



NATIONAL CONSTRUCTION DEFECT CONFERENCE



The Roosevelt New Orleans | November 13-14-2025

Litigation Funding in Construction Defect



Henrietta Hinojosa
*Senior Vice President
National Claim Services LLC
Atlanta, GA*



Stephen Miles, Esq.
*Pipes Miles Beckman
New Orleans, LA*



Kevin Skrzysowski
*Director, Certum Group
Plano, TX*

Litigaton Funding, Monetization, and Insurance

Presented for:
National Construction Defect Conference
Perrin Conferences

Litigation Funding

SOLUTION NAME: Litigation Funding

SOLUTION TYPE: Funding

DESCRIPTION: Litigation funding is the mechanism or process through which litigants (both plaintiffs and plaintiff law firms) can finance their litigation or other legal costs through a third-party funding company. In return, the third-party funding company charges interest on the loans and/or shares in the participation of funds recovered from the litigation, if any.

TYPE OF LITIGATION: Any type of litigation.

STAGES OF ACTIVE LITIGATION:



Litigation Funding

HOW IT WORKS:

- Funders will assess the case and look for claims with strong merits that justify the loan.
- Funders will assess if the counterparty has the financial means to pay any resulting judgment, should the plaintiff win.
- If the above two assessments are positive, the funder will propose terms for the loan which will include amount, timing, structure, and economic terms.
- Parties then enter into a loan agreement.

KEY BENEFITS:

- Provides funding to what can be expensive litigation costs against deep-pocketed defendants. In businesses that lack the capital resources to pursue litigation, litigation funding can provide a useful bridge.
- Unlocks liquidity so the company can use cash flow in other areas of the business.
- Provides additional assessment of the merits of the litigation without any additional cost.
- Shifts the litigation risk outcomes from the company to the funder.

Affirmative Asset Monetization

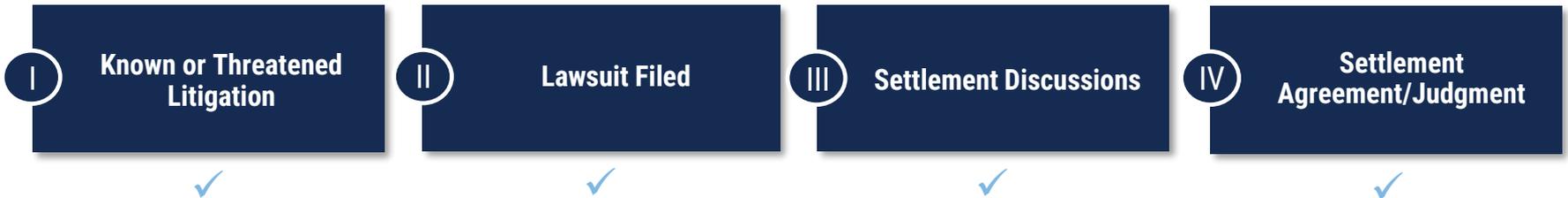
SOLUTION NAME: Affirmative Asset Monetization

SOLUTION TYPE: Funding

DESCRIPTION: Claim monetization is a way to convert an illiquid litigation claim into non-recourse capital. When a claim is monetized, a third-party funder advances capital on a non-recourse basis directly to a company in exchange for a portion of the claim's potential future recovery. With claim monetization, a company obtains immediate access to capital that would otherwise be unavailable until the claim is successfully resolved.

TYPE OF LITIGATION: Any type of litigation, but is usually best applied to antitrust, patent/IP, contract disputes and commercial arbitrations.

STAGES OF ACTIVE LITIGATION:





Affirmative Asset Monetization

HOW IT WORKS:

- Determine a monetization strategy that best meets the company's business, legal and financial objectives.
- Identify meritorious claims and determine what portion of the claim the company seeks to monetize.
- Third-party funder assesses the claim and provides a capital offer to participate in the claim's potential future recovery.
- A legal agreement is executed, and funds are advanced to the company on a non-recourse basis.

KEY BENEFITS:

- Provides company access to non-recourse cash that is not subject to the vagaries of litigation.
- Locks in a guaranteed return regardless of the claim's outcome.
- Allows company to focus on its core business operations.
- Allows company to cover ongoing business operating expenses or even make reimbursements for previously incurred legal fees.
- Transforms the legal department from a cost center to a revenue generator.



