

Legal Funding:

The Means To Take On Goliath



A WHITE PAPER PRESENTED BY

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We all know an unfair fight when we see one. Whether on the playing field or battlefield, the classic David v. Goliath scenario is easy to spot. One area where this imbalance can take place is the courtroom. Take, for instance, a young woman trying to build a case against a high-level executive at a behemoth corporation. The woman was a victim of sexual assault and is brave enough to attempt to hold her abuser accountable. She is just getting started in her chosen profession and is still establishing her financial footing. Is it realistic for her to take on her abuser, who is supported by an established corporation that has a team of lawyers on annual salaries that can drag the case out until the victim can no longer afford to continue the fight?

Such disparities are frustratingly common. Other examples include a victim of a serious car accident going up against a giant insurance company, and a parent fighting a hospital system after a birth injury. Thankfully, there is a tool that can help these victims have the means needed to continue their fights. Litigation funding, also known as third-party litigation funding, legal funding or lawsuit lending, can provide the funds necessary to move forward with legal action.

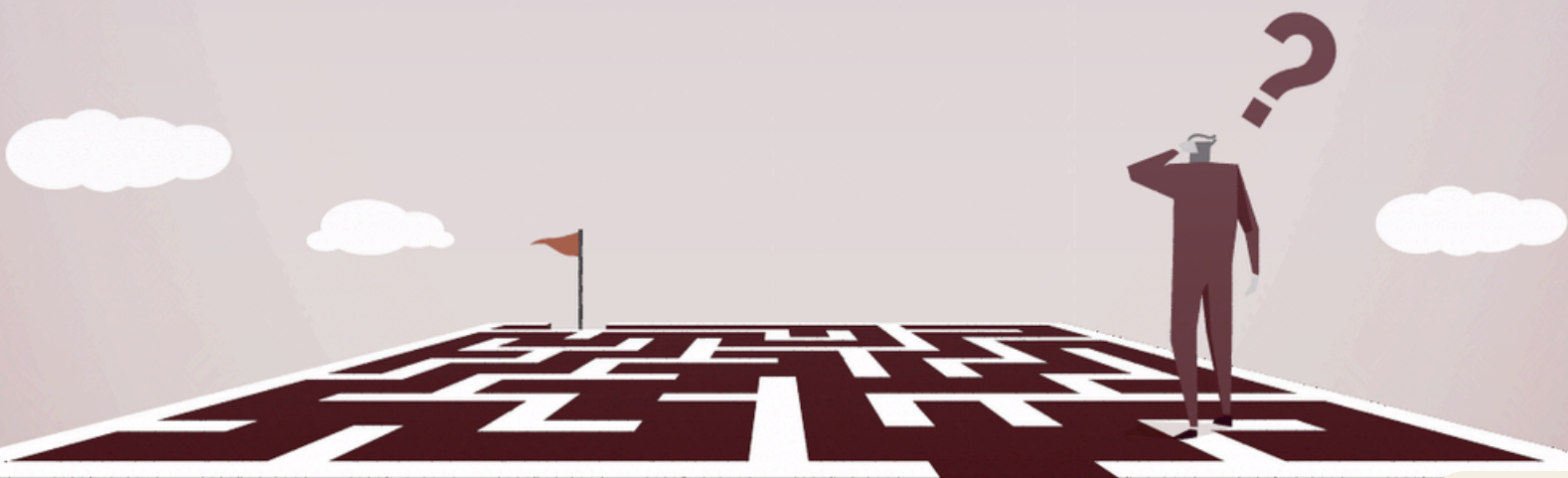
What Are Your Options If Cost Is A Barrier To Legal Action?

Litigation funding provides victims with a financial safety net, allowing them to focus on healing while their legal counsel concentrates on building their cases. It can help alleviate their concerns about financial pressures, enabling them to move through the legal process to the end rather than quickly accepting low settlements to recoup funds.

For such a feat, it is important to have the right legal counsel by your side. Larry Taylor Jr., founder of tailormadeaw.com and managing partner at the Cochran Firm in Texas, is a fierce advocate for justice and a dedicated leader in both the legal field and his community. He knows the struggles that come with pursuing legal action because he has faced them. Before becoming an attorney, Larry needed to use the legal system to fight for his home.

After completing the building process and making a home of his own, paying taxes on it for almost eight years, local officials stated the home did not exist. The problem? The builder failed to take out any permits. This led to costly legal battles. Financial services such as legal lending were not available at the time, and he simply could not afford to continue the fight. This experience fueled Larry's drive for justice and played an important role in his decision to become an attorney. He understands that litigation funding, when used wisely, can help those in the community take on legal challenges that may otherwise seem insurmountable.

But what does it mean to use legal funding wisely? It is important to understand its evolution and how the system works to better ensure that you choose a reputable company.



