



LITIGATION FUNDING PUTTING WIND IN YOUR SAILS

*Third-party funding for
the shipping industry*

Covid-19 has undoubtedly created challenging conditions for most sectors of the economy. The shipping industry has been hit hard by a global fall in demand, by logistical delays, quarantines and movement restrictions and a breakdown in supply chains. As a result, countless counterparties have failed to perform contractual agreements. This has resulted in substantial financial losses for numerous shipping businesses.

With uncertainties around insurance coverage and instability in rates not only due to the pandemic, but due also to global geopolitical tensions, many businesses in the shipping industry are suffering a cash crunch. One of the consequences of this has been a cut in spending in various areas, including legal costs. As a result, some shipping businesses have dropped strong legal claims, the proceeds of which would have shored up finances. There is, however, an option for those in this situation to pursue cases, without taking on risk or needing to find cash for legal fees: Litigation Funding.

If you have a meritorious legal claim, you can access third-party litigation funding to fully hedge the inherent risk of legal action – leaving capital free to protect and expand your business. Such agreements differ to insurance in that no premiums are paid in advance. Should your claim be unsuccessful, the funder takes the loss directly with no recourse to you (the claimant). Any adverse costs are also covered via ATE - After the Event Insurance - which can be structured to form part of the funding agreement. Should a claim be successful, the funder recovers their investment and margin directly from proceeds received from your opponent (the defendant).

In today's challenging times, such a risk transfer mechanism will be appealing to managers of shipping businesses. Whether suffering from cash constraints due to the macro conditions discussed above, or with budgets set-aside for litigation under pressure, third-party funding will be attractive to many. The opportunity to pursue meritorious cases without impact on working capital can turn claims from a potential worrying liability into a welcomed asset.

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Professional litigation funders have established case management processes in place. These combine analytical and legal skill and triage to not only the legal merits, but also to the monetary dynamics of the claim and the defendant's ability to pay. Such processes ensure that funders only support cases with a high probability of a successful return to the claimant. As a result, sophisticated funders witness a high success rate, often around 70%. Claimant's receiving litigation funding will be reassured that their case has good prospects, and the defendant will be aware that the case has been reviewed by the funder, useful tactically.

With the ongoing pandemic affecting all constituents of the shipping industry, managers and counsel alike need to carefully consider all options. Preserving and recovering cash are critical to ensure survival in these volatile times. Innovative lawyers are increasingly seeking out tools such as litigation funding to reduce risk without writing off potential upside. Converting legal liabilities into potential assets is undoubtedly the life raft from which many in the shipping world might benefit.

HFW has a bespoke portfolio litigation funding facility with Augusta, the UK's largest funder by volume. Please contact us to discuss how funding can help you in these challenging times.

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