

# Commercial Litigation Finance: A Primer For Counsel and Clients

Presented by: **Jim Batson**  
Senior Investment Manager, Legal Counsel  
Bentham IMF

# What is Commercial Litigation Funding?



- Litigation funding = litigation finance
- Any transaction where the asset value of a litigation claim is used to secure financing from an outside financier
- Funds are provided on a non-recourse basis = return of capital is tied to a successful outcome in the litigation

# What is Commercial Litigation Funding?

- Began in Australia in 2001
- Adoption in UK and international arb
- Growth in US after financial crisis
- Bentham opens first US office in 2011
- Big Law adoption increases last 3 years
- Global adoption increases over last year (Canada, Asia)

*“Litigation finance can be used by one company to sue another, so that the general counsel’s office can become a revenue generator instead of a cost center...”*

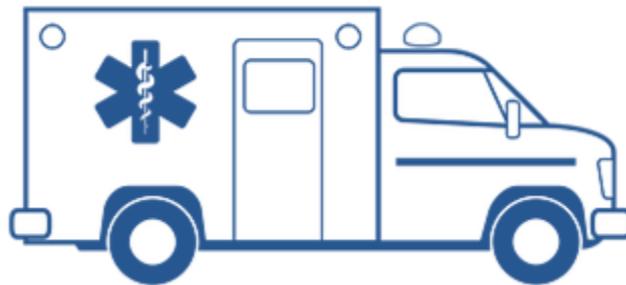
— Above the Law

# What is Commercial Litigation Funding?

- Funding for complex “business to business” commercial disputes



- Commercial funders typically do not invest in consumer disputes



# Why is it Beneficial?

## Who Benefits?



Small/mid-size companies



Large corporations

# Why is it Beneficial?

## Problems Facing Clients and In-House Counsel

- Incredibly Expensive Legal System
- Dissatisfaction with Hourly Billing Model
- Budget Uncertainty; Budget Runs Out
- Legal Fee Expenses on Corporate Balance Sheets
- Litigation is Risky
- Need for Risk Mitigation and Sharing



# Why is it Beneficial?

## Interesting Statistics Concerning House Counsel

- **94%** increased pressure on legal budgets = significant challenge
- **87%** concerned about how litigation expenses depress financial results
- **54%** have already moved work to firms that offer alternative fees
- **29%** didn't bring meritorious litigation because of budget or capital restraints
- **23%** dropped a meritorious case in progress because the company was tired of the legal expense

# Why Litigation Funding?

## The irreducible conflict between clients and firms



- Pressure on client budgets create reasons to move costs off balance sheet
- BUT, firms can only tolerate so much risk; not always able to share costs and risk as much as needed
- Litigation funding can bridge this gap

# Why Litigation Funding?

## A realistic hypothetical

**Legal counsel to CFO:** \$5-7M spend (maybe) over next 3 to 5 years, for an affirmative/elective litigation (perhaps outside of the legal department's budget) that counsel informs you is "highly likely" to be successful and return 5 – 6x to the corporation. Approved?

**Answer?**

# Why Litigation Funding?

- Facilitates recovery of lost revenue
- Access to capital for meritorious claims
- Enables risk-sharing
- Reduces budget uncertainty
- Provides resources to retain top counsel
- Aligns company and counsel interests
- Off-balance sheet transaction; transforms legal departments from cost to profit centers

