Financing litigation defense: How it works

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When learning about legal finance, in-house lawyers always ask one question: “Can we finance our defense matters?” And that line of inquiry makes sense—after all, while many companies rarely (if ever) bring lawsuits, it’s the rare company that’s never a defendant in litigation (often more regularly than it would like). The good news is that—while the majority of legal financing is for the pursuit of claims—yes, legal finance also works for the defense of weak matters.

Below, we describe three typical defense financing models and how they benefit in-house legal departments.

1 *Portfolio of mixed cases*	**HOW IT WORKS** A portion of client fees and expenses for multiple plaintiff and defense matters is financed by a single set of deal terms. Burford provides the capital on a non-recourse basis, meaning it assumes all downside risk and earns its return only in the event of the plaintiff matters prevailing. **BENEFITS** Turns legal department into a profit center by generating revenue through recoveries and offloading cost and risk of defense.			
	MATTERS	**CLIENT COST**	**BURFORD PAYS**	**CLIENT GAINS**
	Pool of plaintiff and defense matters	$0	Significant portion of legal fees and expenses, and assumes all downside risk	All recoveries from successful claims net of Burford return

2 *Single defense matter—With counterclaim*	**HOW IT WORKS** Burford pays a portion of client fees and expenses for defending against a weak claim and for pursuing a counterclaim. Burford covers costs on a non-recourse basis, meaning that if the counterclaim fails, Burford is not entitled to any repayment of its investment. **BENEFITS** Neutralizes risk of cost exposure, with potential to generate revenue through recovery.			
	MATTERS	**CLIENT COST**	**BURFORD PAYS**	**CLIENT GAINS**
	Weak defense matter balanced by counterclaim	$0	Significant portion of legal fees and expenses, and assumes all downside risk	All recoveries from successful claims net of Burford return

3 *Single defense matter—No counterclaim*	**HOW IT WORKS** Burford advances a portion of costs to defend against a weak claim, earning its investment back and a return based on a predetermined success measure, such as client savings or prevailing on a dispositive motion. Capital deployed on a non-recourse basis, meaning that the client is not obligated to repay any of Burford's investment should the "success event" fail to materialize. **BENEFITS** Creates predictability of cost and minimizes downside risk of loss to the company.			
	MATTERS	**CLIENT COST**	**BURFORD PAYS**	**CLIENT GAINS**
	Weak defense matter	$0	Significant portion of legal fees and expenses, and assumes all downside risk	Risk mitigation, budget savings, and tool to protect the company's wealth