



## Monetizing and enforcing your intellectual property with no out-of-pocket cost

AUTM Webinar  
November 21, 2019

1

**ABA JOURNAL**

NEWS ▾ IN-DEPTH ▾ BLAWGS ▾ ABOUT ▾

Home / Daily News / Top partner billing rates at BigLaw firms...

BUSINESS OF LAW

### Top partner billing rates at BigLaw firms approach \$1,500 per hour

BY MARTHA NEIL

FEBRUARY 5, 2016, 4:00 PM CST

Like 0 | Share | Tweet | LinkedIn Share |

Despite efforts by corporate clients to curtail legal expenses over the past decade, rates have risen steadily at many of the nation's BigLaw firms.

Although a billable rate of \$1,000 per hour was newsworthy only five years ago, top partners at the nation's biggest and best-known corporate law firms are now billing at rates nudging \$1,500 per hour, according to the Wall Street Journal (sub. req.).

With the help of public filings in Chapter 11 bankruptcy cases, the newspaper was able to confirm hourly fees of as much as \$1,475 at Proskauer Rose, \$1,450 at Ropes & Gray and \$1,445 at Kirkland & Ellis. Rates at Akin Gump Strauss Hauer & Feld and Skadden Arps Slate Meagher & Flom topped out at \$1,425.

John Altorelli of DLA Piper tells the newspaper that his own billable rate exceeds \$1,500 per hour. However, more than half of his matters involve a fixed-fee arrangement, he said.

2

IPWATCHDOG  
ABOUT | TEAM | CONTACT | PR CONTACT

Topics Industry Calendar Jobs Press Releases Webinars Programs IPWatchdog CON2020

How China is Changing the Global Patent System  
December 3 | 12:00 PM ET REGISTER NOW

## Managing Costs of Patent Litigation

By [Chris Brannaman](#)  
February 3, 2013

For several years I was the lead attorney at a Taiwan company that

It's no secret patent litigation costs are immense. According to the **American Intellectual Property Law Association**, the cost of an average patent lawsuit, where \$1 million to \$25 million is at risk, is \$1.6 million through the end of discovery and \$2.8 million through final disposition. Adding insult to injury, more than 60% of all patent suits

are filed by non-practicing entities (NPEs) that manufacture no products and rely on litigation as a key part of their business model.

However, whether one represents a plaintiff or defendant, manufacturer or NPE, there are actions one can take to help manage the costs. Below are some general guidelines.

**Preliminary Matters**

3

a) **Third-party litigation funding**

b) **Contingency fee arrangements**

4

**a) Third-party litigation funding**

**b) Contingency fee arrangements**

5

The image is a screenshot of a Bloomberg Law article. The header includes the Bloomberg Law logo and navigation links for 'Law Firms', 'In-House', and 'Technolo'. The main headline is 'Use of Litigation Finance Exploding, New Study Says'. Below the headline, the author is listed as 'Melissa Heelan Stanzione - Bloomberg Law' and the date as 'Oct. 19, 2018'. There are social media sharing icons for Facebook, Twitter, LinkedIn, Email, and Print. A callout box highlights a bullet point: 'One-third of interviewees said their companies used litigation financing, up 237 percent from 2012'. Another callout box below it repeats the same text.

Big Law Business Law Firms In-House Technolo

## Use of Litigation Finance Exploding, New Study Says

Melissa Heelan Stanzione - Bloomberg Law  
Oct. 19, 2018

Facebook Twitter LinkedIn Email Print

- One-third of interviewees said their companies used litigation financing, up 237 percent from 2012
- Changing billing practices will make litigation financing "more common" — Stanford study
- One-third of interviewees said their companies used litigation financing, up 237 percent from 2012

6

## Major litigation funders in the U.S.



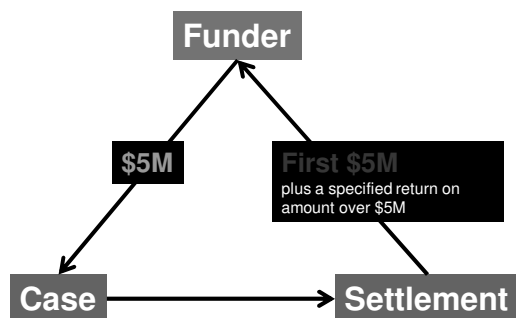
7

## Factors considered in calculation of funder's share:

- amount of money
- length of time until recovery
- estimated risk and value of the plaintiff's claim

