Financing Dispute Resolution, Not Just Conflict: ADR vs. Litigation Funding

By Jeremy Lack

I. Introduction

As the number, cost, and complexity of legal disputes grow worldwide, so too does the importance of third-party financing mechanisms that promote access to justice. Litigation funding, now a multi-billion-dollar global industry, has transformed the ability of under-resourced claimants to pursue legitimate claims. But what if, instead of financing litigation, we could finance its resolution earlier and better?

This article explores two complementary approaches to legal finance: litigation funding, which supports one party's adversarial claim, and ADR funding, a newer model that funds resolution processes equally for all sides. Drawing on practical experience and emerging trends, this article outlines how ADR funding works, how it differs from litigation funding, and why it matters, especially for lawyers, ADR institutions, and dispute resolution neutrals committed to delivering value, fairness, and efficiency, and improving access to justice.[1]

II. Litigation Funding: A Tool for Access to Adversarial Process

Litigation funding, also known as third-party funding (TPF), allows a party (usually the claimant) to pursue legal action without paying legal and expert costs upfront. A funder finances the case and is repaid from the proceeds of a successful award or settlement. In return, the funder often receives a multiple of its investment (e.g., 3x or 4x) and a percentage of the damages (eg., 20-40%).

While this model has unlocked access to justice, it tends to reinforce adversarial incentives. Budgets are locked in early, and counsel are funded to prepare for trial rather than explore settlement. Early settlements are possible but often occur only after extensive discovery, expert evidence, and hearings have been completed.

Litigation funders generally look for cases with:

- Extremely strong legal merits.
- High damages-to-cost ratios.
- High likelihood of enforceability.
- Experienced legal representation.

Although the claimant and counsel maintain primary control of litigation strategy, most funders reserve veto rights over material decisions, such as settlement offers, budget changes, and changes in representation. This shared control model seeks to protect the funder's return but may limit a party's procedural flexibility or inclination to explore early settlement or ADR processes.

While litigation funding has improved access to justice, its underlying economic model can inadvertently discourage early settlement. Funders typically calculate their expected return based on projected legal spend, meaning that settlement is often deferred until sufficient procedural progress has been made to justify the investment. Even when clients, counsel, and funders are open to resolving the dispute, resolution may be postponed until the case has matured enough for the funder's return thresholds to be met through negotiation. As a result, litigation funding tends to be structured around late-stage outcomes. Cases are more likely to settle only after substantial legal expenditure (often near the trial date), when legal positions are fully developed and sunk costs enhance negotiating leverage. Although funders and counsel support settlement in principle, the financial model is built to recover value through judgment or monetized resolution, not early compromise. Moreover, counsel may have limited economic incentive to settle early if their fees are covered by the fund regardless, in accordance with the approved budget.

The global litigation funding market was valued at approximately $13.5 billion in 2023 and is projected to exceed $67 billion by 2037. However, this model remains largely adversarial, inefficient and cost-intensive, which can limit creativity, polarize relationships, and strain reputations. These issues can be improved by coupling litigation funding with ADR funding.

III. ADR Funding: A Process-Driven Alternative

ADR (Appropriate Dispute Resolution) funding provides an entirely different approach. Rather than financing one side of a legal contest, it funds and catalyzes the procedural infrastructure (e.g., scheduling tools, diagnostic platforms, neutral appointment systems, etc.) necessary to bring all parties to the table and resolve their dispute through a neutral-led, jointly designed process.

Key features include:

- **Impartiality**: The ADR fund supports all parties equally.
- **Contingent funding**: The funder is only paid if the matter settles to all the parties' satisfaction.
- **Capped compensation**: The ADR fund's fees are usually transparent, capped and shared equally by all participating parties. In many cases, they are set below 5% of the value of the dispute or one-third of the expected cost of litigation or arbitration. These benchmarks ensure the process remains cost-effective, predictable, and acceptable to all sides.
- **Neutral independence**: ADR institutions and professionals are paid regardless of outcome to preserve their impartiality and independence.
- **An early settlement incentive bonus pool for counsel**: In ADR funding models, a portion of the anticipated litigation savings may be allocated as a success fee pool. Participating counsel receive a share (e.g., up to one-third) if the matter is resolved early and effectively, rewarding outcome-focused work over time-based billing. Instead of rewarding prolonged billing cycles, the success-fee pool compensates counsel based on the value delivered to the parties through earlier resolution. This results in higher effective hourly rates and encourages strategic settlement discussions from the outset.

