



ARTICLE

The Decade of Disputes & the impact of litigation funding

As the “decade of disputes” continues, research by FTI Consulting has found that third-party litigation funding will support the rise of high-profile claims.

2020 marked the beginning of a decade of corporate disputes, according to [FTI Consulting’s survey of over 2,000 business leaders](#). Now, with the global litigation funding investment market expected to reach \$13 Billion in 2021, FTI Consulting’s “decade of disputes” series analyses the impact of this growing resource for backing claims in the corporate sphere. London appears to be a global centre of this trend with a reported £2Bn of cash held by UK’s litigation funders at the start of the year.

This research was conducted by FTI Consulting among 250 global institutional investors to assess their perspectives. A summary of the methodology and sample base is outlined at the end.

89%

Of investors expect to be impacted by claims backed by litigation funding.

39%

Of investor-state disputes consider third party funding

89% of institutional investors surveyed by FTI Consulting expect companies in their portfolio to face legal proceedings with claimants backed by litigation funding. The highest expectations are from investors that predominantly invest in North America (91%) vs Europe (85%) and Asia (82%).

COVID-19 has also dramatically affected the nature of the global litigation market. While financial services organisations, consumer goods companies and big tech businesses indicated greatest preparedness for litigation, FTI Consulting’s updated research at the start of 2021 [indicated supply-chain disruption and worsening business conditions have brought a new dynamic to commercial disputes](#) – with the majority of cases now reported in the press.

FTI Consulting’s previous study of investor sentiment towards litigation found that [media coverage “strongly affects” the investment decisions of 61% of institutional investors](#) analysing companies engaged in corporate disputes – led by hedge funds, which were most reactive to litigation covered in the media, followed by endowment funds and sovereign wealth funds.

While investors are expecting litigation funding to be deployed broadly, a number of areas stand out for the next wave of claims backed by third-party funding. They are:

- **Competition:** Hedge funds, in particular, foresee antitrust claims enabled by litigation funding. 48% of hedge funds surveyed expect litigation funding to be deployed in competition cases, with the rise of antitrust activism by regulatory authorities across several international markets. The hedge fund community are more acutely aware of the risk than the average institutional investor, where only 31% of respondents foresee competition claims backed by litigation funding.
- **Climate activism:** 41% of institutional investors expect ESG disclosure and regulation to bring about claims backed by litigation funding. This sentiment is expressed more strongly by investors based in North America (48%) compared to investors based in Europe (29%), though a further 9% of European institutional investors expect litigation funding to open up new environmental harm cases against corporates.
- **Class action claims for data breaches:** 30% of institutional investors expect a data breach within their portfolio to lead to a claim backed by litigation funding – reflecting the increasing importance of data in technology-enabled business and the increased cyber risk presented to businesses that have adapted to new working environments through the pandemic.
- **Investor-state disputes.** Third-party funding is considered in 39% of investor-state disputes, which may go some way to explaining the current trend of increasing disclosure obligations in the context of Investor-State Dispute Settlement mechanisms. For instance, the new EU-Canada Comprehensive

Economic and Trade Agreement (CETA), requires informing “the other disputing party and to the Tribunal the name and address of the third-party funders” (article 8.26). In the context of UNCITRAL there are equally ongoing discussions about more comprehensive disclosure obligations, including the terms of the litigation funding agreements.

A market facing regulation?

86% of investors surveyed by FTI Consulting are expecting greater oversight and transparency within the litigation finance industry. In the event of regulation being considered by policy-makers, 89% of the respondents expect a common EU approach to litigation funds rather than individual EU member states regulating them independently. Only 11% expect the latter. This comes against a backdrop of increasing calls for EU legislation. Most notably the European Parliament is currently discussing a draft report on *Responsible private funding of litigation* which is expected to request the European Commission to put forward a legislative proposal to regulate third-party funding of litigation across the EU.

Methodology

Research was conducted by FTI Consulting online on 30th March 2021 with n=250 Global Institutional investors (with a mean of USD40 billion AUM). Respondents were based in the following locations: North America, 39%, Europe, 34%, Asia & Asia Pacific, 16%, Middle East & Africa, 6% and Latin America, 5%. The convention on rounding was followed, so sums may not always add up to 100%.

The convention on rounding was followed, so sums may not always add up to 100%. For more information on the research methodology please contact Dan Healy: dan.healy@fticonsulting.com

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