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Litigation Funding In The COVID-Era

April 29, 2020



Presenters

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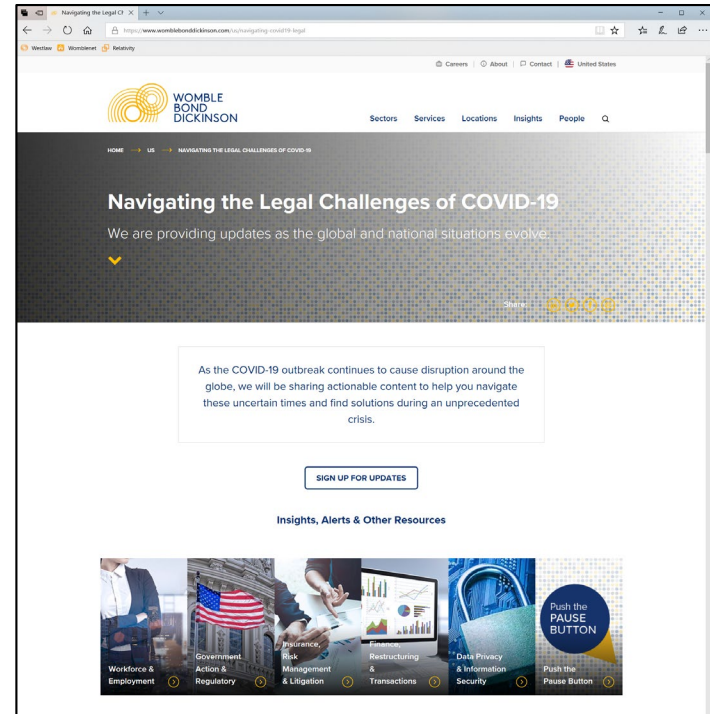
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Covid-19 Resource Hub

<https://www.womblebonddickinson.com/us/navigating-covid19-legal>



Agenda

12:00 – 12:15	Welcome and Introductions
12:15 – 12:25	Matt Reason: Overview of plaintiff side litigation funding
12:25 – 12:35	Ted Farrell: Overview of litigation funding broker role
12:35 – 12:45	Ross Weiner: Overview of defense side litigation insurance
12:45 – 1:00	Ethical and Discovery Considerations
1:00 – 1:30	Moderated Q&A

Questions

- During today's presentation, your microphones will be muted.
- Please submit questions through the Q&A feature at any time during today's presentation.
- Please include your name, company, and title with the question if you are comfortable having that information disclosed. Otherwise, indicate "anonymous" when you present your question.
- We will get to as many of the audience questions as we can.



COMMERCIAL
LITIGATION
FINANCE

MATT REASON

VP of Investments & Partnerships

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(978) 697-0880

LexShares overview

COMPANY OVERVIEW

LexShares is a leading litigation finance firm, with an innovative approach to originating and financing high-value commercial legal claims. LexShares funds litigation related matters through both its online marketplace and dedicated litigation finance fund.

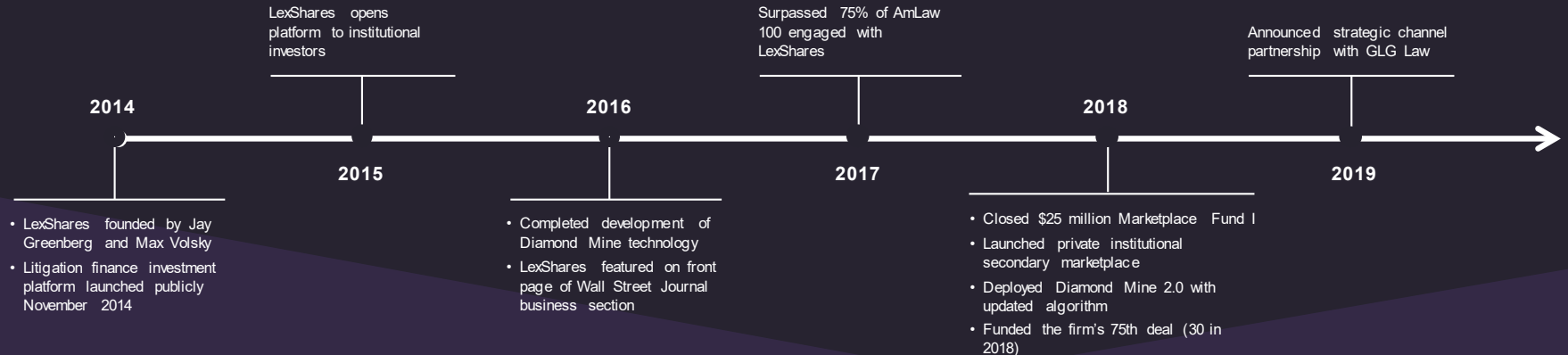
COMPANY INFORMATION

- Founded in 2014
- 14 full-time employees
- 2 principal offices in Boston and New York City

