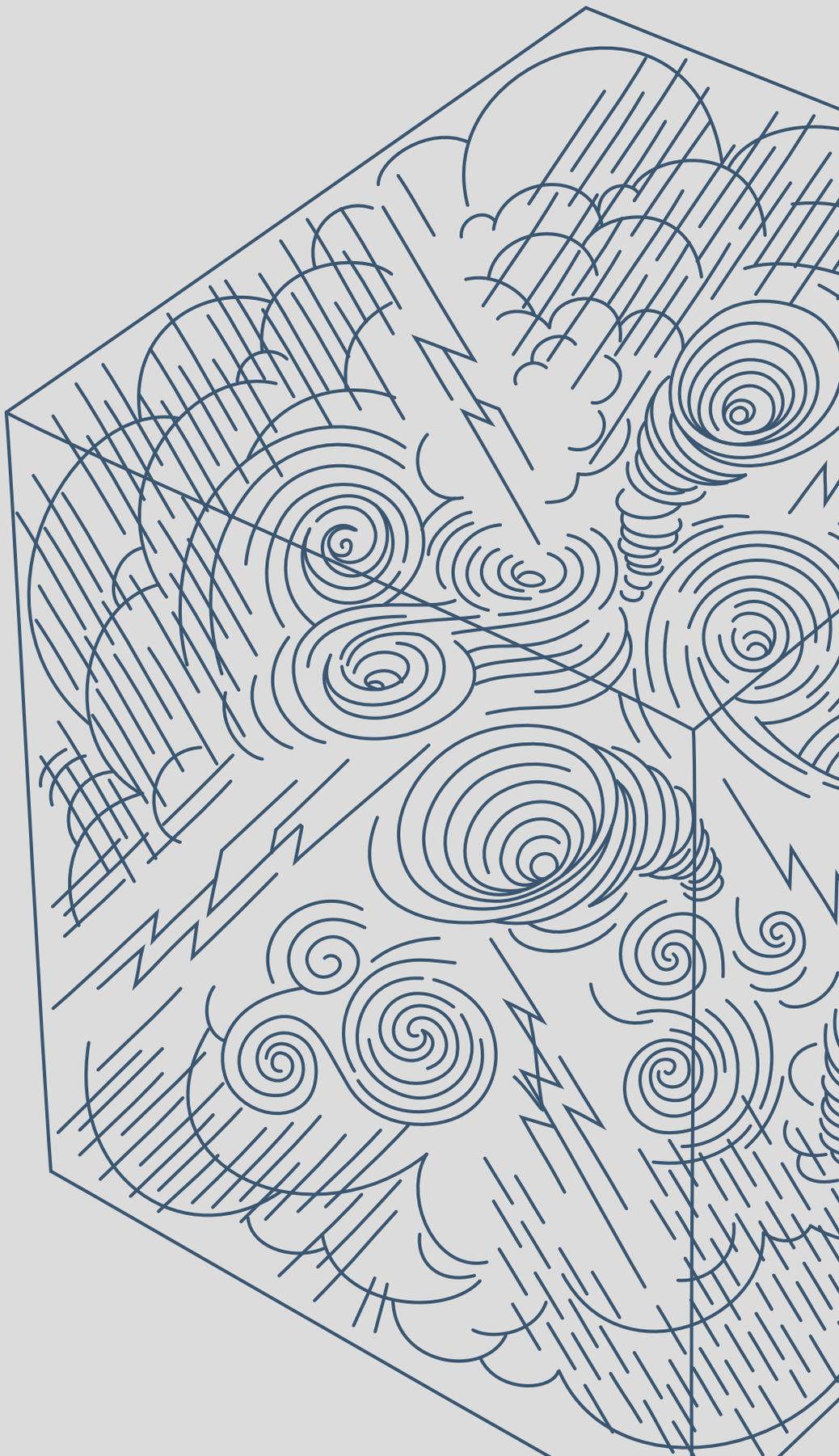


# CONTROL

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Litigation Finance



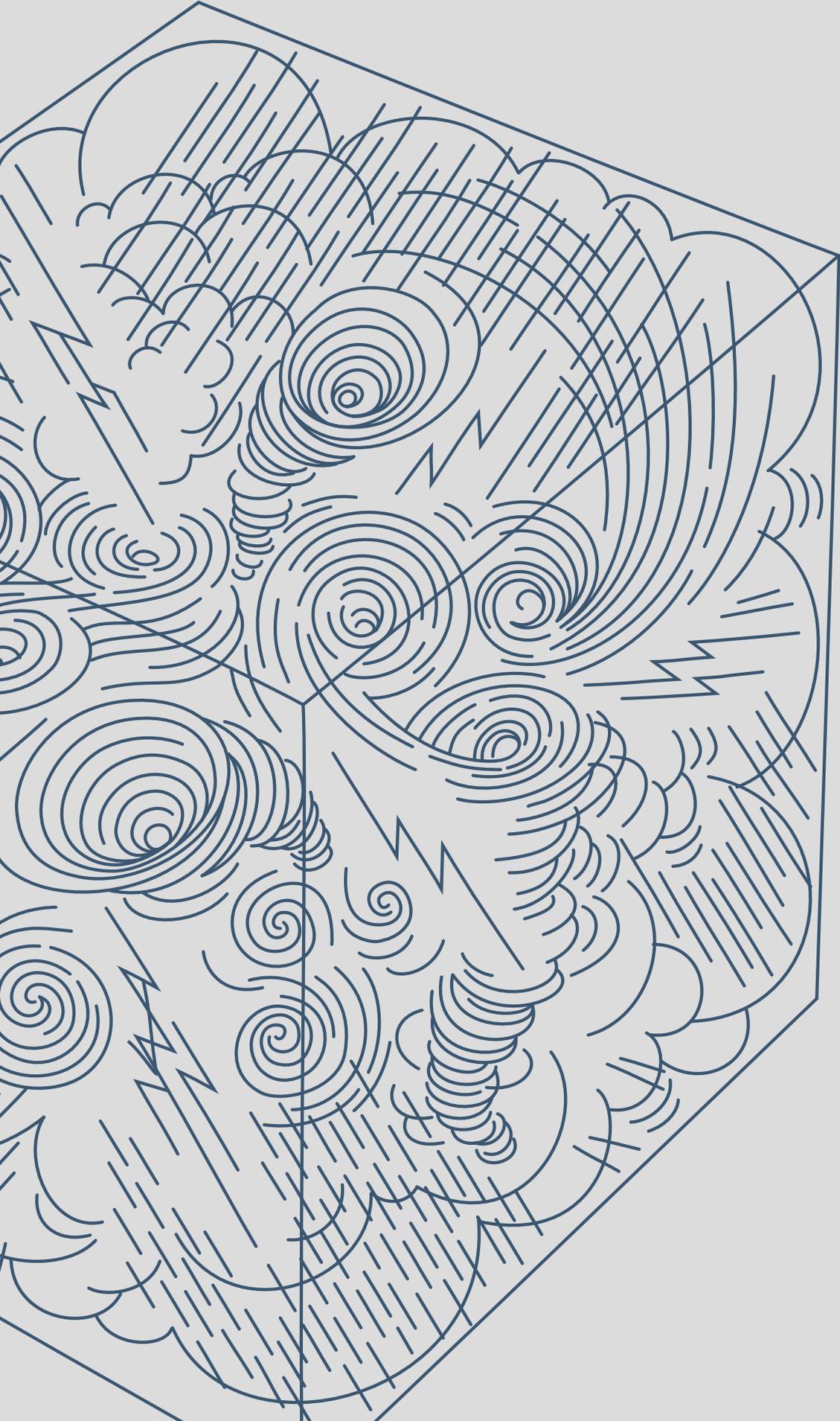


Illustration: Containing chaos by Becky Sutherland

## **WHAT HAS CHANGED?**

The Litigation Finance market has evolved significantly over the last 10 years.

Changes in the law, in England and other jurisdictions, have prompted the development of new and increasingly sophisticated forms of alternative pricing arrangements, third party funding models and insurance products.

Commercial funders have increasing amounts of capital available to them and, in a more competitive market, are more flexible about the returns they seek. This, together with the other developments, allows claimants not only to pursue claims which they might otherwise have been unable or reluctant to bankroll, but also to monetise judgments and awards.

## **WHY THIS MATTERS**

While these changes present an obvious opportunity, particularly for potential claimants, they also represent a challenge for anybody in the business of defending claims.

Claimants can use Litigation Finance to mitigate and share risk, as well as to limit or eliminate upfront cost and even enhance returns. But defendants too can mitigate risk and costs exposure.

Defendants faced by funded claimants should consider the impact of Litigation Finance on traditional litigation strategies, including the approach they may want to adopt and the pressure points they may be able to leverage.

We have run numerous cases for both claimants and defendants supported by some form of Litigation Finance. We have also defended cases brought by funded claimants and made new law in some of those actions.

