



LAKE
WHILLANS

LITIGATION FINANCE: IN-HOUSE PERSPECTIVE

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Introduction:

Litigation finance is rapidly becoming an important fixture of the legal industry. Corporate clients increasingly expect their in-house and outside counsel to understand the potential benefits of financing options and the nuances of the process. Seeking to dig deep into the viewpoints of corporate legal departments, Lake Whillans recently surveyed in-house attorneys at a wide range of companies, including those at more than 140 Fortune 1000 (or larger) corporations. We found that over a quarter of have firsthand experience with litigation finance and approximately 70% told us they would consider it.

Among the questions our survey explored:

How prevalent is firsthand experience with litigation finance among in-house attorneys?

What are the strongest motivations for seeking litigation finance?

How does adoption vary among industries?

What are the major obstacles to adoption?

Our findings demonstrate that growth in awareness, acceptance, and interest in the practice of litigation finance continues to accelerate in the legal profession.

Survey Demographics:

276

Total Respondents:

37

Cities Represented

26%

New York City

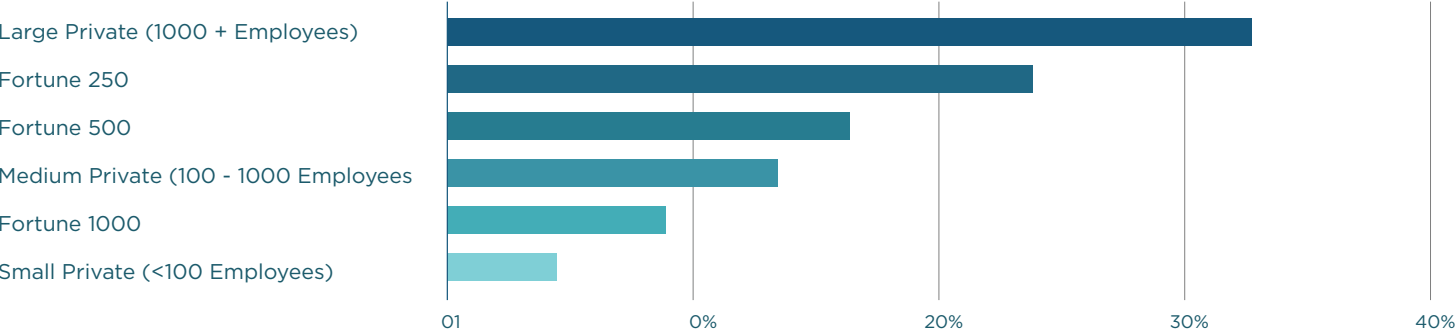
12%

Los Angeles

12%

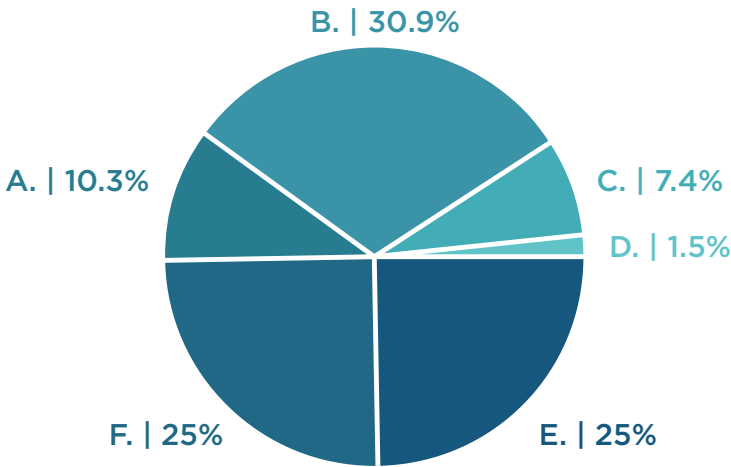
Chicago

Company Size / Type

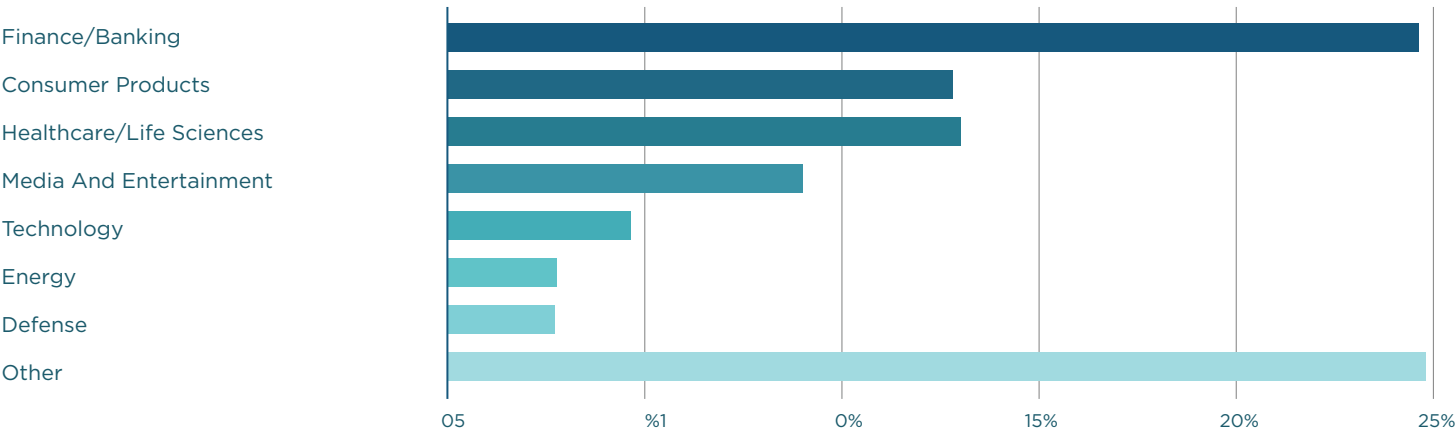


In-House Respondent Practice Area

A. Employment	10.3%
B. Corporate	30.9%
C. Real Estate	.4%
D. Tax	1.5%
E. Litigation	25%
F. Other	25%



In-House Respondent Industry

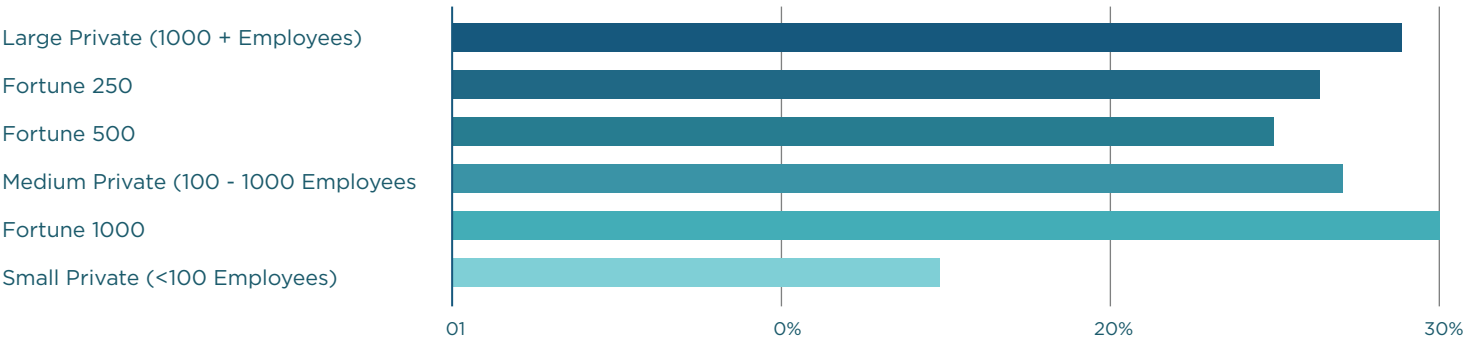


Survey Findings:

Do you have **FIRSTHAND EXPERIENCE** working with a litigation finance firm?

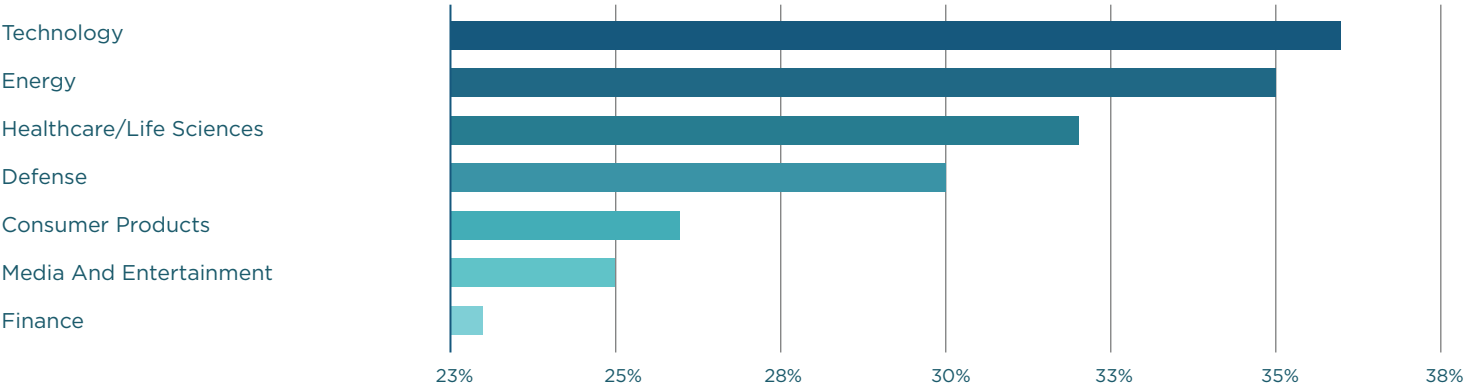


In-House Firsthand Experience by Company Size:



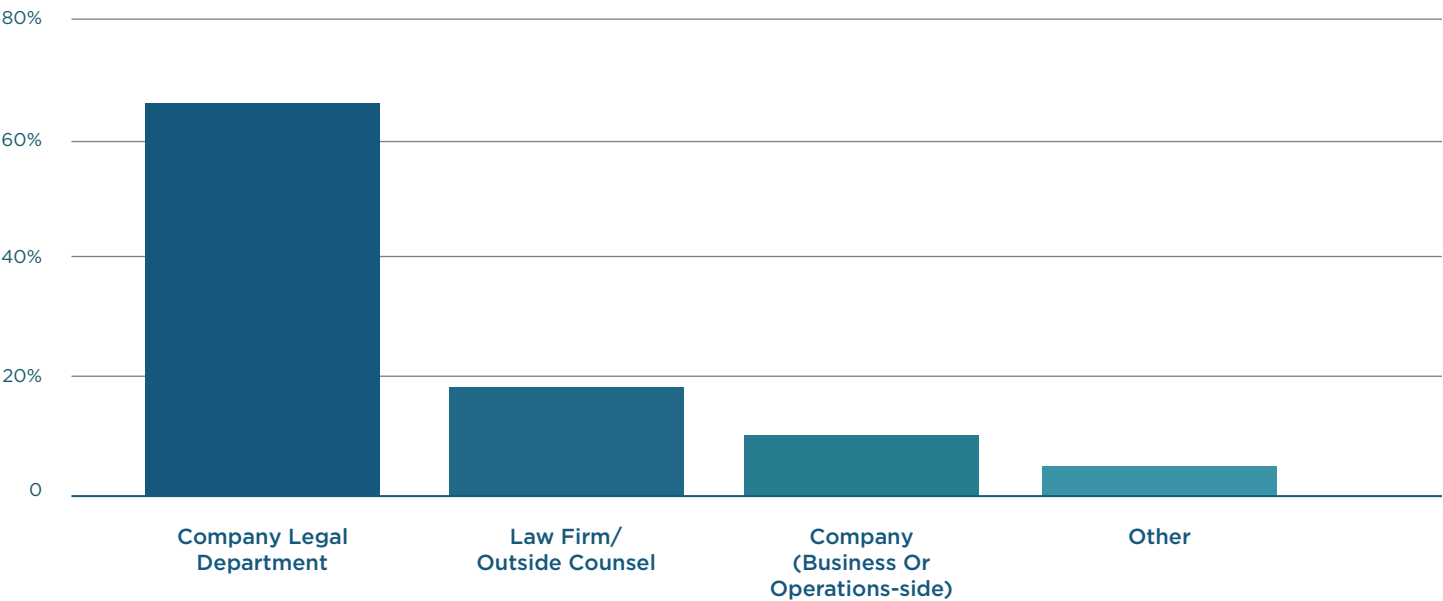
While firms of all sizes reported first-hand experience with litigation funding, the product has gained the most traction with large corporations, the most coveted Biglaw clients.