DEALS FUNDED METRICS

- Funded to date: 103
- Total resolved: 41

FIRM HISTORY



Types of investments

SINGLE CASE COMMERCIAL LITIGATION

- Non-recourse funding for legal fees, litigation expenses, working capital, etc.
- Case types include: breach of contract, breach of fiduciary duty, qui tam, theft of trade secrets, patent infringement; stage agnostic

PORTFOLIOS & COMPLEX FINANCING

- Funding for portfolios of multiple matters cross collateralized
- Custom financing solutions addressing complex needs of corporates and law firms

INTERNATIONAL ARBITRATION

- Financing international arbitration across multiple forums

INTELLECTUAL PROPERTY

- Finance plaintiffs to protect intellectual property
- Help unlock capital that can be used to pursue assertion campaigns or reinvest into the operating companies

LAW FIRM FUNDING

- Similar to portfolio financing, firm funding can reduce overall risk and enable firms to grow their docket
- Recourse and non-recourse options. Cases are cross-collateralized.

POST-SETTLEMENT MONETIZATION

- Help claimants and law firms expedite payment of awards and fees
- Eases collection pressure and alleviates cash flow concerns

REPRESENTATIVE LEXSHARES INVESTMENTS

\$750K

Breach of contract

**BUSINESS PARTNER VS.
BUSINESS PARTNER**



Defendant allegedly engaged in a scheme to misappropriate millions of dollars from the Plaintiff through hidden financial dealings, false accounting, and numerous other acts of fraud.

\$2.00M

Breach of fiduciary duty

**CONFIDENTIAL PLAINTIFF VS.
GOVERNMENT ENTITY**



Plaintiff alleges that Government Entity, in its capacity as trustee, breached duties to Plaintiff by mismanaging Plaintiff's assets resulting in economic damage to Plaintiff.

\$2.25M

Theft of trade secrets

**TECHNOLOGY COMPANY VS.
FORTUNE 500 COMPANY**



Defendant allegedly misappropriated Plaintiff's trade secrets, infringing on Plaintiff's intellectual property and breaching multiple contractual obligations.

\$2.50M

Breach of contract

**REAL ESTATE DEVELOPER VS.
MUNICIPALITY**



Defendant allegedly breached a lease agreement, failing to comply with its joint venture obligations for commercialization of certain municipal properties.

\$620K

Trademark infringement

**TRADEMARK OWNER VS.
MULTIPLE ENTITIES**



The Defendants allegedly infringed on the Plaintiff's registered trademarks by using them without authorization.