Control brings together that experience and market know-how with a willingness to share risk and the flexibility to structure a bespoke financing package appropriate for each case and every client.

## **TEN YEARS AT THE FOREFRONT OF LITIGATION FINANCE**

Control is our integrated solution which includes conditional fee agreements (CFA), damages based agreements (DBA), third party funding (TPF) and after the event insurance (ATE). Depending on the case, these can be combined or used interchangeably.

Since we launched Control in 2008, Addleshaw Goddard has been at the forefront of Litigation Finance. Over that 10 year period, we have acted in more than 160 commercial disputes on retainers involving CFAs, DBAs or TPF, frequently with support from ATE insurance.

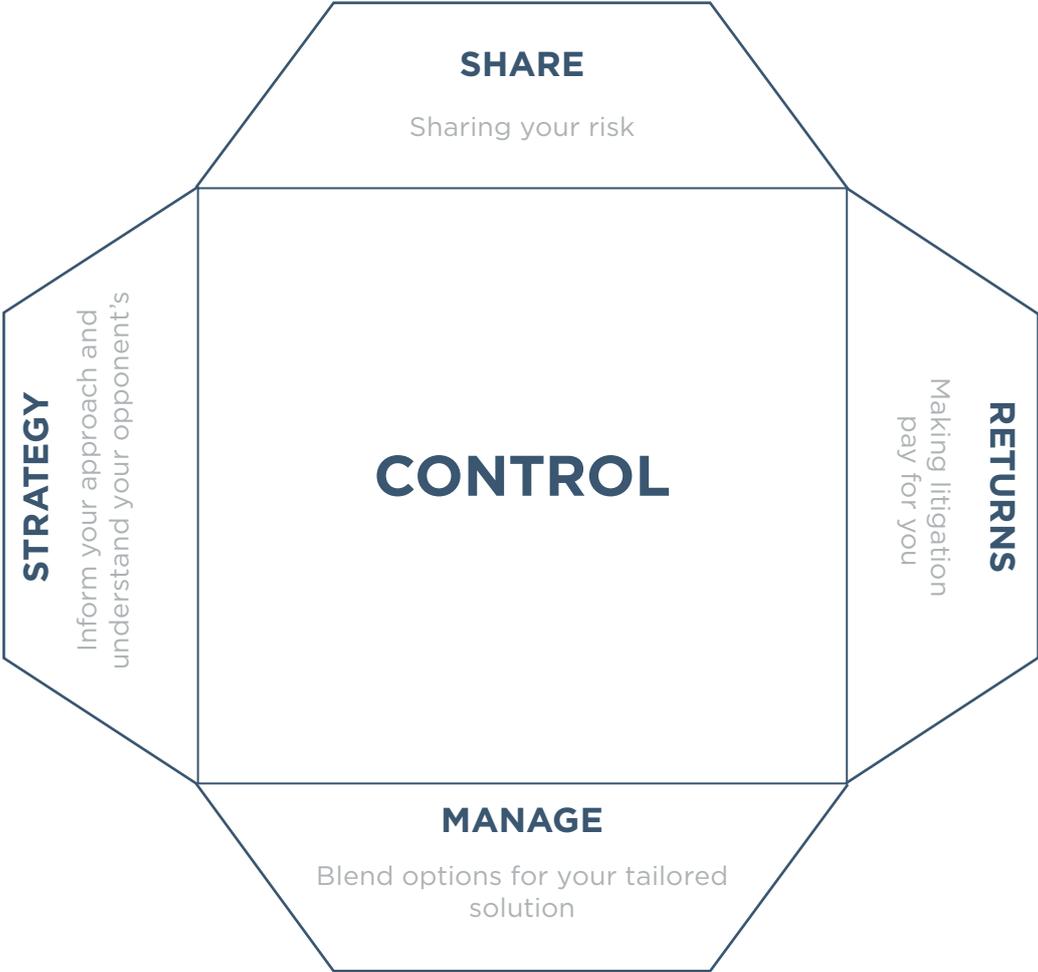
## **LEGAL COSTS REMAIN ONE OF THE GREATEST CONCERNS IN ANY DISPUTE**

Whilst the Litigation Finance market has grown over the last ten years, the awareness and understanding of many of the options and, importantly, experience of how they can be used remains low.

As one of the original law firm pioneers we have a well-developed and sophisticated approach to risk sharing with clients, allied with a strong network of funders, brokers and insurers that allow us to provide imaginative yet practical solutions.

