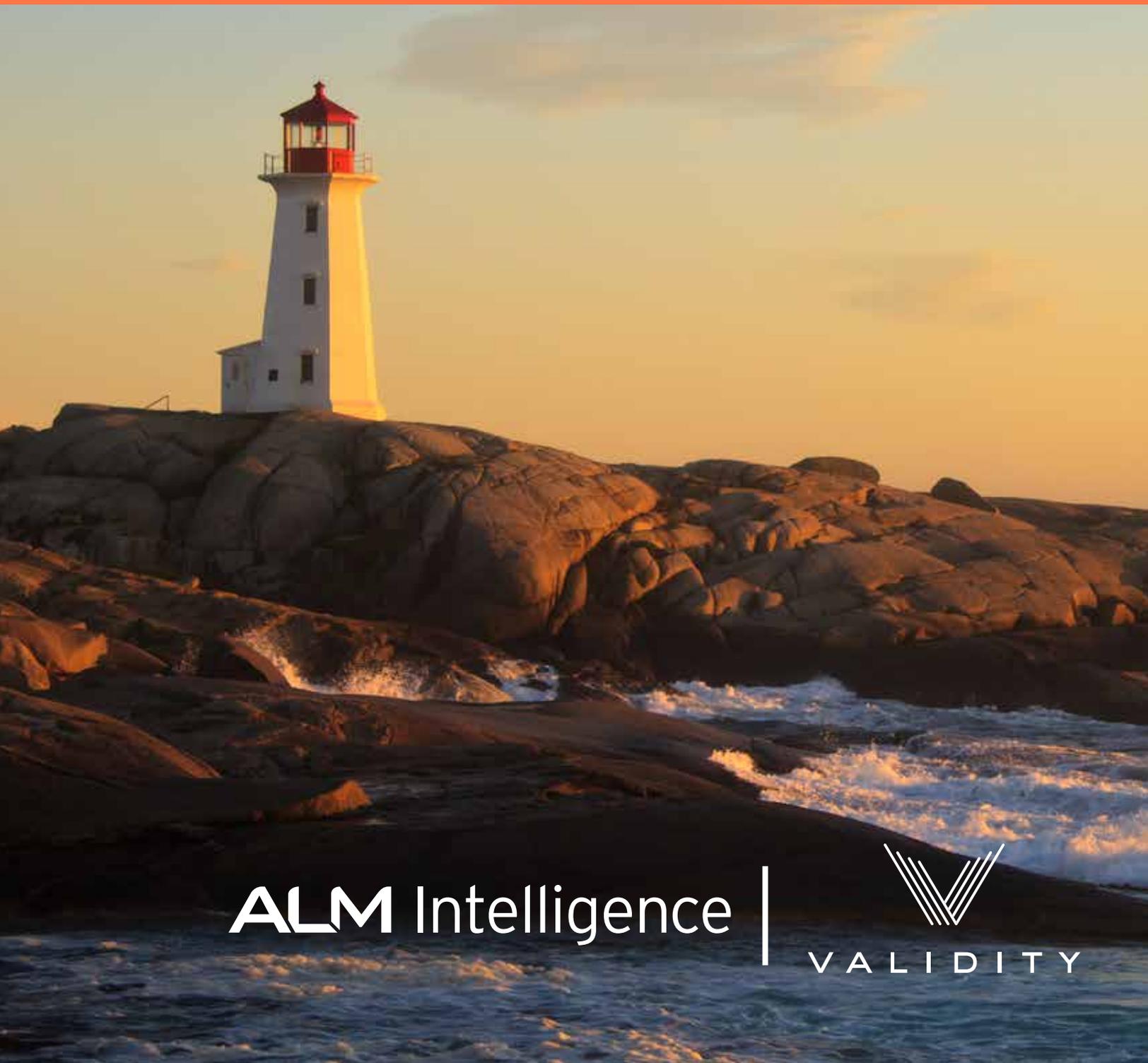
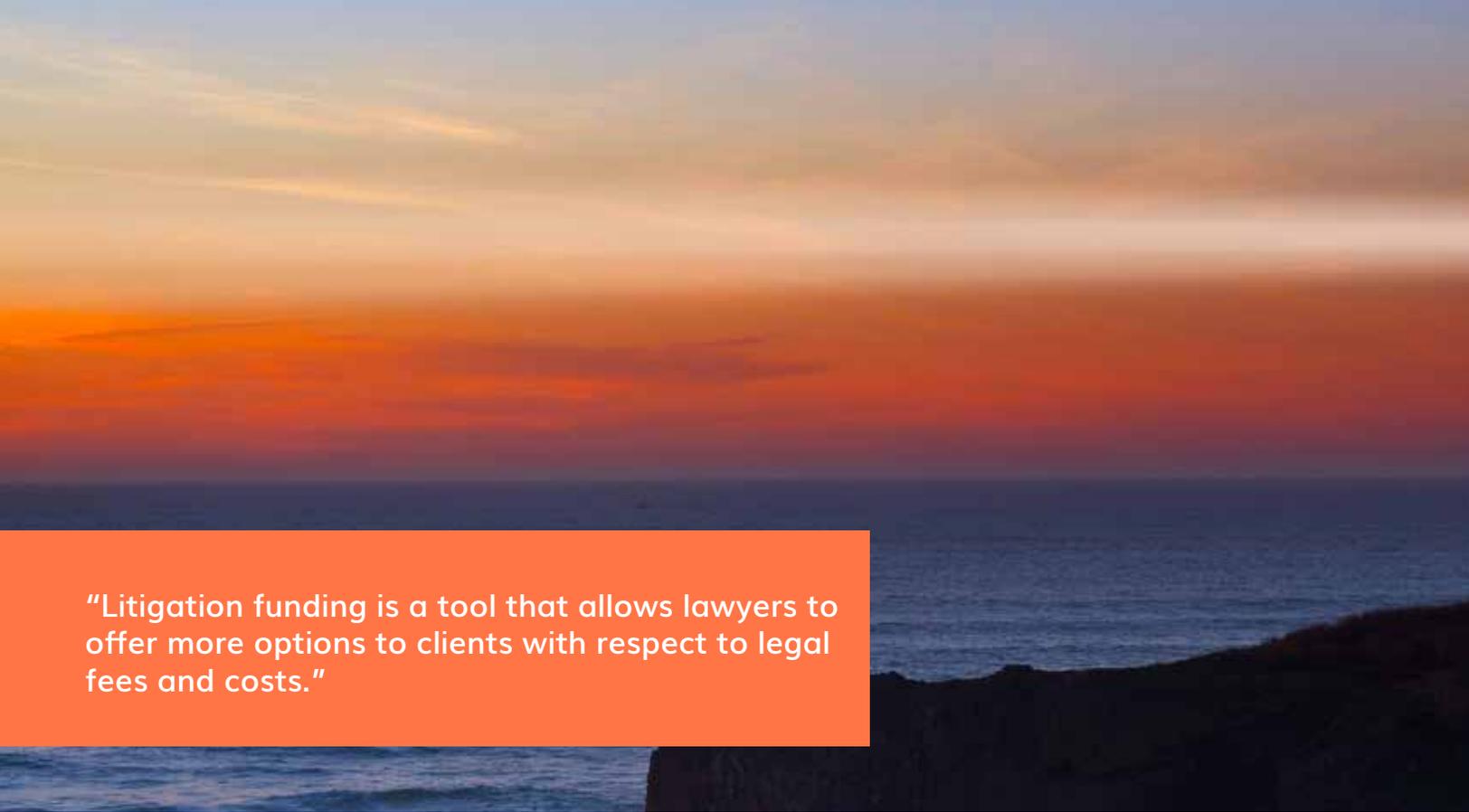


