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HOW BIG DATA, ARTIFICIAL INTELLIGENCE, AND LITIGATION FUNDING ARE REVOLUTIONIZING SECURITIES LITIGATION

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Renowned former Intel CEO, Andy Grove, famously wrote in, *Only the Paranoid Survive,* that a strategic inflection point - a 10x shift - is the moment those in an industry must either adapt or perish. Baseball experienced such a moment with the rise of big data and analytics, immortalized in Moneyball, when the Oakland A's used statistical insight to overturn decades of conventional baseball wisdom and lore, making the team a perennial playoff contender despite a limited payroll. Big data, artificial intelligence, and a rapidly expanding litigation-funding market are reshaping how cases are initiated, litigated, insured, and ultimately resolved. The result is not an incremental change but a structural reordering of incentives, capabilities, and competitive dynamics across the entire ecosystem.

This paper explores how these factors interact, why the transformation is accelerating, and how investors, insurers, issuers, and law firms must prepare.

The Quiet Revolution in Risk Assessment

Risk management has always been fundamental to securities litigation, particularly for the defense and insurance sectors. Historically, D&O insurers diversified exposure by spreading risk across layered towers, with different companies taking each layer (e.g. taking on all losses between $20 to $30 million or agreeing to pay 5% of any settlement amount), thus reducing the risk of a catastrophic loss and allowing some carriers to specialize in certain layers or percentages of the tower based on risk tolerances, much like investors playing different tranches of collateralized debt obligations.

That system remains in place, but the tools used to calibrate it have become far more advanced. Economic experts and actuaries can analyze more than fourteen thousand cases and settlements, controlling for variables such as market capitalization, industry, plaintiff law firm, and the presence of parallel derivative claims. These models allow insurers to price risk with unprecedented precision by modeling "tail outcomes" and expected loss curves and to more effectively set reserves. Defendants likewise gain a clearer understanding of settlement ranges and worst-case milestones. This is the Moneyball situation: big data enables advanced analytics to significantly transform both risk and opportunity. Those with access to this data will remain competitive even against better-funded opponents and competitors.

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AI-Assisted Discovery: From Manual Review to Lightning-Fast Automated Processes

Securities litigation produces vast quantities of documents, sometimes amounting to hundreds of thousands of documents spanning millions of pages. For years, discovery meant assembling large teams of reviewers to manually review each and every document, followed by layers of quality checks.

That process was time-consuming, expensive, and extremely complicated, and it risked the best evidence (or a document that should have been withheld for privilege) falling through the cracks. Technology-assisted review (TAR), which harnesses state-of-the-art artificial intelligence, has transformed the process entirely.

A TAR allows senior attorneys to code a training set of documents, enabling the system to generate relevance scores (such as from 1-100, with 100 being the most relevant document) across the entire production. What once required dozens of reviewers can now be handled by targeted, expert teams focused on the highest-value material. This provides several advantages such as: being able to review all the high-scoring documents first and thereby improving the chance of quickly identifying the most relevant documents in a repeatable process as productions roll in; higher accuracy to iterative machine learning; dramatically lower review costs; more consistent scoring across rolling productions; and the ability to skip lower relevance materials entirely if the case schedules necessitates this. Indeed, in fast-moving cases, the ability to find the “hot documents” early can shape litigation strategy before depositions begin or motions are filed. Accordingly, TAR is no longer an add-on tool but is becoming the default approach.

Advanced computing also uniquely empowers the plaintiff side. First, in actions outside North America, law firms can obtain increasingly accurate windows into the addressable book of client losses to build a case and more accurately determine whether after-the-event (“ATE”) insurance is required to cover adverse costs, if any.

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AI-Driven Case Origination and Claims Filing: The Next Frontier

If AI has transformed discovery, its impact on case origination may ultimately even be greater. The late-1990s-era rooms, stacked to the ceiling with client financial and brokerage statements to be painstakingly reviewed manually for each potential case, are already long gone. Software platforms were subsequently developed to alert law firms to newly filed cases quickly and to provide client-loss estimates for these cases. Similarly, there is no longer a need to print and read every company's securities filings and statements; computer platforms enable quick, targeted searches of these voluminous—and often highly soporific—documents.

But now AI will bring forth the era of algorithmic portfolio monitoring, where computers will present and analyze client losses in real time based on market data, while providing succinct and compelling insight into the causes of these stock drops. Additionally, AI can analyze all corporate filings to identify potential misstatements. AI could automatically flag certain stock drops as potential cases for further review by attorneys, equipping plaintiff firms with a new arsenal at the case origination stage, as one tank immediately rendered an entire regiment of cavalry obsolete. The result is that plaintiff firms may be able to identify viable cases long before issuers or insurers even recognize the issue.

Lastly, investors can leverage the increasingly advanced technology and analytics of a third-party filer, such as ISS SCAS. Not only can investors monitor their own portfolios, but, more importantly, they can access a wide range of data points—such as settlements worldwide where they may be eligible—all through a fully transparent and integrated platform. The possibilities for investors are endless. Indeed, based on historical records, organizations such as ISS SCAS can estimate future distribution dates and potential recovery amounts, broken down to sub-clients or the account level. Current technology enables ISS SCAS to distribute recovered funds to any accounts selected by clients.

