

COMMERCIAL LITIGATION FINANCE



LAKE
WHILLANS

Established in 2013, Lake Whillans is a commercial litigation finance firm providing non-recourse capital for companies in litigation or arbitration.



Our platform is unique within the industry:

Our capital can be used for a variety of purposes, including paying for attorneys' fees, case expenses and for general corporate purposes such as expanding operations, paying down debt or supplementing the general counsel's budget. Because our capital is non-recourse, we see a return on our investment only if the underlying litigation(s) or arbitration(s) succeed. Our non-recourse capital minimizes or eliminates litigation risk and can be a way to raise capital without diluting equity or increasing debt load.

We finance matters with amounts in dispute over \$15 million including:

- contract disputes.
- business torts.
- trade secret misappropriation.
- breaches of fiduciary duties.
- fraud.
- bankruptcy-related claims.

We can also monetize judgments or claims to accelerate cash flow.

We offer direct communication with ultimate decision-makers throughout the process.

We have no hierarchy or formal "investment committee" and can go from contact to close in 30 to 45 days.

We are experienced former litigators from firms including Bartlit Beck, Cleary Gottlieb, Latham & Watkins, and Wachtell Lipton.

We can deploy additional capital to support underlying business operations.

We provide transparency throughout the process and business friendly terms (See Code of Conduct: <http://lakewhillans.com/code-of-conduct/>)

Our depth and breadth of experience allow us to quickly understand matters, offer insights and craft attractive deal structures. As Chambers and Partners noted our "relatively smaller size allows [us] to be flexible and to react faster than some of the bigger funders."



Why consider litigation finance.

Litigation finance can be a versatile financial tool for a wide variety of litigants and corporations. While it has traditionally been employed in “David v. Goliath” battles where a plaintiff lacks the funds to pay attorneys’ fees and expenses there are many more situations where litigation finance may be an attractive option.

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- Hedging litigation risk by offloading some or all of the expense of litigation.
 - Efficiently raising capital for corporate purposes by monetizing some or all of a litigation claim.
 - Prosecuting a company’s portfolio of affirmative claims without eating into its operating budget or valuation.
 - Relieving a company that has been engaged in litigation for a number of years from the continued uncertainty and expense of litigation that may have continued far beyond the anticipated timeline.
 - Funding a company that is in distress but has potential upside due to its legal claims.
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- Advancing fees to a law firm or monetizing a portion of anticipated fees.
 - Providing growth capital to a law firm secured on a non-recourse basis by fees it expects to receive in ongoing matters.



What to expect when raising litigation finance.

1.) Initial Discussions

The Lake Whillans process usually starts with a brief call or email exchange to review the general parameters of the claim. Assuming the case fits within our target investment profile, we will:

- Enter into a non-disclosure agreement to allow the parties to share confidential information.
- Request key documents that provide an overview of the matter.
- Schedule an approximately one-hour call with the claimholder and its counsel and our underwriting team to learn more about the claim.

2.) Investment Proposal

Our initial discussions allow us to understand the claim, the budget or funding sought, likely damages and collection risk, if any. With this information, we are able to determine whether it makes sense to move forward. Assuming we do, generally within 24-48 hours, we will provide an investment proposal setting forth the economic terms of a transaction.

3.) Due Diligence Period

The purpose of the due diligence phase is to verify that the underlying facts and materials support the narrative discussed in our initial call. Our due diligence process lasts approximately 30 days absent extenuating circumstances. We provide a “road map” at the beginning of due diligence that guides our process and identifies the deliverables we expect to aid in our process. We generally discuss questions we may have in a series of phone calls, reducing the need for written work product. We strive for complete transparency throughout the process and make an investment determination at the earliest possible point in the process in order to avoid any unnecessary burden on the claimholder or counsel.

4.) Investment Documentation

Once diligence is successfully completed, transaction documents are circulated to the claimholder and its counsel for review. Once the documents are finalized, the investment funds are released.

Transaction structures.

Non-Recourse

We invest on a non-recourse basis: we only have recourse to proceeds from the underlying litigation(s) or arbitration(s). If the underlying litigation or arbitration claims do not succeed, the claimholder owes nothing. Non-recourse capital minimizes or eliminates litigation risk and can be a way to raise capital without diluting equity or increasing debt load.

Use of Proceeds

Our funding can be used for almost anything. Most frequently, funds go toward litigation fees and expenses, but claimholders often take additional capital to use toward operating costs including R&D, payroll, or manufacturing.