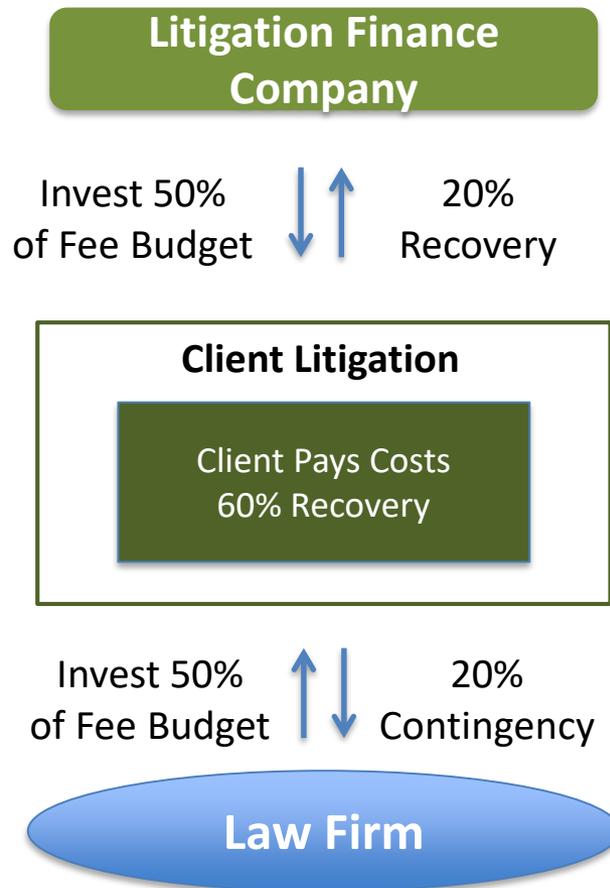
# How Does it Work?

## How Do Funders Invest in Litigation

- Full Hourly Fees
- Risk Sharing
- Costs Funding
- Working Capital
- Appeals de-risking
- Risk Sharing with Law Firms/Portfolio Funding

# How Does it Work?

## Risk Sharing: 50/50 (Client on Full Contingency)



# How Does it Work?

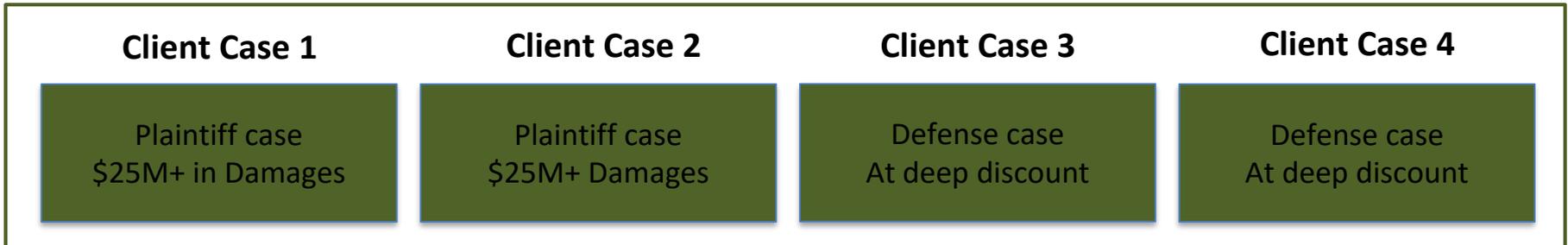
## Risk Sharing: Portfolio of Contingency Cases

