



# Litigation Finance for Boutique Law Firms

Woodsford Litigation Funding Insight

# Litigation finance for boutique law firms - What you need to know

The use of litigation finance is expanding rapidly across the legal world. This trend has accelerated as the key actors in dispute resolution proceedings become familiar with litigation finance and its many benefits. Sophisticated litigants appreciate how funding can help them manage costs and offset legal risk; savvy lawyers - especially those in innovative boutique law firms - recognise how litigation finance can help them expand their practice and offer clients flexibility on fees; and forward-thinking judges and arbitrators acknowledge the positive role that litigation finance plays in promoting meritorious claims and enhancing access to justice.

Since the inception of litigation finance, the range of funding solutions has evolved from single-case funding for impecunious litigants, into portfolio or 'facility' finance for well-resourced corporates and law firms. In essence, reputable litigation finance providers have capital to deploy into any contentious situation which, in time, may generate a return. Prior to the development of litigation finance, there were few workable solutions for boutique law firms seeking to reduce financial pressure while also driving growth. Traditional credit providers are ill-suited to consider a law firm's contingent receivables as a valuable asset. However, litigation finance providers, with their unique combination of legal expertise and financial resources, have started to fill this void.

As a global litigation finance provider, Woodsford regularly receives inquiries from lawyers at boutique law firms, either on behalf of their clients or themselves. Woodsford expects the frequency of these inquiries to grow substantially in the coming years and would encourage lawyers to familiarise themselves with how litigation finance works in practice and the many benefits of partnering with a litigation finance provider like Woodsford.

# The Basics of Litigation Finance

Litigation finance, also known as ‘litigation and/or arbitration funding’ or ‘third-party funding or finance’, in its simplest guise, is where a third party, who commonly has no direct interest in the proceedings, provides a law firm or litigant with the financial resources to enable costly, risky (and

potentially lengthy) litigation or arbitration cases to proceed. In return, if the case results in a recovery, the third-party funder receives a ‘success fee’. If the case is unsuccessful, the third-party funder loses its investment and nothing is owed by the law firm or litigant.

## A Comprehensive Range of Finance Solutions

Boutique law firms and their clients, due to the constantly evolving nature of litigation finance, have a number of solutions available to them. These include:

- Single-case litigation finance - financing which is available on a case-by-case basis for high value litigation or arbitration claims, where the claimant typically lacks the resources or risk appetite to proceed without financial support. The terms of investment and return are tailored for each case. This type of financing may cover lawyers’ fees, disbursements (which can include out-of-pocket costs relating to e-disclosure, expert witnesses, and court or tribunal fees) and/or provide working capital to a claimant. Where claimant law firms are prepared to work on a conditional or contingent basis (i.e. where some or all of their fees are deferred and payable upon success), funding may only be required for disbursements.
- Portfolio finance - funding for claimants or law firms which have more than one claim to pursue. This solution typically involves a funder providing a ‘facility’ from which the claimant or law firm can

draw down to cover the costs of multiple litigation or arbitration cases. Portfolios can be used for claims already underway, future claims or a mix of both, with several different structures available, each designed to meet the capital needs and risk tolerance of the law firm or claimant. As with single-case finance, the funder takes its return from the contingent income generated in the cases - no such income means no return for the funder.

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But unlike single-case finance, portfolio finance offers greater flexibility and the cost of capital is typically lower because the funder’s risk is diversified and its return is cross-collateralised.

- Law firm portfolio finance/law firm finance - finance provided directly to law

firms. This is a form of portfolio finance, which allows a law firm to draw down from the facility provided by the funder to cover a pre-agreed proportion of the law firm's incurred fees in any given case (as well as disbursements), which ensures that the law firm receives at least a certain amount even where it is acting for claimants on a fully contingent basis. Funds may also be drawn down, if required, to cover the firm's general operating expenses, for example

employee salaries and other overheads.

- Judgment monetisation - finance provided to claimants or law firms that have received a positive award or judgment that is subject to appeal or enforcement risk. This solution allows a claimant or law firm to de-risk the positive award, allowing them to receive funds immediately and get on with their businesses.

