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FUNDER NEWS ([HTTPS://LITIGATIONFINANCEINSIDER.COM/TOPICS/FUNDER-NEWS/](https://litigationfinanceinsider.com/topics/funder-news/))

Nivalion: Bringing a Unique Approach to Funding



Nivalion AG (<https://litigationfinanceinsider.com/tag/nivalion-ag/>)

By Jonathan Barnett and Maria Victoria Gómez of Nivalion AG

With the majority of funders globally coming from common law jurisdictions – in particular England, Australia and USA – to date common law practices and experiences have dominated the evolution of funding. Nivalion distinguishes itself by providing a different approach: Being civil law (Swiss) established and based, Nivalion has gone global, beyond its inception as a Continental European funder. This year marks the expansion of Nivalion's focus to The Americas and Asia-Pacific, regions that are proving ripe for developing funding in line with its unique experience and procedures.

A Leading Funder Using Best Practices

Nivalion's approach has proven time and again to be effective and a welcomed presence amongst other

leading funders. Its track record to date includes Band 1 recognition in Chambers & Partners' Litigation Support 2021, four members of Nivalion's Management Team being recognised by 2021 Law Dragon's Global 100 Leaders: Legal Finance and recognition of five members by Who's Who Legal as Third-Party Funding Thought Leaders (2020).

These accomplishments demonstrate the value in adhering to the funding industry's best practices. Nivalion is a Charter Member of the International Legal Finance Association (ILFA), where Marcel Wegmüller (Nivalion's Co-CEO) is a member of the Association's Management Committee, also chairing the Regional Committee for Continental Europe. It is committed to ILFA's Best Practices. According to Isabelle Berger (Nivalion Partner, Chief Investment Officer and Market Head for Switzerland, France, and Benelux): "This pushes the whole funding scene to a new, transparent level that encourages the market to have further confidence in funding."

Efficiency is Key

Nivalion implements these and its own practices at each step from assessing a funding application to funding a case: "Nivalion has a sophisticated and experienced team with multilingual capabilities. This facilitates and optimises time for the client, the lawyers and Nivalion. When we receive a funding request, we first confirm there are no conflicts of interest. Then the team focuses on budget, quantum, and timeline to make sure the claim is a suitable candidate for funding from a commercial perspective. In parallel, we conduct a high-level investment review of the case. Only when a case has met these two hurdles do we enter into an in-depth analysis of the case: We do not like to waste the client's or our time on claims that do not match our risk appetite". (Isabelle)

Stefan Kirsten (Nivalion's Head of Germany & Nordics) adds that Nivalion's main attributes when approaching a new case are being "straight to the point, speed, clarity, reliability, quality".

While this is consistent with practices of other leading funders, Nivalion's unique approach becomes apparent the more an application develops and ultimately once a case is funded: "We only invest in meritorious claims that have passed a very robust due diligence. Once a case is funded, we apply a hands-off approach." (Thomas Kohlmeier, Nivalion Co-CEO)

No Champerty & Maintenance and No Control

And therein lies a fundamental shift in funding practices and approaches: As the common law doctrines of champerty and maintenance do not exist in civil law, Nivalion is not bound by any such considerations. Nonetheless, Nivalion goes further than most funders by having no control over the proceedings except to ensure that the client acts under the advice of its lawyers and provides regular (monthly to quarterly) updates on the case. This gives Nivalion the assurance that the case is being pursued diligently and reduces potential concerns regarding its role as funder: Nivalion simply stands aside and lets the lawyers get on with advancing the case: "Of course, given the litigation and arbitration experience and expertise that we have in-house, if the legal team wishes to use us as a soundboard then we welcome such discussions. But this is not expected, and certainly not required by us" (Jonathan)

This makes Nivalion's approach adaptable and able to be implemented in most jurisdictions, regardless of whether they are common or civil law. Having no control over the proceedings, ensuring the independence of the client-lawyer relationship, and avoiding conflicts of interest with the parties, arbitrators and other stakeholders has proven to be a successful formula: "We focus on building relationships with lawyers and

clients based on trust and reliability. This is not just lip service – once we fund a case, the lawyers and client are in the driving seat from beginning to end, so part of our decision to fund is that we are comfortable we can trust the lawyers and client.” (Kirstin Dodge, Head of Americas)

