

# The Litigation Funding Barometer

A Data-Driven Analysis of What Litigation Funders Want

## A LexShares Special Report

Which cases appeal to litigation funders, and why? That question lies at the heart of this first-of-its-kind resource, which uses data collected from more than 30,000 federal and state cases to give lawyers and their clients a better understanding of how this growing industry really works.



# Foreword

If you are a sophisticated investor, or even just a wise consumer, one thing is certain: you routinely use data to make smarter decisions.

Stock pickers look at price-to-earnings ratios, among hundreds of other data points. Home buyers review market trends and mortgage rates. From pricing airline seats, to drafting fantasy football players or picking restaurants, mountains of data are available to those who seek an informational edge.

That's not true, however, for a group of participants most would expect to be highly informed: sophisticated attorneys. Lawyers routinely embark on economically taxing litigation with no concrete data to indicate how the matters they represent are viewed by third-party litigation funders. In fact, litigators often have little to guide them beyond their subjective impression of a client, their body of work, and a general sense of the law.

To blame this reality on attorneys would be unfair. While litigation funding has become an effective means for businesses and law firms to improve their legal outcomes, the industry has rarely communicated well or openly to its primary users — lawyers — about the qualities that lend individual cases to outside investment.

With this report, LexShares hopes to begin correcting that trend. For the first time, we are publicly sharing data from Diamond Mine — the proprietary software we use to analyze thousands of cases per day and score them based on characteristics that we, as investors, find attractive. While this data speaks to *potential investments*, and not actual investments, we believe the findings can help lawyers better understand a powerful resource for litigants and, ultimately, empower their firms to advance more meritorious claims in court.

Some of our report's takeaways are intuitive; others are not. Regardless, the data we use to guide our own business decisions is now available for the litigation community to do the same.



**Cayse Llorens**  
Chief Executive Officer  
LexShares

A handwritten signature in black ink, appearing to read "Cayse Llorens". The signature is fluid and cursive.



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# I. Introduction

In recent decades, and particularly in recent years, third-party funding has become increasingly pervasive in the legal market. Today, countless practicing litigators have a basic understanding of what litigation finance offers them: the ability to transfer contingency fee risk to a third party. That's a valuable benefit, and in that sense, the success of litigation finance could be expected.

Despite its ostensible growth, most litigation finance industry participants also subscribe to the notion that fewer than 5% of all opportunities to cross a funder's desk ultimately receive an investment. It is an assumption that begs two important questions, neither of which have ever been answered with any degree of certainty:

1. Is it true?
2. If so, which characteristics separate funding-worthy cases from the rest of the pack?

This report attempts to answer both of those questions. It harnesses data from Diamond Mine, the software that LexShares uses to identify attractive funding candidates, in a bid to further demystify an industry long viewed by lawyers as opaque. While LexShares does not rely solely on Diamond Mine when making its investment decisions, the software gives our team a unique, data-driven "first look" at the large volume of federal and state cases filed each day. To even qualify for funding consideration, a case must score at least a nine on Diamond Mine's 0-25 scale, underscoring the high bar litigation funders typically employ when assessing cases for investment.

As to the first question above, our data suggests that the industry lore is, in fact, correct: just 12% of federal cases and fewer than 10% of state cases met Diamond Mine's threshold for funding consideration in 2021. With so many cases eliminated at the very outset of the vetting process, the anecdotal 5% figure would seem, if anything, to overestimate the share of cases that funders might deem attractive enough to back.

For litigators, the mystery behind the second question perhaps runs even deeper than the first, and it reflects an information gap that exists on both sides of any litigation finance transaction. For our part, litigation funders typically invest in matters without access to the privileged discussions that occur between attorney and client. At the same time, we recognize that lawyers and their clients possess imperfect information as well. Litigation funding has existed under a cover of confidentiality, making it difficult for the public to obtain common contract terms or pricing information.



## As a result, most litigants and their lawyers are unable to answer a most basic question: what makes a case attractive to litigation funders?

By leveraging the trove of data produced by Diamond Mine, we hope our analysis will educate attorneys on the types of cases that generally offer the strongest potential for positive outcomes — not only for litigation funders, but also for law firms themselves. Our conclusions include the following:

- ◆ We found a higher percentage of strong funding opportunities among federal cases than state cases. Approximately 12% of federal cases represented robust funding opportunities, compared to 9.7% of state cases.
- ◆ Federal trade secrets, antitrust, and contract disputes presented some of the strongest funding opportunities across jurisdictions.
- ◆ Contract disputes filed in state courts, particularly in New York, also presented many of the strongest funding opportunities.
- ◆ In what we believe to be one of the first analyses of law firms filing state and federal cases, we found that large law firms (those appearing in the NLJ 500) generally filed the most cases with the best investment potential – with a few notable exceptions.

