ACCELERATE PROFITS AND REDUCE RISK: NEW TOOLS FOR LAW FIRM SUCCESS

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Commercial litigation financing is when a third party funder provides non-recourse capital to fund legal fees and expenses and/or to raise funds for corporate purposes (operating costs, etc.) in exchange for a financial interest in the legal matter. If a claim is successful, the funder receives an agreed-upon portion of the claim proceeds. If a claim is unsuccessful, the funder is owed nothing.
“Litigation funding allows lawsuits to be decided on their merits, and not based on which party has deeper pockets or stronger appetite for protracted litigation.”

Litigation Funding is an Innovative Solution

- Amount of investments vary. Bentham’s customary investments range from $1-10+ million
- Helps turn a cost center into a profit center
- Exhaustively studied for 2 years by the American Bar Association Commission on Ethics 20/20
- Bentham does not control decisions or interfere with attorney-client relationships
- Assists parties with company operating expenses
- Diversifies risk
- Enables parties to obtain the counsel and top experts of their choice
Why Have Litigation Financing?

- Litigation financing pays for the high costs of litigation: attorneys' fees and/or out of pocket expenses (e-discovery, experts, etc.)

“Protracted discovery is expensive and is a drain on the parties’ resources. Where a defendant enjoys substantial economic superiority, it can, if it chooses, embark on a scorched earth policy and overwhelm its opponent.” *Miller UK Ltd. v. Caterpillar*, Case No. 10 C 3770, 2014 WL 67340 (N.D. Ill. Jan. 6, 2014) (Cole, J.)
Types of Litigation Funding

- Full Hourly
- Hybrid 50:50 Fees
- Costs
- Appeals
- Working Capital
- Flat Fee Advance
- Defense
- Due Diligence
- Judgment Purchasing and Enforcement
- Portfolio funding
Funding Model 1: 50/50 Hybrid

**Bentham IMF**

Invest 50% of Fee Budget  
20% Recovery

**Client Litigation**

Up to $10M in Fees  
Client Pays Costs

Invest 50% of Fee Budget  
20% Contingency

**Law Firm**
Funding Model 2: Portfolio

Invest 50% of Fee Budgets

Up to $10M in Fees

Litigation 1

Litigation 2

Litigation 3

Litigation 4

Up to $10M in Fees

Up to $10M in Fees

Up to $10M in Fees

Invest 50% of Fee Budgets

40% Contingency

Capped Return: 2x-3x

Bentham IMF

Law Firm
Working Capital and/or Cost Funding for Clients

Bentham IMF

Provide $$
For Working Capital/Costs

Percentage of Recovery

Client Litigation

Client

Law Firm
On Full Contingency
Case Studies

- **Case Study 1: 50/50 Hybrid**
  - Budget estimated at $10M fees
  - Bentham invests $5M towards fees and costs
  - Firm defers other $5M in fees
  - Client pays all costs
  - Law firm and Bentham each receive a contingency payment of 20%
  - Client recovery 60%

- **Case Study 2: Portfolio Funding**
  - Bentham invests $5-10M in fees and costs against a portfolio of four cases (at a $2.5M budget per case)
  - Clients pay no out-of-pocket costs
  - Firm receives contingency recoveries
  - Bentham entitled to capped return from any case:
    - 2x if less than 18 months
    - 2.5x if between 18 and 36 months
    - 3x if over 36 months
Litigation Finance, Privilege, and Ethics

Maintenance, champerty, and barratry

- **Champerty:** “A bargain by a stranger with a party to a suit, by which such third person undertakes to carry on the litigation at his own cost and risk, in consideration of receiving, if successful, a part of the proceeds or subject sought to be recovered.” *Black’s Law Dictionary*

- **Maintenance:** “An unauthorized and officious interference in a suit in which the offender has no interest, to assist one of the parties to it, against the other, with money or advice to prosecute or defend the action.” *Black’s Law Dictionary*

- **Barratry:** “Common barratry is the practice of exciting groundless judicial proceedings.” *Black’s Law Dictionary*
Litigation Finance, Privilege and Ethics

- Privilege and confidentiality: written NDAs are imperative to protect documents and information subject to the attorney-client privilege and work product doctrine.


The intricacies of attorney-client privilege are funny. But not “ha-ha” funny. More “psych, you’re not protected” funny.
Recommendations

- Familiarize yourself with local laws, rules, and ethical decisions regarding litigation funding.
- Enter into a Non-Disclosure Agreement prior to engaging in substantive discussions. Do not simply rely on oral assurances of confidentiality.
- In jurisdictions with statutory prohibitions on champerty and maintenance, review case law regarding how those statutes are applied.
- Work with funders who are aware of privilege issues.
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- Former partner, Liddle & Robinson
- Lead counsel, *Zubulake v. UBS Warburg* (U.S. District Court for the Southern District of New York), which led to several seminal e-discovery opinions
- Former member, United States District Court for the Southern District of New York’s Advisory Groups’ Pilot Project regarding Case Management Techniques For Complex Civil Cases
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