8

### Funder is usually entitled to “first dollars”



9

### Straight multiple:

Funding	\$5 million
Return	
Money out (first dollars)	\$5 million
+ 3x investment	\$15 million
<b>Total</b>	<b>\$20 million</b>

10

**Straight multiple OR percentage:**

<b>Funding</b>	<b>\$5 million</b>
<u>Return</u>	
Money out (first dollars)	\$5 million
+ 3x investment	\$15 million
<b>Total</b>	<b>\$20 million</b>

**OR**

<b>Funding</b>	<b>\$5 million</b>
<u>Return</u>	
28% of recovery	If recovery is \$100M, funder takes \$28M

11

**Straight multiple AND percentage:**

<b>Funding</b>	<b>\$5 million</b>
<u>Return</u>	
Money out (first dollars)	\$5 million
+ 2x investment	\$10 million
<b>Total</b>	<b>\$15 million</b>

**AND**

<b>Funding</b>	<b>\$5 million</b>
<u>Return</u>	
8% of recovery	If recovery is \$100M, funder takes an additional \$8M
<b>Total</b>	<b>\$23 million (\$15M + \$8M)</b>

12

a) Third-party litigation funding

b) Contingency fee arrangements

13



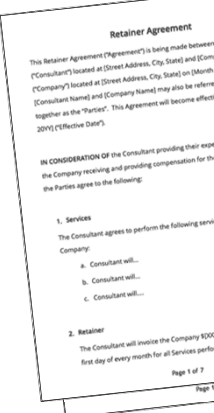
In the last decade, a substantial market has begun to develop for contingent fee representation in patent litigation. Wiley Rein — a

patent cases on a contingent fee basis.

In the past, patent litigation was almost entirely performed on an hourly fee basis rather than on a contingent fee basis. That made sense because patent litigation appeared a poor candidate for contingent representation. Among other reasons, patent cases were expensive to litigate, took years to resolve, and outcomes on liability and damages were considered uncertain and unpredictable. In contrast, personal injury cases are relatively inexpensive to litigate, are adjudicated quicker, and often the liability of the defendant is not seriously disputed.

14

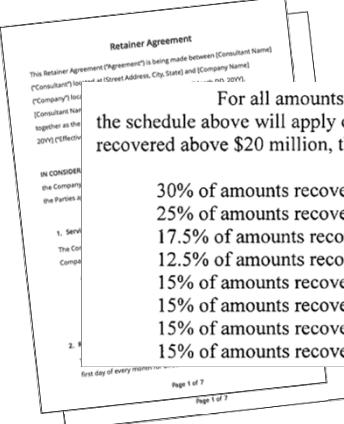
## Sample contingency fee structures



services, and whether through agreement, settlement, judgment, or otherwise. Our contingency fee will be a percentage of the net amount recovered, with the applicable percentage based on what events have occurred as of the date of the recovery, in accordance with the following schedule:

- Retention Event* – this agreement is signed by the parties.  
15% after the above.
- Complaint Event* – a complaint is filed against the defendant.  
26.0% after the above.
- Discovery Event* – the earliest of either (a) a Rule 26(f) conference (or equivalent scheduling event that commences discovery) in the litigation against the defendant or (b) 240 days after the filing of a complaint against the defendant,  
30% after the above.
- Deposition Event* – a deposition is taken in the litigation.  
33.5% after the above.
- Markman Event* – 30 days before the deadline for filing your opening claim construction brief.  
37.5% after the above.
- MSJ/Expert Event* – the earliest of either (1) the date a motion for summary adjudication is filed by you or the defendant, or (2) 45 days before the deadline for serving an expert report on substantive issues (e.g. liability or damages).  
40.5% after the above.
- Pretrial Event* – the date that is 60 days before the first date set for trial.  
43% after the above.

**15**



For all amounts recovered after a Rule 26(f) report is filed, the fee percentages in the schedule above will apply only for amounts recovered up to \$20 million. For amounts recovered above \$20 million, the following fee percentages apply:

- 30% of amounts recovered above \$20 million, up to \$30 million;
- 25% of amounts recovered above \$30 million, up to \$40 million;
- 17.5% of amounts recovered above \$40 million, up to \$50 million;
- 12.5% of amounts recovered above \$50 million, up to \$60 million;
- 15% of amounts recovered above \$60 million, up to \$100 million;
- 15% of amounts recovered above \$100 million, up to \$500 million;
- 15% of amounts recovered above \$500 million, up to \$1 billion; and
- 15% of amounts recovered above \$1 billion.