In-House Firsthand Experience by Industry:



Litigation finance adoption rates are robust across all industries. By sector, in-house respondents reported firsthand experience at rates of between 23% (Finance/Banking) and 36% (Technology).

WHO was the MAIN DRIVER of the decision to seek litigation financing?

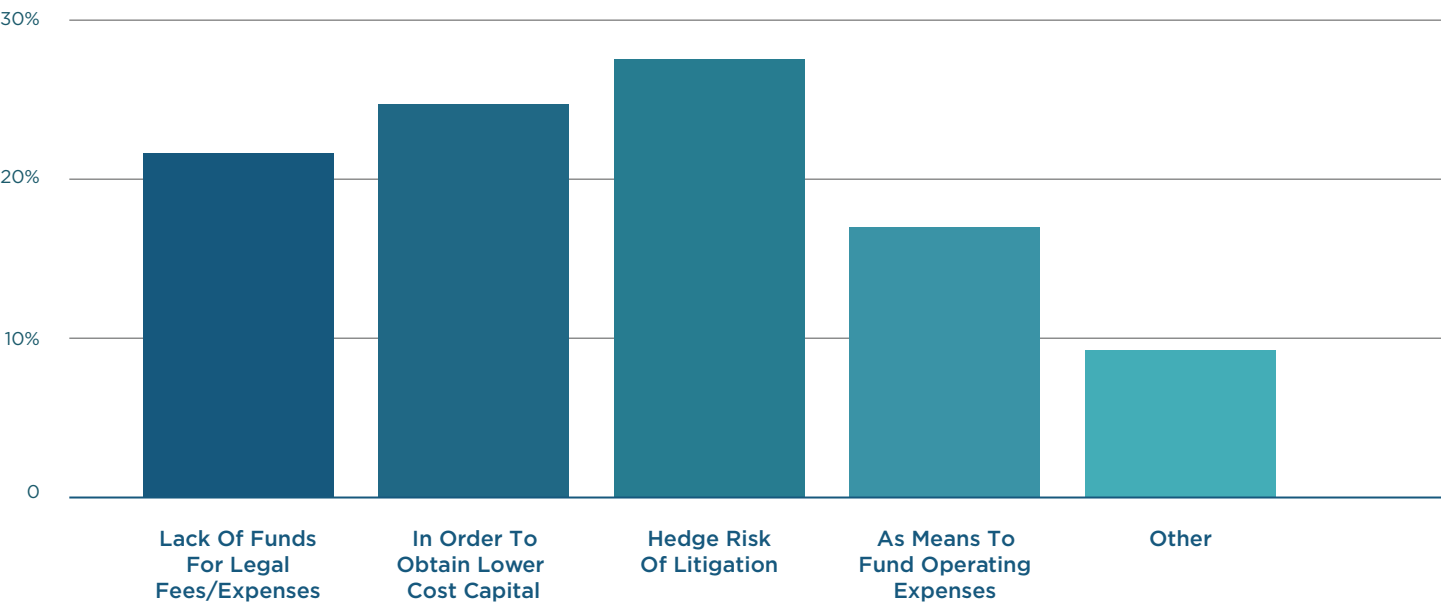


In-house attorneys reported that **general counsel/legal departments** (i.e. themselves and their peers) drove the decision an overwhelming majority **(66%) of the time, with outside law firms being the main driver at only 18%.**

A mere 10.5% of **in-house attorneys** identified the business- or operations-side of their company (i.e. their employers) as the main driver behind the decision to seek litigation finance.

WHAT was the strongest motivation for seeking litigation finance?

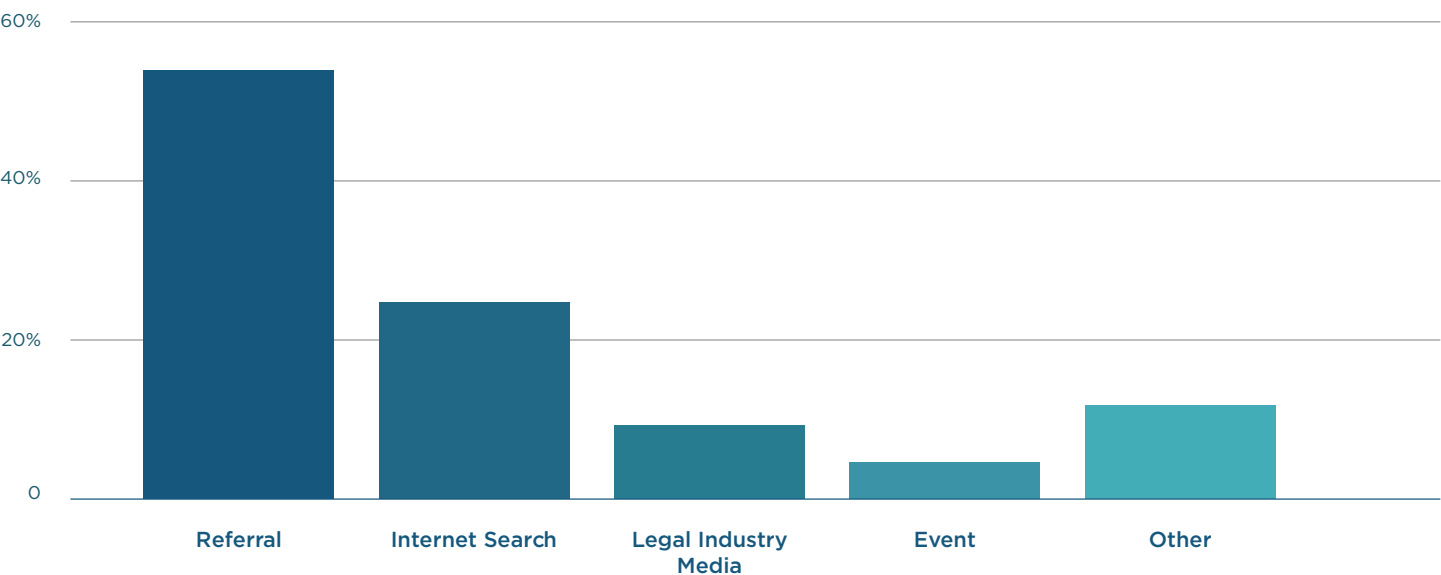
Asked of Participants Who Had Previous Experience:



No single motivating factor dominated our survey results. A plurality (28%) of in-house respondents cited a need to “hedge risk of litigation.” Fully a quarter of in-house counsel named “in order to obtain lower cost capital” as the strongest motivation for seeking litigation financing.

HOW were potential litigation finance providers identified?

Asked of Participants Who Had Previous Experience:



WHAT are the most important considerations in choosing a litigation financier?

Respondents were asked to assign an ordinal value (“1” highest, “7” lowest) to a set of factors. Overall, respondents ranked factors in the following order of relative importance:

1. Economic terms	(1.98)
2. (Tie) Financier’s right to influence/decide strategy or settlement	(3.40)
3. (Tie) Flexibility regarding the structuring of financing arrangements	(3.40)
4. Financier’s reputation/track-record	(3.85)
5. Speed/responsiveness	(4.55)
6. Subject-matter or industry-specific expertise	(4.67)
7. Other	(6.89)

Resoundingly, “economic terms” were cited as the most important selection criterion.

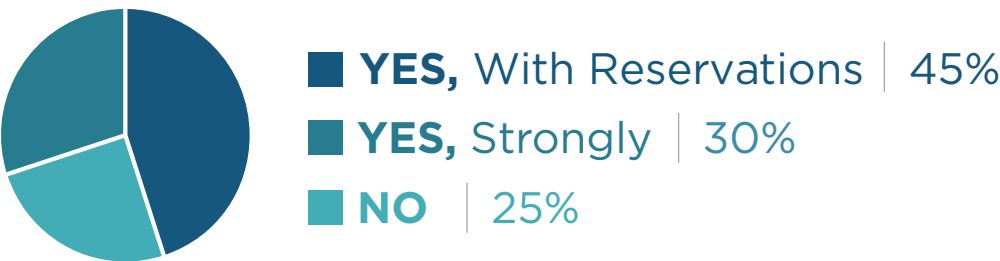
Would you use litigation finance again?

Asked of Participants Who Had Previous Experience:



This proportion was essentially consistent across various categories of respondent company size and industry focus.

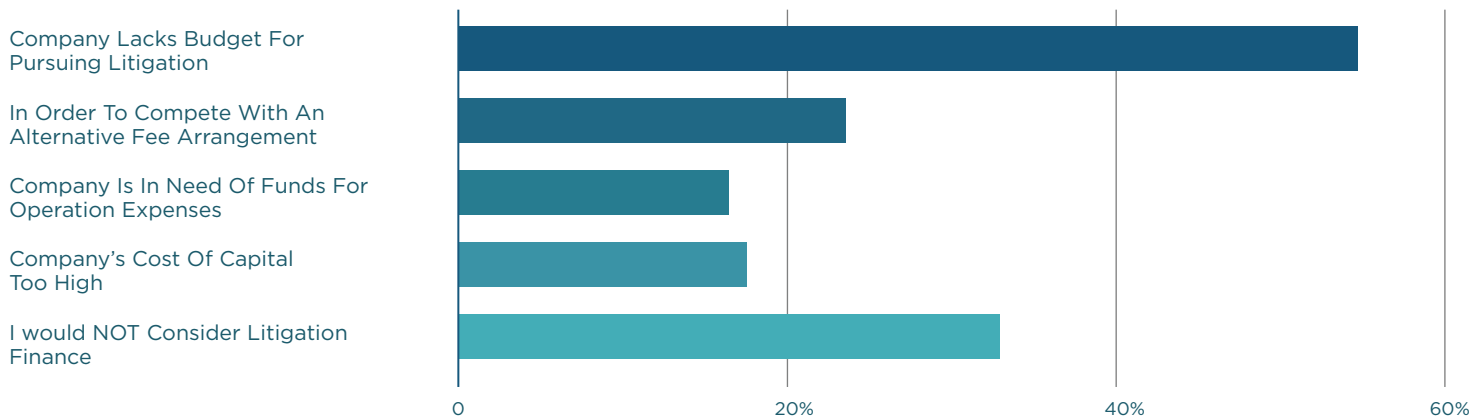
Would you recommend litigation finance to others?



Similar to the previous—and related—question, this overall pattern was consistent across all respondent categories.

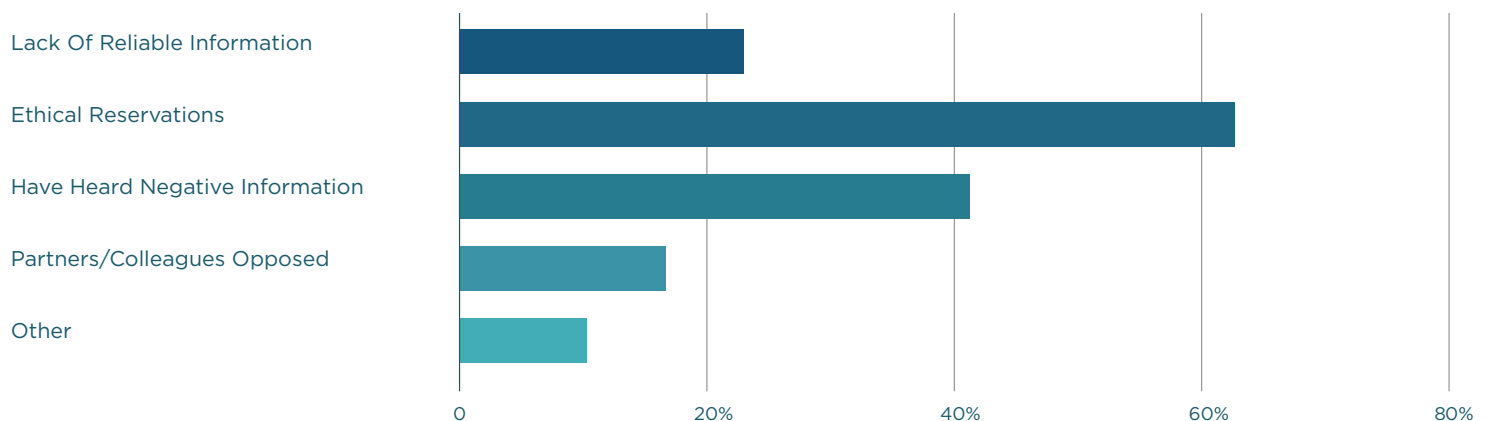
Would you consider exploring litigation finance in any of the following circumstances?