\$1.50M

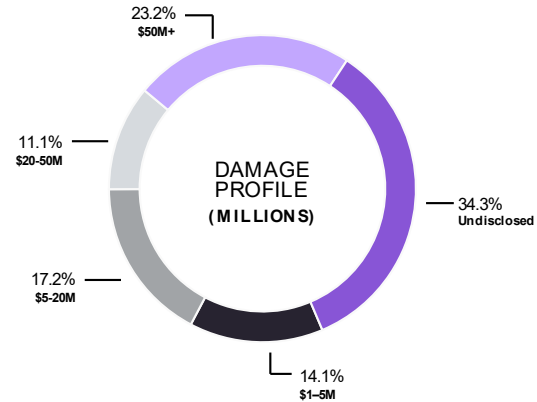
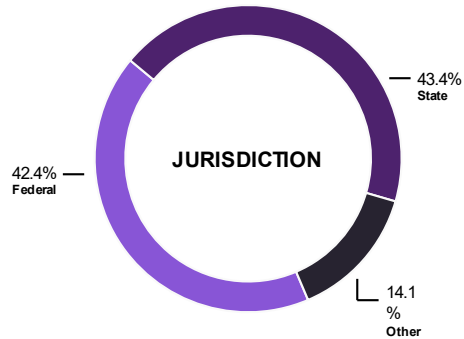
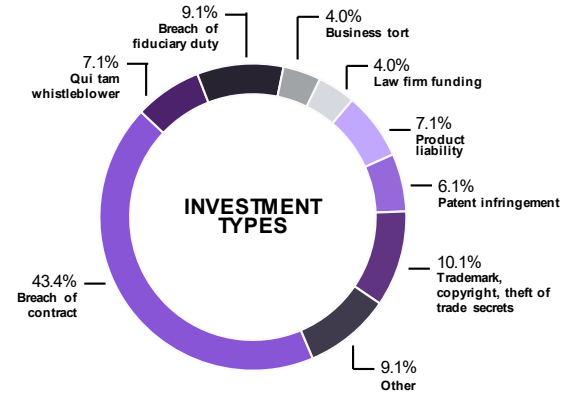
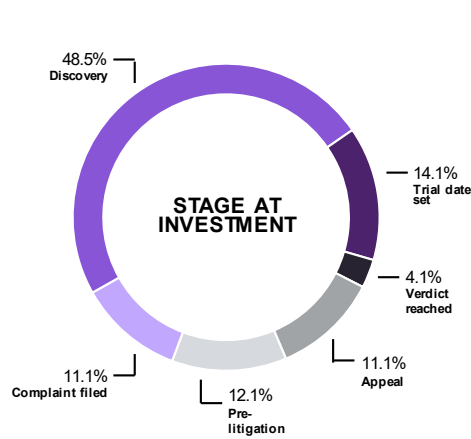
Breach of contract

**PHARMACEUTICAL COMPANY VS.
FORTUNE 500 COMPANY**

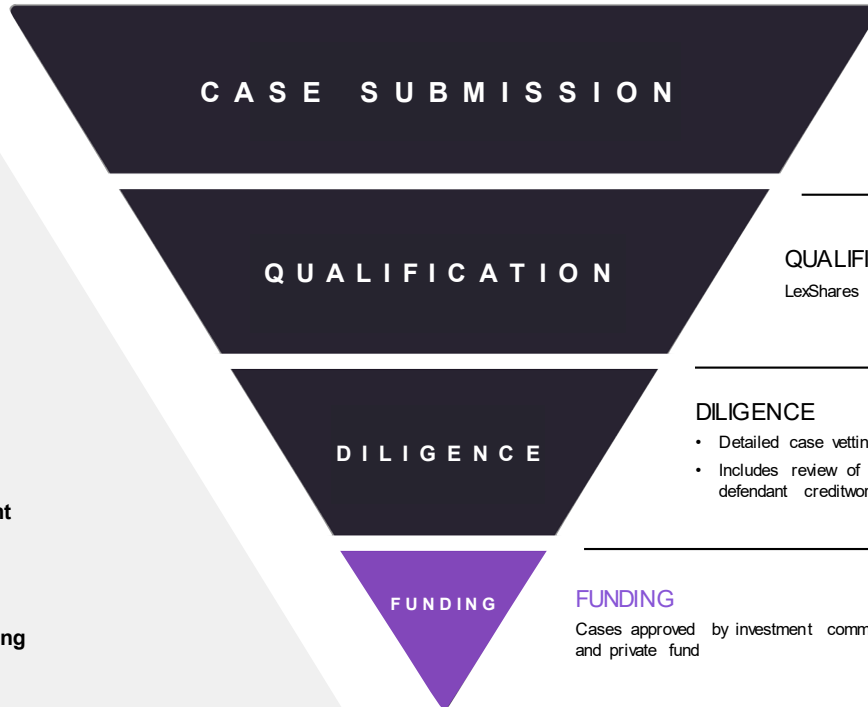


Defendant allegedly breached the license agreement, failing to comply with its obligations to develop, market, and sell the Plaintiff's product.