### A NOTE ON DIAMOND MINE

The data presented in this report is unique to LexShares. It is based on Diamond Mine, the proprietary software we use to analyze thousands of cases each day. Diamond Mine's algorithm scores each case on a 1-25 scale, based on factors including damages alleged and the legal team's track record.

Based on LexShares' experience, we consider cases that score 9 or higher as "qualifying cases," which merit consideration for funding. We categorize cases that score 16 or higher as "Five-Diamond" cases, or the best potential funding opportunities.



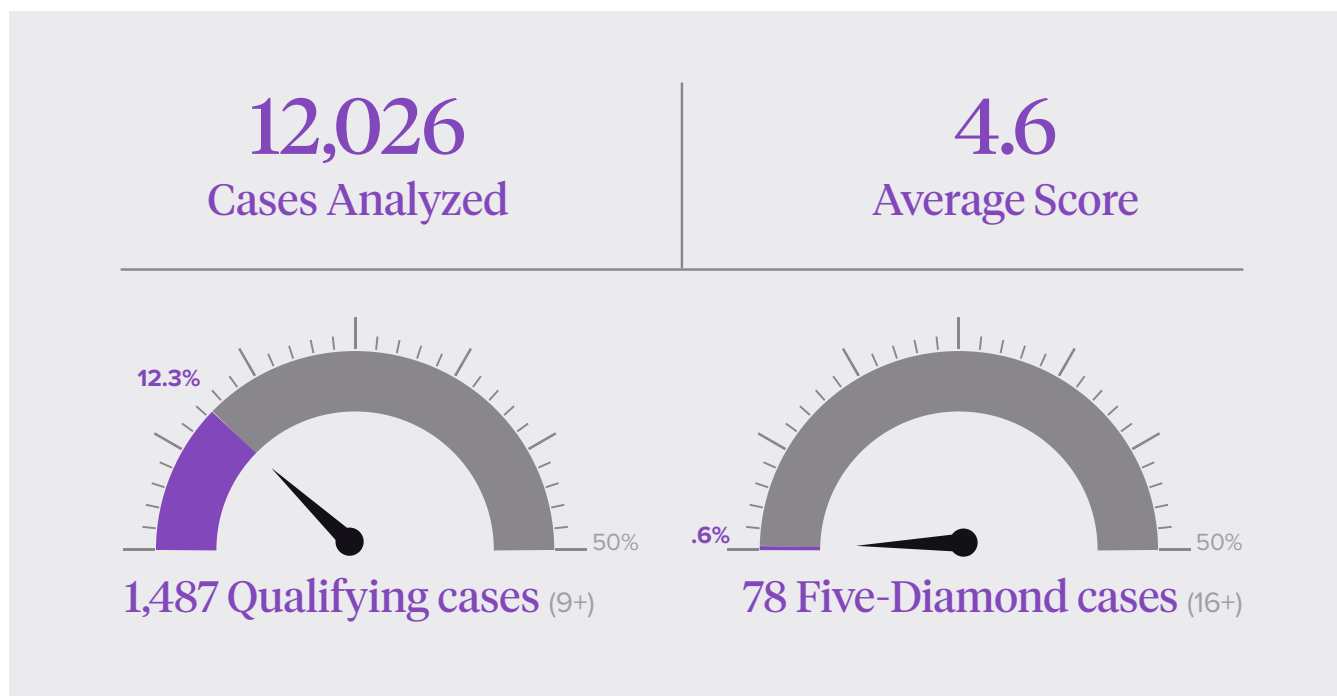
### WHY ASSESS CASES AT FILING?

Our report assesses cases at the time of filing because many litigators seek funding in the earliest stages of their disputes. More than 70% of LexShares' engagements occur before the end of the discovery phase.



## II. Federal Spotlight

### 2021 BY THE NUMBERS



#### WHICH TYPES OF FEDERAL CASES ARE BEST FOR FUNDING?

A certain type of case may be attractive to a litigation funder for any number of reasons. That case type may have a large volume of cases with enough merit to warrant consideration for investment (in our parlance, “qualifying” cases), assuring the funder a large pool of investment opportunities. The case type may have a high percentage of qualifying cases, minimizing the time a funder must spend screening matters before finding worthy funding opportunities.

Or the case type may have a relatively high percentage of particularly compelling cases (what we refer to as “Five-Diamond” cases), which, due to the potential for large damage awards or other factors, present some of the most appealing investment opportunities we analyze.



