

THE 3<sup>RD</sup> ANNUAL LF DEALMAKERS FORUM

# Event Summary

OCTOBER 13-22, 2020 / VIRTUAL EVENT



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STATS  
**2020**

**270**  
1-TO-1  
MEETINGS

**250**  
DECISION  
MAKERS

**38**  
A-LIST  
SPEAKERS

**13**  
SPONSORS &  
PARTNERS

**22**  
SESSIONS &  
BREAKOUTS

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ABOUT

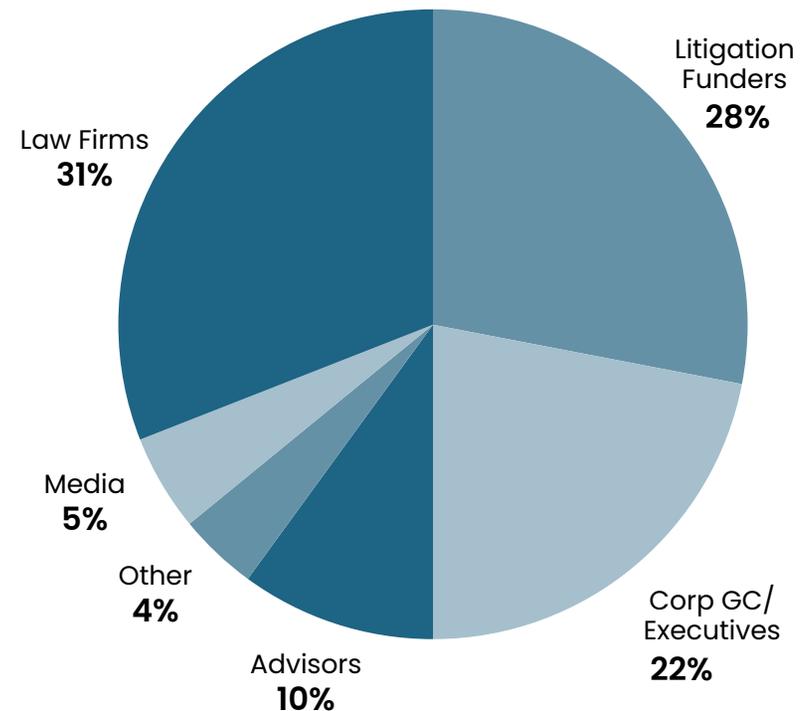
# LF DEALMAKERS FORUM

## Advancing Litigation Finance

Widely considered the industry's "go-to" event, LF Dealmakers is an exclusive gathering of thought leaders in litigation finance, as well as in-house and outside counsel, and other key stakeholders.

Event hallmarks include rigorously researched content, insightful panels, A-list speakers, 1-to-1 meetings, and a curated audience of decision-makers.

