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Practical Guidance Glossary

Litigation Finance Glossary

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Litigation finance sits at the intersection of a rapidly evolving legal industry and the world of finance. The industry has quickly developed its own vernacular. Understanding this specialized vocabulary is critically important for anyone involved in negotiating a legal finance transaction. Below are some key concepts and their definitions.

After the Event (ATE) Insurance	Insurance available to plaintiffs and defendants after litigation has already been filed, typically to cover the opponent's legal fees if the insured party loses the case. It is more common in the United Kingdom, but it is increasingly available in the United States when litigants sue under contracts with cost-shifting provisions (i.e., a "loser pays" provision).
Alternative Fee Arrangements (AFAs)	A law firm billing arrangement that provides an alternative to the traditional hourly billing rate. Some possible AFAs include fee discounts, full or partial contingency, fixed fee, capped fee, and success fee agreements.
Appeals Funding	Litigation funding provided after the trial phase and before or during an appeal, offering the client immediate access to capital that it can use to litigate the case through the appellate phase or for other business purposes.
Arbitration Funding	Litigation funding for domestic or international commercial arbitrations, which may include international treaty disputes and complex international commercial disputes. Funding in arbitration is both long-established and growing, and several jurisdictions have issued rules and regulations that expressly permit such funding.
Asset Monetization (also known as Claim Monetization)	A claimholder can fully or partially monetize a legal claim. The claimholder fully monetizes its litigation asset by assigning the claim in its entirety to a third party. Partial monetization occurs when a funder advances a portion of the expected damages in the case, usually as a non-recourse investment. In partial monetizations, the claimholder remains the party in interest, retains responsibility for pursuing the claim or enforcement effort, and continues to control the legal strategy.
Bankruptcy Funding (also known as Insolvency Funding)	Litigation funding made available to debtors, trustees or other stakeholders in the context of corporate liquidation or reorganization proceedings. As with other types of funding, the capital provided can often be used to pay the fees and costs related to litigating, or for other purposes related to the reorganization or liquidation.
Broker	An intermediary who, for a fee, connects parties seeking litigation finance with funding companies.
Champerty	A doctrine imported from English law that prohibits third parties from assisting a claimant in exchange for a financial interest in the outcome of a dispute. Many American states have rejected or limited the doctrine, but vestiges of it still remain in some jurisdictions.

Client	Clients of litigation finance companies are typically either claimholders (e.g. a company, trust, university, government entity or NGO in commercial litigation finance, or individuals in consumer litigation finance) or lawyers (e.g. a law firm or solo practitioner that represents clients in commercial litigation).
Collateral	Asset securing a loan. In litigation finance, typically, the damages award or settlement amount a claimholder expects to receive in a case or set of cases used to secure the funding. When the funded party is a law firm, collateral usually refers to the fee the law firm expects to receive in the case.
Confidentiality, Duty of	The obligation to keep private the confidential information of clients or claimholders. Lawyers' confidentiality obligations are imposed by the jurisdiction's ethical rules; funders' confidentiality obligations are typically imposed by contract.
Contingency Fee Arrangement	An alternative fee arrangement whereby a law firm litigates a case on behalf of a client in exchange for a contingent portion of case proceeds received only if the case succeeds.
Control	The client and counsel's authority to make all important decisions regarding legal strategy and case resolution. Litigation finance companies should not control litigation strategy or settlement decisions.
Crowdfunding for litigation	Litigation funding in which the claimholder raises financing from a number of individual investors. The claimholder may raise funds independently, through a broker, or through some other aggregation mechanism such as a website.
Defense Funding	Funding provided to the defendant in a case, typically where the funder provides a discount on the defense fees in return for a success fee upon favorable resolution.
Due Diligence	A vetting process during which a funder assesses the strength of a case and the legal team, develops an estimate for the potential damages or settlement amount, and assesses any potential obstacles to recovery.
Exclusivity	A period of time during which the client agrees to negotiate with a single funder. The funder will usually conduct diligence on the case or set of cases during this time. Clients should not expect to grant funders a period of exclusivity until after the client and funder have entered into a term sheet.
Investment Multiple (also known as Multiple)	A way to structure a funder's return on investment using a multiple of the capital committed or deployed. For example, upon successful case resolution the funder recovers its invested capital as well as a pre-negotiated amount, such as 2x or 3x the amount invested. (See also, Percentage Recovery.)
Judgment Enforcement	The post-judgment process of ensuring the owing party pays the amount awarded, which may include investigation, asset tracking, and additional litigation.

Legal Finance	Often used interchangeably with the term litigation funding, "legal finance" is an umbrella term for any transaction in which legal claims (or, for law firms, contingent fees or client billing receivables) are valued as financial assets and used as collateral to obtain capital.
Litigation Investment Agreement (also known as Litigation Finance Agreement or Funding Agreement)	The central agreement in any litigation finance transaction, laying out the funding amount, terms, rights, and mutual obligations of the claimholder/counsel and the funder.
Litigation Risk	Uncertainty related to the duration, complexity, cost, or outcome of a particular case or set of cases. Litigation risk has historically been difficult for companies, firms, and traditional financial institutions to assess, price, or share. The litigation finance industry addresses these challenges by creating a market in litigation risk.
Maintenance	A close cousin of the doctrine of champerty, the doctrine of maintenance prohibits a third party from "intermeddling" with another's lawsuit. As with champerty, the maintenance doctrine does not prohibit standard commercial litigation finance agreements in most jurisdictions.
Non-Disclosure Agreement (NDA)	An agreement between the funder and client that protects the parties' exchange of information while negotiating a litigation finance agreement and throughout the case.
Percentage Recovery	A way to calculate a funder's return on investment in which the funder will be entitled to a pre-negotiated percentage—capped or uncapped—of any settlement or damages award. (See also, Investment Multiple)
Portfolio Finance	An arrangement in which a funder invests in multiple cases in a single transaction, with the return on invested capital coming from any of the cases in the portfolio or from the portfolio's aggregate results. Portfolios are often used to spread risk and offer clients more capital on better terms.
Risk Sharing	The opportunity that litigation finance creates for claimholders and counsel to align interests and shift some portion of litigation risk to a third-party funder.
Success Fee	A pre-negotiated amount (either a fixed number or percentage) received by a claimholder's counsel or funder in the event of a favorable resolution of a case, most often in the context of defense funding. For defense funding, a success fee is typically defined in relation to the amount of liability avoided in the case.

Term Sheet	An initial non-binding offer from a funder detailing the terms and conditions under which a funder would be willing to invest in a particular case or set of cases. A funder usually provides the term sheet after its initial review of the case, but before it conducts comprehensive due diligence.
Third-Party Litigation Funding (TPLF)	Another term for litigation finance or legal finance.
Tranche	A portion of funding deployed at set intervals. For example, a funder's investment in a case may be tranched out at set intervals of time (e.g., a new tranche every three months) or at various stages of the case (e.g., a new tranche upon completion of the motion to dismiss stage, summary judgment stage, etc.).
Waterfall	“Waterfall” describes a payment priority structure outlining the order of priority in which litigation proceeds are paid out. A common example would be for the funder to receive first priority on its deployed capital, for the funder and lawyers to receive next priority on their combined returns, with the remainder of recovery going to the client.
Working Capital	Capital provided to a claimholder or law firm for general business purposes and secured by the claimholder's litigation or the lawyer's anticipated fees. For example, in addition to funding fees and costs, a funder could provide working capital to the client secured by case proceeds.