \$225 million upfront financing, with an additional \$100 million option to be exercised by mutual consent of the parties. This structure provided the company with meaningful financial flexibility, to say nothing of the infusion of liquidity—an exceedingly rare but valuable combination—with Burford only earning its return in the event of successful resolutions within the portfolio (significantly de-risking the claims for the corporate). It's a level of financing few, if any, other legal finance providers have the scale, expertise or underwriting capacity to execute, let alone execute quickly.

What's more: The deal fundamentally inverted the relationship between the CFO and GC. What in most instances would have been a problem for the CFO to solve became an opportunity for the GC to proactively deliver value to its business.

Not all businesses will have such sizeable claims, but many more legal departments can follow this Fortune 500's example: By building an affirmative recovery program and financing it, GCs and their teams can become meaningful value generators for their companies—and endear themselves to their CFO counterparts.

# How the funding process works

## What are the stages of the process?

### 1. Initial review

- Confidentiality agreement
- Background documents signed
- Confirm counsel has performed factual and legal analysis

### 2. Active diligence

- Discussion of merits and economics
- Culminates in term sheet for matters that are ultimately funded

### 3. Investment

- Signed capital provision agreement
- Execution of deal
- Commencement of funding

### 4. Monitoring

- Ongoing case monitoring until matter resolves

## What are Burford's commitment criteria?

- **Type of matter:** We finance complex commercial litigation and arbitration at any stage.
- **Strong merits:** Cases must succeed for us to recoup funding and earn a return, so we will carefully assess facts and legal merits.
- **Counsel:** We value cases led by legal counsel with experience, strong track records and a strategic approach.
- **Jurisdiction:** We finance matters filed in domestic courts in common law jurisdictions or in internationally recognized arbitration centers.
- **Capital requirement:** Legal finance is best suited to commercial matters in which our clients need at least \$3 million in financing.
- **Damages:** Damages must be supported by solid evidence of loss, and large enough to ensure that the client keeps most of the litigation proceeds and our investment return is met. While the ratio of investment to expected recovery varies, a \$3 million investment should have expected compensatory damages of around \$30 million.

Some of the characteristics we look for include:

- Case does not turn on a “he-said-she-said” credibility determination
- More than one viable legal theory that could lead to recovery
- Legal theory is tested and has good support in statutory or case law
- Case theory makes sense in the commercial context of the transaction or course of dealing

## What do I need to do to secure financing?

At Burford, we work hard to provide the best expertise and client experience in addition to the largest pool of available capital. Ultimately, we approach the investment diligence process as a collaboration, not a transaction.

Clients seeking financing can aid the process in four important ways:

- **Organize documents:** Active diligence requires review of the key documents underlying the dispute as well as financial information about the businesses involved. We work more efficiently when clients provide documentation quickly.
- **Be responsive:** Clients can aid the process by responding quickly to questions and document requests—a commitment we make in turn.
- **Understand the risk profile of the case:** Burford is in the business of taking risk, but we invest in cases that have strong risk profiles, and we may have a different risk tolerance from others.
- **Prepare a realistic budget:** When we are providing fees and expenses financing, matters must be equipped to get to the finish line. That requires a realistic, conservative budget through trial that does not assume early settlement. We may reject good cases because the ratio of financing to expected return is too narrow.

## How long will it take?

The time frame to secure legal finance depends on several factors. Although we have financed cases in a matter of a few days, as a general rule, if cases are well worked up and information is provided in a timely fashion, commercial matters typically take about a month from initial case review to investment.

A variety of factors influence how long the process takes:

- **Client:** Clients’ responsiveness in answering questions and providing documents is among the most significant factors.
- **Stage:** Matters with fewer unknowns (e.g., matters on appeal) require the least time (as little as a week to 10 days); yet-to-be-filed matters require more time.
- **Case type:** International arbitration and patent matters typically require more time.

When a portfolio is in place, the diligence process for new matters can be completed extremely quickly. This greatly benefits law firms that must be responsive to urgent client needs, and helps legal teams stay aligned with the commercial imperatives of the businesses they represent.

## What happens after Burford provides financing?

After financing commences, Burford and our clients are in an ongoing business relationship that requires regular care and tending. Happily, case monitoring can help maximize returns for clients and Burford.

CLIENT	BURFORD
<p><b>Regular reporting</b></p> <ul style="list-style-type: none"><li>• Draft monthly summaries to be reviewed by senior Burford management and Burford's board of directors</li></ul>	<p><b>Case monitoring</b></p> <ul style="list-style-type: none"><li>• Receive electronic docket notices</li><li>• Review filings</li><li>• Track court deadlines</li></ul>
BURFORD + CLIENT	
<p><b>Discuss case progress and potential challenges on at least a monthly basis</b></p> <ul style="list-style-type: none"><li>• Budget monitoring</li><li>• Review legal bills on a regular basis</li><li>• Consult on budget allocation to maximize potential returns</li></ul>	

## Adding value beyond capital

While our clients retain control of decision-making, many businesses value the expertise Burford can offer:

- Providing perspective based on decades of in-house and litigation expertise
- Using quantitative modeling to ensure best possible legal outcomes
- Leveraging 15+ years of proprietary data to identify high-value matters in the business's litigation portfolio
- Building litigation budgets and assisting in expense management
- Developing damages theories and legal theories
- Offering consulting expertise at critical junctures post-investment

Burford acts as a true partner to companies at every stage of the legal finance process.

“

Burford [has] the resources  
and expertise to provide  
expert assistance in big-scale  
litigation, both at a macro  
level and a micro level.

—CHAMBERS AND PARTNERS

”

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# Why business leaders choose Burford.

## EXPERIENCE

Burford routinely works with Fortune 500 and FTSE 350 legal and finance teams to fund and monetize high value litigation and arbitration, enforce judgments and maximize corporate returns.

## SCALE

As the world's largest legal finance provider, Burford has ample permanent capital to fund clients' commercial litigation, arbitration and enforcement needs

## TEAM

Top ranked in the industry with more than 160 staff

## RESPONSIVENESS

With litigation finance as well as enforcement expertise entirely in-house, Burford can respond quickly and comprehensively to clients' needs.

## PROFESSIONALISM AND TRANSPARENCY

Burford is the gold standard for legal finance—dual-listed in New York and London (NYSE: BUR, LON: BUR)

## DOING WELL BY DOING GOOD

Through our award-winning Equity Project, Burford has committed more than \$150 million to commercial disputes with a female or racially diverse lawyer in a lead role. For Equity Project matters funded since October 2021, when matters resolve successfully and Burford's return criteria are met, we make a contribution to charities focused on advancing diversity in law.



“

I am being credited internally because management thinks the legal team is being creative by monetizing its claims.”

—HEAD OF LITIGATION, FORTUNE 100 COMPANY



Please contact any member of our team or email us at [info@burfordcapital.com](mailto:info@burfordcapital.com) to discuss how we can help.

**Burford**

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