The Good And The Ugly: Beware Of Predatory Lending

When used wisely, litigation funding can help provide the means necessary to build a strong case. However, it is important to thoroughly review any potential legal lending opportunity to make sure that the loan does not exceed a reasonable portion of the recovery. Predatory lending can be a problem. Review any proposal carefully and proceed with caution.



Legal Funding Laws Are Changing Fast – Victims Could Pay The Price

The laws that guide the use of legal funding are rapidly changing. For example, California recently adopted a law that makes it much more difficult to seek legal funding. The law essentially prevents alternative business structures (ABS) from associating with firms or being in California. This is a huge blow to the practice of law when it comes to being able to fund firms, particularly for class action and mass tort cases.

Our Constitution provides the right to access justice, but that right depends on practical ability, not just principle. Legal funding can provide critical support that enables plaintiffs to meet basic needs while pursuing their cases. Attacks on plaintiff funding are making it more difficult for plaintiffs to realistically exercise this right.



Challenges And Solutions

When used wisely, litigation funding can help provide the means necessary to build a strong case. One of the primary concerns about using legal funding is the potential for the investor to influence the progression of the case. Investors inherently want to recoup their funds and turn a profit, and this goal can translate to the investor trying to push for an early settlement. This goes against an attorney's professional code of conduct, as they are ethically bound to honor a client's choices – not an investor's – regarding the progression of the case. A client can further protect themselves from such issues by making sure that the funding agreement includes a provision that prevents the investor from making decisions about the litigation or settlement of the case.

Another concern is compounding expenses. Although legal funding

enables plaintiffs to complete a more thorough discovery process to build stronger cases, these efforts come at a price. This, paired with the costs associated with the loans themselves, can mean that the lender takes a large portion of the settlement.

Some states, such as New York, have capped the percentage of a lender's recovery, allowing for some predictability and reducing the risk of loans exceeding settlement amounts. This can pressure defense attorneys to settle cases more quickly, as prolonging litigation will not change the plaintiff's financial outcome from the loan.

Other states, such as Texas, have taken a different approach. It is not uncommon for defense attorneys in Texas to attempt to disqualify law firms by demanding financial disclosures, which is often an unfair intrusion.



**“If we’re going to make me show mine, show me yours.”
- Larry Taylor**



Framework Of Legal Funding

Although it's been in existence for centuries, legal funding has not always been viewed favorably. During the 18th century, maintenance – or the provision of funds for legal counsel solely to support the lawsuit – was frowned upon. It was seen as a means to “keep alive strife and contention” instead of a way to help serve justice.

Legal scholars of the time viewed the provision of funds to support a lawsuit with a financial interest – known as champerty – as even more offensive to the pursuit of justice. As such, the use of legal funding was generally presumed throughout the law community as not permissible.¹ Some states established laws limiting or even prohibiting the use of these funding mechanisms.

But this view is changing. Litigation is expensive. In addition to covering the

costs of court fees, victims must also pay for less expected charges, such as those for gathering documents during the discovery process to help build evidence for their legal claims. Even keeping up with basic living expenses while going through the legal process can seem impossible.

In recent years, and in response to the soaring costs of litigation, states have shifted their stances to better ensure equal access to justice. They strive to reduce the risk of victims being barred from seeking relief because of their inability to afford litigation. While some states still have strict rules, others are offering a more welcoming approach.²

Today, litigation funding is a big business. Investors in this market have billions of dollars in available capital to support various cases.³

¹National Association of Mutual Insurance Companies (2011, May), “Third-Party Litigation Funding: Tipping the Scales of Justice for Profit”

²Lat, David (2024, November 6), “Litigation Funding Is Here to Stay, But Faces New Challenges (1),” Bloomberg Law

³Bloomberg Law (2020, February 24), “How Litigation Finance Works”

Legal Funding Versus A Traditional Loan

There are options that help provide the financial support necessary when pursuing legal action. One of the more common is a traditional loan. Litigation funding is different from traditional loans in two key ways:

1. **Repayment:** Instead of making monthly payments and repaying the loan with interest, repaying the legal funding received is only required if the lawsuit is successful. This allows the victim to take the time they need to resolve the legal issue without pressure to settle.
2. **Collateral:** The underwriting for a traditional loan often involves an asset, such as a home or car, but with legal funding, the underwriting focuses on the merits of the case.⁴

It is important to note that these funding companies provide support to individuals and businesses pursuing litigation.