Asked of Participants Who Had Previous Experience: Multiple Selections Permitted



Why would you not consider using or recommending litigation finance?

Multiple Selections Permitted



Approximately **74%** of all our survey respondents **did not have firsthand experience with litigation finance.**

Of that group, **31% declared that they would NOT consider using litigation finance.**

The most commonly cited reason for ruling out the possibility of litigation finance by nearly **65% of negative respondents was “ethical reservations.”**

The second most common reason (“have heard negative information”) was cited by about **42% of the “would NOT consider” cohort.**

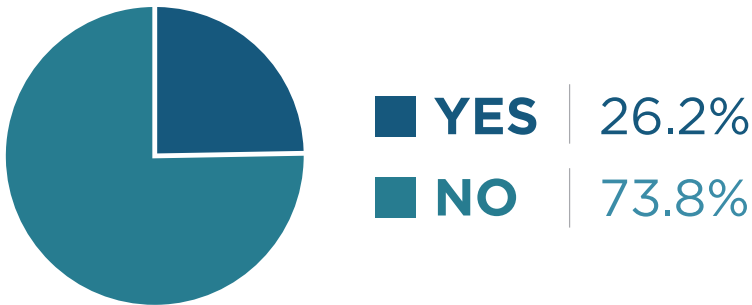


Appendix:

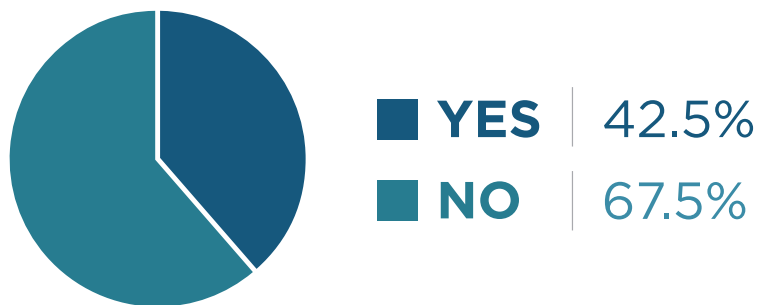
The field of litigation finance is growing and changing at an explosive pace and one should be hesitant to read too much into data sets on the subject compiled a year apart. However, our 2018 responses from in-house counsel showed a number of marked contrasts with our 2017 findings concerning law firm litigators. The following comparison between the two data sets is presented with the aim of showing some broad differences in perspective between the two groups, albeit with the caveat that perspectives can and do evolve rapidly.

Comparative Survey Findings:

Do you have **FIRSTHAND EXPERIENCE** working with a litigation finance firm?