Case Type	Number of Cases	% of Qualifying Cases	Five-Diamond Cases	Avg. Score of Qualifying Cases
Trade secrets	138	58.69% (81)	8.69% (12)	11.51
Contract	3,902	15.79% (616)	0.21% (8)	10.19
Trademark or copyright	1,089	11.29% (123)	0.37% (4)	9.61
Fraud, fiduciary duty, or business tort	823	19.93% (164)	0.38% (3)	10.14
Antitrust	190	31.05% (59)	1.05% (2)	11.12
Torts or personal injury	1,994	12.49% (249)	0.1% (2)	10.252
Arbitration	43	11.63% (5)	0.0% (0)	9.8
Qui tam	23	4.35% (1)	0.0% (0)	12
Other	1,136	15.4% (175)	1.76% (20)	11

Among federal cases, we found that trade secret and antitrust matters stood out favorably in multiple respects. More than half of all trade secrets cases (58%) and more than a quarter of all antitrust cases (26%) met our qualifying threshold. They didn't only qualify for funding consideration at a high rate, either; the qualifying trade secret and antitrust cases had the second- and third-highest average scores of the group, respectively. Trade secrets matters also had, far and away, the highest percentage of Five-Diamond cases, representing highly attractive investment opportunities.

#### THE RARITY OF "FIVE-DIAMONDS"

Of the 31,265 federal and state cases analyzed for this report, we identified 283 as Five-Diamond cases that we considered excellent fits for litigation funding. That such a small percentage of cases (0.8%) met this threshold speaks to the rigorous selection process that successful litigation funders must adhere to when making investment decisions.



“When you come across a good trade secrets case, everything seems to align from a funding perspective,” says Allen Yancy, LexShares’ Director of Investments. “These matters can include very large damages awards, and from an investment perspective, there tends to be a lot of information available for due diligence. There has often been a prior relationship among the litigants, and that means there is a paper trail that can provide a good sense of the merits of the case upfront. That said, there will always be surprises in discovery, and plaintiffs are likely viewing the evidence through a filter that favors them. We must therefore evaluate trade secrets matters carefully; there are also a number of weaker cases where the merits and the damages just don’t make sense when viewed objectively.”

Yancy noted that antitrust cases, for different reasons, also offer the potential for very large damages. “Antitrust cases can be appealing due to the availability of automatic trebling of damages,” he said. “That’s rare to see, as usually to get a recovery that’s a multiple of your damages, you need to show intent.”

Yancy adds that the quality of the parties involved in the litigation is another factor, noting that antitrust matters tend to have more sophisticated plaintiffs and more specialist counsel than typical commercial litigation. “Sometimes you see commercial litigation generalists handling complex matters, but when it comes to antitrust, from my perspective as an underwriter, I prefer to see an antitrust specialist on the plaintiff’s side. It is a technical area of law and the law changes in antitrust a little bit more frequently than some other areas.”

#### MORE FROM ALLEN YANCY ON FUNDING TRADE SECRETS LITIGATION

“Damages are the blessing and the curse of trade secrets cases,” Yancy says. “They can be large, but they can also be difficult to prove. Often, trade secrets litigation concerns new technology, new products, or new business methods. It’s hard to pinpoint a plaintiff’s lost profits because there’s no track record, no history of performance. That’s one of the issues. If the proprietary information involves something novel, it’s difficult to say, ‘I would have made \$100 million on this.’”

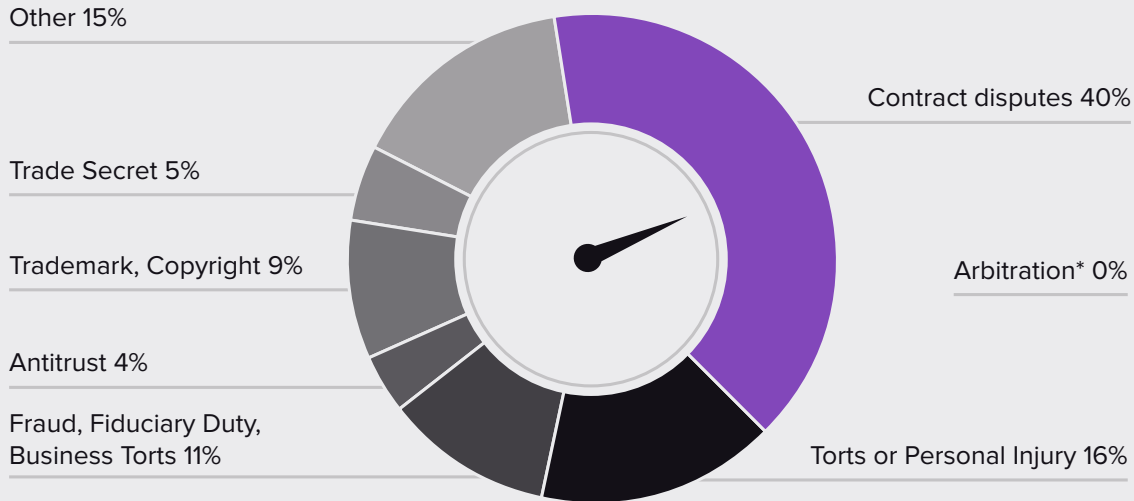
“Sometimes you can get around that challenge. If the defendant has started making money on the plaintiff’s trade secrets, you can project that into the future. But sometimes when a defendant steals the trade secrets, they’re novel, and the plaintiff sues before anyone has successfully monetized it.