The 2019 Litigation Finance Client Experience Survey: *What Clients Want*



ALM Intelligence





"Litigation funding is a tool that allows lawyers to offer more options to clients with respect to legal fees and costs."

Skyrocketing litigation costs aren't just a problem for claimholders—they affect everyone in the legal industry. A staggering 70% of companies report having abandoned meritorious legal claims, and 82% of law firms report having turned away meritorious cases that were not considered "cost-effective."

Litigation finance mitigates costs. But despite the notion that the industry is experiencing "explosive" growth, many clients that could benefit from litigation finance either don't understand how it works, fear the process is onerous, or have misperceptions about the industry.

82%

of law firms report having turned away meritorious cases that were not considered "cost-effective"

// From a corporate standpoint, litigation finance is an excellent vehicle for spreading risk, monetizing litigation assets, and keeping litigation expenses off the books."

The 2019 Litigation Finance Client Experience Survey is not a survey about the size or amount of capital going into the industry. **It's a survey about what clients want and need.**

The American Lawyer and Validity Finance set out to get to the heart of what people think of litigation finance, what they worry about, what makes for a good funding relationship, what constitutes a fair investment agreement, and how litigation finance can best serve them.



Early Adopters, Loyal Users

Despite growing awareness of litigation finance, it is still only used in a sliver of commercial litigation in this country.