The Parties to a Transaction

For single claim investments, we typically transact directly with the claimholder. Counsel will assist in the diligence process but the investment contract is a bilateral agreement directly with the claimholder. For portfolios of claims, our counterparty may be either the claimholder (where the company has more than a single case at issue) or a law firm (with respect to its contingent interest in claims).

Terms

Each transaction is specifically tailored to meet the individual needs of a claimholder. At Lake Whillans, we are happy to discuss new and alternative structures in order to meet the needs of a given claimholder.

How to value a legal claim.

Lake Whillans and other litigation financiers typically take four components into account when pricing a legal claim. Understanding these components can provide a party seeking funding insight into the proposed terms and attractiveness of its claim to a funder:

1.) Probability of success on the merits.

Litigation is inherently uncertain. Each side has its own story. Discovery may provide new information. Witnesses may perform well or poorly. Judges or juries may act unpredictably. When pricing a claim, we look for features that mitigate uncertainty (such as strong documentary evidence) and demonstrate that the party that we are financing has the better case. The more information available to establish liability and damages at the time of our evaluation, the more favorable pricing a claimholder can expect to receive.

2.) Damages to investment ratio.

The greater the likely damages, the more valuable the claim and the smaller the percentage of proceeds that will be needed in consideration of the investment. Many legal claims have various theories of damages. We will weigh each theory according to the probability of the potential outcome.

3.) Likely duration of the litigation/arbitration.

Litigation financiers make investments at all stages of the litigation process, from pre-filing to the eve of trial to post-judgment. Due to the time value of money, the shorter the likely duration of a claim, the more valuable it is. We assess all factors from case stage to the average duration in the particular court or judge to determine likely duration.

4.) Other risk factors.

These include issues such as collection risk (the difficulties associated with collecting a judgment against a particular defendant) and economic risk (if the defendant's financial position is questionable).

Assessing these factors, we will offer customized terms that are tailored to the circumstances of the investment. Our return can be structured as a multiple on the amount we have invested, a percentage of any proceeds, or a combination of both. We strive to put structures in place that align incentives among the claimholder, its counsel and Lake Whillans.



Ethical considerations and privileges.

Litigation finance has become widely accepted within the legal community and in the vast majority of U.S. states and international forums. Lake Whillans does keep abreast of legal and regulatory developments and will inform claimholders and counsel where it believes legal or ethical issues may be implicated and encourages each party to conduct its own evaluation of issues that may be implicated.

- A limited number of states continue to have prohibitions against champerty and maintenance that may implicate some funding arrangements.
- A limited number of jurisdictions have rules concerning the disclosure of litigation funding arrangements; rules have been proposed for U.S. federal courts both administratively and by legislation for class action and multi-district litigations but those have not had traction.
- Some bar associations have issued advisory opinions suggesting that providing funding to law firms on a non-recourse basis be prohibited.

More regularly, questions arise about confidentiality and privilege. Lake Whillans enters into a non-disclosure agreement at an early stage of the case evaluation process and safeguards confidentiality. Generally, matters that are protected by the work product privilege such as counsel's mental impressions of a case can then be shared with minimal danger of waiving that privilege. Lake Whillans will generally never ask for attorney-client privileged information as that information is likely not protected from waiver once shared with a funder. We have written and lectured extensively on issues of ethics and privilege and our website is a great resource for more detailed information.

Our team.



Boaz Weinstein

Boaz is the co-founder of Lake Whillans and a Managing Director. Chambers USA has ranked Boaz among the top leaders in the litigation finance space, noting that he is “widely recognised as a ‘great operator’ . . .

praised for deploying ‘patient capital and handling sophisticated matters’” and a “very talented, terrific lawyer who is a pleasure to work with.” Boaz has also been recognized by Lawdragon as one of America’s 100 Leading Legal Consultants and Strategists. Boaz was previously a litigator at Cleary Gottlieb, where he represented financial institutions and major corporations in complex commercial litigations and arbitrations, and Bernstein Litowitz Berger & Grossmann, where he represented investors in high-profile securities class actions. He has also served as law clerk to the Honorable Robert P. Patterson, Jr. (S.D.N.Y.) and the Honorable Pamela B. Minzner, then-Chief Justice of the New Mexico Supreme Court. Boaz has a J.D. from Columbia Law School and a B.A. in economics from Harvard University.



