



Litigation Finance: Creating Capital for Portfolio Companies

Woodsford Litigation Funding Insight

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Companies are often sitting on latent commercial legal claims which could produce significant capital or increase market share. Sophisticated investors can give their portfolio companies an advantage by identifying opportunities to unlock value and protect the business; Litigation financing can underwrite and de-risk exploitation of these claims by providing non-recourse capital to pay for legal fees and costs.

Legal claims are often incompletely considered liabilities by investors, and treated conservatively. But they can also

be corporate assets. Some of these assets are highly valuable and might provide companies with non-dilutive operating capital, increased margins or market share. To take advantage of these assets however, a company, or board, needs to understand the types of claims that might exist and how to identify them. Once identified, companies need help figuring out which claims are worth pursuing and how to exploit these assets while minimizing distraction and risk to the company. Fortunately, there are outside partners that can help in this task.

Types of claims:

An intimate business relationship with the directors and officers of a company gives insight to where a company might have a legal claim. Sometimes the value and merit of these claims are obvious (e.g. a breached contract), but sometimes they require a professional such as a lawyer with expertise in the field or litigation financier to identify potentially lucrative opportunities. Some of the most common claims held by small and medium sized businesses include:

Founders Disputes:

Partnership dissolution, equity restructuring, breaches of duties and contracts are matters that can threaten the business and have significant financial impacts.

Intellectual Property:

A well drafted patent gives a company the right to exclude others from competing with its products or the ability to recovery licensing revenue from infringers. Trade secret claims can be critical when employees defect to competitors. Copyright and trademark claims can protect other aspects of the business.

Shareholder disputes:

Shareholders, especially in a closely held company, can fall victim to fraud, illegal activities or grossly negligent management that injure the business. When this happens, litigation can resurrect the company or repay investors for failures to execute firm judgment.

Breach of Contract:

Valuable contracts often fall victim to malfeasance by the other party. Failing to pay, not using best efforts, diverting sales can all cost a company huge sums.

Tortious interference with business relationships:

Competitors are supposed to compete on product bases, but when they interfere with clients and business opportunities directly, there is a claim to recover the value of that lost business.

Antitrust:

Sometimes a company isn't thriving because its competitors use prohibited practices that reduce competition.

Global litigation & Arbitration:

If your investment is lucky enough to compete on a global scale, there is a whole

different set of rules to resolve disputes. These claims are typically complex, costly to resolve and require specialists.

To litigate or not to litigate?

Even when a company has a claim that they believe to be meritorious, there are issues and risks to consider before pursuing:

- **Enforcement Costs:**
Litigation can be expensive, with no guarantee of success. Full blown patent or anti-trust cases, for example, can cost into the eight figures.
- **Insufficient value:**
Even a successful litigation is limited by its remedies - are the damages significantly greater than the costs of enforcement? Is there collectability risk? Can you get a meaningful injunction?
- **Diverting capital from operations to legal:**
Legal fees and costs can soar into the millions, or even tens of millions on some litigations. Internal legal resources might have to be reallocated.
- **Process management:**
Unless the company is mature, it probably doesn't staff a litigation manager. Managing the legal process can help identify inflection points, settlement

opportunities and contain costs.

- **Disruption to the business:**
Pursuing a legal claim means documents will need to be produced and officers or employees deposed. Trial can attract attention to your business you may or may not want. The defendant might be a potential acquirer of this or another portfolio business.
- **Profit and loss recognition:**
Proceeds from litigation won't necessarily increase enterprise value as general accounting practices do not expense litigation costs and recovery is not treated as operating income but appears 'below the line' as non-operating income or a one-off item.

Often time the claim itself will answer these questions - claims can return substantial awards, even up to the billions of dollars; acts of fraud, theft, breach or infringement that limited market share can be redressed. But occasionally, the best way to offset these risks is partnering with a litigation financier like Woodsford, who will vet, value, fund and support your claim.



What is litigation finance?

Litigation financing is, broadly, how pursuing a legal claim is paid. All litigations are financed, whether by the claimant paying lawyers hourly and costs out of pocket, by a law firm in return for a portion of recovery, or by a litigation financier. Third party financing is when an unrelated third party pays part or all of the legal fees and costs of litigation. Similar to a contingency financing by a law firm, a third-party financier, like Woodsford, provides capital to plaintiffs with good claims to offset litigation costs and in return receives a portion of the recovery in a successful case.