This is reflected in the funding documentation: Nivalion tailors its funding agreements to grant as much autonomy as possible to claimholders, for instance, establishing a minimum threshold for settlement so that the lawyers and clients can negotiate with an ample margin without requiring Nivalion’s prior approval. The funding agreement is also considerably shorter than those in common law jurisdictions: “Common law lawyers and clients are often pleasantly surprised by how efficient and streamlined our funding agreement and related documents are.” (Jonathan)

Trusting in a Dynamic Relationship

Establishing such a trust-based relationship means that the client, lawyers and funder need to be on the same page from the outset. Funding a dispute is often a long journey, therefore it is crucial to develop a solid relationship based on trust: “We work with very intelligent lawyers on complex cases, so we learn from them and they learn from us. The quality of the legal team is essential for the case moving forward. Furthermore, funding is an extremely dynamic sector, and we aim to shape it. This is why our favourite cases start with a call from an outstanding lawyer who happens to have a somewhat crazy idea, which then turns into a completely new funding product” (Stefan).

In this manner, Nivalion can add value to clients, lawyers, and the industry. “We like to be one step ahead: A brilliant idea is vital to move the industry and the market forward and only works when the team is exceptional.” (Stefan)

Different Places / Different Trends

Nivalion enjoys receiving a broad range of meritorious corporate claims against solvent counterparties. There are, however, different trends in different markets.

In Germany and the Nordics “we receive applications from a wide variety of areas, including commercial and competition, patent and insolvency claims, plus more recently Covid-related disputes.” (Stefan)

In Switzerland, France and Benelux “we see a strong focus on commercial disputes, both before the courts and in arbitration. The markets here are growing more aware of funding and the benefits it brings to clients and lawyers. We are excited to see how the markets will continue to develop and how we can influence and learn from this” (Isabelle).

In Austria and Central and Eastern Europe, there is a strong focus on Investor State Dispute Settlement (ISDS), class actions and commercial arbitrations. “This bodes well for a healthy development of funding for the future as we see an increase of cases and corresponding funding applications” (Jonathan).

In Southern Europe, Marcel explains that “this market offers a great number of cases to fund including corporate and competition claims, ISDS arbitrations as well as requests to fund claim portfolios for corporations. The latter is quite a new development in Continental Europe.”

Asia-Pacific has taken to funding like a duck to water: “The market is yet relatively small but lawyers and

clients are well aware of the availability and benefits of funding. We bring a different approach than funders also established in the region and are already seeing this is helping to develop the market and attract cases.”

(Marcel, Head of Asia-Pacific).

In North America “there is a lot of litigation, which means a lot of opportunities. In particular, we receive a lot of funding requests for US patent litigation cases.” (Kirstin Dodge, Nivalion Head of Americas).

The Americas and Asia-Pacific: New Shores

On 1 May 2021, Nivalion welcomed Kirstin to the team as Head of Americas. Her extensive legal experience – including as a commercial litigation Partner in a leading US firm before more than 14 years as an international arbitration and mediation lawyer at a leading firm in Zurich, Switzerland – dovetails seamlessly with Nivalion’s expansion of focus to funding in the US, Canada and Latin American countries: “My experience litigating, arbitrating and mediating cases in both civil and common law jurisdictions is extremely helpful in dealing with the cases we receive. Thanks to my previous experience in the US, I understand the causes of action and court procedures, and can have detailed discussions with lawyers regarding their proposed strategy and the merits and risks of cases. The same is true for international arbitration cases, including ISDS claims, thanks to having worked many years in this field for a Swiss firm. That experience also helps in communicating with lawyers and team members who approach issues from a civil law perspective, for example with respect to adverse cost risks and Nivalion’s approach to case analysis and funding agreements.”

Nivalion has also expanded to Asia-Pacific. Led by Marcel, Nivalion has welcomed Alice Meissner as an Independent Senior Consultant to develop this market. Alice has practiced at leading firms in Austria and Germany and focuses on Chinese and European seated arbitrations: “This is an exciting time to be developing funding. We see a lot of interest coming from Singapore, Hong Kong, China and India, which are dynamic and large markets.” (Alice)

The Future is Bright

The emergence of a funder operating in accordance with international best practices and applying civil law principles and practices is an indication that the funding market is able and willing to accommodate a broad range of funding practices and cases. Nivalion gives clients and lawyers another option when considering funding.