## 2020 ATTENDEE PROFILE



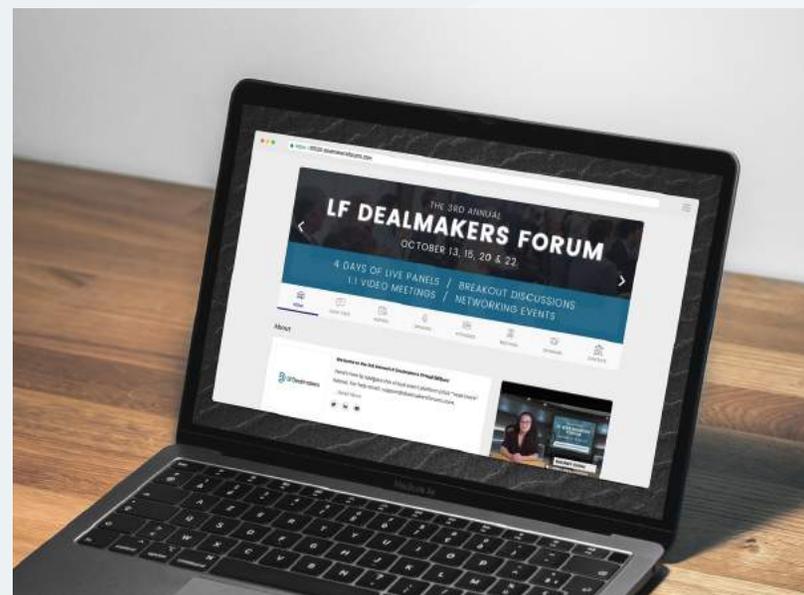
LF DEALMAKERS 2020

# EVENT SUMMARY

The 3rd Annual LF Dealmakers Forum continued its tradition of serving as an exclusive gathering of thought leaders in litigation finance.

A virtual event, the forum attracted 250 decision-makers including law firm partners and executives, litigation funders, corporate legal and business executives, strategic advisors and others who are focused on the industry. The program, which was spread out over a two-week period (October 13-22), featured 38 “A-list” executive speakers, 22 interactive sessions and breakouts, and 270 one-to-one video meetings facilitated through an innovative technology platform.

This year, the program kicked-off with an interview of veteran dealmaker Ashley Keller, a partner at the law firm Keller Lenkner. Ashley, who previously co-founded litigation finance firm Gerchen Keller Capital, offered his perspectives on how litigation finance has influenced his approach as a litigator today, and he discussed some of the untapped opportunities for the industry and its priorities moving forward.



The Forum then featured 8 interactive panel discussions that addressed the state of the industry, legal and regulatory developments, and took a deep dive into important issues and best practices that directly impact litigation finance deal making today. Key themes emerged from the panel discussions that touched on the maturation of the industry and expanded options for financing; the continued growth and acceptance of litigation finance by in-house and outside counsel; the critical importance of ensuring alignment of interests and flexibility when crafting a deal; and the necessity of understanding a law firm’s or corporate client’s risk appetite when determining the right financing option. Those themes, among others, are further amplified in the key take-aways that follow.

# STATE OF THE INDUSTRY: LITIGATION FINANCE & RISK MANAGEMENT

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## The Litigation Finance industry has seen accelerated growth in the midst of the COVID-19 crisis.

In 2019, Westfleet Advisors conducted a survey of 41 funders and found that they had deployed \$2.3 billion over the previous 12 months (May, 2018-June, 2019), with \$9.5 billion in dry powder. A Bloomberg Law survey earlier this year reported that the top 5 firms had already raised \$1 billion in 2020, and a Slingshot Capital survey in May revealed that 64% of funders have seen originations increase this year - with more than half seeing an increase of 25% or more. In addition, 42% of those surveyed by Slingshot indicated that their fundraising had increased.

## The industry is attracting a steady influx of new players and supporting service providers.

As a sign of the industry's maturation, new supporting service providers are entering the space - from an increase in the

number of brokers to the entrance of artificial intelligence, statistical, valuation, and asset-tracing and recovery experts, as well. In addition, insurers are focusing on the market with new products, and hedge funds are making direct investments often using those same products to mitigate risk.

## New investment options are emerging.

A secondary market is starting to emerge as portfolio funding steadily increases and funds are looking to sell off all or a portion of those portfolios to raise additional capital. This is attracting multi-strategy investors who traditionally pursued special situation or distressed investments. In addition, "hybrid" opportunities that are not pure play litigation finance are also coming to light. They involve an understanding on how the value of litigation impacts securities and opens the door to significantly larger deals that touch on the expertise of both litigation funders and hedge funds.

## The industry is maturing and aims to speak with a single, coordinated voice.

The establishment of the International Legal Finance Association signals a new era for the industry. The Association aims to

### OUR PANEL 1 SPEAKERS

The "M" indicates the panel moderator



Sara Randazzo  
The Wall Street  
Journal



Rebecca Berrebi  
Avenue 33



Ian Ippolito  
Private Investor  
Club



Leslie Perrin  
International Legal  
Finance Association



Ross Wallin  
Curiam Capital

promote best practices, and engage, educate and influence legislative, regulatory and judicial matters and serve as the global voice of the commercial legal finance industry. Tapping into a long-standing need for better alignment around a host of issues, the association doubled its membership in one month after its launch.

