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LITIGATION FINANCE

The Role of Litigation Finance During Difficult Times

By Andrew Stulce

THE COVID-19 PANDEMIC is resulting in widespread illness and the tragic loss of life throughout our country and the world. In addition, the pandemic is wreaking havoc on our economy, creating unprecedented job loss and financial strain on companies large and small. A partial shutdown of our economy coupled with safety concerns and supply-chain interruptions have left business leaders with difficult choices. Law firms are not immune, and each day brings new headlines of managing partners announcing expense management plans to weather the storm.

With this backdrop, litigation finance has rightly been identified as a possible solution to some of the financial challenges facing law firms and companies, alike.

Litigation Finance for Law Firms and Corporate Litigants

Litigation finance emerged in the U.S. around the time of the last great economic downturn—and awareness and acceptance of this new form of specialty finance continues to grow. The commercial litigation finance industry is well-capitalized and built around a fairly simple idea: companies would prefer to transfer risk and avoid expense when pursuing meritorious legal claims. In times of economic prosperity, litigation finance is quite popular; in challenging, uncertain economic times, the need to transfer risk and avoid expense makes litigation finance a necessary consideration.

Since COVID-19's effects on our economy began to take hold last month, we have experienced an increase in requests for funding. We hear from lawyers who have worked with us for years and who recognize the value of partnering with a litigation finance firm. But we also hear from attorneys and companies prompted to explore litigation finance for the first time because of challenges presented by COVID-19.

More than ever, law firms are looking for reliable income that is necessary to fund operations over the next six, 12, and 18 months. Law firms are anticipating significant reductions in demand to affect certain transactional practices and expect the payment cycle to be extended for many clients. Clients in the midst of meritorious litigation may find that paying outside legal counsel is too difficult, opting to divert those funds to core business operations, paying the rent, or paying employees. Law firms, concerned with paying their own rent and salaries to their most valuable personnel, are unlikely to be interested in offering a contingency arrangement to help solve the client's troubles. Litigation finance is designed for just this circumstance—where the corporate client is unable or unwilling to pay the law firm's hourly rates and the law firm is disinterested in representing the client on a contingency arrangement.

Litigation finance enables companies to avoid the high costs of litigation without abandoning meritorious legal claims. Meritorious legal claims are corporate assets that should be monetized, now more than ever. Likewise, law firms wish to accommodate client requests for alternatives to the hourly billing model, but law firms are not banks and are not well-positioned to front the costs and absorb the risk of litigation for their clients. Litigation finance provides the capital necessary to achieve an attractive solution for clients and law firms, alike. Litigation funders can provide much needed capital to law firms and their clients at a time when such capital is crucial to respond to economic challenges.

Litigation Finance for the Civil Justice System

Litigation finance also empowers companies to access the justice system and defend their legal rights. This could mean enabling a company to pursue a claim for damages caused by a breach of contract or infringement of patented technology. It could also mean hiring the right lawyers to defend against a frivolous lawsuit designed to take advantage of a company's weakened financial position.

In difficult financial times, companies without third-party financing may be forced to forego meritorious legal claims, abandon their legal rights, accept a low-ball settlement offer, or perhaps shop the case to a different law firm willing to take it on a contingency. No fair-minded advocate would argue that it is in the legal system's interest to allow COVID-19 to force a litigant's hand in this way.

Litigation finance provides an alternative that upholds one of the principles upon which our civil justice system is built: disputes should be decided on their merits, not based on the financial means of the parties. In that sense, litigation finance offers stability to a legal system facing its own issues—including shuttered courthouses, unavoidable delays, and increased reliance on technology—in these difficult times.

Of course, litigation finance is not an economic panacea that will be appropriate for every case. Litigation finance firms' business models are built on providing funding only for the most meritorious legal claims with recoverable damages sufficient to ensure that the interests of the litigant, law firm, and litigation finance firm are aligned. This fact undercuts the primary criticism of the industry from outsiders: that the influx of capital will be used to pursue cases that should not be brought in the first place.

To the contrary, successful litigation finance firms rely on experienced litigators to scrutinize the merits of opportunities before investing. Longford Capital has assembled a team of experienced trial lawyers and litigators that have each worked at large law firms for many years before joining Longford Capital. Our law firm partners and their clients count on this experience and expertise.

It is not clear how long the economic turmoil caused by COVID-19 will last, but near-term decisions have the potential to affect lawyers, their clients, and the U.S. civil justice system for years to come. For some of them, litigation finance offers creative ways to weather the storm.

About the Author

Andrew Stulce is a vice president at Longford Capital. He was previously a member of the litigation departments of Hunton Andrews Kurth LLP and McGuireWoods LLP.

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.