Leveraging Litigation Insurance Before Funding

TRADITIONAL FUNDING

- Companies or law firms seek funding, then funders look to insurance markets to reduce the outcome risk
 - Can be expensive for companies and law firms
 - Non-recourse debt
 - Uncertain litigation risk
 - Risk drives up cost

LEVERAGING A CAPITAL PROTECTION INSURANCE WRAPPER

- Companies or law firms seek risk transfer of the outcome, then look to funders for capital
 - Removes or reduces the litigation risk
 - Provides protection against unknown outcomes
 - Reduces the cost of capital
 - Increases the ability to obtain cost-effective, non-recourse capital

Contingent Fee Insurance



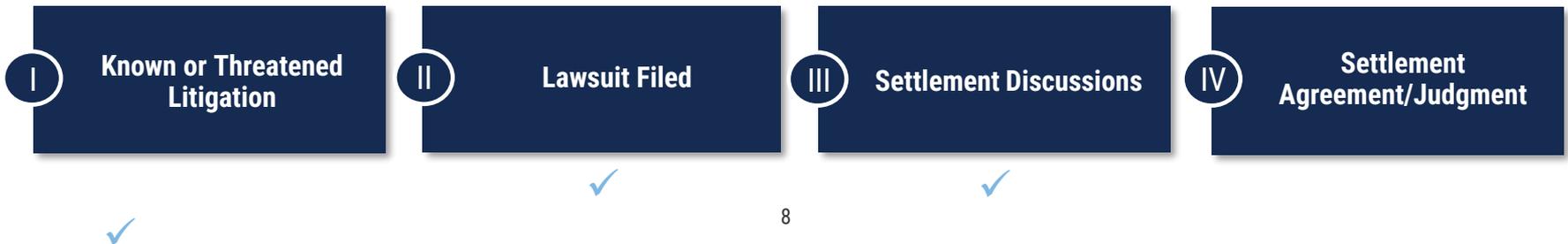
SOLUTION NAME: Contingent Fee Insurance

SOLUTION TYPE: Insurance

DESCRIPTION: Law firms are increasingly working on a contingent basis in order to pursue cases that otherwise may not have the appropriate funding to pursue. Often, law firms will seek funding of their fees and third-party expenses from financial institutions including litigation funders. Instead of going to the funding market first, companies or law firms can look to insurance to remove the outcome risk. Just like with a litigation funder, the risk goes through an underwriting process but, this time, by insurance underwriters who specialize in creating litigation insurance solutions for known, threatened, or pending litigation. In exchange for a fixed premium, the company or law firm can obtain downside protection to prevent a total loss of expenses or work in progress (WIP) incurred in the prosecution of litigation.

TYPE OF LITIGATION: Any type of litigation.

STAGES OF ACTIVE LITIGATION:





Contingent Fee Insurance

HOW IT WORKS

- The insurer will conduct an underwrite of the risk which usually requires substantial diligence.
- Once the insurer has completed the underwrite, it will usually engage in a Q&A with the law firm (for any items that might need clarification).
- If the risk is insurable, the insurer will propose policy terms and pricing.
- A one-time premium transfers up to 100% of the risk to the insurer.

KEY BENEFITS

- Provides certainty: regardless of what happens in the case, the law firm will recover its WIP and expenses.
- Alleviates litigation fatigue by providing a plaintiff the security it needs to continue the fight.
- Allows law firm to pursue claims they may otherwise turn down due to fear of not being able to collect sizeable fees and expenses.
- Facilitates settlement as Contingent Fee Insurance can provide the leverage needed to mitigate any notion that a cash-strapped plaintiff will settle on the cheap.



Developing the Right Litigation Strategy

Litigation is inherently unpredictable making it difficult to assess litigation risk and formulate the appropriate litigation strategy. When developing your litigation strategy and deciding on whether to utilize one or more litigation risk transfer solutions, consider some of the following questions:

- Is your company carrying latent litigation assets that could be monetized to provide an immediate boon to your corporate balance sheet?
- Is the cost of ongoing litigation hampering settlement discussions or prohibiting the pursuit of affirmative claims?
- Is your department seen solely as a cost center? Would it be helpful to pursue claims that generate revenue?
- Have you recently won a judgment and have a need to lock in some or all the damage award?
- Would shifting the outcome risk of litigation free up resources and allow you to focus on your business and operations?