LexShares investment history



LexShares investment process & methodology



CASE SUBMISSION

- Plaintiffs or attorneys submit an application for funding
- LexShares originates a claim via Diamond Mine channel

QUALIFICATION

LexShares begins initial review of legal merits and parties

DILIGENCE

- Detailed case vetting
- Includes review of legal merits, interviews with plaintiff and counsel, defendant creditworthiness and litigation budget analysis

FUNDING

Cases approved by investment committee are funded via the LexShares platform and private fund

MONITOR & SERVICE

LexShares case management team actively monitors investments post close

INVESTMENT TENETS

LEGAL MERITS

Procedural history and alignment of facts with prevailing law

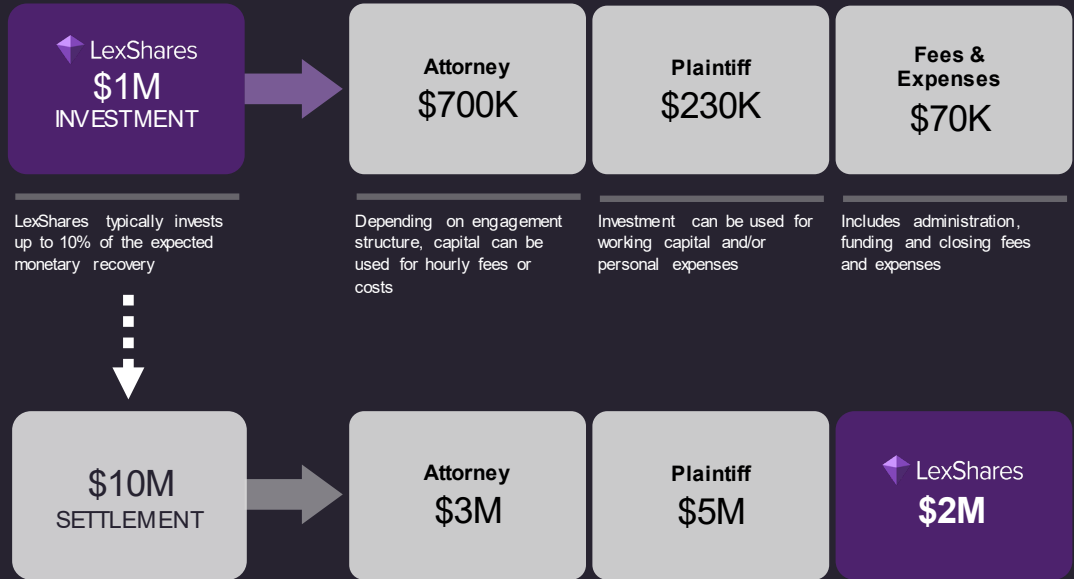
STRENGTH OF COUNSEL

Legal team's track record litigating similar claims

DEFENDANT'S ABILITY TO PAY

Assessment of defendant's ability to pay recovery

COMMON FUNDING STRUCTURE



LexShares typically invests up to 10% of the expected monetary recovery

Depending on engagement structure, capital can be used for hourly fees or costs

Investment can be used for working capital and/or personal expenses

Includes administration, funding and closing fees and expenses

Terms and structure are bespoke on a case by case basis, reflecting estimated risk profile, size, time to adjudication, amongst other factors

The above example is purely illustrative, and does not represent an actual investment made by LexShares. A case may not recover positively, and should it, the recovery may not be sufficient in order to enable full payment of the return.

The Role of Brokers – Brokers Understand What Funders and Firms Need

- Brokers understand how funders think, and can help you develop your case and present the relevant materials in the most efficient manner.
- Brokers handle much of the day-to-day with the funders, allowing attorneys to pay attention to their ongoing cases.
- Brokers understand what law firms need to get approval from their internal stakeholders.

The Role of Brokers – Providing Insight into Funder Capital Structures

- Some funders have large pools of capital in a dedicated fund that they can deploy directly.
- Some funders are largely sales agents for large institutionals/hedge funds, which adds another layer of approval.
- Some funders raise capital on a per deal basis.
- All of these structures can work, but may not be the best option for certain deals.

The Role of Brokers – Providing Insight Into Risk Profiles

- Some funders want to risk \$2 million to make \$4 million, others want to risk \$15 million to make \$60 million.
- Some funders can move in 30 days, others take 6 months to make a decision.
- Some funders have been burned in certain types of cases are unlikely to invest in such areas again.
- Brokers can lead you to the best, and most likely source of capital for your particular case.



RISK SETTLEMENTS

SOLUTIONS OVERVIEW

April 2020

What is Class Action Settlement Insurance (CASI)?

