



WEST U CAPITAL

Litigation Funding in Patent Cases
NYIPLA Patent Litigation Committee Meeting

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Agenda

- What is Commercial Litigation Finance?
- How Can Litigation Finance Help Me and My Firm?
- Which Patent Cases Get Funded?
- How Does It Work?





What is Commercial Litigation Finance?

Litigation Finance is:

- Any transaction where a litigation claim secures financing
- Funds are provided on a non-recourse basis, i.e., the financier's return depends on a successful outcome in the litigation



A Third Way to Access the Courts

Hourly fee model.

Lawyer paid by the hour (but most clients don't have that kind of money)

Contingency fee.

Lawyer has contingent fee (but most lawyers can't take that much risk)

Litigation finance.

Third-party finances the litigation in exchange for a share of case proceeds.



Who Uses Litigation Finance?



Small/Mid-size
Companies



Law Firms



Large
Corporations



Which Cases Get Funded?

Is Your Case a Candidate for Funding?

- **LIABILITY.** Strong liability case on infringement and validity.
- **DAMAGES.** 10:1 ratio between the expected damages and the funding amount.
- **COLLECTABILITY.** Solvent defendant(s) with a clear path to collection.
- **TIME TO RESOLUTION.** Reasonable time to resolution (2-4 years).

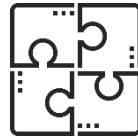


WHICH CASES GET FUNDED?

How Do Funders Invest in Patent Cases?



Fee and Cost
Funding



Portfolio
Funding



Working Capital



Equity
Investments



Patent
Acquisition



Bespoke
Programs



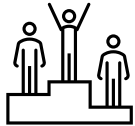
How Funding Helps Clients



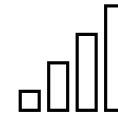
MANAGE RISK. Rather than taking litigation risk, companies can re-invest their capital back into their core products.



MANAGE LEGAL SPEND. Corporate claimholders can take legal spend off their balance sheets.



HIRE THE BEST COUNSEL. Funding lets litigants hire the very best lawyers who maximize the likelihood of victory.



HIGHER ROI. Funding provides higher returns on capital invested in litigations (e.g., 8x without funding vs. 120x with).

What to Submit to a Funder

Cases are more likely to be approved for funding if counsel shares an oral or written analysis discussing the opportunity.

- **The facts.** Provide background facts on the dispute, highlighting key documents.
- **Case analysis.** Liability, damages, collectability. Infringement claim charts and any prior art.
- **Strategy.** Discuss the litigation strategy, including jurisdiction, venue, and likely time to recovery.
- **Funding budget.** Broken down by fees and costs (and any working capital).





How Does It Work?

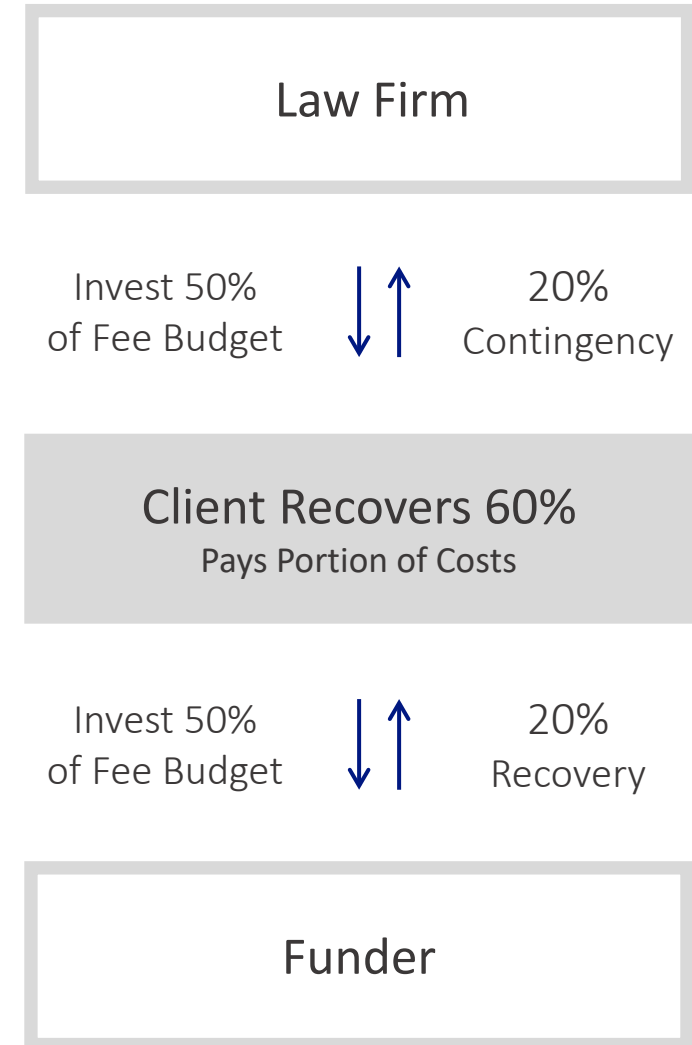
Inventor Co. v. Infringer Corp.