Singularity AI has a problem

Singularity AI has an NDA breach of contract arbitration case against Bad AI

Estimated damages: \$60M

Singularity AI has little capital – and what little capital it has, it wants to invest in its core business

The litigation will cost \$8 million:

- **Legal Fees: \$6 million**
- **Case Expenses: \$2 million**



Singularity AI's funding arrangement

Legal Fees:

- **Funder:** Invests \$3M as incurred (50% of legal fees)
- **Law Firm:** Invests \$3M of its time (remaining 50%)
- Law firm responsible for all overages



Singularity AI's funding arrangement

Legal Fees:

- **Funder:** Invests \$3M as incurred (50% of legal fees)
- **Law Firm:** Invests \$3M of its time (remaining 50%)
- Law firm responsible for all overages

Case Expenses:

- **Funder:** Invests the first \$1.8M (90% of expenses)
- **Claimant:** Invests the final \$200K
- Claimant responsible for all overages

Singularity AI's funding arrangement



	Certum	Law Firm	Singularity
Legal Fees			
Case Expenses			
Illustrative Return			
<i>If \$60M damages</i>			

Singularity AI's funding arrangement



	Funder	Law Firm	Singularity
Legal Fees	\$3M (50%)	\$3M (50%)	\$0
Case Expenses			
Illustrative Return			
<i>If \$60M damages</i>			

Singularity AI's funding arrangement



	Funder	Law Firm	Singularity
Legal Fees	\$3M (50%)	\$3M (50%)	\$0
Case Expenses	\$1.8M (90%)	\$0	\$200K (10%)
Illustrative Return			
<i>If \$60M damages</i>			

Singularity AI's funding arrangement



	Funder	Law Firm	Singularity
Legal Fees	\$3M (50%)	\$3M (50%)	\$0
Case Expenses	\$1.8M (90%)	\$0	\$200K (10%)
Illustrative Return	25% of case proceeds	20% of case proceeds	55% of case proceeds
<i>If \$60M damages</i>			

Singularity AI's funding arrangement



	Funder	Law Firm	Singularity
Legal Fees	\$3M (50%)	\$3M (50%)	\$0
Case Expenses	\$1.8M (90%)	\$0	\$200K (10%)
Illustrative Return	25% of case proceeds	20% of case proceeds	55% of case proceeds
<i>If \$60M damages</i>	\$15M (-\$4.8M investment)	\$12M (+\$3M fees paid)	\$33M

From the GC/CFO perspective ...



	Without Funding	With Funding
Amount invested in the litigation		
Amount invested in core business		
Downside risk		
Return from \$60M result		
ROI from \$60M result		

From the GC/CFO perspective ...



	Without Funding	With Funding
Amount invested in the litigation	\$8M	
Amount invested in core business	\$0	
Downside risk	(\$8M)	
Return from \$60M result	\$60M	
ROI from \$60M result	7.5x	

From the GC/CFO perspective ...



	Without Funding	With Funding
Amount invested in the litigation	\$8M	\$200K
Amount invested in core business	\$0	\$7.8M
Downside risk	(\$8M)	(\$200K)
Return from \$60M result	\$60M	\$33M
ROI from \$60M result	7.5x	165x (plus ROI on core business investment)

From the law firm's perspective ...



	Hourly Model	Full Contingent Fee	Litigation Funding
Hourly fees paid			
Total payment if case loses			
Total payment if case wins			

From the law firm's perspective ...



	Hourly Model	Full Contingent Fee	Litigation Funding
Hourly fees paid	\$0 or \$6M		
Total payment if case loses	\$0 or \$6M		
Total payment if case wins	\$6M		

From the law firm's perspective ...



	Hourly Model	Full Contingent Fee	Litigation Funding
Hourly fees paid	\$0 or \$6M	\$0	
Total payment if case loses	\$0 or \$6M	\$0	
Total payment if case wins	\$6M	\$24M	

From the law firm's perspective ...



	Hourly Model	Full Contingent Fee	Litigation Funding
Hourly fees paid	\$0 or \$6M	\$0	\$3M
Total payment if case loses	\$0 or \$6M	\$0	\$3M
Total payment if case wins	\$6M	\$24M	\$15M (\$12M + \$3M)

Q&A



Any questions?

