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**PF2 Newsletter**

**October 2020**

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# Q: *Funders*, how involved are you in the selection process or the budgeting for expert witness fees?



**ANDREW JONES**

Managing Director,  
Vannin Capital, London

"We are certainly involved in the budgeting for experts as part of the process of negotiating and agreeing the overall budget for the case.

That said, expert fees are generally one of the more straightforward areas of the budget to agree because the independent testifying expert(s) cannot work on any sort of contingency.

There is also a recognition on our part that finding the right expert with the right expertise and calibre is often fundamental to the success of the case, and that means that this is not an area where we would immediately look to try to reduce costs.

In terms of the selection process, this will tend to be a collaborative effort in which we will be involved, since we know a wide network of experts across the market and will often have views on who would or would not be suitable. However, as with all such matters, the decision is ultimately one for the law firm and the client."

"The short answer is: it depends.

Some of the cases we fund turn solely on factual evidence with some limited quantum of loss evidence required, while others require expert evidence to establish technical aspects of the liability claim as well as quantum. In the latter cases, selection of the right experts is crucial and so we do take a keen interest in making sure the legal team interviews multiple candidates and we will feed in our views as to the suitability of their background, and seek references from our network as to the quality of their written work and oral testimony.

We care just as much as the legal team that the expert is someone who understands their duties to the court, has the right skills and expertise, is being asked the right questions, hasn't contradicted themselves in previous testimony or articles, and can express complex concepts in a simple and concise manner."



**ROBERT ROTHKOPF**

Managing Partner,  
Balance Legal Capital  
LLP, London

## Q: Engaging experts can be expensive, and depending on how a case develops litigators may need to adjust their budgets for experts. How is this dynamic accommodated by the funders?



**JACQUELINE YOUNG**

Head of Group  
Litigation, Augusta  
Ventures Ltd, London

“Whilst an expert may prove to be an expensive element of a budget, they can in many instances represent money well spent if they bring about a successful case outcome.

It is therefore of paramount importance to instruct the right expert and to budget for their costs at the outset.

Of course, litigation is a fickle beast and the best laid plans can quickly go asunder. Pesky interlocutory hearings or surprising disclosure can necessitate changing the scope or focus of expert evidence, or necessitate further reports with the inevitable increase to the budget.

If it is possible but uncertain whether additional expertise will be required on any given case, a contingency can be built into the budget prior to funding, to cover that eventuality.

At Augusta, we have a dedicated resolutions team that engages on each case once funded and aims to ensure support is provided to the lawyers, so that the cases proceed in an optimal fashion and to maximise the prospects of success. Variations to budgets can be sought to cover unforeseen

expenses, with a focus to always ensure the cases have the best possible chance of success.”

“This is an area where we sometimes play a greater role, particularly at the outset when a deal is being negotiated.

It is important that the budget reflects the realistic expectations of what it will take to bring the case successfully all the way through trial.

An overly optimistic budget isn't helpful and we don't want good cases suffering because there aren't sufficient resources to devote — particularly on critical issues like experts.

So we more often find ourselves advocating for increased budgets for experts rather than limitations. That may sometimes mean that the economics of the investment become untenable or that the law firm needs to act on a larger contingency to accommodate a tight budget.

Obviously, litigation is unpredictable and lawyers are notoriously poor at setting and sticking with



**ZACHARY KRUG**

Senior Investment  
Officer, Woodsford  
Litigation Funding,  
London

budgets, which is why we typically try and build in some cushion to the budget to allow for these contingencies. That said, we understand that sometimes budgets will need to be adjusted and there are various ways in which this can be accommodated. For example, we often pre-agree terms at the outset for some additional funding if required, or sometimes lawyers will seek to reallocate some portion of the fees budget to needed costs.

Ultimately, it underscores the important of working with funders staffed with lawyers with real trial experience, who understand the long and sometimes winding path that is modern complex litigation.”

Join PF2 at the 3<sup>rd</sup> Annual  
Litigation Funding Dealmakers  
Forum.

The event will be held online,  
starting the 13<sup>th</sup> of October.

Register here:  
<https://lf.dealmakersforums.com>

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