## PICKING RIGHT: FINDING THE BEST FUNDING OPTION FOR YOUR FIRM

**There are a wide range of funding options available to law firms.**

Available options include partner capital/ self-funding to traditional non-recourse debt products, and a variety of litigation finance products in between. When choosing the right funding option, a key consideration revolves around a law firm's culture and appetite for embracing and accepting risk. To a great extent, that determines what the right option may be, and it is not dependent on a firm's size or type.



**Self-funding requires an openness to take on substantial risk, as well as the ability to value time differently.**

Self-funding requires that a firm accept that work done today may not yield a financial result until sometime in the future. It also requires that a firm spend substantial time vetting cases; the majority of which the firm will decide not to take. Often, a track record in managing contingency cases, and flexibility in compensation decisions for partners who focus on contingency work are also needed to be successful. Self-funding can, however, provide a greater financial upside for those who are positioned to appropriately manage the matters.

### OUR PANEL 2 SPEAKERS

The "M" indicates the panel moderator



Charles Agee  
Westfleet Advisors



Peter Bulger  
PP&C



Chip Hodgkins  
Statera Capital



Michael Nicolas  
Longford Capital



Kalpana Srinivasan  
Susman Godfrey

**Single case solutions often work best for firms who have limited experience in funding and/or a limited appetite for risk.**

Single case solutions can also work best for entrepreneurial partners in firms who wish to cut down on the number of internal approvals that they'll need to navigate in order to take on a matter.

**Portfolio funding is generally a better fit for firms with a strong background in plaintiffs' litigation and who have structured their internal resources and processes to support contingent matters.**

It may also be appropriate for certain firms who do not have an established record of handling contingency cases but have made a strong commitment to risk sharing arrangements moving forward.

**Firms also have available to them a wide range of other types of structures and approaches.**

Among the many options, firms can access capital from specialty lenders and hedge funds, fund only a portion of a case (e.g., expert witness fees), go to a funder with a basket of single cases ("portfolio lite"), or monetize the value of the entire case or an unpaid judgment.

**When choosing each option, there are related ethical and financial considerations that need to be considered.**

For example, portfolio matters lead to a greater focus on what types of disclosures are necessary and raise other types of client relationship issues. Funding options and structures also impact how law firms can realize revenue on their balance sheets.

*“LF DealMakers is unquestionably the single most important event each year for people in the industry. There's no other event that combines the level of expertise with the accessibility and facilitated interaction. This is where the relationships begin.”*

—Aaric Eisenstein, Personalized Media Communications



# CIO ROUNDTABLE: INSIGHTS, CHALLENGES & OPPORTUNITIES

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## **IP cases continue to be a significant driver of deal flow.**

There has been an across-the-board uptick in deal flow. That uptick involves a mix of arbitration, securities opt-out, and other types of cases, as well as a significant increase IP cases; especially those that are patent-related. The picture is further rounded out by an interest in monetization deals and an increasing number of law firms exploring portfolio financings.

## **Law firms are increasingly looking at financing for their clients and themselves.**

There's been an increase in law firms exploring portfolio and single case financing for themselves and their clients. The trend also touches large, leading law firms who are considering taking on more risk and have set-up internal working committees to explore various litigation funding options. There's also been

greater interest by in-house legal departments but that interest, so far, has not been as robust as has been portrayed.

## **There are more conversations around providing working capital as part of the funding arrangement.**

Having an outlay of cash at closing can provide critical capital to a client in order to survive the course of a litigation. Much thought needs to take place, however, on how it can impact motivation for coming to a reasonable settlement and the alignment of interest of the parties. It does raise the risk component in a transaction.

## **A lack of candor, cooperation and preparation are often the greatest barriers to getting a “yes” on a funding deal.**

Clients sometimes choose not to disclose all of the relevant information surrounding a case, or don't offer a well thought through plan or analysis of the damages. Openness on both sides is what funders are looking for.