“It’s also important to understand that trade secrets are often one part of a larger whole. A plaintiff might claim that without the trade secret, the larger business is damaged. Consider, as a simplified example, the battery for an electric vehicle. The defendant may make \$100 million in profits selling vehicles that incorporate a trade secret making the battery 10% more efficient. The plaintiff obviously can’t claim that all \$100 million are ill-gotten gains, and it’s challenging to pinpoint what portion of that profit should be considered as damages. A case can be fundable or not fundable based on that estimation alone.”





## All Qualifying Federal Cases by Claim Type 1,487 Qualifying cases



\* 4 qualifying matters classified as “arbitration” for 2021

Though trade secrets and antitrust matters presented the most attractive investment opportunities, contract disputes provided the largest pool of qualifying cases, making up 40% of the entire group. That should not be surprising. Commercial disputes account for much of the federal docket, and many commercial matters involve an underlying contract. While contract disputes make up four out of every 10 qualifying cases — and nearly 5,000 of the 12,026 total federal cases — they were not significantly more likely to meet our threshold for funding consideration than non-contract cases. In fact, they were less so. Just 12% of contract disputes met our qualifying threshold; meanwhile, 16.16% of non-contract matters met the threshold. Likewise, contract cases were less likely than non-contract cases to be categorized as Five-Diamond matters. About one-half of one percent (.52%) of contract cases earned that status, versus .73% for non-contract matters.

Matthew Oxman, LexShares’ Vice President of Business Development and Investments, explains that several factors influence funding decisions on contract cases. “A substantial percentage of the litigation filed nationwide contains a breach of contract claim, but there are many pitfalls in investing in contract disputes,” Oxman says. “Liability waivers can kill contract deals, as can broadly written or construed termination clauses. These factors might constitute 80% of the ‘deal killers’ that cause us to pass on a potential breach of contract investment opportunity.”



## A NOTE ON PATENT CASES

You won't find federal patent cases in our analysis. That's not due to any lack of strong patent cases in 2021 (there were plenty), or because litigation funders do not invest in patent actions (plenty do, including funders who specialize in these matters). LexShares, however, does not regularly fund patent matters. So, for the purposes of this report, we have included them in our "other" category."

Max Volsky, LexShares' Chief Investment Officer, highlights some of the challenges in funding patent litigation. "There are many ways to lose a patent case, including inter partes reviews, ex parte reviews, and other validity challenges that can undermine a patent," he says. "Infringement is difficult to prove and very technical in nature, stacking patent litigation against the plaintiff. While some jurisdictions are much better than others for patent plaintiffs, many courts don't understand patent claims. Others, such as Delaware, are simply hostile to them."

### WHICH FEDERAL JURISDICTIONS HAVE THE BEST FUNDING OPPORTUNITIES?

The federal jurisdictions that stand out as having attractive investment opportunities are a combination of the expected and perhaps unexpected. It is no surprise that New York and California dominate in terms of sheer numbers. Only 10 states had more than 20 qualifying federal cases in 2021, and each of the coastal population centers had nearly twice as many qualifying cases as Illinois, the jurisdiction with the third-highest number.

Among the top 10 jurisdictions, however, were others that may surprise both for their high case counts and high scores. Utah is an emerging legal market that has been buoyed in recent years by a strong technology startup scene and growing population, leading to it becoming an attractive market for high-profile litigation practices. It enjoyed the second-highest average federal case score (11.59) of any state with a substantial volume of qualified filings. Other jurisdictions appear on this list for reasons that may be more fleeting. For instance, the numbers for Indiana — which had 34 qualifying cases and the highest average score — were inflated in 2021 by a wave of related litigation filed against the NCAA.

Utah, California, and New York also led the pack in terms of 5-Diamond cases, with each state tallying four.



## Federal Jurisdictions With 20 or More Qualifying Cases

	Number of Qualifying Cases	% of All Federal Qualifying Cases	Average Score of Qualifying Cases	Five-Diamond Cases
<b>California</b>	135	17.49	9.86	4
<b>New York</b>	130	16.84	10.11	4
<b>Illinois</b>	70	9.07	10.86	2
<b>Texas</b>	62	8.03	9.84	1
<b>Florida</b>	55	7.12	10.04	3
<b>Indiana</b>	34	4.4	11.68	1
<b>Ohio</b>	29	3.76	10.57	3
<b>Utah</b>	22	2.85	11.59	4
<b>Pennsylvania</b>	20	2.59	10.05	1
<b>Michigan</b>	20	2.59	9.8	2

### THE LEGAL LANDSCAPE

Adding to the appeal of the jurisdictions above, several of them have a legal landscape that makes them particularly receptive to litigation funding. Take, for instance, prohibitions on “champerty” or “maintenance,” two antiquated common law doctrines designed to prevent abuse of the legal system. Those doctrines have been rendered largely obsolete by laws that prevent abuse of process and malicious prosecution. Funders and litigants alike, however, can take comfort that champerty and maintenance do not apply in four of the 10 jurisdictions above (California, Michigan, Texas, Utah). Four additional jurisdictions (Florida, Illinois, New York, and Ohio) either don’t enforce the doctrines or construe them narrowly, thereby limiting any role they may play in funding decisions.





