

Business & Practice
May 18, 2023, 5:30 AM

Clients Embrace Litigation Finance to Cut Costs in Tough Economy

By Emily R. Siegel

- Omni Bridgeway sees 30% growth in requests
- Validity Finance cites highest number of leads

Litigation funders are in high demand in a tough economy, as clients seek to save costs, avoid borrowing and offload risk—all while aiming for big payouts.

Funding requests at Omni Bridgeway increased about 30% this fiscal year compared with a year ago, said Matt Harrison, the company's managing director and co-chief investment officer. Macroeconomic factors such as tighter credit are helping drive demand.

"The harder it is to borrow money, the more you're going to see people go to other sources for money if they need it, including litigation funding," he said.

Validity Finance saw the highest number of leads ever last quarter and that continued into this quarter, said David Kerstein, co-founder of the company. Validity has nearly \$450 million in funding from TowerBrook Partners and institutional investors.

"I'm pretty bullish on the outlook for the industry," Kerstein said.

Law firms and corporations are latching on to litigation finance as a way to pay for lawsuits without tapping their resources or borrowing money as they battle the highest inflation in four decades. The number of funders has grown to more than 40. That's up from a handful when the industry became active in the US about 15 years ago, according to the International Legal Finance Association.

Mintz Levin regularly uses litigation finance for intellectual property litigation and other litigation, said Bob Bodian, the law firm's managing partner. "We've been talking about that more and more," he said. "It's growing, definitely."

The "risk profile" of some cases is a motivator to use the tool, Bodian said.

Lower Costs

Companies are able to lower costs by having investors supply cash for lawsuits. The investors then reap a return if the case results in a monetary award—or they forfeit the money if the lawsuit is a loser.

Biotech company NovelStem International Corp. said Omni Bridgeway agreed to fund up to \$1 million in costs for an arbitration in return for a portion of claims. A decision on the case may come next month, NovelStem disclosed in a March 31 securities filing.

Litigation Capital Management Ltd. has been approached by lawyers investigating whether there is a viable claim to bring on behalf of Credit Suisse Group AG retail bondholders, Bloomberg News reported earlier this month.

Law firms expected to raise rates by 8% this year after increases failed to keep up with inflation in 2021 and 2022, according to Wells Fargo's Legal Specialty Group survey of more than 120 firms late last year.

"Clients are trying to find other sources of revenue and cut back costs," said Rebecca Berrebi, a litigation finance broker and consultant. "One way is to not have to pay your lawyers."

US litigation funders made more than \$3.2 billion in new commitments to lawsuits in the year ending June 30, 2022, according to a Westfleet Advisors survey. That was a 16% increase from the previous 12-month period, Westfleet said.

Burford Capital

Polaris PowerLED Technologies LLC, which develops LED-related technologies, got Burford Capital Ltd. to finance a patent infringement case against Vizio Inc. and five manufacturers that sold and distributed Vizio's products, according to a court filing this month in the Central District of California.

The filing didn't say how much Burford was paying for the case, which is being handled by law firm Kramer Alberti Lim & Tonkovich.

Burford has seen an increase in requests over the past few months from firms that don't typically work with contingency fees, said David Perla, Burford's co-chief operating officer. The firms are seeking help with case assessments and how to price them, Perla said.

"They very often don't want to take on the full risk, and that is where litigation finance companies come in," he said. "Firms that traditionally have been on the defense side with some contingency practice want to take on more."

Perla said litigation finance has gained popularity as the tool has become more mainstream—and as companies see the results of investments in cases.

Burford-funded entities won a favorable ruling from a US judge on claims that Argentina failed to pay fair value to shareholders when the country nationalized the gas and oil company YPF SA in 2012, Bloomberg News reported March 31. Argentina would have to pay \$7 billion to \$19.8 billion, according to Bloomberg, which cited newspaper La Nacion.

— With reporting by Meghan Tribe

To contact the reporter on this story: Emily R. Siegel at esiegel@bloombergindustry.com

To contact the editors responsible for this story: Chris Opfer at copfer@bloombergindustry.com; John Hughes at jhughes@bloombergindustry.com

© 2023 Bloomberg Industry Group, Inc. All Rights Reserved