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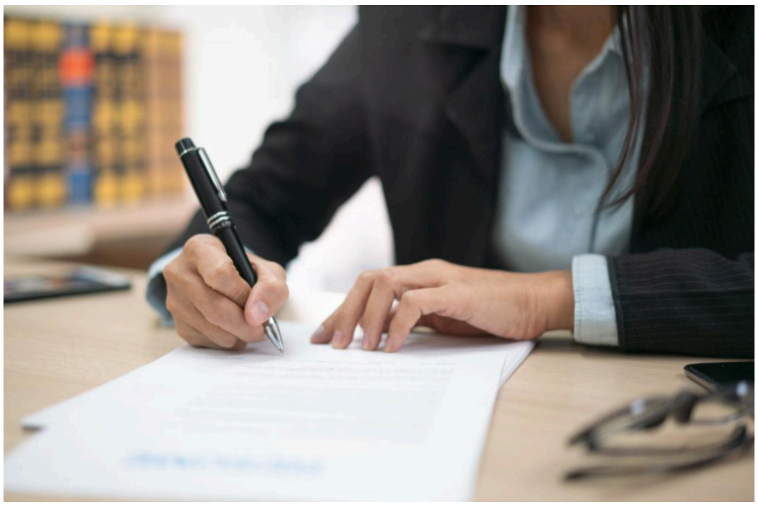
Could litigation funding be the key to surviving a recession?



Enterprises suffering from a sudden drop in revenue will be well-served by maximizing the value of their contingent litigation assets and availing themselves to litigation funding, particularly in an environment where litigation claims are likely to increase.
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Federal Reserve Chairman Jerome Powell recently offered his opinion that the United States may have already entered a recession. But Powell hastened to differentiate our current economic situation from a "normal" recession by emphasizing that a quick rebound is possible if economic activity resumes in the second half of the year.

When a downturn is projected to be short-lived, organizations seek out creative solutions to survive while maintaining the infrastructure necessary to return to business as usual. Common cost-cutting measures like layoffs and office closures do not serve this goal. However, unlocking the value of contingent assets, such as litigation claims, can help.

Converting contingent litigation assets into concrete ones
Litigation funders can provide capital for companies and law firms with interests in large commercial claims in exchange for a return from the recovery in the litigation. Funders allow enterprises to immediately monetize these contingent assets, the value of which might otherwise go unrealized for years. This is particularly important for businesses facing a temporary dip in operational revenue.

Litigation funding is also non-recourse, meaning it does not threaten to overleverage a borrower if business fails to recover as anticipated. For both companies and law firms, this model has obvious appeal over traditional bank lending in times of economic uncertainty.

How litigation funding works for companies: Particularly in a downturn, funding can be a useful resource for legal departments that are under pressure to reduce spending and minimize litigation costs. Corporate cultures that disfavor litigation often stem from companies being unable to account for their potential litigation recoveries as an asset for accounting purposes, but are obligated to reflect the litigation costs on a current basis. Funding ameliorates both of these issues: it allows legal departments to realize immediate value on litigation claims while eliminating or reducing ongoing costs of the litigation for the company.

Litigation funding also allows companies to maximize the long-term value of their litigation claims by enabling them to engage reputable counsel and shoulder potentially oppressive costs. Moreover, the benefits of litigation funding extend well beyond the boundaries of the case being funded. Funders can provide lump-sum disbursements at closing to be used as the borrower chooses — to pay rent, make payroll or catch-up vendors.

How litigation funding works for law firms: Litigation funding is also a resource for law firms when business slows. For firms with an existing book of contingent fee cases, portfolio funding can provide an immediate liquidity event to pay attorney salaries, fund case expenses and cover firm overhead. For firms that are reluctant to stray from the billable hour, partnering with a funder makes alternative fee arrangements more palatable by enabling hybrid structures - for instance, a reduced hourly rate coupled with a partial contingent interest. Embracing alternative fee arrangements is key to remaining competitive during a downturn and accommodating limited client budgets. Prudent firms will strive to maximize attorney utilization, even if at reduced rates, in order to retain talent and minimize disruption to the firm.

Downturns drive disputes
Litigation funding is particularly well-suited for this environment, where many enterprises may find themselves with valuable legal claims related to the interruption of their business. This abrupt cessation of economic activity will likely cause a surge of litigation in the near-term. Indeed, insurance disputes are already percolating as companies see their business interruption insurance claims rejected. Contract disputes are also likely - for instance, disputes over the interpretation and applicability of force majeure and impossibility clauses will arise as parties seek to avoid liability for nonperformance. Bankruptcies and related litigation are also expected as businesses cope with the fallout from lost revenues and sinking profits.

Position your business for optimal success
While the long-term effects of this unprecedented economic downturn remain unknown, enterprises suffering from a sudden drop in revenue will be well-served by maximizing the value of their contingent litigation assets and availing themselves to litigation funding, particularly in an environment where litigation claims are likely to increase. Litigation funding experts can help sophisticated parties design structures to achieve these goals during a downturn.

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