Jonathan Barnett is Nivalion’s Market Head for the Austria & CEE region, having also focused on funding arbitration in Singapore, Hong Kong and Australia and practiced as an English and Australian qualified lawyer in Australia, Paris, Vienna, London and Zurich and as Counsel at the Secretariat of the ICC Court and Researcher at UNICITRAL. Jonathan speaks English and French and is a guest lecturer on third-party funding at ESSEC Business School (Paris).

Maria Victoria Gómez is an Analyst at Nivalion. She holds a Bachelor’s degree in Law and International Relations from IE University. Maria Victoria speaks Spanish, English and French.

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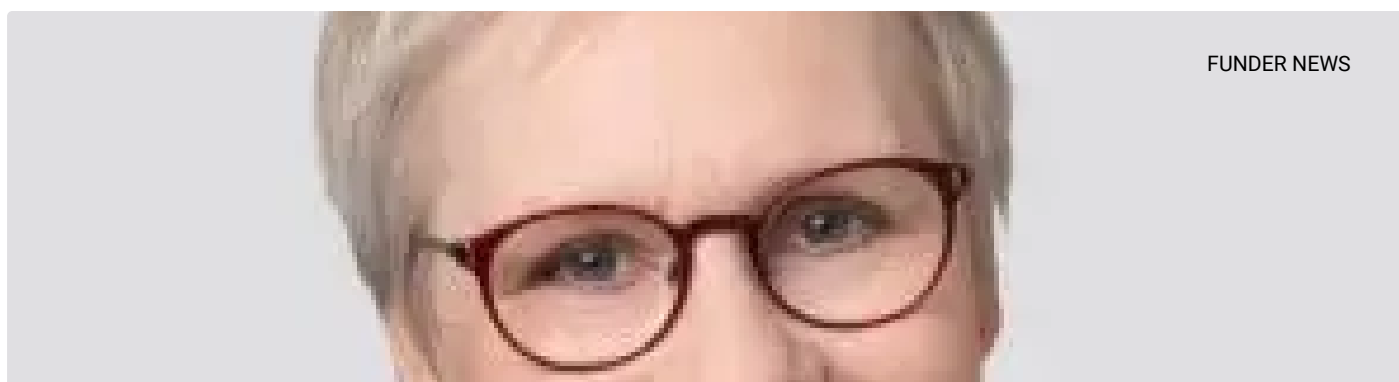
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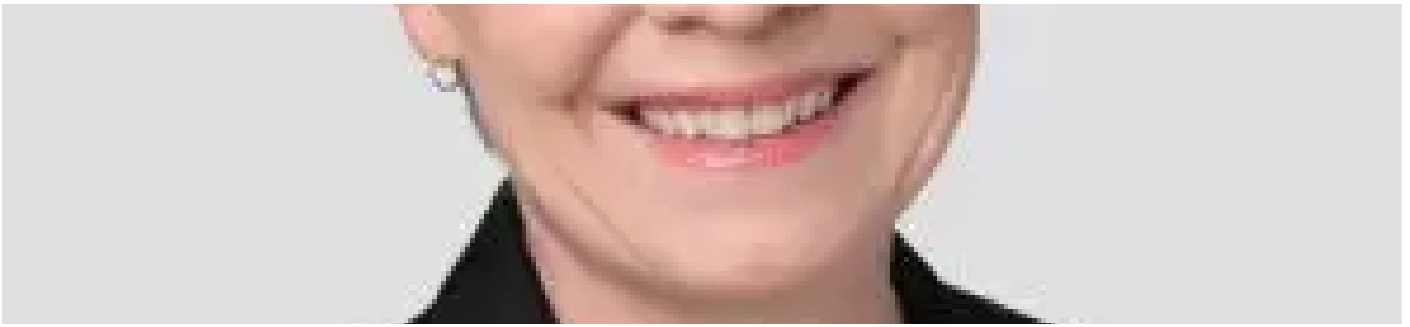
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Kirstin Dodge joins Nivalion AG (<https://litigationfinanceinsider.com/kirstin-dodge-joins-nivalion-ag/>)

Kirstin Dodge has joined Nivalion AG as Head of the Americas. Kirstin will further develop the firm's US, Canadian and LatAm portfolios across its business lines: direct, secondary and co-funding opportunities.

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ILFA

ILFA adds members to management committee (<https://litigationfinanceinsider.com/ilfa-adds-members-to-management-committee/>)

The International Legal Finance Association has added three new members to its Management Committee: Marcel Wegmüller of Nivalion, Kevin McCaffrey of LFG and David Gallagher of the D. E. Shaw Group.

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