



Ask the Expert: Tough Questions on Litigation Finance

William P. Farrell, Jr. at LF Dealmakers Forum

JUST AS GOOD LITIGATORS KNOW most trials are won in the months of preparation leading up to opening arguments, experienced litigation funders know the key to successful outcomes lies in doing the hard work upfront, before contracts are signed or money changes hands.

Rigorous, thorough due diligence, early case assessment and negotiation are critical to ensuring that funders, attorneys and corporate litigants are aligned on contract terms and budgets. This is especially important given the challenges in predicting the variables in litigation.

That was one of the key insights delivered by William P. Farrell, Jr., Co-Founder, Managing Director, and General Counsel, Longford Capital, in comments at the third annual LF Dealmakers Forum. The event is an exclusive gathering of thought leaders in litigation finance, as well as in-house and outside counsel and other key stakeholders.

Farrell was one of four speakers on a panel titled “Ask the Expert: Tough Questions on Litigation Finance” on October 20, 2020. Here are a few other high points from the insights Farrell shared with the virtual attendees.

Collaboration creates resilient contracts: In hundreds of cases Longford Capital has funded, the firm has encountered almost no insurmountable problems with its partner law firms or clients during litigation. That’s because, in Farrell’s

experience, Longford works hard early on to not only assess potential outcomes but also to ensure the parties' interests are aligned. Once the parties' interests are aligned, unexpected challenges, budget overages and time delays that may arise during the litigation can be amicably resolved.

Litigation budgets that work: While estimating the cost of litigation is highly challenging given the unknowns involved – most importantly, how the opposing party will defend the case and how the judge will rule on key motions – Farrell said Longford has had success by asking legal teams for detailed case management plans and budgets as the first step in the process. Doing so not only helps the funder understand the client's capital needs, it also helps strengthen the legal team's case. By planning the prosecution of their claims and digging into the costs involved, the lawyers can identify and address weak points, think through various scenarios and increase the chances of success – for themselves, their clients and the funder. In this way, Longford's focus on early case assessment adds value beyond the firm's capital and endears Longford to its clients and law firm partners.

Faster innovation, more transparency: Asked what mistakes he'd seen in litigation funding, Farrell offered a pair of edifying observations. Funders could be faster to innovate and create new offerings for law firms and their clients, he said. For example, Longford and other litigation funders have recently started offering claim monetization – enabling businesses to obtain a portion of the value of meritorious legal claims before filing the claims, or in the time between judgment and final payment of the claims. The offerings have proved valuable and popular but, Farrell said, funders could have moved sooner to realize the notion that litigation finance can be valuable beyond non-recourse financing of legal fees and expenses. He also said the industry's general opposition to disclosing litigation funding was misguided. While acknowledging that there is no legal rationale to compel claimants to disclose the manner in which they're paying their legal bills, he argued that doing so would promote awareness of the industry and enable it to grow even faster.

"We're proud of the work we're doing, the clients we're supporting, and the law firms we're partnering with," he said. "And we'd like to share it more broadly."

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.