- Case Budget:
 - \$6M Fees
 - \$2M Expenses
- Funding Proposal:
 - \$3M (50% fee budget)
 - \$1.8M (90% of costs)



Single-Case Risk Sharing: 50/50

1. Client reduces fee/cost risk
2. Law Firm's and Funder's risk and interests are aligned
3. Returns can be tiered



Inventor Co. v. Infringer Corp.

	With Funding
<u>Legal Fees</u>	Client pays \$0 in legal fees. Funder invests \$3M in case. Law Firm works \$6M in hours; receives \$3M as case progresses.
<u>Expert, Discovery and other Costs</u>	Client pays \$200,000 in costs Funder pays \$1,800,000 in costs
<u>Successful Termination</u> (Client wins \$100M judgment)	Client receives \$60M Funder receives \$20M Law Firm receives \$23M (\$20M plus \$3M)
<u>Unsuccessful Termination</u> (Client loses case on appeal)	Client invested \$200,000 instead of \$8M. Law Firm received \$3M (half its fees)



From the Law Firm's Perspective

Under this example, how much in fees will the law firm see?

Fee Arrangement	Successful Termination (Client Wins \$100M Judgment)	Unsuccessful Termination
Hourly	\$6M	\$6M
Full Contingency (40%)	\$40M	\$0
Funded Hybrid	\$23M	\$3M



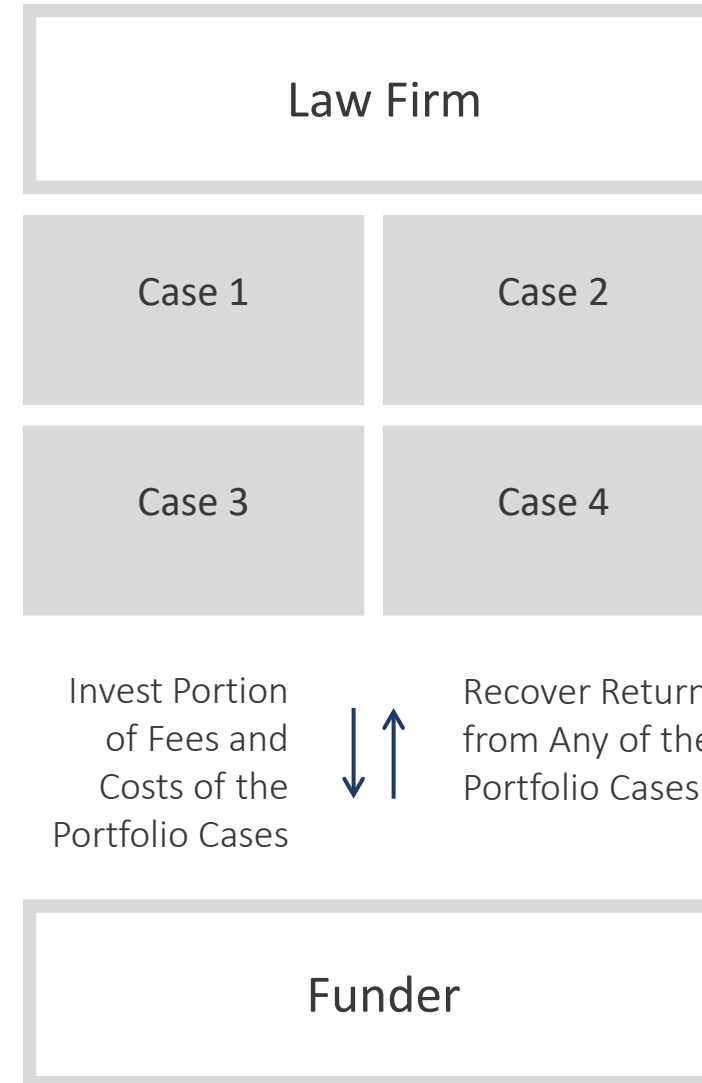
From the Client's Perspective

- If the case recovers **\$100M** and costs **\$8M** to litigate:
 - Self-funding means client receives **12.5x** on \$8M investment
 - With funding, client invests \$200K, recovers \$60M or **300x on investment**, AND
 - The company has \$7.8M to invest in growth in the meantime
 - The downside risk of loss is covered

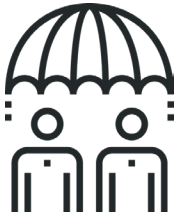


Portfolio Risk Sharing

1. The funder's risk is reduced because it is spread over multiple cases.
2. As a result, the funder's returns can be reduced.
3. Improved process: reduce transaction costs and time as new cases require funding and can be added to the portfolio.



What are the Benefits of a Law Firm Portfolio?



Reduce risk, but still participate in the upside.

Minimize firm's risk across contingency fee cases – enabling the firm to take on new matters too.



Better pricing.

Portfolios are usually lower risk, so funders can usually offer better terms.



Serve clients.

You don't need to turn away clients that have strong cases but can't pay.



Recruit clients.

Portfolio funding provides an edge when recruiting new clients.



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Contact Us for Questions or Discussions



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