We believe it is essential for businesses to understand both how they can make best use of the opportunities Litigation Finance presents and how their litigation strategies should evolve to keep pace. Our knowledge and credibility in the market means we can help our clients make decisions that are right for them and their business.

# OUR APPROACH TO LITIGATION FINANCE



# THE BLEND OF OPTIONS AVAILABLE

## **DAMAGES BASED AGREEMENTS**

A DBA is an agreement under which we make no charge for our services during a case. Instead, if the claim succeeds we are paid an agreed percentage of the damages recovered by you.

### **WHO IS RESPONSIBLE FOR OTHER COSTS AND DISBURSEMENTS?**

We are responsible for the fees of any barristers that are instructed. You may have to pay other expenses, such as Court fees and expert witnesses, but options exist to mitigate or otherwise fund those costs.

### **HOW ARE WE ABLE TO OFFER THIS AT NO COST TO YOU?**

Having entered into a DBA with you, we set-off some of our risk using funding or insurance at our own expense.

## **CONDITIONAL FEE AGREEMENTS**

Under our 'no win, low fee' model, we offer a discounted rate during the life of the dispute. If 'success' (as defined and agreed at the outset) is not achieved, that is all you would pay. If success is achieved, at the end of the case you would pay the difference between the full rate and the discounted rate (the 'deferred fees') and a success fee. The deferred fees form part of the 'base costs' (i.e. costs at our full rate) and are therefore recoverable from a losing opponent in the ordinary way. The success fee, which is not recoverable from a losing opponent subject to limited exceptions, will not be more than the deferred fees, and will often be less.

DBA

CFA

TPF

ATE

### THIRD PARTY FUNDING

A commercial provider would pay your legal fees and costs, as claimant, of the litigation or arbitration in return for a share of the damages in the event of success.

TPF provides an option for effectively removing litigation costs from your balance sheet, as well as sharing risk with a third party who has independently assessed your claim.

### AFTER THE EVENT INSURANCE

ATE insurance is frequently used together with other financing options.

Traditional ATE insurance provides cover against adverse costs orders, (i.e. a party's liability to pay the other side's legal costs in the event of losing an application or a claim as a whole).

The ATE insurance market has matured and diversified and coverage for disbursements, such as experts' fees and Counsel's fees, or for a proportion of your own solicitors' fees is now widely available.

Premiums can often be contingent on success and deferred until the end of the case, meaning you will not have to pay in the event you lose and have to make a claim under the policy. You will have to pay the premium only if you win, but in those circumstances you should be in receipt of damages.

ATE insurance provides certainty as to potential exposure by crystallising the amount of the contingency and effectively taking it off the balance sheet.



# EXPERIENCE OF LITIGATION FINANCE

## SPECIFIC EXAMPLES

- Acting on a CFA basis in £100m High Court and Court of Appeal proceedings against the claimant's professional indemnity insurers. Our client was successful at first instance and on appeal.
- Acting on a CFA basis in a multi-£m High Court claim for a HNW individual. The claim was settled with a substantial payment to our client.
- Acting on a DBA basis with ATE insurance in an €11m ICC arbitration seated in London. An award on liability was issued in our client's favour and settlement agreed in relation to the subsequent quantum phase.
- Acting pursuant to a TPF arrangement with ATE insurance on behalf of 243 individual Singaporean investors who suffered losses as a result of investments in social housing projects in Brazil.
- Acting pursuant to a TPF arrangement for a UK distributor in a multi-£m ICC arbitration against the US subsidiary of a well-known international brand. An award of liability was issued in our client's favour and settlement agreed in relation to the subsequent quantum phase.
- Instructed by Backhouse Jones on behalf of the Road Haulage Association, pursuant to a TPF arrangement with ATE insurance, in collective proceedings being brought by the RHA on behalf of its operators affected by the EU Truck Cartel.
- Providing independent advice to clients in relation to the proposed TPF arrangements for a potential multi-£m group action.
- Acting on a CFA basis, with ATE insurance, for a defendant in a claim brought by an employee. Our client was successful at trial and recovered costs from its opponent's ATE insurer.