## **OUR PANEL 3 SPEAKERS** The “M” indicates the panel moderator



Steven Molo  
MoloLamken



Patrick Dempsey  
Therium Capital



Sarah Johnson  
D. E. Shaw & Co.



Aaron Katz  
Parabellum Capital



David Kerstein  
Validity Finance

# LEGAL, REGULATORY, AND ETHICS DEVELOPMENTS

**There's increasing recognition by the American Bar Association, the state bars and the courts of the impact of litigation finance.**

The ABA Best Practices for Litigation Funding was adopted in August and, although imperfect in many ways, attempts to articulate broad information and considerations about litigation funding to its members, and is a recognition of the impact of the industry. This is also supported by developments at the state bar level like the report issued by the Litigation Funding Working Group of the New York City Bar which recognized the role that litigation funding plays and criticized the City Bar's 2018 ethics opinion that prohibited fee sharing.

**In the US, there has been a reluctance to regulate the industry and there are developments that point to a deregulatory shift.**

Recently, the Uniform Law Commission decided not to create a single statutory framework to regulate aspects of litigation after



studying it for a year. In addition, over the past twelve months, various state bars have issued ethics opinions supportive of the industry, and Arizona and Utah (provisionally) abolished the fee sharing prohibitions of Rule 5.4. The Minnesota Supreme Court also recently issued an opinion abolishing the common law concepts of *champerty* and *maintenance*.

**In other parts of the world, there have been movements both toward the abolishment of antiquated common law concepts impacting the industry and greater regulation.**

The arbitral hubs of Singapore and Hong Kong both abolished the common law concept of champerty for third party funding, but both also instituted laws to regulate the industry. In Hong Kong, for instance, funders most subscribe to a code of practice

## OUR PANEL 4 SPEAKERS

The "M" indicates the panel moderator



Annie Pavia  
Bloomberg Law



Preeti Bhagnani  
White & Case



William Marra  
Validity Finance



Tyler Maulsby  
Frankfurt Kurnit

an advisory board was established to oversee compliance and systematic disclosure. In arbitration, there's a trend to mandate disclosure of the existence and identity of a funding provider.

**The Arizona Supreme Court case that abolished its version of Rule 5.4 may have a significant national impact on law firm portfolio financing.**

The elimination of Rule 5.4 fee sharing prohibitions in some jurisdictions, as well as the loosening or questioning of the rule in others, puts pressure on those jurisdictions that continue to prohibit law firm portfolio financing.

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## FROM COST TO PROFIT: CORPORATE PERSPECTIVES ON LITIGATION FINANCE

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**Despite a slow start, in-house legal departments are piloting litigation financing options.**

For example, a large multinational company is approaching litigation financing in a formalized way. The in-house lawyers are selecting claims that they would not typically pursue due to the cost of traditional litigation and bundling them into portfolios. The cases are approved for inclusion in the portfolios by a standing litigation finance committee that includes the company CFO, as well as Senior Vice Presidents of its business units. The in-house legal team then partners with a select group of funders who can evaluate the portfolios, as well as a team of law firms who handle the matters.

The company sees the program as an opportunity to train and develop young and diverse associates at their law firms, provide them with opportunities to do more substantive work, and be developed into the next generation of partners who will represent the company in the future.

**In evaluating funders, corporate clients should be focused on relationships, the “value add” the funder brings to the deal, and the cost of capital.**

Companies should also become educated about the expertise of certain funders with specific asset classes, as well as the appetite of the funders for the size and type of case in question.

### OUR PANEL 5 SPEAKERS

The “M” indicates the panel moderator



Marla Butler  
Thompson Hine



Sanjay Desai  
Marsh



York Eggleston  
YE Ventures



Vincent Montalto  
BASF



“An impeccably organized event, as usual. The quality of speakers and attendees is top-notch.”

