Burford Capital Research Finds Companies Missing Out on Commercial Class Action Recoveries Due to Opt-Out Reluctance

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Costs and uncertainty cited as key barriers to opting out—legal finance offers a solution

NEW YORK, June 25, 2025 /PRNewswire/ -- Burford Capital, the leading global finance and asset management firm focused on law, today releases new research showing that US companies are routinely leaving substantial value unclaimed in commercial class action matters by choosing to remain in the class rather than pursuing individual opt-out litigation.

The independent survey of 301 senior in-house lawyers at US-based companies found that, although 54% report that their companies had potential commercial class action recoveries exceeding an aggregate of $50 million in the last five years, 62% reported that their companies always or usually chose to stay in the class. This despite growing recognition of the advantages of opting out—including the potential for significantly higher recoveries.

In-house lawyers cite anticipated litigation costs and uncertainty around potential outcomes as the primary reasons their companies choose to remain in the class rather than pursue potentially higher-value individual claims. Legal finance eliminates upfront litigation costs through fees and expenses financing, which 73% of in-house lawyers cite as a key barrier to opting out. Separately, monetization financing enables businesses to convert a portion of anticipated recoveries from pending claims into immediate capital—enhancing liquidity, improving cash flow predictability and reducing timing and outcome-related risk.

"Corporate legal and finance teams are increasingly focused on value creation, yet many are not leveraging opt-out strategies that could deliver significantly better outcomes," said **David Perla**, Vice Chair of Burford Capital. "Legal finance eliminates financial barriers to opting out, empowering companies to pursue valuable claims by derisking through fees and expenses financing or by providing immediate liquidity by monetizing a portion of the expected recovery. These options present compelling opportunities for businesses to unlock value and enhance liquidity without deploying internal capital."

Key Findings:

- **Opt-outs yield stronger recoveries:** Survey results show that in-house lawyers believe opting out

significantly increases their recoveries of estimated potential damages, and the vast majority (71%) believe opting out would have increased their company's recovery by more than 25%.
- **Cost and uncertainty drive inaction:** In-house lawyers cite anticipated litigation costs and uncertainty around outcomes as the main reasons companies forgo opting out, even though 86% say maximizing recoveries from commercial class actions is a business priority. 84% indicate they would be more inclined to opt out if they knew it could significantly increase their recovery.
- **Legal finance is an untapped resource:** 73% of in-house lawyers identify litigation costs as a key barrier to opting out, yet only 39% have used legal finance to pursue an opt-out strategy—a significant untapped opportunity to mitigate costs and maximize recoveries. Additionally, 71% say access to monetization—converting future expected recoveries into immediate capital—would make them more likely to opt out.

The Survey of In-House Counsel on Commercial Opt-Out Claims was conducted by GLG, gathering insights from 301 in-house lawyers at US-based companies with annual revenues exceeding $50 million. All surveyed companies had been plaintiffs in at least one class action over the past 10 years where the option to opt out was available.

The research report can be downloaded on Burford's website here.

About Burford Capital
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