THE WESTFLEET INSIDER

2021 Litigation Finance Market Report

WESTFLEET ADVISORS

OVERVIEW

The 2021 edition of ***The Westfleet Insider*** reveals signs of an industry that is maturing.

The 2021 edition of *The Westfleet Insider,* our annual report on the state of the US commercial litigation finance industry, reveals signs of an industry that is maturing. As with last year's analysis, we remain cautious about drawing sweeping conclusions on the trajectory of the market given the continued irregularities present in the U.S. litigation system and the broader economy. Nonetheless, this report represents the third year for which we have collected and analyzed industry data, and our views are informed both by those statistics that have remained stable as well as those for which movement may signal a market that is approaching maturity.

The litigation finance industry continued to experience positive growth in 2021, both in terms of fresh inflows of capital from investors and new commitments toward litigation finance deals. Unlike prior years, the pace of capital raised from investors was eclipsed by the pace of new commitments toward deals, but this reflects a slowing in the pace of new fundraising rather than a substantial increase in the pace of new commitments to funding deals. The capital commitments toward new deals increased 11% compared to the prior year (following a mere 6% annual increase in 2020), suggesting that the widely anticipated rally in deployment pace following the onset of the pandemic fell short of expectations.

One encouraging sign — and one that we believe points to a maturing market — is the substantial increase in the amount of capital committed to deals involving Big Law. Funding activity in which a law firm ranked in the AmLaw 200 was involved increased by nearly 50% in 2021, and this increase was driven primarily by a small number of large portfolio deals with these firms. Big Law has been slow to adopt these more comprehensive funding arrangements, but that appears to be changing due to these firms' increasing comfort with the ethics of funding as well as a desire for a more efficient mechanism for accessing funding for cases, which portfolio structures purport to offer.

In 2021, evolution in the utilization of funding was not limited to larger, more sophisticated deals. In another sign of a maturing industry, the funding community also improved its capacity for servicing smaller transactions. Several newer entrants to the funding market have elected to specialize in smaller transactions, and some of these have gained traction. Also, many of the more established funders have found ways to entertain smaller deals through efficiencies in their processes. In fact, despite a significant increase in larger law firm deals, the magnitude of funding activity in smaller deals actually caused the average size of deals industrywide to decrease by nearly 20% compared with 2020.

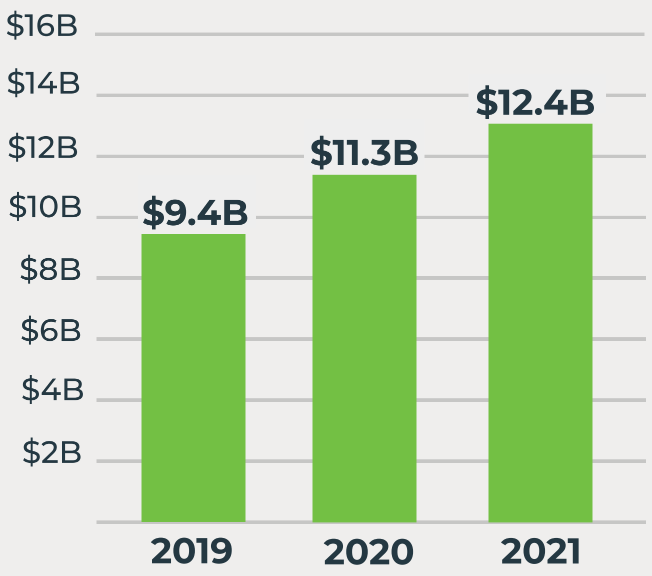
Time will tell the extent to which these and other innovations will serve to increase the size of the U.S. commercial litigation finance market. On the one hand, it may be tempting to conclude that litigation finance has reached its full potential already. After all, litigation finance has been widely available in the U.S. now for more than a decade, and recent surveys suggest that litigator awareness of funding is nearly universal. On the other hand, we continue to see ample opportunity for innovation within the industry, and we have reason to be optimistic that Big Law will increasingly become more comfortable and find new ways to take advantage of litigation financing.

Through this report, we endeavor to enhance transparency in the litigation finance industry so that lawyers and their clients can better understand the funding market and utilization trends. We also hope our work in this regard equips investors and funders with improved visibility so that users of funding may ultimately be better served. With these goals in mind, we proudly present ***The Westfleet Insider: 2021 Litigation Finance Report.***

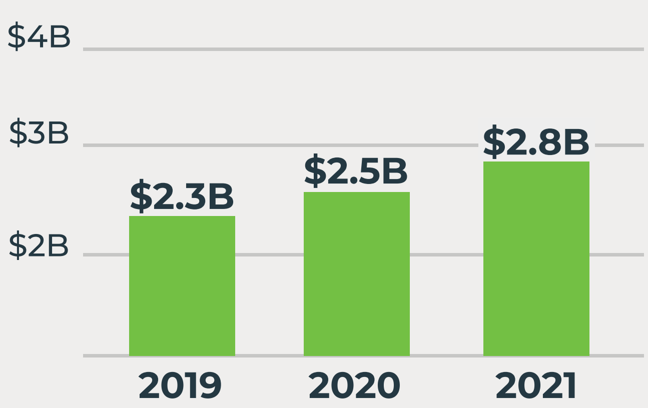
INDUSTRY SIZE & RECENT GROWTH

Growth of Industry

Assets Under Management



New Commitments to Deals



TYPES OF LITIGATION FUNDERS

Litigation funders in the U.S. can be divided into three types: dedicated, multi-strategy, and ad hoc.