26.2% of In-House Counsel = YES

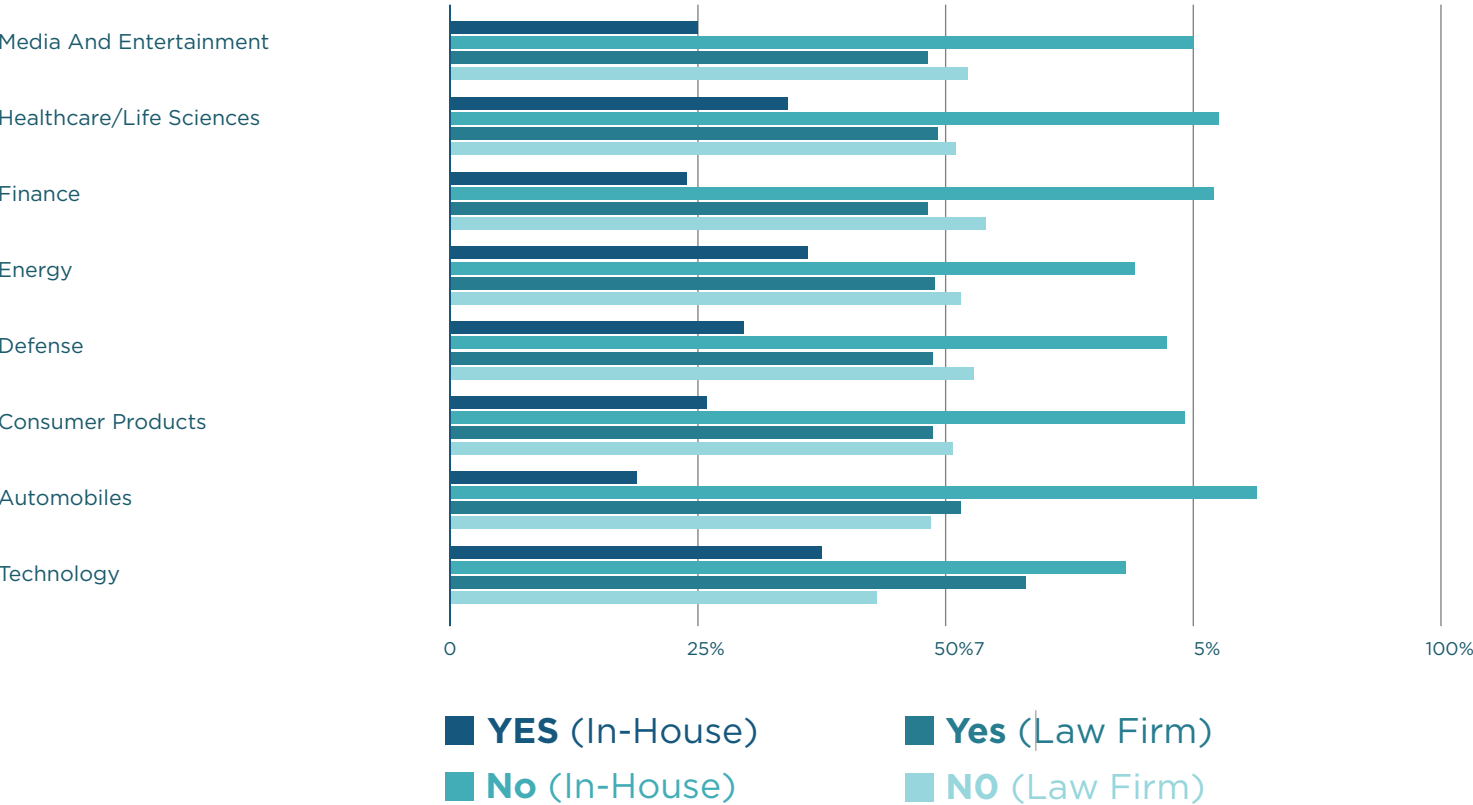


42.5% of Law Firm Litigators = YES

We found significantly less experience among company legal departments as compared with law firms. Slightly over one-quarter of in-house counsel reported firsthand experience, compared with more than 40% of litigators at law firms.

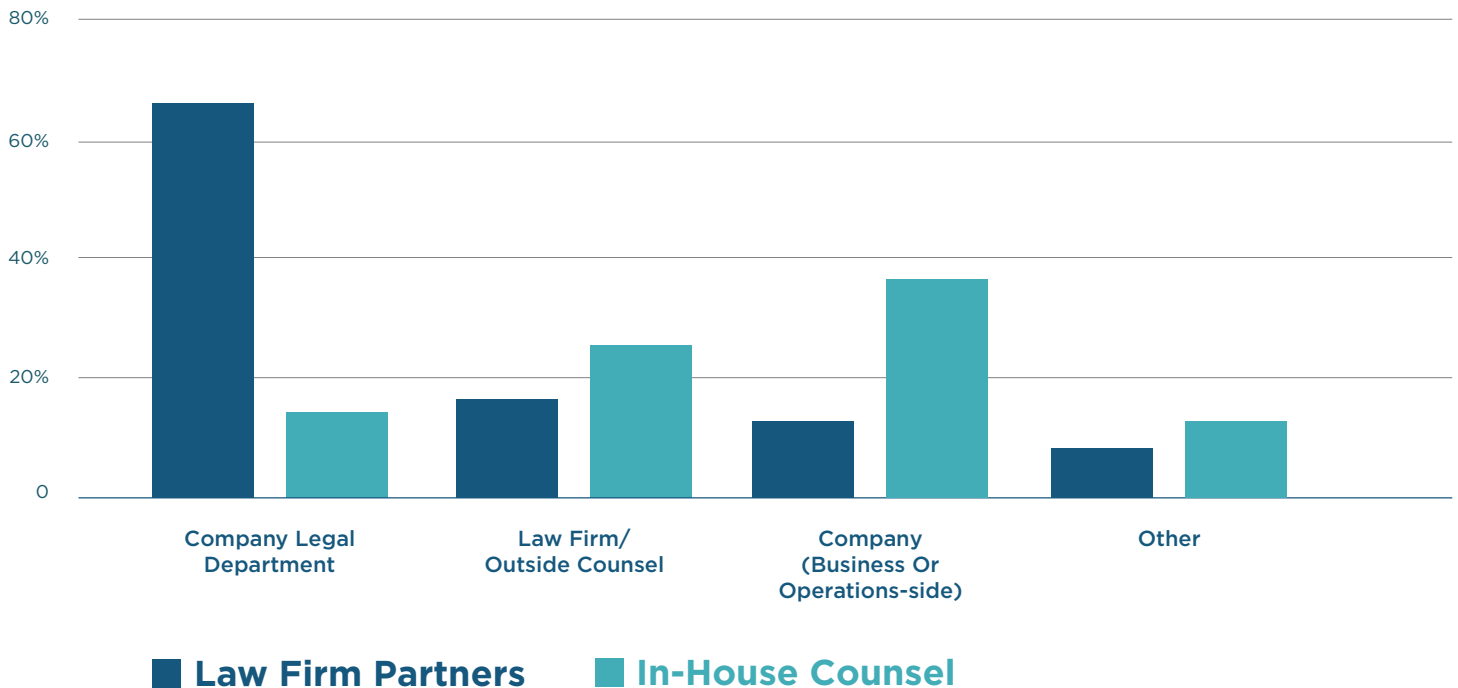
1 Note that our 2017 survey data did contain some responses from in-house counsel. Where that data is presented here for the purposes of comparison with the 2018 “all in-house counsel” data, the 2017 in-house responses have been stripped out.

FIRSTHAND EXPERIENCE by Industry:



In-house counsel whose companies are in the **Energy and Technology industries** had the **highest proportion of firsthand experience**; **Finance/Banking and Automobiles** had the **lowest**. This is consistent proportionally with our findings on law firm litigators, albeit at lower levels.

WHO was the MAIN DRIVER of the decision to seek litigation financing?