## Other Federal Jurisdictions

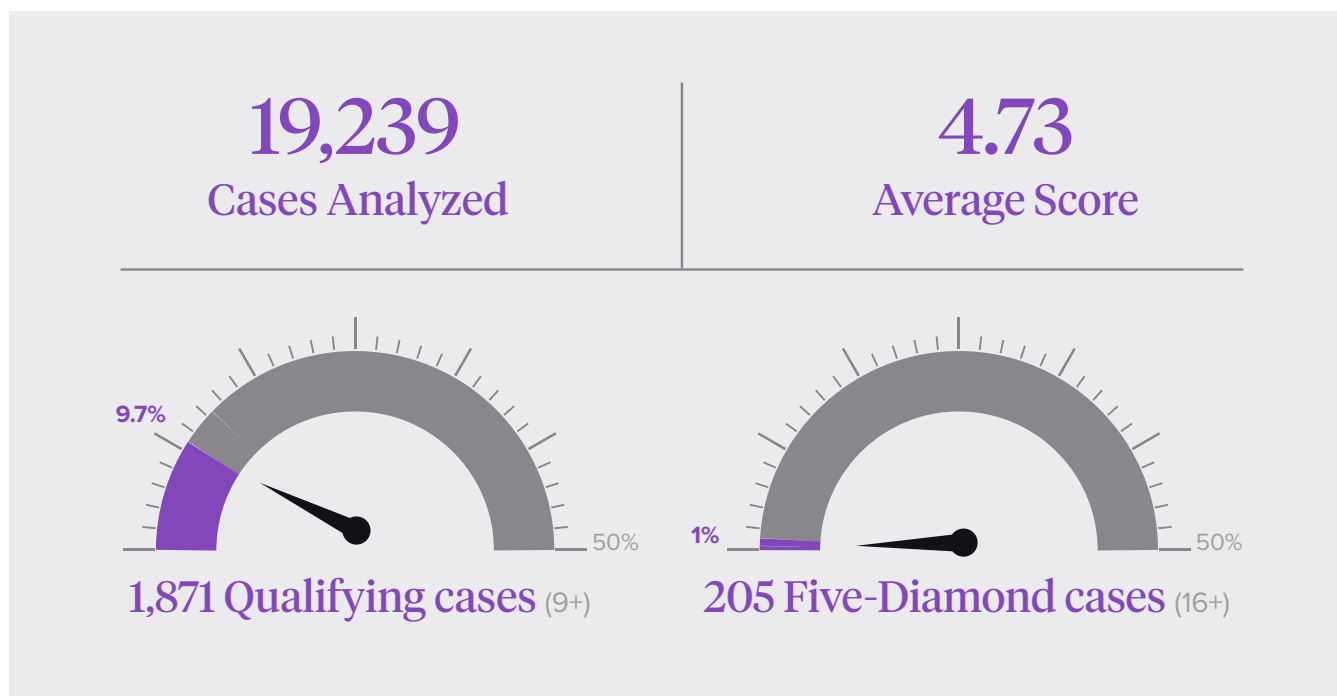
	Number of Qualifying Cases	% of All Federal Qualifying Cases	Avg. Score of Qualifying Cases
<b>Louisiana</b>	19	2.46	9.47
<b>Massachusetts</b>	18	2.33	10.83
<b>New Jersey</b>	18	2.33	9.94
<b>Virginia</b>	18	2.33	10.61
<b>Oregon</b>	13	1.68	10.15
<b>Puerto Rico</b>	13	1.68	9.69
<b>Minnesota</b>	11	1.42	10.91
<b>Missouri</b>	11	1.42	9.55
<b>D.C.</b>	9	1.17	11
<b>Delaware</b>	7	0.91	10.43
<b>Rhode Island</b>	7	0.91	9.14
<b>Georgia</b>	5	0.65	11
<b>Idaho</b>	5	0.65	10.25

The following jurisdictions had fewer than five qualifying cases: Arizona, Arkansas, Hawaii, Kentucky, Maine, Nebraska, Oklahoma, and Wyoming (1); North Dakota and Federal Claims (2); Iowa, Kansas, New Mexico, and West Virginia (3); and Connecticut, North Carolina, South Carolina, and Washington (4).



