

The logo for Quinn Emanuel Trial Lawyers features the words "quinn emanuel" in a bold, lowercase, yellow sans-serif font, followed by "trial lawyers" in a bold, lowercase, white sans-serif font. The background of the logo area is dark grey with a subtle grid pattern.

quinn emanuel trial lawyers

quinn emanuel urquhart & sullivan, llp

los angeles new york san francisco silicon valley chicago washington, d.c. tokyo london mannheim hamburg munich moscow paris hong kong sydney brussels

Third Party Funding

Stephen Jagusch QC

3 NOVEMBER 2016

The Legal Industry

- ▶ **USD 800 billion (estimated global annual revenues)**
 - ▶ The US litigation market alone is more than USD 200 billion
- ▶ **c. 34 law firms with annual revenues over USD 1 billion**
- ▶ **5 law firms would be eligible for FTSE 100**
- ▶ **Profitability - Average profit margin of AmLaw50 = 41%**

- ▶ **Enter “third-party funders”**

The Apogee of Third Party Funding

Litigation Funding Moves Into Mainstream

Startups like LexShares, Trial Funder attract investors with promises of double-digit returns

Investors Put Up Millions of Dollars to Fund Lawsuits



Therium raises £200m in litigation funding

Corporate investors find legal claim sector increasingly attractive



Forbes

The Next Great Investment Idea? Somebody Else's
Lawsuit

**The
Economist**

Investing in litigation

Second-hand suits

“Eye Catching Results” *Forbes* on Burford

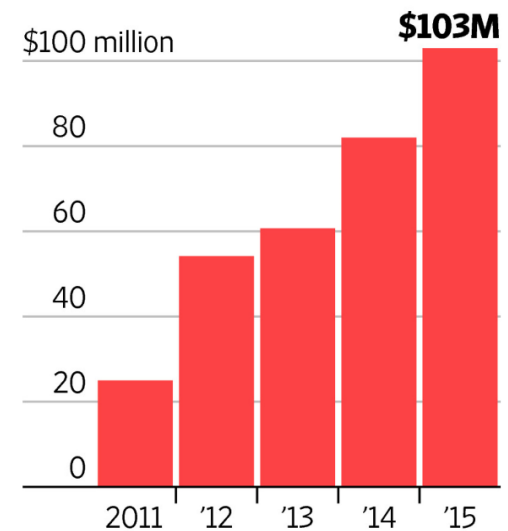


“litigation finance” *WSJ*

“the next great investment idea?” *Forbes*

Taking Off

Burford Capital revenue



Source: The firm

THE WALL STREET JOURNAL.

Third Party Funding and Arbitration

- ▶ In the US litigation market, it has existed forever → New in Arbitration
- ▶ The capital available in the global litigation funding market is estimated to be above USD 2 billion
 - ▶ Only a fraction of this capital is used for the financing of arbitration cases
- ▶ Arbitration cases now involve mega-claims and multi-billion dollar disputes → the promise of great returns is paying off
- ▶ Large number of arbitration cases settled leading to faster and bigger returns
- ▶ Arbitration awards are globally enforceable and may be regarded as “high liquidity” products

Setting the Scene: The Funders



Setting the Scene: The Legal Framework

- ▶ **From maintenance and champerty to decriminalisation**
 - ▶ ‘Maintenance’ barred people (legal or real) from funding legal disputes to which they were not a party
 - ▶ ‘Champerty’ barred them from being rewarded with a share of the proceeds

- ▶ **Recent Developments in Hong Kong and Singapore**

- ▶ **Industry currently self-regulated – See eg. Association of Litigation Funders (ALF) in the UK**

The Case for and against TPF

- ▶ **Expensive form of finance**
- ▶ **Justice for small investors - filter for frivolous claims.**
- ▶ **Confidentiality, disclosure and conflicts issues**
- ▶ **Interests of the funded and the funder will not always be the same**
- ▶ **TPF is highly unregulated**
- ▶ **Simply because an award is made, does not mean that the respondent will pay it quickly, or in full, or even at all**
- ▶ **TPF has generated controversy in respect of Security for Costs**
- ▶ **Recoverability of costs of TPF**

A storm in a teacup?

- ▶ **Every claim ever brought is funded by a third party**
 - ▶ shareholders (through e.g., shareholder loans)
 - ▶ banks (e.g., loans, revolving credit, overdrafts)
- ▶ **Somewhere behind the party is always the source of funds**
- ▶ **Why should we be upset now?**

Third Party Funding gone wrong

- ▶ **Issues of control over the proceedings**
- ▶ **The Argentum Capital Ltd case or guaranteed high returns might have a catch**
- ▶ **The Excalibur saga or how can TPFs be dragged into litigation**

New Horizons

- ▶ Funders now buy claims
- ▶ Funders now buy arbitration awards
- ▶ Funders help launch new litigation boutiques
- ▶ Funders buy into law firms
- ▶ Funders launch their own law firms
- ▶ Experienced arbitrators advise funders, or experienced attorneys join funds
- ▶ Insurance companies and banks are trying to catch up