

LAWDRAGON

Legal Consultant Limelight: William P. Farrell Jr. and
Michael A. Nicolas



By John Ryan

William Farrell (left) and Michael Nicolas first discovered the attraction of litigation finance nearly a decade ago – as litigation partners interested in business development. Their combined experience of 35 years of litigating cases underpins Longford Capital’s focus on investing in business-to-business disputes to allow law firms and corporate departments to share the risk and rewards of their litigation. With the vast majority of businesses involved in some type of litigation, Farrell and Nicolas see significant potential for growth with Longford Capital continuing to play a leading role in the industry.

Lawdragon: What are each of your roles and responsibilities at Longford Capital?

Michael Nicolas: Bill and I founded Longford Capital in December 2011, along with Tim Farrell. Bill and I are managing directors of Longford Capital responsible for the overall strategy and direction of the company. We are also directly involved in the sourcing, underwriting, structuring, documenting, and monitoring of each of our investments. Bill also serves as the general counsel of Longford Capital.

LD: Does Longford Capital focus on particular types of cases or controversies?

William Farrell: Our focus is on business-to-business disputes with more than \$25 million in controversy, in cases involving one of three broad substantive areas of the law: commercial disputes, including breach of contract, fraud, breach of fiduciary duty, partnership/joint venture disputes, *qui tam* actions, and others; antitrust and trade regulation claims; and intellectual property actions, such as infringement of patents, trademarks, and copyrights, and theft of trade secrets.

Before launching Longford Capital, Mike and I practiced law for many years representing companies involved in controversies in these areas, so we focus on these broad areas because we are quite familiar with these types of disputes and are comfortable analyzing these types of cases. We have expanded our team to include other former partners of major law firms who have also litigated and tried cases in these subject-matter areas. Each of our investments concerns highly meritorious claims which may be pursued in state and federal courts throughout the United States and abroad.

We also consider investments in domestic and international arbitrations and cases before regulatory bodies. The demand for our capital is strong – and growing – in each of these areas and we see no need to expand our focus.

LD: Does Longford Capital finance law firm portfolios or corporate legal departments?

MN: Longford Capital has always been at the leading edge of commercial litigation finance in the United States. We were one of the first managers to focus on litigation finance in the U.S. in 2011, and we are one of the largest managers in the asset class, with more than \$550 million in assets under management. We have helped lead the expansion of litigation finance from single-case investments, to law firm portfolios, and, most recently, corporate portfolios.

Earlier this year, for example, we announced a \$67-million portfolio investment with a top litigation firm, the largest of our portfolio investments so far. Leading law firms and large corporations are finding great benefit from sharing litigation risk with Longford Capital. This expansion is being driven by increased interest from law firms that are looking to expand their litigation practices, and from companies seeking alternative and flexible forms of specialty financing under many different circumstances.

LD: What is your philosophy on financing of legal matters when it comes to deciding what claims you choose to finance?

WF: First, we invest only in the outcome of highly meritorious cases. Second, we focus on large business-to-business disputes where the underlying controversy falls within one of the substantive areas of law with which we are intimately familiar. Mike and I and our team of former partners from leading law firms have litigated and tried hundreds of cases in these broad subject-matter areas. Third, we only work with great lawyers and we ask those law firms to align interests by putting skin in the game; they must share some risk and reward. In other words, the lawyers will be paid based on performance, not only on how many hours

are invested in the case. Finally, we work with companies that we believe deserve access to the legal system and the necessary financial backing to pursue important and worthy claims.

LD: What is the firm's niche or strength in litigation funding?

MN: We believe that Longford Capital's greatest strength is the deep, diverse, and complementary skills of our team. We have former litigation and trial lawyers who were all partners at leading law firms – Kirkland; Finnegan; Jenner; Nixon Peabody; and Neal Gerber. And our leadership team includes former CFO, COO, and CEOs from business, private equity and a top global banking institution. We are well prepared, responsive, and bring value beyond our capital. We always conduct ourselves pursuant to the highest ethical standards. Corporate claim owners appreciate our approach and so do leading law firms.