**Litigation Finance Company**

Invest 50% to 75% of Hourly Fees + discount



Recover 20% to 35% of Proceeds



Legal Services

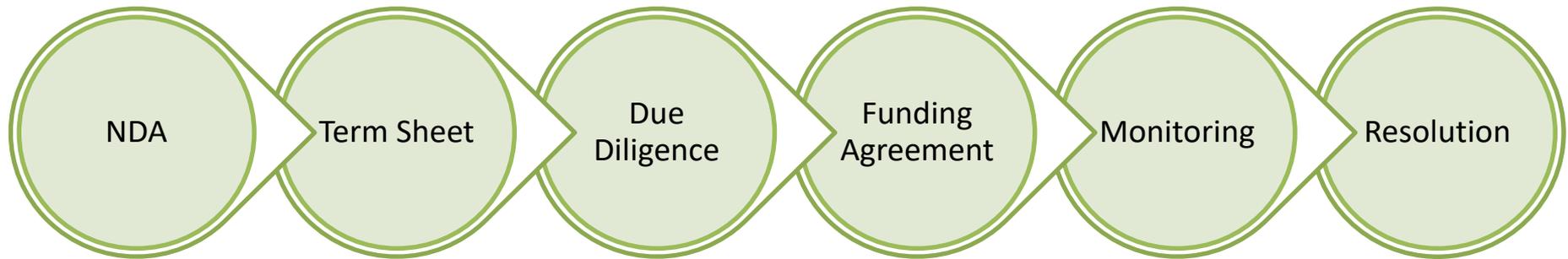


50%-75% Hourly Fees paid, plus 10%-15% Success Bonus from Plaintiff cases

**Law Firm**

# How Does it Work?

## Six Step Funding Process



# Ethics and Concerns

- Encourages frivolous litigation
- Maintenance, champerty, and usury
- Privilege: attorney-client privilege and work product doctrine
- Confidentiality of Information
- Control of litigation and settlement
- Third-party involvement in litigation
- Interference with attorney-client relationship
- Funder viability

# Ethics and Concerns

## Keeping Up With The Jones

- **28%** outside counsel say their firms have used litigation funding – 4x increase in 3 years
- **75%** outside counsel and **61%** of in-house counsel predict litigation funding will grow in next 5 years
- **Most AmLaw 100 firms**, including many in the top 10/20, are utilizing litigation funding
- Exploration and use by **large corporations** is increasing

# Bentham IMF's US Investment Management Team



## Allison Chock

Chief Investment Officer - United States, Legal Counsel  
achock@benthamimf.com | (213) 550-2687

Allison was formerly a shareholder of McKool Smith, a premier contingency law firm. She has 14 years of trial practice experience and 3 years of litigation funding experience.



## Matthew Harrison

Head of San Francisco office  
Investment Manager, Legal Counsel  
mharrison@benthamimf.com | (415) 231-0363

Matt was a trial lawyer at Latham & Watkins for 15 years before joining Bentham in 2015.



## Eric Chenoweth

Head of Houston office  
Investment Manager, Legal Counsel  
echenoweth@benthamimf.com | (713) 818-0151

Eric was a trial lawyer at Yetter Coleman LLP, recognized by the National Law Journal as one of the top 10 litigation-only firms in the country, for 15+ years before joining Bentham in 2017.



## James A. Batson

Investment Manager, Legal Counsel, New York  
jbatson@benthamimf.com | (212) 488-5331

Jim was a partner at Liddle & Robinson. He has 20 years of trial practice experience and more than 5 years of litigation funding experience.



## David Kerstein

Investment Manager, Legal Counsel, New York  
dkerstein@benthamimf.com | (212) 488-5331

Dave was a trial lawyer for 15 years at Gibson Dunn & Crutcher before joining Bentham in 2014.



## David Gallagher

Investment Manager, Legal Counsel, Los Angeles  
dgallagher@benthamimf.com | (213) 550-2687

David was a senior counsel at Akin Gump Strauss Hauer & Feld LLP before joining Bentham in 2015. He has 11 years of trial practice experience.

# Bentham IMF's US Investment Management Team



## Ronit Cohen

Legal Counsel, New York  
rcohen@benthamimf.com | (212) 488-5331

Ronit was a trial lawyer and senior associate at two of the nation's premier law firms prior to joining Bentham in 2014.



## Julia Gewolb

Legal Counsel, New York  
jgewolb@benthamimf.com | (212) 488-5331

Julia was a litigation attorney at Boies, Schiller & Flexner LLP in New York, where her practice focused on complex commercial litigation before joining Bentham in 2015.



## John Harabedian

Legal Counsel, Los Angeles  
jharabedian@benthamimf.com | (213) 550-2687

Prior to joining the Bentham team, John was a prosecutor in the Los Angeles County District Attorney's Office. Earlier in his career, he practiced as a litigator at Latham & Watkins LLP.



## Priya Pai

Legal Counsel, San Francisco  
ppai@benthamimf.com | (415) 231-0365

Priya was a litigator at Latham & Watkins and earlier Kirkland & Ellis focused on complex commercial litigation prior to joining Bentham in 2015.