Lee Drucker

Lee is a co-founder of Lake Whillans and serves as a Managing Director. He has been named one of the leading figures in litigation finance by The American Lawyer magazine

and has been quoted on litigation finance by numerous publications, including The Economist and The Wall Street Journal. Lee has also been named one of America’s 100 Leading Legal Consultants and Strategists. Prior to founding Lake Whillans, Lee was a Vice President at BlackRobe Capital Partners, one of the first U.S. based litigation funders. Lee’s experience in litigation finance stretches back to 2007, when he worked at Burford Advisors. Lee has a J.D. from New York University School of Law, an M.B.A. from New York University Stern School of Business, and a B.S. in history and communication sciences from Northwestern University.



Garrett Ordower

Garrett joined Lake Whillans in 2017 and is currently a Managing Director. Garrett has been recognized by Lawdragon as one of America’s 100 Leading Legal Consultants and Strategists and currently serves on The

American Lawyer’s Young Lawyer Editorial Board. Prior to joining Lake Whillans, Garrett was a litigator at Wachtell, Lipton, Rosen & Katz, where he represented clients in complex commercial litigations, bankruptcy proceedings, and government investigations. He has served as a law clerk to the Honorable Robert D. Sack (2d Cir.) and the Honorable Rebecca R. Pallmeyer (N.D. IL.). Prior to attending law school, Garrett worked as an investigative journalist and newspaper reporter. Garrett has a J.D. from the University of Chicago Law School, where he served as Editor-in-Chief of the University of Chicago Law Review, and a B.S. in Journalism from Northwestern University.



Jim Kearney

Jim joined Lake Whillans at its formation in 2013 after nearly 40 years as a trial lawyer handling complex commercial cases around the country. He is currently a Strategic Ad-

visor. For 17 years, Jim had been a senior litigation partner at Latham & Watkins, where he represented major U.S. and international corporations both on plaintiff and defense side, as well as in connection with bankruptcy matters. Prior to joining Latham, Jim had been a partner at the Mudge Rose and Webster & Sheffield law firms. Jim has been at the forefront of emerging trends in trial advocacy, crafting and implementing jury research and trial strategy development in a variety of areas. He has taught trial advocacy for more than 35 years, including with the National Institute of Trial Advocacy and as national coordinator of trial advocacy training programs at Latham & Watkins. Jim has been recognized by Lawdragon as one of America’s 100 Leading Legal Consultants and Strategists. Jim received his undergraduate degree from Manhattan College and J.D. from New York University School of Law.



Marla Decker

Marla joined Lake Whillans in 2015 and is currently a Managing Director. Marla has been recognized by Lawdragon as one of America’s 100 Leading Legal Consultants

and Strategists and has been profiled in Above the Law and featured in the Wall Street Journal on the subject of litigation finance. Prior to joining Lake Whillans, Marla was a litigator at Cleary Gottlieb Steen & Hamilton LLP, where she represented financial institutions and major corporations in complex commercial cross-border disputes and investigations. Prior to attending law school, Marla was a senior consultant at WinMill Software where she provided software development services to an array of companies. Marla has a J.D. from Benjamin N. Cardozo School of Law, where she served as an Articles Editor for the Cardozo Law Review, and a B.S. in Agricultural and Biological Engineering from Cornell University.



Chris Hagale

Chris joined Lake Whillans in 2018 and is currently a Managing Director. Chris gave the Keynote Address at the 2019 Litigation Funding Conference and has been featured in publications such as Crain’s, The American

Lawyer, and Above the Law. Prior to joining Lake Whillans, Chris was a partner at Bartlit Beck Herman Palenchar & Scott LLP, where he represented clients in complex commercial litigations and arbitrations. He has served as a law clerk to the Honorable Jacques L. Wiener, Jr. (5th Cir.). Chris has a J.D. from the University of Chicago Law School, where he served as the Articles & Online Editor of the University of Chicago Law Review, and a B.A. in History from Yale University.



“Lake Whillans Litigation Finance is a well-respected litigation funder known as a ‘selective’ and ‘smart’ outfit. The firm’s approach to funding and the engaged nature of its principals comes in for praise. They are very sophisticated, good people there.”

- Chambers and Partners

The best way for companies and their counsel to determine if litigation finance is an attractive option is to discuss it with us.

Please contact Lee Drucker: drucker@lakewhillans.com for more information.

Lake Whillans, a commercial litigation finance firm located in New York City and Palo Alto, provides non-recourse funding for companies in litigation or arbitration.

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