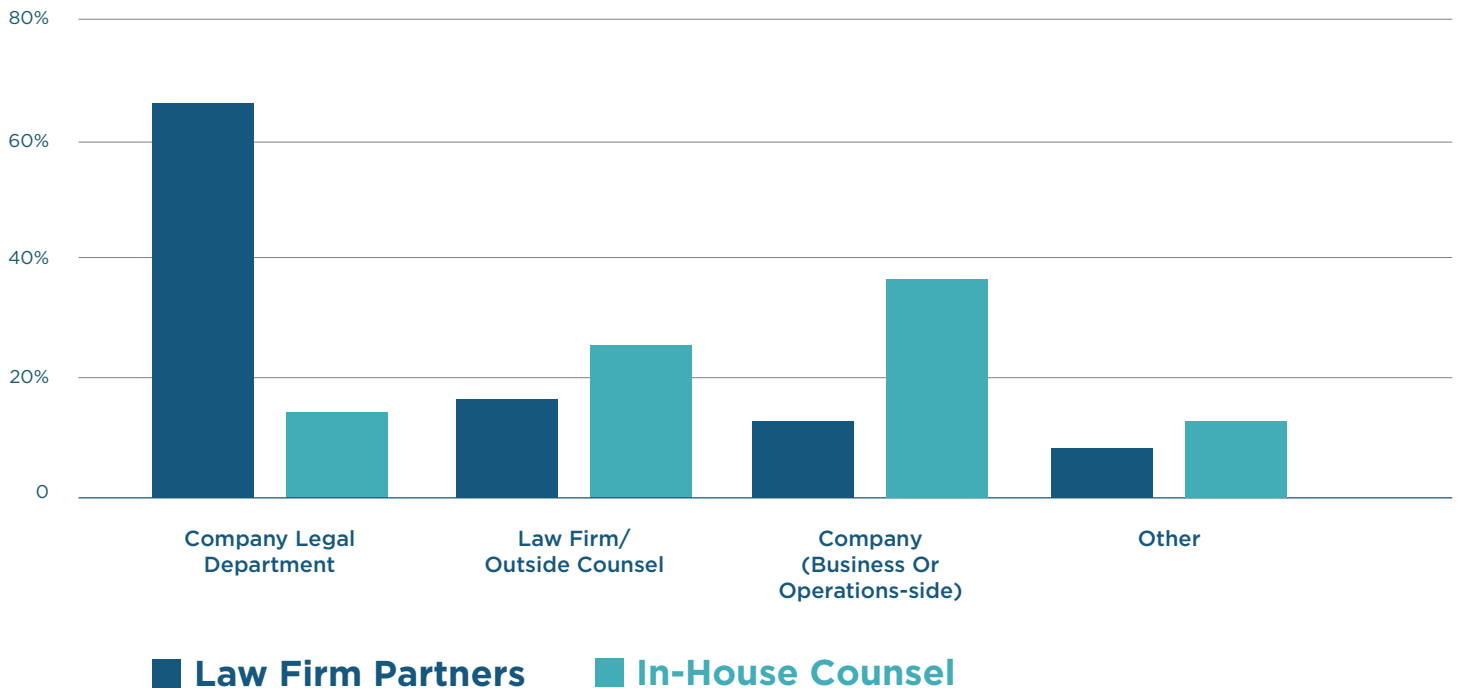


There was a marked difference in perspective between in-house counsel and law firm partners regarding the identity of the “main driver” of the decision to seek litigation financing.

Law firm partners characterized outside counsel (i.e. themselves and their peers) driving the decision at a **rate of nearly 30%** and **general counsel/legal departments at a mere 7.3%**. (Recall from above that our 2018 survey revealed that **in-house attorneys** reported that **general counsel/legal departments** drove the decision an overwhelming majority **(66%) of the time, with outside law firms being the main driver at only 18%.**)

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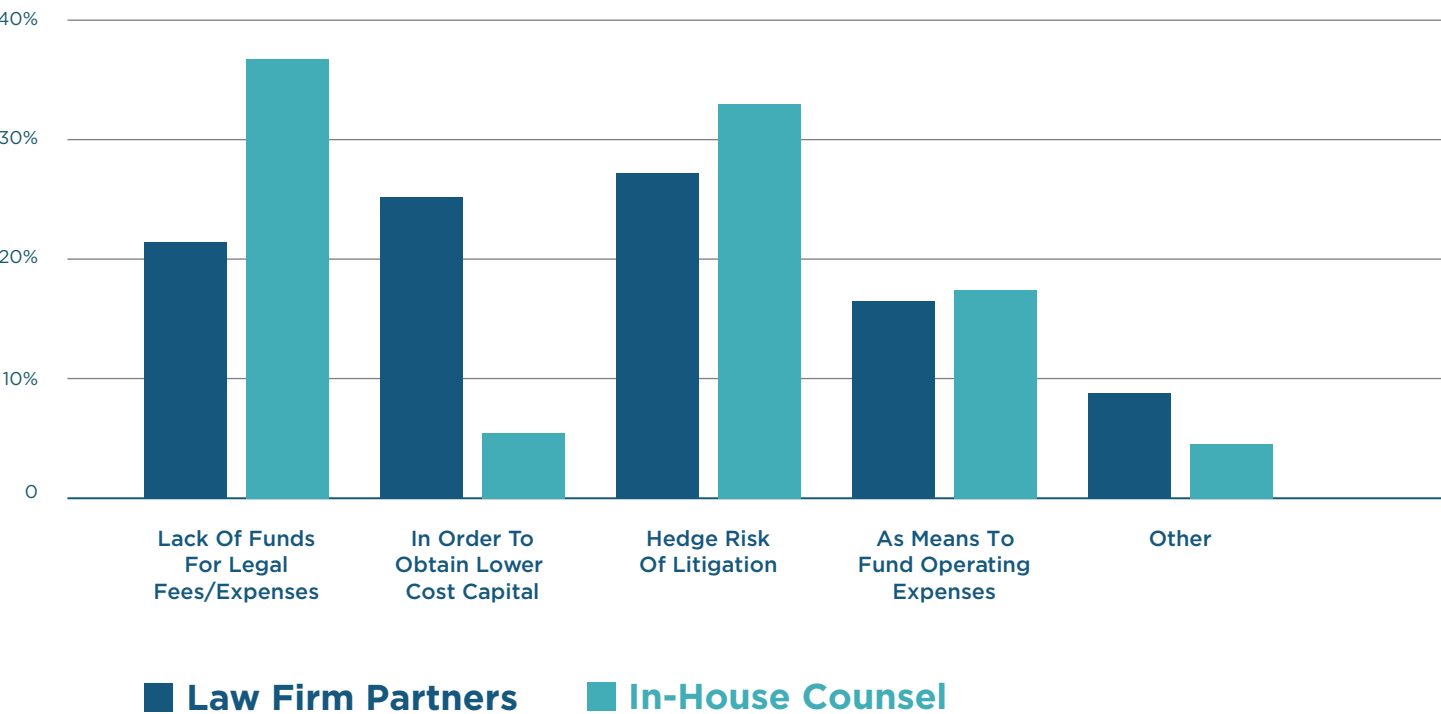
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WHAT was the strongest motivation for seeking litigation finance?