## The Benefits of Litigation Finance for Boutique Law Firms

In recent years, a considerable number of boutique litigation and arbitration law firms have been established by top lawyers after leaving highly reputable international law firms. Often these individuals have decided to pool their resources and set up their own boutique practice to increase their autonomy and flexibility in a highly-competitive market and pursue litigation and arbitration claims without the significant conflicts that can arise in full-service legal practices.

While these practices have many advantages over larger law firms, they also face a number of challenges in competing with their more established counterparts. When it comes to levelling the playing field, litigation finance is one of the most useful tools at a boutique law firm's disposal. If you are practicing at a boutique law firm or are thinking about setting up a boutique practice and have not thought seriously about litigation finance, here are four benefits to consider:

### 1. Competitive advantage

Trying to grow a business by attracting new clients can be difficult for boutique law firms that are competing directly with larger, more established and better resourced rival firms, with entrenched

long-term client relationships. So how can boutique firms differentiate themselves from their competitors? They are likely to have more success in attracting new business if they can offer clients innovative and flexible fee solutions, which meet their demands. For example, they could offer full contingency agreements which reduce the financial pressure on the litigant, are straightforward for the client to understand

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and provide certainty regarding the client's likely net recovery (in percentage terms). Such contingency structures could well place an uncomfortable amount of financial pressure on a boutique law firm, but a law firm finance facility from a funder can alleviate that pressure. While portfolio and

law firm finance is also available to larger full-service firms, boutique firms have the advantage of being more ‘nimble’ and are therefore better placed to conclude a facility agreement with a funder with minimum delay and disruption.

## 2. Growth

For emerging boutique law firms, growing the practice can be difficult. Contingency arrangements, coupled with a law firm finance facility, allow a boutique law firm to take on the biggest commercial cases and share in what might be a very considerable upside if the case ultimately succeeds and results in a recovery. In this way, litigation finance provides critical financial assistance to law firms by monetising future revenue to help cover operational expenses



(including, overhead costs such as salaries and recruitment) and/or a proportion of the fees incurred by the law firm. With this guaranteed revenue stream stabilising the law firm's financial position, the law firm can maximise the value of its litigation and/or arbitration matters and focus on developing the business. The all too common distraction of clients failing to

pay their bills on time (or at all) becomes a thing of the past, allowing the lawyers to focus on advancing meritorious cases with the confidence that the necessary liquidity is in place to bring them to a conclusion.

## 3. Preservation of own capital

Law firms, like most businesses, require capital to function. Historically, this capital has come from partners' own pockets and/or bank loans (which often rely on the personal credit of the partners and the value of their personal assets). If a boutique law firm is able to obtain a debt facility from a bank, it may be inadequate in amount and, in any event, often requires servicing with regular payments.

Litigation finance allows law firm partners to avoid having to reach into their own pockets or taking on debt from a financial institution. Unlike bank debt, litigation finance is non-recourse and a litigation finance provider will only receive a return on its investment when recoveries are made in the law firm's cases. By preserving the law firm partners' own capital, litigation finance can reduce the individual financial pressure and stress.

## 4. Increased due diligence

As litigation finance is typically non-recourse, litigation finance providers generally have to undertake significant due diligence before agreeing to provide funds in respect of a particular case. While this can be seen as a negative, it allows a claimant to have an objective analysis of its claim carried out before substantial resources have been expended. A litigation finance provider's decision to proceed with investment is a good indication that the claim is meritorious and worth pursuing. Where a law firm finance facility is put in place, due diligence into individual cases is ordinarily carried out more quickly, as the law firm and funder tend to carry out their respective analyses in tandem and the level of trust between them grows with each case which is analysed and discussed.

# Practical tips for lawyers and their firms

With litigation finance on the rise and continuously taking different forms, it makes sense for lawyers to educate themselves on litigation finance and the

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numerous finance solutions that are available to their firms and clients. When clients require or may otherwise benefit from litigation finance, it is arguably incumbent upon the lawyer not only to have adequate knowledge of funding and the products available, but also to help the client in deciding which funders to approach and (more importantly) which

ones to avoid. In this regard, lawyers should select only reputable and professional litigation finance providers, who are experienced in the practice of dispute resolution.

