Picking Right: Finding the Best Funding Option for Your Firm

Michael A. Nicolas at LF Dealmakers Forum

THERE'S ONLY ONE SITUATION where litigation funding isn't a fit for law firms – when the law firm is unwilling to accept any risk.

So said Michael A. Nicolas, Co-Founder and Managing Director, 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.

Nicolas was one of four speakers on a panel titled "Picking Right: Finding the Best Funding Option for Your Firm" on October 13, 2020. Here are other high points from the insights Nicolas shared with attendees, all of whom attended virtually this year.

Alignment of Interests is Key: Litigation finance is about risk sharing, and Nicolas focused on the need for all parties to have skin in the game. That can be difficult if a law firm needs to receive 100 percent of its hourly rates in order to proceed with a funding relationship, he said. But if that's not the case, a funding solution that works for the law firm, its client and the litigation funder can be found, most often through the negotiation of a partial fee contingency.

"We encourage law firms to actively participate in risk sharing, while still receiving a steady stream of income – which is important in today's climate for a lot of law firms – while at the same time maintaining a significant interest in any settlement or judgment achieved for the client," Nicolas said.

Building Portfolio Relationships: Longford regularly works with law firms with strong backgrounds in plaintiff-side litigation and robust portfolios of contingency matters. Those firms, Nicolas said, often are looking for funding to smooth the risk associated with the firms' significant investment of attorney time in the portfolio, as well as to recoup litigation-related expenses paid by the firm.

Longford also considers portfolio relationships with firms that do not yet have robust contingency portfolios so long as the firms have made a commitment to take on additional full or hybrid contingency engagements. Nicolas added that Longford is willing to work with firms of all sizes "as long as they are willing to think creatively and have an open mind about risk sharing."

Alternative Funding Structures: Nicolas also discussed "claims monetization," wherein a client has a meaningful contingent interest in the outcome of a commercial legal claim or arbitration and wishes to monetize a portion of that interest immediately.

"We have enabled clients to take money off the table at the outset of our relationship in exchange for clients agreeing to share a portion of their future recoveries with us," Nicolas said. He added that law firms that introduce new funding concepts like claims monetization to their clients add value beyond simply reducing or eliminating the clients' obligation to pay attorneys' fees and expenses – they allow their clients to put cash in their pockets today.

Other Ways to Monetize a Judgment: In some instances, clients receive a favorable judgment or arbitration award, but payment of the judgment or award is delayed because of appeals or collection efforts. Clients will then seek to monetize some or all the judgment or award rather than waiting months or even years for payment to ultimately be made, Nicolas said.

In such instances, "we determine the likelihood that the judgment or award will ultimately be paid," Nicolas said, "and if we conclude that the likelihood is high we will allow the client to monetize a portion of its judgment or award immediately."

Maintaining Autonomy: A common question asked of litigation funders is how much autonomy law firms and clients should expect to relinquish if they work with a litigation funder. On that point, Nicolas was adamant. "We do not control settlement decisions, litigation decisions or strategy decisions." That's the case for individual matters and portfolio agreements, Nicolas said, and it's possible because Longford is dedicated to not encroaching on the relationship between an attorney and her or his client.

"We try to structure investments such that there is perfect alignment between ourselves, the client and the firm," he said. "If we do our jobs right, we're structuring transactions so that we're achieving the best possible financial outcome in the shortest amount of time."

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.