An ADR fund will often provide access to software, AI platforms and technological support to assist the parties with diagnostics, process design, neutral appointment processes, and implementation of the process. It pays for the fees of the institutions and neutrals selected. Each party typically pays its own legal fees, travel, and shares the neutrals' expenses. ADR funding enables settlement without requiring parties to assume upfront risk or appear "weak" for initiating dialogue.

Unlike litigation funding, ADR funding aligns all parties, counsel, neutrals, and funders around a shared goal: a timely, cost-effective, and mutually acceptable resolution.

IV. The Importance of Time in Dispute Financing

Three critical metrics help explain how time impacts dispute finance:

- **Internal Rate of Return (IRR):** The rate at which invested capital over time generates returns. Higher IRRs mean faster, more efficient outcomes.
- **Working Cost of Capital (WCC):** The cost of having capital or firm resources tied up. The longer a case lasts, the more overhead it absorbs. In law firms, it reflects the opportunity cost of salaried lawyers, paralegals, and support staff. With average overheads of up to 50% of billing rates, delayed resolution can materially impact firm economics.
- **Effective Hourly Rate:** Lawyers' total compensation divided by hours worked. This increases when outcomes are achieved faster or performance bonuses are earned.

A firm that bills $700/hour may net only $350/hour after overheads are deducted (50% WCC). Long cases dilute overall profitability. However, resolving the same dispute in fewer hours, with bonus incentives for early resolution, can more than double a lawyer's effective hourly rate.

For funders, instead of waiting three to five years for a return, capital can be recycled in three to six months. For clients, early resolution increases recovery and reduces strain.

V. How ADR Funding Works: A Five-Step Process

Step 1. Confidential Convening: The process begins with a private application submitted by any concerned party or stakeholder. The ADR fund then reaches out to all identified participants individually and in strict confidence. The process only proceeds if all essential parties agree to take part, using an opt-out mechanism that ensures no one appears to be making the first move. This approach has been likened to a "dating app": no party is informed of another's willingness to engage unless there is mutual consent. As a result, no participant risks appearing overly eager to settle. This structure lowers psychological and strategic barriers to entry and helps preserve neutrality and trust from the outset.

Step 2. Impartial Diagnostics: Each party completes structured online questionnaires. Rather than sharing positions or pleadings, parties identify their procedural needs across seven "key drivers":

1. Time sensitivity.
2. Cost concerns.
3. Relationship preservation.
4. Process control.
5. Outcome control.
6. Confidentiality.
7. Enforceability.

This information enables the ADR fund to design a process that best fits all parties' needs.

Step 3. Process Design: Based on the diagnostics, a custom ADR process is co-designed. It may involve a single neutral or a mixed-mode approach (the use of two or more neutral-led processes using non-evaluative and evaluative neutrals), such as combining a mediator with an evaluative expert or conciliator (e.g., MED-CON). These mixed-mode processes can be sequential, in parallel or integrated into one another. The design is flexible and adaptive.

Step 4. Implementation: Selection, coordination, and scheduling are handled efficiently through online platforms. Many ADR funds also offer secure, AI-enabled portals for digital intake, diagnostic tools to assess procedural needs, automated scheduling, and curated neutral selection systems. These resources help streamline the process while ensuring a high degree of procedural support, neutrality, and professionalism.

Step 5. Outcome-Based Compensation: If the dispute is resolved to the satisfaction of all parties, the ADR fund charges a capped success fee. If no resolution is achieved, there is no fee. Neutrals are always paid for their work, preserving neutrality, impartiality and independence.

Moreover, outcomes reached through ADR funding can be structured to result in enforceable consent awards, either through arbitration rules or under international frameworks such as the Singapore Convention on Mediation or the New York Convention on Arbitration. This makes ADR funding particularly attractive in cross-border and investor-state disputes, as it enables this to be factored in early on in such matters.

VI. Case Study: A $5 Million Commercial Dispute

Scenario A – Traditional Litigation Funding

- A $5 million claim is financed through litigation funding.
- The case proceeds for 3.5 years and eventually results in a full recovery of $5 million.
- After paying legal fees and a 4x return to the funder (plus a share of residual damages), the claimant receives ultimately retains $800,000.
- Counsel spend over 1,000 hours at an average rate of $700/hour. Assuming 50% overheads, the net hourly rate drops significantly. The internal rate of return (IRR) is low and the working cost of capital (WCC) is high.