### III. State Spotlight

#### 2021 BY THE NUMBERS



In one sense, the numbers tell a simple story. Cases filed in state court were not as likely to present attractive funding opportunities as cases filed in federal court. Our analysis found that 9.7% of state cases qualified, as opposed to 12.3% of federal cases. What state litigation may lack in quality, however, it made up for in volume. In 2021, Diamond Mine analyzed over 7,000 more state than federal filings, enough to result in a higher absolute number of qualifying cases at the state level — albeit by a slim margin of 384.

But state litigation had another significant advantage over federal litigation in 2021: a much higher rate of cases of the highest quality. Our software identified 205 Five-Diamond cases at the state level, more than two and a half times the 78 Five-Diamond cases at the federal level. For funders, the relatively high percentage of Five-Diamond matters makes state litigation well worth considering for investment, even if they must do a bit more “digging” to find the best candidates.



## What Types of State Cases Are Best for Funding?

Case Type	Number of Qualifying Cases	Five-Diamond Cases	Average Score of Qualifying Cases	Number of Cases
<b>Contract</b>	812 (15.39%)	108 (2%)	12.27	5,275
<b>Fraud, fiduciary duty, or business tort</b>	164 (29.18%)	20 (3.56%)	12.42	562
<b>Torts or personal injury</b>	522 (5.9%)	17 (0.19%)	10.65	8,834
<b>Other</b>	370 (8.14%)	57 (1.25%)	12.09	4,544

In looking at case types at the state level, we can observe some expected variation from federal cases. With almost all trademark, copyright, intellectual property, and to a lesser extent antitrust disputes being heard in federal court, those categories are effectively absent above, as one would expect. (Although the few cases in those categories scored highly.) Conversely, and expectedly, there were a much higher number of tort cases in state court. It is also predictable, given the minimum amount in dispute required for jurisdiction in federal court, that state tort actions met our qualifying criteria at only about half the rate of federal tort actions (6.64% v. 12.9%).

In two prominent categories — contract and fraud disputes — we have an apples-to-apples comparison. For each of those case types, the numbers of cases were roughly similar. And the numbers, for the most part, are in line with each other. For fraud cases, a slightly higher percentage of state cases met our qualifying score than federal cases (29.18 % v. 20.2%). The qualifying rate for contract cases, meanwhile, was virtually identical (15.39% v. 15.8%). The stark difference arose in the identification of Five-Diamond matters, where more than ten times as many state contract cases qualified as Five-Diamond matters (108) than federal contract cases (7). The 108 Five-Diamond contract cases in state court, in fact, represented more than half of all Five-Diamond matters at that level.

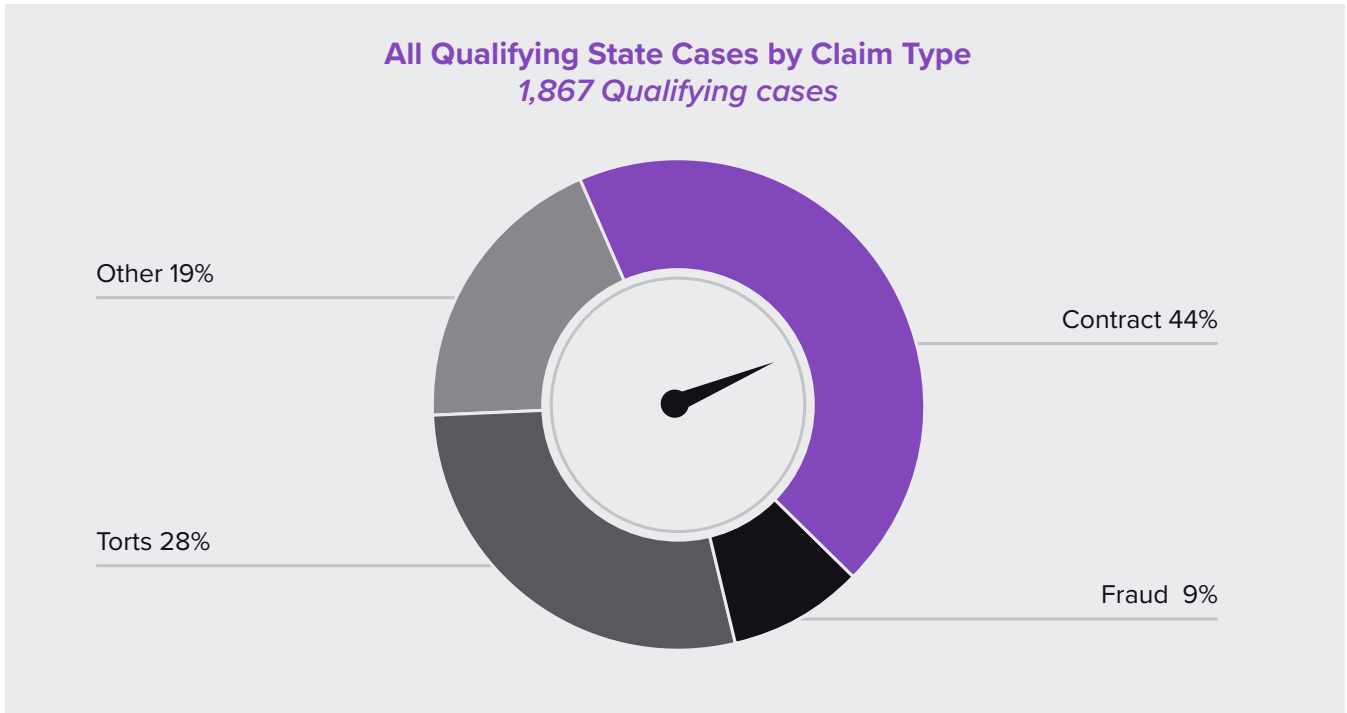
“There are situations where a larger company knowingly breaches a contract with the assumption that the smaller company will not have the resources to sue,” Oxman says. “Those are matters we might be inclined to take a closer look at.”