—Adam Tubbs, Pravati Capital

### Brokers can be key in finding the appropriate financing solution for companies among the array of options.

At the end of the day, it is all about the client’s motivation. Litigation funders can be used to help manage a company’s cash flow, while insurance products are primarily aimed at managing risk. With an understanding of the client’s motivation, brokers can go into the market and pinpoint/join the right set of options in the midst of a complicated and vast array of choices.

### Litigation should be viewed as a corporate asset like any other.

In-house legal departments can overcome the stigma of litigation funding within their respective organizations by getting the businesspeople to view litigation as an asset class like any other, with legitimate, recognized players in the market mix.

## ASK THE EXPERTS: TOUGH QUESTIONS IN LITIGATION FINANCE

The conditions when a funder can potentially terminate financing, or a law firm withdraw from a case need to be anticipated and articulated in the LFA.

When a claimant breaches a funding agreement, the rights of a funder to terminate financing can be fairly straight forward. Problems arise when developments occur that materially change the merit of a case or the ability to recoup the funder’s investment. Although most parties successfully work out these types of issues between the parties, it’s a good idea to include relevant provisions in the funding agreement to address them. The same holds true for a change in counsel and how it can impact a funder’s assessment of the opportunity.

Although not always practical or desired by the client, a law firm litigating a case should always suggest that the client hire independent counsel to negotiate the funding agreement.



Gene Phillips  
PF2 Securities



Fred Fabricant  
Fabricant LLP



William Farrell  
Longford Capital



Matthew Harrison  
Omni Bridgeway



Lewis LeClair  
McKool Smith

OUR **PANEL 6** SPEAKERS  
The “M” indicates the panel moderator

It is important to suggest that a client have independent counsel negotiate the funding agreement and undertake the appropriate disclosures. Litigation counsel, however, needs to remain involved so that their own engagement terms appropriately align with the funding agreement.

### **A litigation budget is a critical tool in managing costs and in prosecuting a case.**

Asking the legal team for a detailed budget and case management plan is critical. The budgeting process allows the legal team to think through the prosecution of a case. When budgeting a matter, it is also important to anticipate the unexpected and consider ways that the risk share ratio remain consistent. That may involve the use of percentage increase caps or caps at stages and determining in advance who will shoulder the burden of cost overruns. At the end of the day, an alignment of interest between the parties remains the most important consideration.

### **There are a number of mistakes that certain funders are making when evaluating cases and working with clients and law firms.**

The areas of opportunity include focusing more on the venue and individual track record of a judge when evaluating a case and determining where a campaign should be brought, as well as making case value determinations based on settlement values not potential judgments since many cases settle before trial. Others on the panel, felt that it was a “mistake” to not bring new opportunities, like monetization, to clients and their law firms as quickly as they could have, while others questioned the industry’s current view on fighting the disclosure of a funder’s involvement in a litigation. Broader disclosure could, in fact, benefit the industry and clients by raising the industry’s awareness and help clients with their specific matters.

“Excellent and thoughtful series of events on litigation funding and many of the current issues and challenges that confront this nascent. Excellent starting AND in-depth conversations..”

—Eugene Becker, Becker Law, New York City, and co-founder New York Litigation Funding Advisors, LLC