Scenario B – ADR + Litigation Funding

- The same dispute is redirected to ADR early on with the help of an ADR funder.
- The matter settles within six months for $4 million.
- The claimant receives over $2.3 million after ADR costs and legal fees.
- Counsel spend only 300 hours and benefit from a bonus pool created from the cost savings (e.g., a portion of the 60-70% saved relative to litigation). Their effective hourly rate exceeds $1,300/hour. The firm's IRR increases tenfold. The WCC drops below 0.2.

VII. When ADR Funding Is Most Useful

ADR funding is especially effective in:

- Commercial disputes.
- Family business, partnership, shareholder, trusts and estates conflicts.
- Venture capital or private equity-backed companies with limited litigation budgets.
- IP and technology disputes, whether domestic or international.
- Regulated or close-knit sectors like health care, finance, energy, and construction.
- Cross-border and investor-state disputes requiring discretion.
- Cases where litigation funding is unavailable due to uncertain recovery, unclear liability, or questionable enforceability.

VIII. Complement or Alternative?

ADR and litigation funding are not mutually exclusive. They can be combined strategically:

- ADR funding can be used before litigation to achieve early resolution.
- It can be used during litigation to enable settlement and reduce costs.
- It can assist after an award or judgment in enforcing or restructuring outcomes.
- It is also a fallback where litigation funding is declined, or where non-adversarial solutions are preferable, keeping the door open to early, cost-effective resolution even when traditional third-party finance is not an option.

Together, these models create a more robust and accessible dispute resolution ecosystem.

IX. What This Means for Lawyers

ADR funding does not diminish lawyers' roles. It enhances them, by enabling them to:

- Deliver higher value in less time.
- Improve client satisfaction and retention.

- Reduce personal stress and the strain on resources.
- Align performance incentives with resolution outcomes.

ADR funding supports problem-solving. It rewards creativity, cooperative dialogue between counsel, and efficiency. It offers a more sustainable model for both lawyers and clients, better addressing clients' needs and expectations.

X. Conclusion: Financing Resolution, Not Just Conflict

Litigation funding supports a side. ADR funding supports a mutually acceptable solution. The two are not in competition. They are complementary parts of a broader toolkit for dispute professionals and their clients who seek better, faster, and more client-centered outcomes. Used together, they offer a broader spectrum of procedural options for resolving disputes more strategically and humanely.

ADR funding fosters closure. It aligns incentives across all stakeholders, and it may be one of the most promising ways to restore access to justice in a world where process often overtakes purpose, and where better outcomes depend on smarter design and aligned incentives.

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Endnote

1. Work on these issues was influenced by the author's work coordinating the Mixed Mode Task Force jointly set up by the Commercial College of Arbitrators, the Straus Institute at Pepperdine University, and the International Mediation Institute and the Global Pound Conference Series, which generated data from over 5,000 dispute resolution professionals around the world regarding how to improve access to justice.

Comparative Summary: Litigation Funding vs. ADR Funding

Feature	Litigation Funding	ADR Funding
Objective	Maximize return on a party's claim	Resolve disputes efficiently for all parties
Party Focus	One-sided (usually claimant)	Inclusive of all parties and impartial
Funding Covers	Legal fees, discovery, expert witnesses, other procedural expenses	ADR Neutrals, ADR institutions, process design
Control Over Process	Limited by courts/arbitrators	Higher party autonomy, including mixed-mode options
Time to Outcome	2–7 years	Less than 3–6 months
Compensation Basis	Damages-based (3–4x draw-downs on capital plus % of remaining award)	Capped success fee (< 5% of value or 1/3 of litigation costs) with proportionally greater returns
Risk Profile	High (outcome and enforceability risks)	Low (self-enforcing settlements, and no fees if case does not settle)
Confidentiality	Limited	Stronger and customizable
Relationship Impact	Often negative	Preserved or improved, and risks of conflict escalation are avoided
Eligibility	Large, high-damage cases only	Flexible, including lower-to-mid-value cases, as well as high-value cases
Economic Efficiency (IRR/WCC)	Slower, lower efficiency	Higher IRRs, lower WCCs for all stakeholders
Lawyer Incentives	Rewarded for duration	Rewarded for resolution