



Introduction to Commercial Litigation Finance

COMMERCIAL LITIGATION FUNDING -101

Stewart Ackerly
Mick Biehl
Jonathan Friedland
David Kerstein
David Lorry



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Meet the Faculty

Panelists

Stewart Ackerly - Statera Capital

Mick Biehl - GLS Capital

Jonathan Friedland - Much Shelist, P.C.

David Kerstein - Arcadia Finance LLC

Moderator

David Lorry - The Brattle Group

About This Webinar

Introduction to Commercial Litigation Finance

This webinar provides an essential introduction to commercial litigation funding, specifically tailored for attorneys seeking to leverage funding to support their clients and practice. Whether you represent plaintiffs in high-stakes litigation or are exploring funding options for your firm, this episode breaks down the key aspects of litigation finance and how it can be a strategic tool for legal professionals.

Attorneys will gain insights into how litigation funding can help manage financial risk, improve access to justice, and provide the necessary resources to pursue meritorious claims without upfront costs. The session will also address ethical considerations and best practices to ensure compliance while maximizing the benefits of third-party funding.

About This Series

Commercial Litigation Funding 2026

This webinar is part of a series titled “Commercial Litigation Funding 2026.”

Commercial litigation funding is an increasingly popular tool for attorneys and parties with legal claims to share the risk and reward of litigation with third-party investors, and for investors to capitalize on the uncorrelated returns generated by legal-driven revenue. This webinar series explores this space.

Once a fledgling industry predominantly used in the Commonwealth nations of the United Kingdom and Australia, litigation funding has become a well-accepted and common practice worldwide, especially in the United States, over the past decade or so.

As the industry has matured, there has been a significant evolution in the types of commercial litigation finance investments that are available, the process for securing litigation funding, and the advisors involved in the industry.

Episodes In This Series

1. Introduction to Commercial Litigation Finance

Premiere date: 5/6/26

2. Litigation Finance Market Process

Premiere date: 6/10/26

Episode #1

Introduction to Commercial Litigation Finance

Each Financial Poise Webinar is delivered in Plain English, understandable to investors, business owners, & executives without much background in these areas, yet is of primary value to attorneys, accountants, & other seasoned professionals. Each episode brings you into engaging, sometimes humorous, conversations designed to entertain as it teaches. Each episode in the series is designed to be viewed independently of the other episodes so that participants will enhance their knowledge of this area whether they attend one, some, or all episodes.

Different Types/ Segments of the Litigation Funding Industry

- Commercial litigation
- Mass torts litigation
- Class actions litigation
- Consumer litigation

THIS IS OUR SUBJECT!

Commercial Litigation Funding Defined

Commercial litigation funding is the funding of litigation activities by entities other than the plaintiff, its counsel, or others with a pre-existing contractual relationship with one of the parties

Parties Involved with Commercial Litigation Funding

- Parties with legal claims (Plaintiffs, or the “Funded Party”)
- Attorneys and law firms representing Funded Parties in litigation
- Attorneys/advisors/intermediaries representing Funder Parties in finding/negotiating w/ Funders
- Damages / valuation experts
- Funders
- Funders’ Investors
- Litigation Insurers
- Contingency law firms seeking funding

Types of Cases that Commercial Litigation Funders Fund

- Breach of contract
- Breach of fiduciary duty
- Insurance coverage
- Intellectual property – patents, copyright, trademark, trade secret
- Fraud
- Antitrust
- Class action opt out claims
- International arbitration (treaty or commercial)
- Judgement enforcement

Characteristics of Cases that Are Attractive to Litigation Funders

- Provable liability that funders are able to confirm
- Damages that are monetary and significant relative to amount to be funded
- Defendants with ability to satisfy judgment
- Counsel with successful track record
- Counsel with willingness to accept hybrid compensation model
- Litigants who appear to be rational actors
- Favorable courts/judges
- Predictable timeline to recovery

Metrics for Analysis: Risk

- “*Risk*” is the probability of occurrence of losses relative to the expected return on any particular investment
- Litigation is an inherently *risky* underlying investment
- Risk varies dramatically based on *type of litigation* -- e.g., contract, intellectual property, antitrust
- Litigation risk is *not constant*, but *rather fluctuates* based on litigation developments
- Sellers may own *diversified litigation risk*, depending on the circumstances
- Risk also includes *headline* and *regulatory* risk