“Often, contract cases come down to a lost profits analysis. A breach of contract might have harmed a company in such a way that its business was nearly decimated, and it will claim it has lost profits of a certain magnitude. If the





company’s past track record is thin, however, it’s difficult to prove lost profits. In claiming lost profits, plaintiffs might make incredibly rosy and unrealistic assumptions about the future profits of a fledgling business. These are also situations we must approach with caution.”



### **WHAT STATE JURISDICTIONS HAVE THE BEST FUNDING OPPORTUNITIES?**

When we analyze the Five-Diamond opportunities at the state level more closely, two data points leap out. The first is that the majority come from New York. The second is that contract and fraud cases dominate. Of the 205 total Five-Diamond cases in state court, 167 originated in New York. Of those 167, contract cases accounted for 99 of them and fraud cases accounted for 68.

Looking at the two tables below — of states with the most Five-Diamond matters and the states with the highest percentage of Five-Diamond matters — we can see that the Northeast presents an attractive region for investment in state court litigation. New York, New Jersey, and Massachusetts all appear on both lists.



## HIGH-VALUE CONTRACT CASES IN NEW YORK

Contract cases in New York account for 108 of the 205 total Five-Diamond cases at the state level. Why does such a narrow profile of cases account for such a large share of Five-Diamond matters? Two factors are almost certainly at play here. One is the high value of real estate and other contractual disputes in New York, where parties may not have the diversity of citizenship to make federal court a potential venue. The second is the high-quality legal counsel that practices in New York.

### Five-Diamond Cases by Volume

State	Number	Contract or Fraud Cases
New York	167	108 (67%)
Florida	14	9 (64%)
Massachusetts	8	6 (75%)
California	5	3 (60%)
New Jersey	5	0 (0%)

### Five-Diamond Cases by Share of Litigation % of All Litigation Analyzed in the State



**3.125%**

**North Carolina**  
1 case



**2.5%**

**Massachusetts**  
8 cases



**1.5%**

**New York**  
167 cases



**1.2%**

**New Jersey**  
5 cases



**.54%**

**Indiana**  
1 case



## Average Qualifying Case Score by State

State	Number of Qualifying Cases	Avg. Score of Qualifying Cases
New Jersey	9	14.11
North Carolina	11	12.36
Massachusetts	41	12.22
New York	1,459	11.88
Pennsylvania	11	11.81
California	73	11.56
Texas	45	11.27
Georgia	8	11.125
Indiana	7	11
Connecticut	3	11
Florida	94	10.95
Ohio	44	10.95

A simple but likely accurate conclusion to draw from this table is that states with higher value business activity will naturally experience a greater number of business disputes. Indeed, 10 of the 12 states listed above were also in the top 12 nationally in terms of nominal GDP.<sup>1</sup> Illinois and Washington state are the only two top 12 GDP states not among the top 12 in qualifying commercial litigation. Notably, Indiana is home to the 15th-largest U.S. city (Indianapolis), while Connecticut is part of New York City's tri-state area.

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<sup>1</sup> *GDP by State* | U.S. Bureau of Economic Analysis (BEA). Bureau of Economic Analysis. Retrieved 10 April 2022.





## IV. The Law Firms

Our data shows a clear distinction between the types of cases filed by large law firms and all other law firms, particularly at the federal level. In 2021, large law firms filed more than half (54.2%) of all qualifying federal cases. On average, qualifying cases filed in federal court by large law firms presented stronger investment opportunities than those filed by non-NLJ 500 firms (with an average score of 11.03 versus 9.98), as well as in state court (12.67 versus 11.59). While the data certainly favors large law firms, that it is not more lopsided in their favor also speaks to better opportunities for small and midsize firms than many realize.