DEDICATED FUNDERS

As their name suggests, specialize in litigation finance. These funders account for most of the capital available, and most of the deals completed, in the litigation finance industry. Some dedicated funders enjoy full autonomy to invest in deals that fit their mandate. Others manage their investors' capital but with limited autonomy. For instance, investors may reserve veto authority over financing deals. Several entities that hold themselves out as dedicated litigation funders do not manage a dedicated pool of capital at all, but instead, approach investors on a deal-by-deal basis to raise capital on the fly.

Two of the funders in this category with significant US activities are publicly traded entities, while the balance of these funders are privately held.

MULTI-STRATEGY FUNDERS

Multi-strategy funders are entities — usually hedge funds — that invest in various markets and asset classes and have established a dedicated litigation finance area (or "desk"). This specific litigation finance area typically operates much like a dedicated funder, but these multi-strategy funders often have greater sensitivity to business conflicts and capital markets compliance issues due to the broader activities.

AD HOC FUNDERS

Ad hoc funders are entities like hedge funds or family offices that only occasionally participate in the litigation finance space and do not have dedicated litigation finance desks. *Ad hoc* funders have an appetite for litigation finance deals, but most do not publicize their participation in the market.

BREAKDOWN OF CAPITAL DEPLOYED

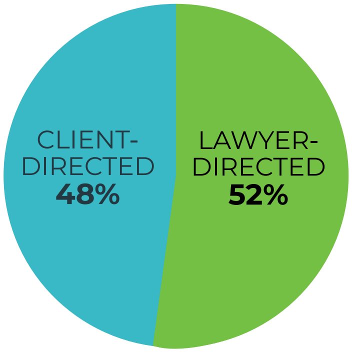
The following sections provide an overview of some of the key metrics we collect from funders that reflect in greater detail how the capital committed to new deals in 2021 was allocated. Many of these metrics were also compiled for the first time in 2020, affording us the ability to analyze year-over-year changes. Generally, we observed significant changes in Big Law utilization in 2021 as well as increases in capital allocations to patent litigation, while the breakdown between single-matter versus portfolio transactions remained fairly constant.

Average Deal Size

In 2021, the average dollar value of the transactions we analyzed was $6.5 million ($7.8 million in 2020). Single-matter deals averaged $3.5 million ($4.5 million in 2020), while portfolio deals averaged $8.5 million ($12.8 million). Thus, across all deal types, the average size of the capital commitments decreased in 2021 versus 2020 despite a relatively higher number of very large ($50 million-plus) law firm portfolio deals in 2021. Commentary on these trends will benefit from additional years of data collection, however, we interpret the reduction in average deal size in 2021 as an indication that funders are gaining greater competency in underwriting and servicing smaller transactions.

Type Of Users

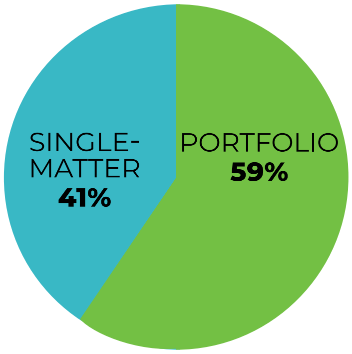
The allocation of capital between client-directed and lawyer-directed deals was much more evenly balanced in 2021 compared with prior years. In 2020, lawyer-directed deals made up approximately 65% of capital commitments versus 52% in 2021. This shift in utilization toward client-directed deals may also be a factor in the reduction in average deal size in 2021.



2021 Commitments By Type Of User

Type Of Deal Structure

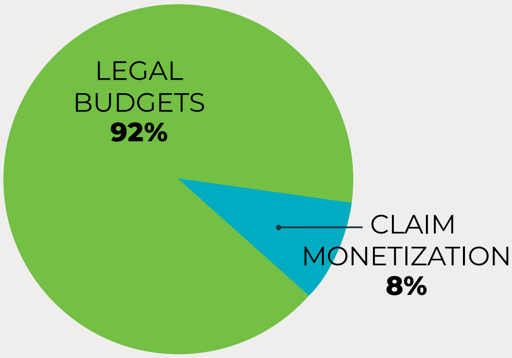
The allocation of capital between single-matter and portfolio deals remained fairly constant in 2021 compared with prior years, with portfolios comprising 59% of new capital commitments. The ratio of portfolio deals to single-matter deals has remained slightly less than 2:1 consistently from 2019 through 2021.