Metrics for Analysis: Alignment

“Alignment” is the extent to which investor and investee have parallel incentives:

- Popular new *“buzzword”* in investing world
- Investors’ *desire to protect downside* by not dis-incentivizing funded party
- Protection against *information asymmetry* between buyer and seller
- Preserve upside in *high-end, best-case scenarios*
- Create opportunity for *recurring or repeated business*

Metrics for Analysis: Cost of Capital

“Cost of Capital” is the required rate of return on a portfolio’s existing securities

- Used to evaluate new projects of an investor
- Minimum return investors expect for providing capital--thereby setting a benchmark
- Impacts the types of investments palatable to institutional investors
- Impacts the “pricing” of individual funding products offered by funder to clients

Process of Securing Litigation Funding

- Reach out to litigation funders
- Execute confidentiality agreements
- Exchange information to facilitate due diligence
- Execute term sheet with a litigation funder
- Provide additional information to facilitate additional due diligence
- Negotiate and document litigation funding arrangement
- Consummate litigation funding arrangement

Policy Justifications in Support for CLF

- Solves **pressures of high cost of litigation:**

- *“Protracted discovery is expensive and is a drain on the parties’ resources. Where a defendant enjoys substantial economic superiority, it can, if it chooses, embark on a scorched earth policy and overwhelm its opponent.” Miller v. Caterpillar 17 F.Supp.3d 711 (N.D. Ill. 2014).*

- Provides *access to justice*:

- *“There is a proliferation of alternative litigation financing in the United States, partly due to the recognition that litigation funding allows lawsuits to be decided on their merits, and not based on which party has deeper pockets or stronger appetite for protracted litigation.” Lawsuit Funding LLC v. Lessoff, 2013 NY Slip Op 33066(U) (Sup. Ct. N.Y. County December 4, 2013).*

Benefits for Plaintiffs

- Allows plaintiffs with liquidity issues to bring meritorious cases
- Provides for capital injections for existing cases without sufficient funding
- Reduces risk of a settlement for less than cases are worth
- Allows plaintiffs to continue to use cash for working capital rather than litigation
- Minimizes downside risk to plaintiffs b/c funder usually repaid only if plaintiff wins
- Permits greater access to top legal representation

Benefits for Investors

- Diversification with investments that are different from most other asset classes
- Investment is uncorrelated to capital markets
- Historical returns tend to be outsized compared with other asset classes
- Liquidity timeframe is typically more moderate as opposed to certain other alternative investments
- Potential tax benefits

Benefits for Attorneys

- Expands universe of potential clients
- Allows third party (rather than law firm) capital for litigation expenses, including expert witness fees
- Provides funding source so clients will not run out of money during litigation
- Heightened scrutiny of outside legal bills and price competition by law firms
- Increased prevalence of alternative fee arrangements among BigLaw
- Post-recession proliferation of new litigation boutiques who require capital

Legal Doctrines Related to Litigation Finance

- Maintenance
- Champerty
- Barratry
- Usury

Definitions of Maintenance, Champerty, and Barratry

- Maintenance – an arrangement where a party supports another to enable him or her to further a legal claim
- Champerty – a type of maintenance, where an unrelated party strikes a bargain with a litigant to financially support the litigation in return for a share of the proceeds from that claim
- Barratry – the encouragement of another to bring or continue a claim

History of Maintenance, Champerty, and Barratry

- In medieval England, maintenance and champerty were used by the elite as a means of settling scores
- Feudal lords and other privileged members of society would support legal disputes of others against the funder's personal or political enemy
- Most colonies that imported their laws from England passed laws designed to protect litigants from "officious intermeddling" and profiteering from the sale of legal claims to third parties
- The American civil justice system increasingly recognized that access to justice depends upon broad availability of legal representation
- The public policy for increasing access to legal system for those that could least afford it overrode concerns underlying medieval doctrines

History of Maintenance, Champerty, and Barratry *(cont'd)*

- According to the modern view, widespread exceptions to these doctrines recognize that financial considerations often influence access to justice
- Most states now permit maintenance, champerty and barratry as they refuse to void contracts based on these outdated doctrines
- Further, maintenance and champerty are typically not implicated by modern litigation finance arrangements because a funder has no control over litigation or settlement decisions & lawyers maintain their independence and duty of loyalty to client