Large law firms don't just file high-quality lawsuits in federal court — they also do a volume business there. Nine of the 14 law firms filing the most suits in federal court were large law firms, and 56% of qualifying cases filed came from large law firms. Removing a single small firm outlier firm from that group, which filed 21 mostly redundant cases, increases the large firm's share to 71%. While smaller firms are certainly active on the federal docket, we often observed non-NLJ 500 firms with large case volumes filing duplicative, smaller complaints against the same or similar defendants. For funding purposes, such cases would not be attractive on their own but could represent a portfolio funding opportunity that would be classified as a single, qualified case in practice.

**In terms of damages, we found that NLJ 500 law firms were more likely to file federal cases with more substantiated damages than their smaller counterparts.**

This is perhaps to be expected: large law firms generally have better access to damages experts and other litigation support resources. At the same time, it is not uncommon for large firms to bill clients a multiple of what a smaller firm might charge for a given case. For this reason, large law firms are incentivized to seek out damages models that can substantiate the cost of engaging them.

“Many higher dollar cases tend to involve large litigants and are filed in federal court, which given the high stakes, typically involves larger law firms,” Volsky said. “Also tilting the scales toward larger firms is the fact that many cases that involve federal statutes, such as patent matters, are heard in federal court and require a certain skill set that relatively few small firms possess.”



To gain an understanding of the law firms with cases presenting the best investment opportunities, we looked at those filing Five-Diamond cases (scored 16+ by our algorithm). On the federal docket, large law firms, including Holland & Hart, Robbins Geller, and Fox Rothschild dominated the list. They were joined by non-NLJ 500 consumer protection firm Francis Mailman Soumilas.

On the state side, where non-NLJ 500 firms are more prevalent, large law firms still had most of the cases presenting the most attractive investment opportunities. Quinn Emmanuel, Greenberg Traurig, and Nixon Peabody led the way, though smaller firms Welby Brady & Greenblatt and Zetlin & De Chiara also filed a number of cases with funding potential.

Based on the above data, it's fair to conclude that large law firms present some of the best funding opportunities. It would not be fair to conclude, however, that large law firms receive the most funding from LexShares or other funders.

## Most of the cases in our data set are never funded, in part because the parties and lawyers behind them never pursue litigation funding.

There are many reasons for that, and some relate to the size of the law firms involved. Our experience tells us that law firm culture is a factor in seeking funding. For instance, large law firms may tend to have cultures that are more bound to tradition and less willing to embrace alternative financial arrangements. Also, the mere process of getting approval for litigation funding can be more involved at a larger firm. Litigation funding is one area in which the ability of small and midsize law firms to be nimbler in their decision-making gives them an advantage.

And while large law firms may be highly represented among cases that Diamond Mine scores highest, there is plenty of quality litigation to go around, particularly on the state dockets. Non-NLJ 500 law firms filed more than 80% of qualifying state cases in 2021. "Local and regional law firms, which are almost always non-NLJ 500, are likely to be better plugged into their communities and can use their networks to originate strong state cases," Volsky said.



## V. Conclusion

We hope this report gives lawyers a richer understanding of the attributes that litigation funders find attractive when considering cases for investment. While this report has underscored the overarching selectivity of funding decisions, we hope it also highlights our commitment to broadening access to the justice system for worthy cases, parties, and their representatives.

Time will tell if this report is the beginning of a movement to make funding decisions more transparent for the betterment of the entire profession. Regardless, we hope to see a greater number of meritorious cases succeed in court as the industry grows and evolves.

## VI. Methodology

This report surveys 31,265 federal and state lawsuits filed in the 2021 calendar year and scored by LexShares' Diamond Mine software. Diamond Mine uses a proprietary algorithm to score litigation matters on a 1-25 scale, based on numerous case criteria.

While Diamond Mine does not dictate LexShares' investment decisions, LexShares considers cases that earn a Diamond Mine score of 9 or higher "qualifying cases" that merit consideration for funding. LexShares classifies cases that earn a score of 16 or higher as "5-Diamond" cases, which LexShares considers to be among the best prospective funding opportunities it analyzes.

This report also segments law firms by size, identifying "large law firms" as those ranked in The National Law Journal's NLJ 500 for the year 2021, and small and midsize firms as those that fell outside of the NLJ 500 in 2021.



## VII. About LexShares

LexShares is the leading tech-enabled litigation finance firm, with an innovative approach to originating and financing high-value commercial claims. LexShares funds litigation-related matters, primarily originated by its proprietary Diamond Mine software, through both its online marketplace and dedicated litigation finance funds. LexShares finances a mix of single-case commercial deals and a growing contingent of portfolio arrangements within its pipeline of “middle market” investment opportunities. Founded in 2014, the company is privately owned with principal offices in Boston and New York. For more information, visit [lexshares.com](https://lexshares.com).





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