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The Rise of Global Litigation Funding: A Parallel Disruption

In parallel with big data and AI, the increasing prominence of litigation funding is another force revolutionizing securities litigation. Indeed, legal funding is an emerging industry in securities litigation, building on its earlier, better-known role in mass tort and patent litigation.

In the aftermath of the US Supreme Court's Morrison decision, many securities claims shifted overseas. Yet outside the U.S., countries with opt-out class actions were rare and contingency fees often prohibited, requiring law firms to be paid out of pocket. Litigation funders filled this gap, purchasing claims or financing cases in exchange for a share of the recovery. As a result, most of the litigation funders in the securities litigation space were based in Australia (which has increasingly embraced contingency fees) or Europe, or were entities affiliated with large US law firms. Notably, most of these funders chose to investigate and book build the cases directly, retaining the law firm(s) to litigate cases.

What began as a niche market is now emerging as a sophisticated asset class. In the wake of pandemic stimulus, significant energy production, and the AI boom, the US is awash with capital, and managers have been looking at both new countries and asset classes. Returns from litigation finance in securities litigation are relatively uncorrelated with broader market returns and have historically been concentrated outside the US, a two-fer for investors. Hence, several large US hedge funds have been moving into funding securities and investor-related antitrust cases, including by acquiring or partnering with existing funders or by establishing their own companies.

As we will see, funders are not merely passive capital allocators but are increasingly helping to shape case selection, finance expert analyses, support, or even run book-building efforts, thereby enabling boutique firms to challenge larger incumbents on both the plaintiff and defense sides. This creates a more competitive, dynamic plaintiff bar and broader access to justice for investors globally.

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The Impact of Litigation Funding Outside North America

The influx of money into the space is driving litigation. ISS SCAS is aware of a higher volume of cases in the UK and is seeing more cases in European jurisdictions such as France and Italy. Law firms are increasingly originating cases independently and then pitching them to funders. Funders are asking law firms to bring a portfolio of potential cases, sometimes multiple securities cases or even a securities case and a variety of other types of cases, so that the funder can reduce the risk of loss by underwriting multiple cases, as opposed to just one.

But increased litigation funding, including from the long-standing, stalwart players, is having major impacts beyond sheer volume. Some jurisdictions (notably the UK) require after-the-event ("ATE") insurance to cover the risk of adverse costs imposed for an unsuccessful claim. Increased funding has helped enable law firms to take on larger policies. Combined with indemnification by well-capitalized funders, this has reduced the risk that investors would have to pay any such adverse costs out of pocket. Funders also have significant access to experts to estimate damages in cases, including specifically for individual institutional investors.

Furthermore, funding enables law firms to compete with larger, well-resourced defendants, thereby helping to develop the law in many of these jurisdictions. Indeed, Australia was once much less plaintiff-friendly in the securities context. Still, with the help of funders, leading attorneys were able to create an environment more hospitable to investors. Finally, increased funding should lead to greater competition, which, over time, should lower case prices.

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The Impact of Litigation Funding In North America

Litigation funding is also changing securities litigation in North America. The largest plaintiff firms have minimal need for funding, but the deep market for funding means that plaintiff firms have more places to turn in hard times. Nonetheless, there is active funding of opt-out securities cases in the US. Funders can pay law firms either by the hour or on a flat-fee basis, thereby eliminating all risk for these law firms. As detailed in one of our previous white papers, in the unlikely event that most large companies adopted mandatory arbitration of securities claims, funders could be instrumental in funding or acquiring arbitration claims, especially given their experience in book-building group proceedings outside North America.

Moreover, funders and/or insurance companies can sell cap insurance. Using such insurance, a plaintiff law firm can hedge against the downside risk of pursuing a contingent case. The price of such policies, a percentage share of the law firm's attorneys' fees, is only payable in the event of a settlement, or potentially even where a fee award exceeds a certain minimum. In exchange for foregoing a portion of the upside of a case, a law firm would be compensated for some or all of the costs, including the value of the firm's time expended (the lodestar). Thus, this is a mechanism for managing risk, not unlike many areas of modern finance.[1]

Thus, even in North America, boutique firms, once unable to absorb the volatility of multi-year contingent litigation, can now compete aggressively in this space. Larger firms may also gain greater flexibility and resilience, enabling them to take on more and riskier cases.

[1] Indeed, the term hedge fund comes from the fact that the earliest such firms were able to hedge the risk of their long positions in securities by simultaneously going short in other positions. For example, a firm could purchase a share of a stock at $100 along with a put option for $2, giving the right for the firm to sell the share for $95, thus capping losses at $7 per share, while reducing gains by only $2 per share. Law firms can now limit their downside in exchange for some of their upside.

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A New Era of Efficiency, Access, and Opportunity

Big data and AI are accelerating, while litigation funding is rapidly expanding. Securities litigation is not merely changing—it is undergoing an irreversible transformation. AI is redefining discovery and case origination. Big data is reshaping risk assessment. Litigation funding is democratizing capital and leveling global playing fields. This is the essence of a strategic inflection point. Those who adapt will thrive. Those who cling to legacy assumptions and the old ways of doing things will find themselves on the wrong side of Grove's "valley of death".

For investors, law firms, issuers, and insurers, the coming year will bring profound opportunities and challenges. The organizations that invest in technology, embrace data-driven strategy, and understand the economics of modern litigation will be the ones shaping the future. The revolution is not theoretical; it's underway. And much more lies ahead.

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