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LITIGATION FINANCE

As COVID-19 hits Texas businesses and law firms hard, innovations in litigation finance may be able to help.

By John Garda

AS THE COVID-19 outbreak continues and the economy slips into a recession, it should come as no surprise that the demand for litigation will drastically increase, whether from breach of contract, insurance recovery, restructuring, or other disputes. This is especially true in Texas, where the business and legal markets had been booming of late, and where the sharp decline in oil prices has only compounded the economic disruption.

With all this uncertainty surrounding the short-term outlook, businesses and law firms in the state may not be fully armed for the upcoming spike in litigation. For one thing, despite more than 15 national firms opening offices in Dallas, Houston and Austin over the past few years, the number of attorneys working at the 50 largest corporate law firms in Texas has decreased. In short, legal talent is now spread thinner across a larger number of firms.

Thus, as we sink into an economic downturn, more litigation will result in more work for an already dwindling pool of top attorneys – attorneys whose firms will likely face reductions in aggregate demand as in-house counsel, struggling with cash-flow issues, seek to cut their budgets.

Meanwhile, cash-strapped businesses will be more focused on staying afloat than diverting capital to pursue meritorious legal claims.

In this uncertain and stressful landscape, a concurrent development may provide a critical resource for Texas businesses and law firms practicing in the state: the growth of the litigation finance industry. Litigation finance companies are recently experiencing an increase in demand for their capital to fund commercial litigation cases – meaning the attorneys' fees and/or out-of-pocket expenses that a company incurs in pursuing commercial litigation. A contingency agreement typically offers some portion of the recoveries to the litigation finance company should the case be successful.

Yet the industry is quickly evolving – and innovating along the way. Public awareness of this industry is at an all-time high. Additional offerings may prove especially useful amid a downturn. For instance:

- **Working capital for businesses.** As the economy falters further, the high costs of litigation will increasingly distress businesses – especially smaller ones – leaving many unable to obtain financing from traditional lenders. In such an environment, litigation finance firms are now increasingly capable of stepping in and providing working capital to help these companies remain operational and pursue their claims.

- **Monetize the claim.** Businesses in Texas may need to obtain a win now – not later. Litigation finance firms are now offering to pay the claim owner a portion of the claim's perceived value up front, so the company can earn a return before even filing the claim.

The full impact of COVID-19 is still unknown. But as the initial damage sets in, a spike in demand for litigation will surely be among the ripple effects. As we move through the crisis and into an economic downturn, struggling law firms and businesses should take advantage of the innovations in litigation finance to help them – and perhaps even Texas – regain some footing.

About the Author

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About Longford

Longford Capital is a leading private investment company that provides capital to leading law firms, public and private companies, universities, government agencies, and other entities involved in large-scale, commercial legal disputes. Longford was one of the first litigation funds in the United States, and is among the world's largest litigation finance companies with more than $1 billion in assets under management, and having invested in the outcomes of more than 250 meritorious cases. Typically, Longford funds attorneys' fees and other costs necessary to pursue meritorious legal claims in return for a share of a favorable settlement or award. The firm manages a diversified portfolio, and considers investments in subject matter areas where it has developed considerable expertise, including, business-to-business contract claims, antitrust and trade regulation claims, intellectual property claims (including patent, trademark, copyright, and trade secret), fiduciary duty claims, fraud claims, claims in bankruptcy and liquidation, domestic and international arbitrations, claim monetizations, and a variety of others. For more information, please visit www.longfordcapital.com.