Asked of Participants Who Had Previous Experience:



Again, significant contrasts appear when compared with our previous findings concerning law firm litigators. “Lack of funds” was cited by a plurality (36%) of law firm litigators, with law firm partners specifically pointing to lack of funds at a rate in excess of 45%.

Whereas “in order to obtain lower cost capital” was cited by a negligible number (3%) of law firm attorneys, 25% of in-house counsel named that as the strongest motivation.

WHAT are the most important considerations in choosing a litigation financier?

Respondents were asked to assign an ordinal value (“1” highest, “7” lowest) to a set of factors. Overall, respondents ranked factors in the following order of relative importance:

In-House Counsel

Economic terms	(1.98)
(Tie) Financier’s right to influence/decide strategy or settlement	(3.40)
(Tie) Flexibility regarding the structuring of financing arrangements	(3.40)
Financier’s reputation/track-record	(3.85)
Speed/responsiveness	(4.55)
Subject-matter or industry-specific expertise	(4.67)
Other	(6.89)

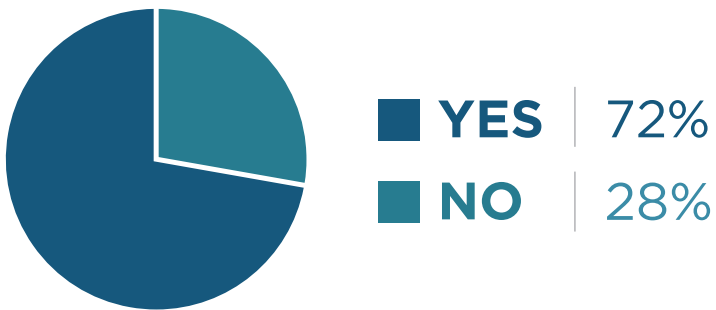
Law Firm Litigators

Economic terms	(2.01)
Financier’s right to influence/decide strategy or settlement	(3.28)
Flexibility regarding the structuring of financing arrangements	(3.33)
Financier’s reputation/track-record	(3.61)
Subject-matter or industry-specific expertise	(4.45)
Speed/responsiveness	(4.54)
Other	(6.79)

In-house counsel appeared to assign slightly more value to “speed/responsiveness” and “flexibility regarding the structuring of financing arrangements” than their outside counsel.

Would you use litigation finance again?

Asked of Participants Who Had Previous Experience:



72% of In-House Counsel = YES



84% of Law Firm Litigators = YES

This proportion was essentially consistent across various categories of respondent company size and industry focus. The level of positive responses was about 12% lower than the 84% of law firm litigators who told us that they would use litigation finance again.

Would you recommend litigation finance to others?

Asked of Participants Who Had Previous Experience:



In-House Counsel



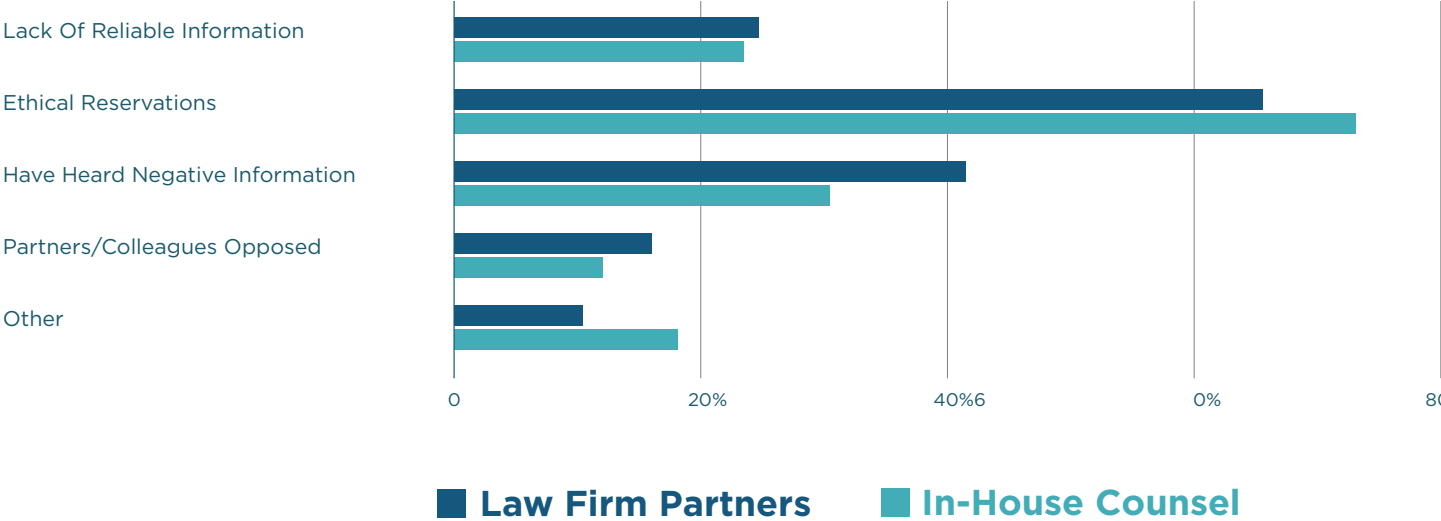
Law Firm Litigators



Similar to the previous—and related—question, these overall patterns were consistent across all respondent categories.

Why would you not consider using or recommending litigation finance?

Asked of those respondents without firsthand experience with litigation finance who reported that they would NOT consider litigation finance. Multiple selections permitted



Interestingly, a larger proportion (42%) of in-house counsel in 2018 report having heard negative information than did the 29% of their counterparts at law firms in 2017.