In relation to obtaining litigation finance, whether it be for your firm or client, most reputable litigation finance providers' processes are similar. The first stage of the process requires the litigant or law firm to submit key documents which provide a good overview of the funding sought. For example, this is likely to include an overview of the factual background (of case(s) and/or the law firm), details of the financing required, case or law firm practice analysis and realistic quantum or likely return. The more well-prepared and detailed the initial material, the quicker the litigation finance provider will be able to indicate whether they are interested, and if so, provide indicative financial terms.

## Conclusion

The business of law has evolved dramatically in recent times and continues to do so. Law firms are adopting increasingly innovative fee structures - often in response to client demand - and boutique firms are uniquely placed to lead the charge in this regard. Similarly, as barriers to litigation finance around the world continue to fall, it is becoming a fixture in the legal market.

Woodsford expects that the use of litigation finance by boutique law firms will increase and looks forward to working with such law firms as they seek to innovate, grow and compete for clients. The focus for Woodsford will be on understanding the unique needs of each law firm and offering bespoke solutions while becoming a trusted professional partner.

# Case Study - Global Portfolio Financing Facility

**Our ground-breaking, disbursements-only US\$20m global portfolio funding facility with international litigation boutique, Lewis Baach Kaufmann Middlemiss was announced in late 2017 and has generated significant press coverage, including:**

THE WALL STREET  
JOURNAL.

THE  
AMERICAN LAWYER

THE LAWYER



LAW360

This portfolio facility covers litigation and arbitration matters in any jurisdictions around the world for which Lewis Baach is prepared to act on a contingency fee basis, and where Woodsford's funding is required for the additional disbursements.

This type of portfolio facility enables entrepreneurial law firms like Lewis Baach to:

- Seek out and pursue meritorious claims that might otherwise flounder due to cost, knowing that if the firm likes a case enough to take a significant contingent risk on fees, Woodsford will pick up the additional litigation expenses.
- Offer their clients a one-stop arrangement

for the funding of high-value litigation and arbitration which, dependent on the level of contingency discount, could involve no up-front costs for the claimant.

- Benefit from synergies of litigation judgment and sensible management when Woodsford's expertise is utilised to review potential cases for the portfolio, in essence giving the cases an extra level of diligence.

*“We have had the privilege of working with Woodsford over many years. We have seen first-hand the resources and the resolve they bring to the equation which, when combined with a strong claim, a determined client, and a formidable legal team, can make the difference between justice delivered or denied.”*

**Eric L. Lewis, Senior Partner, Lewis Baach Kaufmann Middlemiss (New York)**

Woodsford's funding is non-recourse and is spread across a portfolio of diverse matters, meaning Woodsford only gets a return in the event of successful outcomes in one or all cases within the portfolio. The relationship between Woodsford and Lewis Baach has only been strengthened by this global portfolio financing facility and has been successful thus far for everyone involved.

## About the authors

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## About Woodsford Litigation Funding

Woodsford is one of the world's leading providers of finance to law firms and their clients. Founded in 2010, with offices in London, Philadelphia and Singapore, Woodsford provides financing solutions for law firms, businesses and individuals around the world.

Woodsford's highly-experienced, international team deliver a unique combination of extensive business and legal expertise, which allows for quick understanding of the financial implications and legal merits of a case or portfolio of cases. By using its own internal legal capability and its funds from its own balance sheet rather than relying on external advice or capital, the entire financing process is accelerated.

Woodsford is a founder member of the Association of Litigation Funders of England and Wales, a body dedicated to promoting best practice in the litigation finance industry. Woodsford was instrumental in drafting the original Code of Conduct, published by the Civil Justice Council of England and Wales in 2011.

By working with Woodsford, law firms and their clients are assured that they are working with an organisation meeting the high-quality standards that should define this industry.

For further information, visit [www.woodsfordlitigationfunding.com](http://www.woodsfordlitigationfunding.com) or email **Steven Savage** at [ssavage@woodsfordlf.com](mailto:ssavage@woodsfordlf.com)