- Class Action Settlement Insurance (CASI) is the only product on the market that allows companies to transfer the settlement risk in existing class action litigation away from the business to a third-party carrier, for a one-time fixed premium.
- Each policy is tailored to the specific class action settlement circumstances and financial needs of the business.
- Coverage is available for the full spectrum of consumer class cases, including fraud, mislabeling, products liability, statutory claims, and other types of litigation.
- There is no deductible or self-insured requirement, and a policy covers all valid claims made by class members under the settlement agreement

Benefits of CASI



- Efficient resolution of expensive litigation for a known, fixed cost
- Provides certainty to help with budgets, forecasts and expenditures
- Minimizes P&L and balance sheet impact
- Removes concerns over uncertain payout
- Mitigates internal frictional and opportunity costs
- Negates the unintended consequences of settlement including:
 - Weakened financial statement, missed or reduced earnings, adverse impacts on raising capital, acceleration of debt, negative impacts on branding / company image

What is Litigation Buyout Insurance?

- Litigation Buyout (LBO) insurance takes on the financial risks and liabilities for businesses at any time before the settlement and for a known, fixed cost.
- Each policy is customized to meet the business's financial and legal objectives.
- With LBO Insurance the carrier will:
 - Take over the defense of the litigation
 - Take financial responsibility for defense costs
 - Cover any adverse judgement

Benefits of Litigation Buyout Insurance



- Provides risk transfer for known, threatened or pending litigation in exchange for a fixed premium
- Covers the financial risk of litigation, defense costs and adverse judgment
- Facilitates M&A and financing transactions by ring-fencing known litigation
- Risk analysis provided at no cost or obligation
- Achieves financial certainty so the company can get back to its core business

Ethical Considerations

Rules of Professional Conduct Implicated

- 1.6 – Confidentiality of Information
 - *Informed consent*
- 1.7(a)(2) – Conflict of Interest – Current Client
 - *Informed consent in writing*
- Client-Lawyer Transactions
 - *Informed consent in writing*
- 1.8(a) & (f) – Client-Lawyer Transactions
 - *Informed consent in writing*

Ethical Considerations

Rules of Professional Conduct Implicated

- 1.15 – Safekeeping Property
- 2.3 – Evaluation for use by third persons
 - *Informed consent*
- 4.1 – Truthfulness in statements to others
 - 8.4(c) – Misconduct
- 5.4(c) – Professional Independence of lawyer
 - *New York City Bar Report – 3/2/20*
 - Ethics rules should explicitly permit litigation funding agreements
 - Rejects mandatory disclosure of litigation funding agreements

Discovery Considerations for Litigation Funding Materials and Communications

- Attorney Client Privilege
 - Rarely protects disclosure of lit funding materials in discovery
 - Some applications of common interest exception
 - Some applications of agency exception
- Work Product
 - Most courts find work product doctrine protects disclosure of lit funding materials
 - NDA's/Confidentiality Agreements solidify work product claims
- Relevance
 - Unreliable grounds for avoiding discovery
- Champerty/Maintenance

Ethical and Discovery Considerations

Best Practices

- Enter into a written NDA/Confidentiality Agreement
- Obtain written informed consent from clients
- Do not share ACP material with funder/broker/insurer unless it is also covered by work product protection
- Consult the RPC, local rules, standing orders and court opinions in your local jurisdiction

Thank you

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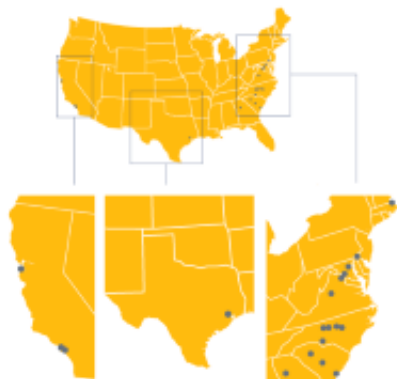
Womble Bond Dickinson at a glance



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US and UK



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400 Partners
1,100 Lawyers



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Charlottesville
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Leeds
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Southampton
Bristol
Plymouth

Consolidating
our national
reputations and
regional heritage
under one powerful
transatlantic brand

Our sectors



Representing
more than
300
Publicly Traded
Companies
in the US and UK



+150
Chambers
rankings



**UK Top
20** Law
firm



**US Top
80** Law
firm



**Global
Top 100**
Law firm by
revenue





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