



# Keep It Real: Why Huge Damages Estimates Give Litigation Funders Pause

*Overly aggressive damages estimates are sending the wrong signals to funders*

By Michael Nicolas and Justin Maleson

With strong demand for litigation financing, and relatively few litigation finance firms in the U.S., only a few hundred cases of the tens of thousands of civil suits filed annually secure funding each year.

Some attorneys may think that a huge damages estimate may help them pique the interest of funders looking for high returns on their investment. But bigger isn't always better, especially in the world of litigation finance.

In fact, it might even lead funders to run in the opposite direction. Here's why – and what attorneys should know before they present their case.

## **The Problems with Overinflated Damages Estimates**

Damages estimates that seem too good to be true can signal to litigation funders that the claim owner and/or attorney has an unrealistic view of the case's value (at least as the funder sees it).

To funders, sky-high estimates are rarely grounded in reality. Too often, attorneys will prepare for funders an in-depth analysis on their case's merits and liability issues, but in the process, many neglect to conduct a similarly thorough damages analysis with strong legal, factual, and practical support. Because actual recoveries are how funders receive a return on their investment, accuracy and practicality are especially critical.

When a claim owner has unrealistic expectations of the value of their case, it signals to a funder that the claim owner may be less likely to accept a reasonable settlement offer

---

---

that could efficiently and cost-effectively resolve the matter, instead opting to go to trial in hopes of a larger award – a far riskier proposition for the funder who has assumed the claim’s financial burden. This is particularly important because funders are passive investors with no control over settlement decisions, which is why most funders seek to understand the claim owner’s expectations and goals for the litigation during the diligence process *before entering into a funding agreement*.

What’s more, while ultra-aggressive damages estimates *might* theoretically be possible, they’re unlikely to fully materialize. Recovering amounts in the hundreds of millions or even billions through a settlement or at trial is exceedingly rare; the defendant may not be able to pay the full amount, for example, and an outsized jury award that “shocks the conscience” is at serious risk of being overturned on appeal.

Simply put, a well-reasoned and practically grounded damages estimate is more likely to generate interest from funders by showing a serious grasp of the case’s strengths, weaknesses, and likely outcomes.

### **Why Funders Value Accuracy Over Hype**

Outside the funding realm, many attorneys are likely used to presenting an aggressive case for damages to yield the best results for their clients, be it from a settlement or an award at trial. But this approach is ill-suited to the needs of prospective funders.

Unlike opposing counsel or juries, litigation funders have no role in deciding the settlement offer or damages award. Funders are passive investors who back cases on a nonrecourse basis – meaning they don’t affect the outcome and only receive returns upon a successful resolution – so they look to invest in the most meritorious claims litigated by skilled, sensible attorneys.

That’s because the relationship between a litigation funder and attorney is built on trust and credibility. After all, a single funding agreement may be just the start of an ongoing relationship – many funders and attorneys work together across a variety of different cases, and a good funding partner can help identify other potential opportunities with clients, as well as ways to leverage funding to expand an attorney’s practice and boost business development efforts.

---

---

Aggressive, pie-in-the-sky damages estimates can get in the way of this, leading funders to question an otherwise strong claim or even reconsider the wisdom of the proposed attorney-funder partnership.

### **Prepare for Damages Due Diligence**

Another reason not to inflate damages numbers? Many litigation funders do thorough due diligence before deciding whether to invest.

Litigation funders typically expect to see a comprehensive packet of materials (subject to an NDA), including a damages analysis and key fact documents and filings. With experienced former litigators evaluating these claims, they'll quickly sniff out an overly ambitious damages estimate that falls apart under scrutiny.

So before attorneys make their pitch, they should spend time carefully considering not only the merits and liabilities of their case, but also what they really expect to see in damages recoveries and potential settlements. This balanced approach will both strengthen the investment argument for funders and better prepare attorneys for the work ahead.

### **About the Authors**


*Michael Nicolas is a Co-Founder and Managing Director of Longford Capital, responsible for portfolio management. He is an accomplished attorney with more than 15 years of litigation experience as a partner with two prominent national firms.*

*Justin Maleson is a Director of Longford Capital, responsible for sourcing, due diligence, and monitoring of portfolio investments. As a Big Law partner, Justin focused on complex and high-value litigation across the country.*

### **About Longford**

*Longford Capital is an institutional alternative investment management firm, and a leader in the commercial litigation finance industry. Longford was one of the first litigation finance firms in the United States, and is among the largest litigation finance firms in the world, having committed more than \$1 billion in support of more than 500 cases since its inception. Longford provides equity, non-recourse capital to*

---



---

*leading law firms, public and private companies, universities, government agencies, and other entities involved in large-scale, commercial legal disputes. The firm manages a diversified portfolio, and considers investments in subject matter areas where it has considerable expertise, including, business-to-business contract claims, antitrust and trade regulation claims, intellectual property claims, fiduciary duty claims, fraud claims, claims in bankruptcy and liquidation, domestic and international arbitrations, claim monetization, insurance matters, and a variety of others.*

---