In January and February of 2019, we surveyed 330 lawyers working in-house and at law firms about their experiences with litigation finance. We found that while more than 50% believed litigation finance had been used against one of their clients, **only 14% of respondents had personal experience using finance.**

“ My experience was positive. The funder provided insight and participated in the process, but did not dictate the process and allowed the client (with the advice of counsel) to make the ultimate decisions.”

98%

of lawyers who have used litigation finance would use it again

Individuals who had used litigation finance reported a jaw-droppingly high level of satisfaction with the experience, with **98% of outside counsel and all in-house counsel reporting they would use it again.**

When asked about the benefits that litigation finance provides, **63% of law firm respondents reported that it helped ensure fees and costs were paid on time**—adding welcome cash flow consistency for firms.



"Funder's due diligence improved the quality of our legal arguments."

An additional 34% said litigation finance allowed them to offer attractive billing options to their clients, while 49% valued the collaborative partnership between lawyers, client, and funder.

Looking ahead, the survey data suggests that American lawyers are, for the most part, open to using litigation finance in the right circumstances. Among those with no litigation finance experience, **51% of law firm respondents and 60% of in-house counsel reported they would consider using it in the future.**

Outside counsel reported they would be most likely to use funding when the cost of litigation was prohibitively high for the client, as a way to share risk on a case, or to help offer discounts to clients. In-house counsel saw funding as an opportunity to share litigation risk with the funder and to free capital that would otherwise be tied up in legal fees.

But litigation finance is not for everyone.

99%
of lawyers agreed that working with a trustworthy funder is essential

Approximately one-third of respondents—**34% of outside counsel and 33% of in-house counsel—said they never plan to use funding.** Of those, 54% of outside counsel and 57% of in-house counsel reported "they have no need for funding."

// I think the general public does not understand litigation finance, and I believe the defense bar has tried to discredit it."

When Choosing a Funder, Trust Matters Most

When asked to rank the importance of factors in choosing a litigation funder, **99% of lawyers agreed that working with a trustworthy funder is essential.** Those with experience using finance prioritize three items in choosing a funder: **trust, fair funding terms, and clear documentation.**

A few respondents who have used litigation finance reported negative experiences with unethical funders or funders who had difficulty honoring their commitments of capital. The responses included one in-house lawyer whose funder had to raise capital in order to finance the case, and one whose

funder reneged on its commitment.

Many litigation finance firms are led by litigators who have a long track record of success in evaluating case merits, developing litigation strategies, and both litigating and funding complex cases. A number of respondents reported that they had found their funder's experience useful throughout the litigation process, and had treated the funder as a valued sounding board in assessing the merits of cases and legal arguments.

“ Litigation finance serves an economic purpose and increases access to justice – both are net goods for the legal landscape and society in general.”

In this area, interestingly, there were divergent perspectives between in-house corporate counsel and law firms in how they value a funder's legal expertise. **A significant majority of in-house counsel—65%—consider a funder's litigation experience to be either “extremely important” or “somewhat important.”** Meanwhile, 60% percent of law firm respondents ranked the possibility of consulting a funder for strategic advice as “not at all important.”

Generally, in-house lawyers seem to value the funder's experience and track record more highly than outside counsel, and are more likely to treat the funding relationship as an opportunity to stress-test their own and outside counsel's assumptions about the case to be litigated.

Financing Structures and Returns

Of the lawyers who have experience with litigation finance, **93% have used it to litigate a single claim** and 20% have used it to fund a portfolio of cases. Although defense funding is available both for single





cases and in the context of a portfolio, only 2% of respondents have used litigation finance for a defense case.

Of those who have considered using finance but haven't tried it yet, 42% indicated it's because they haven't found the right case and **23% said it's because they don't fully understand how the process works.**

The question of how much of the damages award the claimholder would retain was one of the most important issues for respondents.

Some 66% of respondents who had never used finance expressed concern over whether the financial terms would be sufficiently beneficial to clients.

When asked about a fair return structure, **71% of total respondents said they would only consider a financing deal to be fair if the claimholder receives 50% or more of the return.**

Two-thirds of respondents reported being dissatisfied with the fairness of the return structure in the financing deals they had participated in. This suggests significant variation in client recovery rates, and that some rates seem unfair to lawyers.