Types Of Litigation Funding

There are two main types of litigation funding: direct and commercial. Direct litigation funding, also known as plaintiff funding, goes directly to the victim and provides financial support for living expenses and other personal costs while the litigation is ongoing. In contrast, commercial litigation funding generally goes to the legal counsel and funds litigation expenses.⁵

⁴ Carminati, G. (2022, December 12), "Litigation Finance: A Modern Financial Tool for Corporate Counsel" American Bar Association

⁵ NAMIC (2011)

Real-Life Examples: Case Studies To Help Provide Clarity

Common types of cases that benefit from these funds include those involving severe injuries resulting from car accidents, insurance disputes, birth injuries and complicated legal matters that require more experienced counsel.

Serious Car Accident Injuries

When substantial injuries from a car crash result in staggering medical bills and the inability to return to work, legal funding can not only help cover the costs of litigation but also assist in paying mortgage bills, medical bills, utilities and other expenses while the victim focuses on healing. In one example, a man was killed in a tragic car accident, and his wife was unable to pay the bills after his death. Litigation funding provided financial solutions so that she could pursue legal action. Without legal funding, she may have needed to settle to avoid losing her home. Instead of having to rush the process, she was then able to take the time necessary to build a strong case and receive the settlement she deserved. As a result, she did not need to work for the rest of her life.



Insurance Disputes

Insurance companies set aside funds to resolve cases. It is in their interest to drag these cases out, as the victim is more likely to accept a low settlement offer. The insurance company continues to operate profitably while the victim struggles to pay their bills. Litigation funding can help level the playing field, allowing the victim to stay in the fight and get a just settlement.



Birth Injury

A medical error during the delivery of a child can lead to a lifetime of medical expenses. A parent may need to quit their job to help provide care. This loss of income, combined with hospital bills and additional future medical expenses, can cripple a family. Having the means to fight for a fair settlement does more than just enable you to pay the bills; it also brings the peace of mind that comes with knowing that you have the finances necessary to care for your child.



Employment Law

As discussed earlier, those who are the victims of sexual harassment or other forms of employment discrimination and are brave enough to fight back may find themselves unable to afford the cost of lengthy litigation. A strong case can benefit from legal funding, allowing the victim to build their case, pursue justice and effectuate actual change by pushing for accountability.



Experienced Legal Counsel

As in any profession, more experienced counsel generally comes at a higher cost. However, having the funds necessary to hire a skilled, knowledgeable lawyer can help victims pursue legal remedies that they may not have otherwise considered. Take, for example, a driver who hydroplaned on a poorly maintained highway, striking another vehicle and killing the passengers. The driver was able to use legal funding to hire an experienced lawyer. The attorney not only settled with the other driver but also built a case against the local county road commission to help share in the financial responsibilities that followed the tragic accident.

These are just a few examples of the types of cases that can move forward with the use of legal funding.⁶ Larger defendants, from well-established individuals to corporations, may attempt to delay litigation through discovery and other procedural hurdles, bleeding a plaintiff's resources dry and forcing them to accept a settlement out of necessity. Litigation funding provides victims with the means to fight back.



⁶ FindLaw (2018, November 14), "Litigation Funding: Is It Right for Your Case?"



Recommendations For Clients And Firms

Legal funding can serve as an entry point for firms to handle expensive mass tort or class action cases, enabling legal counsel to fight for change by having the financial backing to assemble the necessary team. Those who choose to pursue this form of funding can better ensure that they choose a lender with fair lending practices by avoiding the following red flags:

- **Quick approval:** A trustworthy litigation finance company will have a thorough due diligence process.
- **Overinvolvement:** The company should not have a say in the progression of the case. Any indication that the company will attempt to assert itself in the legal process is a concern.

It is important that an individual considering legal funding have an attorney who can strategically apply it. When used wisely, this funding can not only help the plaintiff build their case but also discourage the defendant from purposely prolonging the case, which helps incite true change. Victims can seek out legal counselors who will both fight for their interests and push for the offenders to become responsible corporate citizens by changing their policies and procedures. This funding can provide the resources necessary to build the right team that will use the legal system to fight for justice.

Legal funding can act as an equalizer, giving David a fighting chance against Goliath.

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Sources

¹ National Association of Mutual Insurance Companies (2011, May), “Third-Party Litigation Funding: Tipping the Scales of Justice for Profit,” https://www.namic.org/wpcontent/uploads/legacy/publicpolicy/1106_thirdPartyLitigation.pdf

² Lat, David (2024, November 6), “Litigation Funding Is Here to Stay, But Faces New Challenges (1),” Bloomberg Law, <https://news.bloomberglaw.com/us-law-week/litigation-funding-is-here-to-staybut-faces-new-challenges>

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⁴ Carminati, G. (2022, December 12), “Litigation Finance: A Modern Financial Tool for Corporate Counsel,” American Bar Association, https://www.americanbar.org/groups/business_law/resources/business-law-today/2022-december/a-modern-financial-tool-for-corporate-counsel/

⁵ NAMIC (2011)

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