Ethical Doctrines Related to Litigation Finance

- Fee Splitting
- Attorney-Client Privilege (and Common Interest Doctrine)
- Attorney Work Product Protection
- Attorney work product immunity protects from discovery materials prepared by attorneys and third parties in anticipation of litigation.
- Disclosure Requirements
- Certain, limited courts throughout the United States require some level of disclosure regarding litigation finance arrangements

Fee Splitting

Model Rules of Professional Conduct

5.4: Professional Independence of a Lawyer

- A lawyer or law firm shall not share legal fees with a nonlawyer, except [certain exceptions].
- A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
- A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
- A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
 - a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
 - a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation; or
 - a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Attorney-Client Privilege

- The attorney-client privilege is a legal concept that protects certain types of communications between attorney and client from disclosure to the opposition
 - The privilege applies only to communications between a client and the attorney, not any communication about the lawsuit.
- The client is free to tell a prospective funder anything other than what the client communicated to the attorney, without waiving the privilege.
- A funder can expect to receive substantial information from the plaintiff about the claim without ever creating attorney-client waiver problems.

Common Interest Exception to the Attorney-Client Privilege

- The attorney-client privilege is a legal concept that protects certain types of communications between attorney and client from disclosure to the opposition
 - The privilege applies only to communications between a client and the attorney, not any communication about the lawsuit.
- The client is free to tell a prospective funder anything other than what the client communicated to the attorney, without waiving the privilege.
- A funder can expect to receive substantial information from the plaintiff about the claim without ever creating attorney-client waiver problems.

Best Practices on Confidentiality

- Ensure NDA is in place before any CI is shared with a legal finance firm. Courts generally consider this a necessary and often sufficient condition to preserve confidentiality and deny discovery requests of information shared with a legal finance firm
- Share only information subject to attorney work product protection.
- Expressly state in term sheet and final agreement that funder has no control over the litigation or settlement
- Know your jurisdiction – certain states or courts have rules regarding disclosure

Basic Contractual Terms- Use of Proceeds

“Use of Proceeds” -- will refer to how funded party (plaintiff or attorney) intends to use the legal funding

- Proceeds may be used for direct litigation costs, i.e., attorneys’ fees and/or costs
- “Hard costs” includes discovery costs, experts’ fees, filing costs; basically anything other than attorneys fees
- Funding arrangements may be used for non-litigation needs, such as operational needs of plaintiff or so that plaintiff can recognize revenue
- In other situations, attorneys may seek funding for use across firm-wide activity, not just one specific litigation

Basic Contractual Terms- Investment Structures

- Single case- litigation funding to a party to a single dispute (litigation or arbitration)
- Portfolio- litigation funding to a party to multiple disputes (litigation or arbitration)
- Law firm portfolio financing – litigation funding to a law firm representing clients in multiple disputes (litigation or arbitration)
- Other
 - Law firm loans
 - Equity ownership of law firms
 - Defense funding
 - Litigation insurance
 - Special situations trades

Basic Contractual Terms- Return Structure

- Typically involves some kind of waterfall where capital outlays are returned followed by some metric of additional return
- Return metric could be tied to some kind of multiple or percentage or calculated based on an internal rate of return

Additional Background Reading:

Litigation Risk Mitigation Through the Use of Third-Party
Litigation Funding

Questions or Comments?

If you have any questions about this webinar that you did not get to ask during the live premiere, or if you are watching this webinar On Demand, please do not hesitate to email us at info@financialpoise.com with any questions or comments you may have. Please include the name of the webinar in your email & we will do our best to provide a timely response.

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Meet The Faculty

David Lorry - David.Lorry@brattle.com



Mr. Lorry specializes in bankruptcy and restructuring matters, with three decades of experience executing and monitoring direct investments in distressed and special situations and helping clients solve a wide range of business and legal issues.

A former practicing attorney, private equity investor, and investment banker, Mr. Lorry has worked with public and private companies across a diverse range of industries in all stages of mergers and acquisitions, general corporate and commercial transactions, and a wide range of commercial disputes. He also has experience in valuation analyses, commercial lending, capital raising, and financial and operational due diligence.