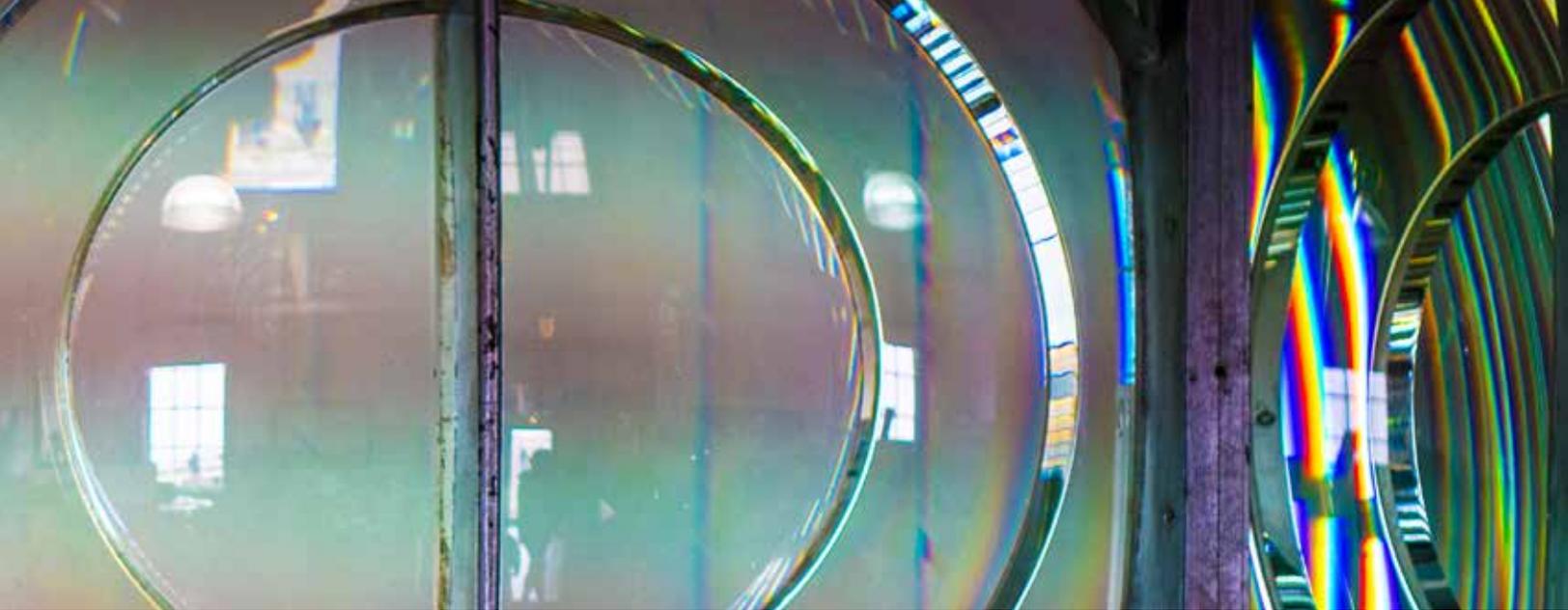
Industry Reputation

Lawyers are divided almost equally as to whether the litigation finance industry has a good reputation. Some lawyers clearly see finance as a tool to level the playing field for litigants who have meritorious claims, but would be disadvantaged against a deep-pocketed adversary.

Critics of the industry have claimed that finance increases frivolous litigation. However, while a handful of respondents expressed concern over the possibility that finance makes it harder to settle cases, almost none of the 330 respondents expressed a belief that it increases the number of meritless claims. On the contrary, as one respondent commented, "I do not have a great concern that litigation financiers are funding a large number of meritless lawsuits, and if any are, I expect they will be disappointed in the returns (or lack of returns)."

44%

of lawyers believe litigation finance will impact the number and type of cases that are litigated.



Some respondents expressed that they had ethical (61%), reputational (35%), and regulatory (32%) concerns about using funding. For those with experience using funding, **27% had ethical concerns—with the biggest concern being client confidentiality or privilege.** For those who had no experience with funding, the most common concern was maintaining control over litigation strategy and settlement decisions – indicating the industry may need to do more to assure lawyers on this key point.

The Great Disruptor

The American commercial litigation finance industry is only about 13 years old, with particularly rapid growth in awareness over the past five years. It remains an open question what impact it will have on the practice of corporate law.

Some lawyers see finance as having a disruptive effect on the legal industry, with **44% of lawyers anticipating finance will impact the number and type of cases that are litigated and 33% indicating they believe it will change how law firms manage risk and profitability.**

To download the full 2019 Litigation Finance Client Experience Survey, please [click here](#)

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VALIDITY

Validity is a commercial litigation finance company that provides businesses, law firms and individuals with non-recourse financing for a wide variety of commercial disputes. With \$250 million in financing, Validity believes that capital and legal expertise combine to help solve legal problems on behalf of clients. Validity's mission is to make a meaningful difference for clients by focusing on fairness, ethics, innovation, and clarity.

For more, visit <http://validity-finance.com>