2021 Commitments By Type Of Deal

Use Of Proceeds

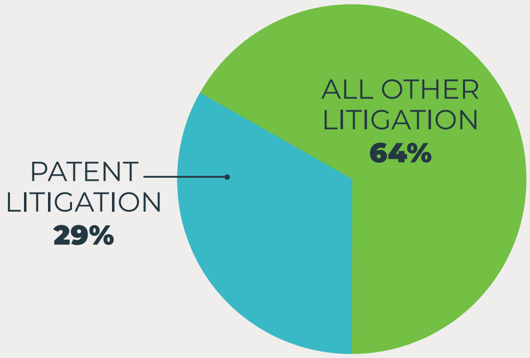
For industry observers who predicted that claim monetization would be a growth area that would eclipse the funding of legal budgets, 2021 results may prove disappointing. The allocation of capital toward claim monetization decreased to 8% (10% in 2020) with 92% of all capital commitments being used toward legal budgets.



2021 Commitments By Use of Proceeds

Patent Litigation

Patent litigation attracted a significantly higher percentage of new commitments in 2021, comprising 29% of all capital commitments. This allocation represents a 61% increase from 2020 as a percentage of the total. The majority (64%) of capital allocated toward patent litigation was for portfolio deals.



2021 Commitments For Patent Litigation

Big Law

Big Law utilization in 2021 may indicate a significant shift toward a long-anticipated embrace of litigation finance by the largest 200 US law firms, particularly in law firm portfolio structures.

41%
Percentage of Total Commitments Allocated to Big Law

46% Increase from 2020

53%
Percentage of Total Law Firm Portfolio Commitments Allocated to Big Law

488% Increase from 2020

34%
Percentage of Big Law Commitments Allocated to Client-Directed, Single-Matter Deals

We must caveat these results based upon the fact that the dramatic increase in law firm portfolio activity appears to be driven by a small number of large ($50 million-plus) deals. We also note that these larger deals were predominantly comprised of patent litigation matters, which served to increase the capital allocated to that type of litigation relative to the total. Nonetheless, Big Law portfolio activity only amounted to 9% of portfolio activity across all law firms in 2020. The increase from 9% to 53% in 2021 represents a staggering 488% increase as a percentage of all portfolio activity.

Our analysis indicates that the funding community is making substantial progress toward accommodating the objectives and concerns of Big Law. Simultaneously, we believe Big Law is becoming less culturally resistant to litigation finance, independent of progress being made by funders. Given the magnitude of Big Law's commercial litigation activities — and the fact that substantially all litigation finance is being directed toward the funding of legal budgets — we forecast both a continued trend toward Big Law's capitalization upon the availability of funding as well as an expanding deployment opportunity, particularly for larger, more established funders.

WESTFLEET'S METHODOLOGY

This report would not have been possible without the participation of most of the major litigation funders, which provided thoughtful responses to our requests for information, and, through a third party, submitted confidential information from which we aggregated a complete picture of the industry's size and scope. By design, that third party shared no attributable data with anyone, even with Westfleet, which was only provided the aggregated information found in this report.

Further, much of the data relating to transactional volume and AUM is available online for the publicly traded entities, as these firms are required to adhere to a certain level of transparency in their operations. The more granular data included in our report was only gathered from those funders that directly participated in our survey. Nonetheless, based on the scope and composition of these participants, we believe these more granular data points accurately reflect the broader industry's activities.

The methodology used in this guide was as follows:

- Funder data was included in this report if the organization had substantial participation in the U.S. commercial litigation finance market as of the report's publication.
- The transaction data we collected relates to the 12 months from July 1, 2020, to June 30, 2021.
- As used in this report, "litigation finance" refers only to commercial litigation finance, which we define as transactions between commercial entities in which the financier's repayment is contingent upon the outcome of one or more legal matters. Other forms of finance—including consumer litigation finance, full-recourse law firm finance, receivables factoring, and other legal finance in which repayment is not contingent on the outcome of legal matters—are excluded from consideration in this report.
- Only commercial litigation finance activities with a nexus to the U.S. (i.e., transactions that involve a U.S. law firm as lead counsel, a U.S. counterparty, and/or U.S. litigation or arbitration or related proceedings) are included in this report.
- Law firm portfolio transactions are included even where the underlying cases may contain cases that are not commercial (e.g., cases involving bodily injuries) if the nature of the law firm's repayment obligations are contingent upon recoveries in the underlying cases.
- Some funders manage capital that is not exclusively dedicated to U.S. commercial litigation finance. For these funders, we have adjusted to exclude any capital not dedicated or allocated to U.S. commercial litigation finance from our estimate of industry-wide AUM.

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