In bankruptcy and restructuring matters, Mr. Lorry's representative transactions and matters include Section 363 acquisitions and dispositions, loan-to-own transactions and restructuring support agreements, debtor-in-possession (DIP) financing, claims and debt trading, recharacterization and other avoidance actions, and directors and officers (D&O) and fiduciary claims. [Read More](#)

[Mick Biehl](mailto:Mick Biehl-mbiehl@glscap.com)-mbiehl@glscap.com



Mick Biehl is a Principal at GLS, where he performs due diligence and monitoring of commercial litigation and arbitration-related investments. Before joining GLS, Mick was a litigation partner in the Chicago office of Kirkland & Ellis LLP and a law clerk for the Honorable Diana E. Murphy of the U.S. Court of Appeals for the Eighth Circuit. He holds a J.D., with honors, from the University of Chicago Law School, where he was a member of the Law Review, and an A.B., with honors, from Washington University in St. Louis.

Jonathan Friedland – jfriedland@muchlaw.com



Summary

- Corporate structuring and restructuring attorney with nearly 30 years of experience advising companies, boards of directors, owners, and other stakeholders in various contexts, including distressed, bankrupt, and special situations.
- Represented and advised clients in 150+ transactions and litigation across various industries.
- Serial entrepreneur who understands business from the business person's perspective.
- Consistently ranks as a top business law attorney in various surveys, holding the highest possible ratings from Martindale-Hubbell (AV® Preeminent™), AVVO (10/10), and Justia (10/10). Has repeatedly been recognized as a “Super Lawyer” in multiple practice areas, including Business/Corporate Law and Bankruptcy/Creditor/Debtor Rights, named a “Leading Lawyer” by Leading Lawyers Magazine several times, and selected for inclusion in The Best Lawyers in America® for exceptional work in Corporate Law.
- Admitted to the bars (each by exam) in New York, Illinois, Arizona, and New Jersey.

Thought Leadership Examples

- Principal Author and Editor-In-Chief, [Commercial Bankruptcy Litigation](#) & [Strategic Alternatives for and Against Distressed Businesses](#) (each published annually by Thomson Reuters)
- Author of 100+ articles and speaker at 100+ events. Examples here.

Academics

- Clayton Center for Entrepreneurial Law Visiting Professor at the University of Tennessee College of Law.
- Adjunct Professor of Strategic Management, University of Chicago Graduate School of Business (co-taught with Jamie Sprayregen).
- JD from the University of Pennsylvania, followed by a one-year federal court clerkship; B.S. in Business Administration (magna cum laude in three years) from Albany State University. [Read More](#)

David Kerstein-dave@arcadiadfin.com



Dave is a Founder and Managing Director at Arcadia Finance, a litigation funding firm focused on mid-market opportunities. An experienced litigation funder, he began his career in litigation funding with Bentham IMF (now Omni Bridgeway) and co-founded Validity Finance, where he was Chief Risk Officer and Senior Investment Manager, before launching Arcadia. He has experience designing financial solutions to litigation and provided strategic advice to clients. He began his professional career handling complex commercial disputes at the international law firms Gibson Dunn and Chadbourne & Parke. As a practicing lawyer, Dave litigated on behalf of both plaintiffs, for whom he has recovered substantial sums, and defendants, for whom he has achieved trial court victories or favorable outcomes. He also possesses extensive experience across jurisdictions, having tried cases in state and federal courts and before arbitration panels across the US and internationally.

Dave earned his J.D. from the University of Pennsylvania Carey Law School, where he was a Toll Scholar, and his B.A from the University of Pennsylvania where he was a BF Scholar.

Stewart Ackerly - sha@stateracap.com



Stewart is a Director at Statera Capital. He leads Statera's origination efforts and public policy initiatives. Stewart is responsible for bringing commercial litigation finance to new markets and expanding the universe of lawyers and clients that can utilize litigation finance to level the playing field and ensure access to justice.

Stewart is a former trial lawyer with unique experience in the public and private sectors. Before joining Statera, Stewart practiced law at Williams & Connolly LLP, where he represented Fortune 50 companies, sovereign nations, and other clients in complex commercial litigation and arbitration. Stewart clerked for Judge Karen LeCraft Henderson on the United States Court of Appeals for the D.C. Circuit.

Stewart previously served as Chief of Staff at the U.S. International Development Finance Corporation, the U.S. Government's \$60 billion development bank. Prior to that role, Stewart served as Deputy Chief of Staff at the Office of the U.S. Trade Representative.

Stewart received his B.A. and J.D. from the University of Virginia.

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