LD: Once invested in a matter, what is the firm's involvement as the claims move forward?

WF: We are passive investors, we are not involved in setting litigation strategy or making settlement decisions. We don't look over the lawyers' shoulders. But, if corporate claim owners or their law firms seek our input, we are ready to help. Mike or I have litigated cases very similar to those for which we now provide capital, and our input is often requested and always appreciated. This is an example of the value we provide beyond our capital.

LD: How did you first become interested in litigation finance and start thinking about switching to this work from a litigation practice?

MN: In 2009, Bill and I were working together as partners in the commercial litigation department at Neal Gerber & Eisenberg in Chicago. We learned of the practice of litigation finance in Australia and the UK and became fascinated. At first, we perceived litigation finance as an exceptional tool to be used for business development at our law firm. At that time, we had experienced numerous examples of corporate clients seeking alternatives to the billable hour billing model. Tim Farrell, who had more than 20 years experience as a senior corporate executive, was equally intrigued about litigation finance from the perspective of C-suite executives who would prefer to avoid the costs of litigation without foregoing meritorious legal claims. After two years of research and analysis, we concluded that litigation finance was going to experience rapid growth in the United States and we saw a great opportunity to develop the market for litigation finance in the U.S.

LD: Did you have any reservations about entering the field given its somewhat uncertain status not too long ago?

WF: For two years we considered a lot of questions and conducted exhaustive research on the idea of litigation finance. We are conservative decision makers and we were very patient in evaluating this opportunity. Once we were confident that litigation finance would be accepted in the U.S., we still had to make the significant decision to resign our rewarding partnerships at our law firm, which Mike and I had worked very hard to achieve over many, many years. We made the right decision.

LD: Can you identify certain factors that have led to such an explosion in the litigation finance market in a relatively short period of time?

MN: Litigation finance has experienced rapid and increasing growth in the U.S. and many other jurisdictions in the past ten years. The awareness and acceptance of litigation finance is exploding because it serves the purposes of all affected groups – companies involved in a legal dispute; law firms representing those companies; investors in litigation finance; and the legal system itself.

Companies can avoid the high cost of litigation without abandoning meritorious legal claims. Law firms can satisfy client demand for alternatives to the billable-hour model without absorbing the full risk of a contingency arrangement. Investors can gain exposure to an uncorrelated and diversifying asset class. And the legal system performs better when access to justice is facilitated and disputes can be resolved on a level playing field.

LD: Are there still risks you see in the industry?

WF: I don't perceive existential risks on an industry-wide level. Regulation of one sort or another may emerge at state or federal levels, but I believe that thoughtful regulation will serve to enhance the use of litigation finance. For example, some courts have considered mandatory disclosure requirements. While the manner in which a company pays for its lawyers is largely not relevant in litigation, the disclosure of our participation would likely increase awareness and acceptance of litigation finance and, thereby, increase the demand for our capital.

LD: What do you enjoy about working with claimants and law firms? What keeps you excited day to day?

MN: We really enjoyed practicing law and working in the courtroom. Our day-to-day responsibilities at Longford Capital enable us to stay close to what we know and love about complex commercial litigation. It is exciting to help a business owner achieve justice after his invention has been stolen or his contract has been breached. And, it is rewarding to be at the leading edge of the development of a new asset class and one that helps deserving companies.

LD: Are there aspects about this type of work that you feel newcomers in the market or law firms still have misconceptions about or do not fully understand?

WF: Awareness and acceptance of litigation finance is growing at a rapid pace, but we have a long way to go. Most companies and most lawyers are not familiar with litigation finance, but this is changing. Once a lawyer understands what we offer at Longford Capital, he usually wants to talk about opportunities to work together.

LD: Within the market, what areas of growth do you see for the next decade?

MN: We expect that the litigation finance industry will grow across all sectors. At Longford Capital, we are pursuing initiatives with private equity funds, research universities, and with companies in bankruptcy or distressed situations. We believe that law firm portfolios and corporate portfolios will continue to become more common.

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