*For reasons of confidentiality we are unable to identify many of our clients.*

# AG LITIGATION FINANCE TEAM

FOR MORE INFORMATION SPEAK TO:



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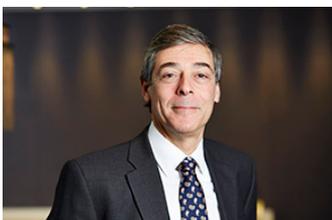
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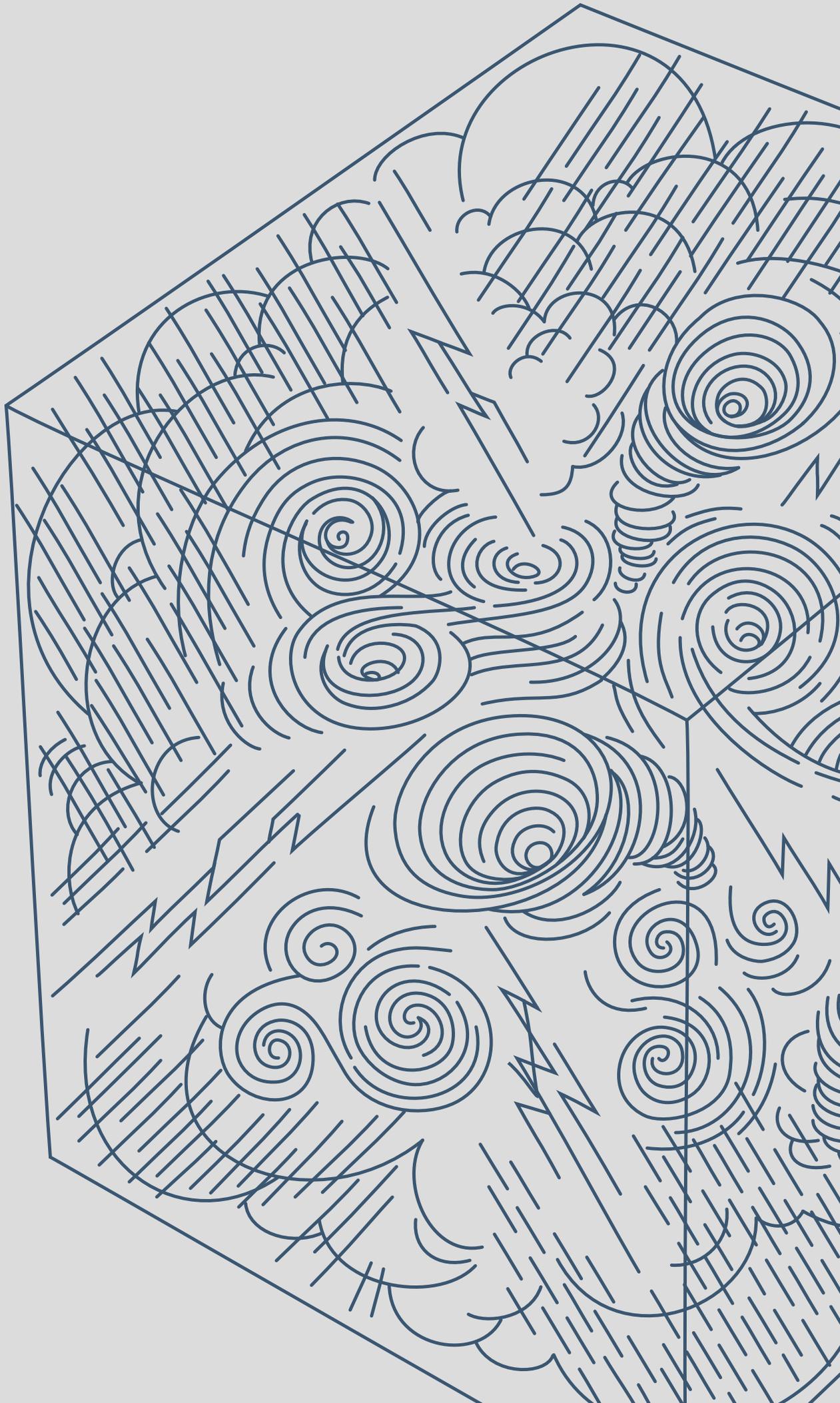


**Traditionally litigation funding has been driven by people looking to take on cases they might not otherwise be able to, but it is expanding.**

**For example, people who might have the funds to fight a case are looking to take the legal financing off their balance sheets.**

**So we are seeing different and more sophisticated models. Competition is hotting up.**

Michael Barnett, Divisional Managing Partner - Litigation  
Financial Times, December 2017



**PROBLEMS. POSSIBILITIES.  
COMPLEXITY. CLARITY.  
OBSTACLES. OPPORTUNITIES.  
THE DIFFERENCE IS IMAGINATION.  
THE DIFFERENCE IS **AG.****

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