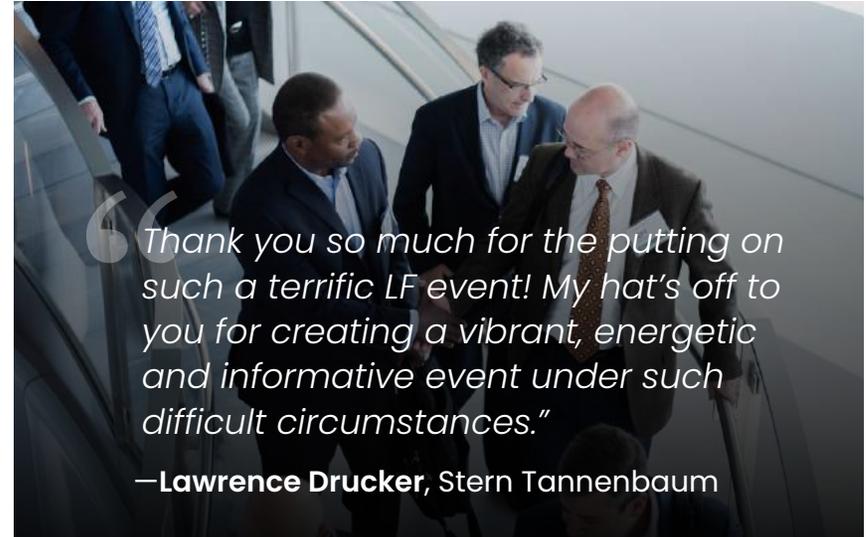
# BEST PRACTICES & LESSONS LEARNED IN FIRM-FUNDER ALLIANCES & FUNDED DEALS

**Each firm has its own unique tolerance for risk and litigation profile. No one size fits all.**

Some firms operate within more traditional firm structures where contingency matters only account for a small portion of cases, while others embrace the contingency model and operate robust case portfolios and actively manage their risk/reward. There needs to be an appreciation that each may have a different appetite for risk and evaluate/pursue funding opportunities differently.

**Alignment of interests, as well as incentives are critical to success.**

Realistically, each parties' interests should be aligned but are probably not identical. When negotiating an arrangement, financial and other incentives need to be put in place so that everyone will continue to want to "play together" in the future.



It is very important for law firms to build relationships with funders who they work well with.

**Firms and funders need to build in as much flexibility as they can into their relationships and arrangements.**

Surprises routinely happen in litigation and flexibility is critical. Cases often take longer than anticipated, and they rarely look as good over time as they did at the start. That is why it is important to have candid communication and good relationships between the parties, as well as an openness to address structural problems with the deal as they come to light.



Alan Guy  
Kobre & Kim



Patrick Arenz  
Robins Kaplan



Aaric Eisenstein  
PMC



Tatiana Markel  
BakerHostetler

OUR **PANEL 7** SPEAKERS  
The “M” indicates the panel moderator

# SECTOR SPOTLIGHT: FUNDING IN PATENT & INTELLECTUAL PROPERTY CASES

**In patent cases, it is important to have a realistic view on the value of a matter as well as a clear understanding of the end game that is being pursued.**

Patent holders often need to be educated about the realistic value of their case since it is common to overestimate the value of their patent to the overall invention. It's also critically important to understand the end game that is being pursued. For example, what are the ambitions for licensing with the targets?

**IP owners should look for a litigation funder that understands the interplay of the unique issues that impact IP litigation, as well as one that would be a good partner for the long haul.**

IP cases bring with them unique factors that impact funding, and a prospective funder should be knowledgeable about the complex interplay of those issues, as well as interested in diving in and

understanding the technology in question. IP holders should also look for a funder who is going to a good partner for the next 3-7 years as the case progresses. Finally, it is also important to understand if the funder actually has money or is, in essence, a broker. Also, it's important to understand how the funder uses its funds - whether it "ring fences" the budget for your case or commits the same funds to more than one matter.

**When patent owners present a case to a funder, the complex issues that are specific to the underwriting of a patent case need to be fully and adequately addressed.**

Patent case due diligence is in-depth and complex and requires an appreciation for, and understanding of, a wide range of IP-specific factors that impact a matter. Those factors include the nature of the infringement, the venue of the case, foreign coverage, "Alice issues" in software cases, among many others. Much can be shared with a funder in advance of undertaking its own due diligence so it can fully understand the claim and craft a deal that ensures alignment of all the parties in the funding transaction.

## OUR PANEL 8 SPEAKERS

The "M" indicates the panel moderator



Michael Renaud  
Mintz



Susan Dunn  
Harbour Litigation  
Funding



Emily Hostage  
Burford Capital



Warren Hurwitz  
Innovative Foundry  
Technologies



Thomas Loureiro  
Innovative Foundry  
Technologies

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