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The Pay Gap Between Male and Female Law Partners is Real—Litigation Finance Can Help Women Close It

As the role of finance in commercial litigation continues to expand, female lawyers can leverage its benefits to the advantage of their clients and their practice.

BY LAINA HAMMOND

In America's law firms, women lawyers statistically earn less than their male peers. Indeed, every recent study of attorney compensation has identified a persistent pay gap between male and female law firm lawyers. Legal search firm Major, Lindsey & Africa's 2020 Partner Compensation Survey showed that male partners out-earned female partners by 44%. While this was a marked improvement over the troubling 53% earning gap reported in 2018, the disparity between male and female lawyer pay remains significant. An inequality of this magnitude could result in women missing out on millions of dollars in earnings over the course of their careers.

So what explains the pay disparity? Research shows that a number of factors contribute to the gender pay gap in law. One thing is clear from the data: Women lawyers are not paid less than their male partners because they work fewer hours or produce inferior work. In fact, studies consistently show that women work more efficiently (billing fewer hours than men for particular tasks) and women's average annual billable hours exceeds that of their male colleagues.

It is true that some of the pay disparity is attributable to choices made by the female partners themselves. In general, women lawyers report being less likely than their male colleagues to negotiate



Laina Hammond investment manager with Validity Finance.

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pay increases on their own behalf. Some women lawyers who have children opt out of the equity partnership track in favor of a non-equity partner or counsel position with fewer law firm commitments but lower pay. Another key factor is the under-representation of women in equity partnerships and decision making roles at law firms. Although for years women have made up roughly half of America's graduating

law school classes, they comprise less than 20% of law firm equity partners, according to a 2019 American Bar Association and American Lawyer Media Intelligence study. Moreover, 70% of Am Law 200 firms have only one woman or no women at all on their compensation committees.

But study after study has identified one major factor underpinning the pay gap that appears to have the greatest impact: originations. That there is an undeniable link between origination credit and partner pay is unsurprising. Most firms strongly emphasize the origination of new matters in determining compensation. A law partner's ability to generate new business often sets his or her trajectory at the firm – both in terms of compensation and advancement to equity partner and firm management positions.

The data makes clear that on average, female partners get less origination credit than male partners. In the 2020 Major Lindsey and Africa study, the women partners

surveyed reported average originations that were 67% of the average originations reported by the men. A 2019 National Association of Women Lawyers study found that 46% of the nation's top 200 law firms do not have a single woman among their top 10 rainmakers. Unsurprisingly, when women lawyers lag behind their male partners in originations, they also tend to lag behind in pay. Recent studies have identified three notable factors contributing to the origination disparity. As compared with their male counterparts, female partners typically inherit fewer lucrative client relationships, receive lower origination credit for the business they help generate, and have less access to critical rainmaking opportunities. These are issues that law firms must address collaboratively and in the medium term, and many are working to do just that.

Still, female partners need solutions now to help them succeed within the existing system. To gain new business and, in turn, boost their compensation, women lawyers

must set themselves apart from the rest of the pack. One way to do this is to approach rainmaking in a new and creative way. To gain a competitive edge, women lawyers can establish new networks of women in leadership positions in business and law. They can demonstrate to clients how the diversity of their teams can bring fresh perspectives and enhanced client value. And, they can offer clients new solutions like flexible fee structures and litigation finance.

Litigation finance is an important tool to help litigators pitch new clients and expand relationships with existing clients. Rather than only offering clients standard hourly fee structures, with the financial backing of a litigation funder, the enterprising lawyer can also offer attractive alternative fee arrangements. That same lawyer can use litigation finance to convince her firm's contingent fee committee to share risk with a client on a promising case. Unlike a traditional contingency arrangement in which the law firm assumes

all of the risk and only gets paid if the case is successful, in a litigation finance arrangement, the firm shares the risk with a funder, which pays a substantial portion of the firm's legal fees and costs. If the case results in a favorable judgment or settlement, the firm and the funder share the success fee according to pre-negotiated terms.

The funder's investment is typically non-recourse, which means that the firm keeps the fees the funder has paid regardless of the ultimate outcome of the case. This arrangement limits the firm's risk and, importantly, the risk to the female partner. A 2021 ABA report on why women lawyers leave the profession revealed that women are disproportionately penalized for failed risk taking, such as taking a case on contingency that is ultimately unsuccessful. Litigation finance can serve as a risk bridge between a standard hourly fee arrangement and a full contingency. In a case funded by litigation finance, the firm (as well as

the female partner leading the case) is exposed to only a portion of the risk it would have to assume in a full contingency arrangement. Yet, unlike with a standard hourly fee structure, the firm retains the potentially lucrative upside of a successful case.

Litigation finance is still a relatively niche offering, although demand for it is growing rapidly. A litigator can further set herself apart from the competition when pitching new clients by her ability to explain how litigation finance works and what advantages it can offer a client. Being able to educate a client about this new option demonstrates responsiveness to the client's budget constraints and a willingness to propose creative, workable solutions that could save the client hundreds of thousands, even millions, of dollars in out-of-pocket legal spend. Likewise, litigation finance can help female partners expand relationships with existing clients and earn more credit for origination. While

handling the day-to-day of a valued client's litigation, she can also discuss the client's legal budget and potential upcoming litigation and use the opportunity to introduce flexible fee structures and litigation finance that could help further the client's goals.

Reversing the forces that have created the pay gap for women in law firms will take widespread recognition of the problem, collaboration, and time. But for women lawyers who do not want to wait for others to act, litigation finance can be a way for them to proactively seek to raise their origination rates and, by extension, their compensation. As the role of finance in commercial litigation continues to expand, female lawyers can leverage its benefits to the advantage of their clients and their practice.

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