The funder does not have the right or ability to influence the strategy of a litigation or dictate settlement decisions. A funder does not interfere with the attorney client relationship. Funding is typically provided on a non-recourse basis, i.e., the funder's return depends on a successful outcome in the litigation. If the claim is not successful, nothing needs to be paid to the funder.

There are further benefits to working with a financier over those from self-financing or working with a law firm on a contingency.

Preservation of capital:

With a financier covering some or all of the costs of litigation, a company can direct capital into growth opportunities, while ensuring litigation costs won't affect settlement posture.

Choice of Counsel:

With a litigation financier, a cash-constrained company is not limited in its choice of counsel to firms that have both an existing contingent practice and the finances to cover some or all of the case.

War Chest:

A portfolio company backed by a litigation financier may reach a higher and faster settlement than an unfinanced claimant because defendants are less likely to

attempt to drive up legal costs to force the plaintiff's hand.

Signaling:

Further, the support of a sophisticated professional funder signals to a tribunal and defendant that a sophisticated and experienced third party has objectively determined that the merits and return of the case justify the investment of capital.

Strategy Resources:

While passive investors, a litigation funder like Woodsford provides access to a backroom of experienced litigators as a resource.



In conclusion, legal claims are often business opportunities. With a willingness to investigate, you can provide your company with numerous advantages while offsetting the financial risk to a financier such as Woodsford. As one of the leading global litigation financiers, Woodsford is flexible and innovative in the financial solutions we deliver. We are glad to discuss potential financing arrangements for a single company or a portfolio of companies.

If you suspect an investment of yours has a claim or claims that you would like to pursue or you'd like to understand more about litigation finance, reach out to discuss.

About the authors



Michael Kallus is a Senior Investment Manager for Woodsford based in San Francisco with a background in complex IP litigation and finance. He joined Woodsford from international alternative investment manager Fortress Investment Group, where, as Vice President, he supported the IP finance group in sourcing IP backed litigation finance, debt and private equity investment opportunities, maintaining relationships with law firms and claims owners, aiding in asset valuations, directing drafting of transactional documents and managing investments post financing. Prior to Fortress, Michael was a director in the Client Development and Acquisitions teams at RPX Corporation maintaining relationships with in-house legal teams, tracking and analyzing market patent risk and negotiating litigation buy outs with plaintiff's counsel of claims on behalf of RPX clients.

As a litigator, after clerking for the Honorable Chief Judge Roger Vinson in the Northern District of Florida, Michael practiced in the Boston office of Fish & Richardson. Michael also worked for the Palo Alto office of Morgan Lewis and later helped found fixed fee litigation boutique, Confluence Law Partners. In addition to IP litigation, Michael has handled trade secret and antitrust claims, drafted technology transfer licenses, and provided M&A support to multi-billion dollar acquisitions. Michael has practiced before a variety of federal and state courts as well as the International Trade Commission and the US Court of Claims.

Michael earned a BA in political science from the University of California Berkeley in 1997 and a juris doctorate from the University of Virginia School of Law in 2003. He is a member of the California and Massachusetts bars.

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Yoav Navon is Director of Litigation Finance, Israel for Woodsford and leads our Israeli office. Yoav helps introduce leading Israeli law firms and their clients to our full range of litigation finance solutions.

Yoav has extensive experience in commercial litigation and arbitration over a broad spectrum of sectors, having acted in the commercial, industrial and governmental disputes, before different legal instances tribunals, including all Israeli courts, arbitrators and mediators.

Prior to joining Woodsford, Yoav was an Associate at Ron Gazit, Rotenberg in Tel Aviv, where he represented clients across a range of areas, including intellectual property, media, antitrust and environmental disputes.

Yoav is a graduate of the University of Bar Ilan, where he obtained a Bachelor of Laws degree (Hons). Yoav also did a period of study abroad at the Monash University in Prato, Italy.

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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 a presence in London, Philadelphia, New York, San Francisco, Brisbane, Singapore, Toronto and Tel Aviv, 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 our own internal legal capability and funds from our 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. By working with Woodsford, law firms and their clients are assured that they are working with an organization meeting the high-quality standards that should define this industry.

The typical minimum claim size we invest in is around \$4-5m. For further information on Woodsford's funding process and what makes a claim attractive to us, see:

[A Practical Guide to Litigation Funding](#)

For further information, visit

www.woodsfordlitigationfunding.com or email **Michael** (mkallus@woodsfordlf.com) or **Yoav** (ynavon@woodsfordlf.com) directly.