**16**



<b>Risks that <u>can</u> be eliminated</b>	<b>Risks that <u>cannot</u> be eliminated</b>
<ul style="list-style-type: none"><li>• attorney fees</li><li>• litigation costs</li></ul>	<ul style="list-style-type: none"><li>• win / loss</li><li>• time investment</li><li>• certain cost / fee risks</li></ul>

17

### **Contingency fee advantages**

- aligned incentives
- retain full settlement control
- a lower recovery is still a recovery
- a single negotiation
- no privilege concerns
- no risk of insufficient funding



19

### Aligned incentives

**Team A**

PAID FOR SUCCESS



**Team B**

PAID BY THE HOUR



20

## Litigation funding advantages

- many funder options
- choice of billable-hour law firm
- can cap funder recovery

21

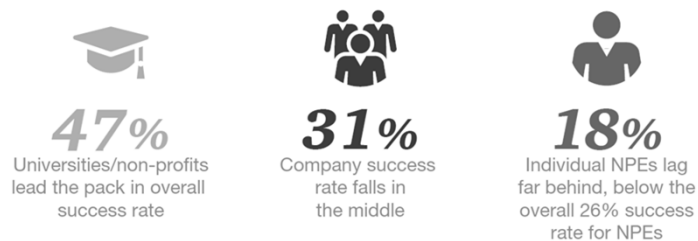
The screenshot shows a WSJ Law Blog post. The header includes the WSJ logo and navigation links: Home | News | Technology | Markets | Personal Journal | Opinion | Weekend & Leisure | Portfolio. The page is titled 'LAW BLOG' with the subtitle 'WSJ.com on law and business and the business of law.' The post is dated April 30, 2007, 11:03 am, and is titled 'Hot Off the Presses: The AmLaw 100' by Peter Lattman. The main text of the post reads: 'This morning the American Lawyer unveiled 2007's AmLaw 100, a listing of the hundred biggest law firms ranked by revenue. The package includes stats on profitability, revenue per lawyer and other nifty metrics. Here and here are free subscribers.' A callout box highlights a specific point: 'Wiley's BlackBerry Bonus: Wiley Rein broke the record for the highest profits per partner ever recorded by the magazine — \$4.4 million. Why? The Washington, D.C., law firm represented patent-holding company NTP in its nearly five-year legal battle with RIM, and earned more than \$200 million in fees from the case. It received approximately one-third of the \$612.5 million settlement that RIM agreed to pay NTP to avert a potential court-ordered BlackBerry shutdown. The firm recently shortened its name from Wiley Rein & Fielding after Fred Fielding left the firm to become White House counsel.'

<http://blogs.wsj.com/law/2007/04/30/hot-off-the-presses-the-amlaw-100/>

22

### Patent holder success rates by NPE type: 1998–2017

Fig 13

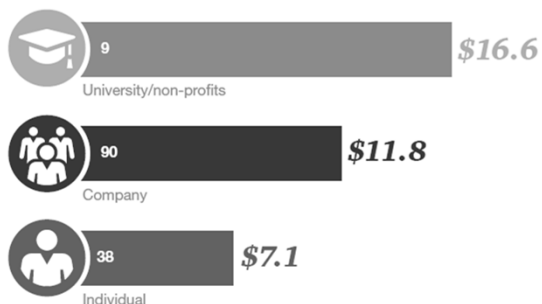


2018 PWC Study of Patent Litigation

### Patent holder median damages award by NPE type: 1998–2017 (\$M)

Fig 12

University/non-profits continue to garner the highest damages awards and success rates—although the sample size of cases is significantly smaller than company and individual NPEs.



2018 PWC Study of Patent Litigation

### **Best practices – litigation funding**

- approach multiple funders
- deadlines for diligence
- compare the structures (e.g. straight multiple vs. percentage)
- diligence law firms (if selected by funder)
- determine source of case capital
- determine involvement of funders in the decision-making process
- process for resolving disputes
- confidentiality / privilege

25

### **Best practices – contingency fee**

- approach multiple firms
- get your own references
- determine source of case capital
- does the firm handle PTAB work?

26

**How contingency fee firms differentiate themselves**

- results
- the attorney on the case
- creative fee structures

**How litigation funders differentiate themselves**

- reliability
- fees
- settlement control

27



28

## Speaker contact info:



◀ BACK TO OUR TEAM

**Jonas Jacobson**

ATTORNEY

☎ 310-656-7066

✉ [jonas@dovel.com](mailto:jonas@dovel.com)

📄 Download Vcard

[www.dovel.com](http://www.dovel.com)

29



**Monetizing and enforcing your intellectual  
property with no out-of-pocket cost**

**AUTM Webinar  
November 21, 2019**

30