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## BARTALK



## GOT YOUR BACK

In a legal brawl with State Farm, a roofing contractor found himself outspent. Litigation funder Bentham came to his aid. **BY JAN WOLFE**

Illustration By **MICHAEL WITTE**

**I**T STARTED WITH THE POWERFUL SPRING STORM THAT swept through central Indiana in April 2006, pummeling houses with golf ball-sized hailstones. In the aftermath, a roofing contractor sparred with State Farm Mutual Automobile Insurance Co. over its treatment of affected homeowners. He wound up facing criminal charges that were at least partly based on evidence collected by State Farm—only to later win one of the largest defamation awards in U.S. history.

The remarkable reversal might not have happened without litigation funder Bentham IMF, which backed roofer Joseph Radcliff as he fought State Farm's efforts to overturn his \$14.5 million award. When Indiana's Supreme Court refused to vacate the award in November, the U.S. subsidiary of Australia's Bentham IMF Limited chalked up its first big victory since its 2011 launch. (State Farm declined to comment on the case.)

Bentham is one of a growing number of companies that have begun funding parties in U.S. lawsuits in recent years, collecting a share of damages if the suit is successful. Like any business, they choose their investments with close attention to the bottom line. Bentham made a \$2.2 million profit from the Radcliff case, according to a regulatory filing. But the case's David-and-Goliath aspects also make it a powerful PR tool for the new industry. "We wanted Radcliff's lawyers to be as good as State Farm's lawyers," says Ralph Sutton, Bentham's chief investment officer, who brought Frost Brown Todd into the case. "We wanted to even the playing field."

After the 2006 storm, State Farm denied 7,000 out of 50,000 property damage claims filed by Indiana homeowners. Radcliff put up roadside signs offering to help homeowners "fight State Farm." He persuaded policyholders to sign over their power of attorney, then challenged the denial of coverage in arbitration. If Radcliff won, he had new roofing work.

Radcliff also criticized State Farm in an interview with local television reporters. And he complained about the insurer to the state's Department of Insurance. (An investigation by the department ended with State Farm agreeing in 2009 to reevaluate rejected claims.)

In June 2007 State Farm began investigating whether Radcliff's employees engaged in "dime spinning"—using coins to damage shingles in order to file fraudulent insurance claims. Engineers retained by State Farm reported finding intentional damage at

Radcliff's lawyers at Price Waicukauski & Riley and Riley Bennett & Egloff put on testimony from four homeowners who said that State Farm adjusters offered them new roofs if they filed police reports incriminating Radcliff. Radcliff testified that his text message simply advised employees that dime spinning wouldn't be tolerated.

The jury awarded Radcliff \$14.5 million on his defamation counterclaim. State Farm appealed. Radcliff's lawyers were working on contingency—but he was in serious need of money, struggling to rebuild his contracting business.

His lawyers put him in touch with Bentham IMF, the new U.S. subsidiary of one of Australia's largest litigation funders. Bentham agreed not only to pay for Radcliff's appellate lawyer, but to give Radcliff more than \$2 million to start a software business. "People need to be able to

hold on for the long fight. So sometimes that means you support the individual," says Bentham's Sutton. Radcliff agreed that if he won, he would reimburse the fund for the legal fees it paid and repay Bentham double the money it had put into his new business.

Bentham helped Radcliff find appellate counsel: Julia Blackwell Gelinas, a partner at Frost Brown & Todd. "We searched for the lawyers in Indiana that were fellows of the American Academy of Appellate Lawyers," says Sutton. "There were really only three. And [Gelinas] was on the only one who didn't have State Farm as a client."

On appeal, State Farm—relying on Jenner & Block, Bingham Greenebaum Doll and Cantrell, Strenski & Mehringer—argued that Radcliff failed to prove actual malice, a necessary element of a defamation claim. But the Court of Appeals for Indiana affirmed the verdict in April 2013. "Evidence of State Farm's ill will is found in the fact that State Farm did not heed the NICB's instructions to turn over its entire claim file, even if that meant including materials that undercut its suspicions of insurance fraud," the court wrote.

In November the Indiana Supreme Court refused to vacate the verdict. State Farm ended up paying more than \$17 million because of postjudgment interest.

"The system worked as it should and provided vindication to Radcliff," Riley says. "But I don't know if anyone would go through everything he did for the sake of the compensation."

## Bentham gave Radcliff \$2 million to launch

**a new business. "PEOPLE NEED TO BE ABLE TO HOLD ON FOR THE LONG FIGHT," SAYS BENTHAM'S SUTTON.**

nine houses of policyholders who had partnered with Radcliff; previously, State Farm adjusters had found hail damage at three of these homes. In-house fraud examiner Tom Cockerill interviewed former Radcliff employees, who told him about a text message—never produced in court—in which Radcliff allegedly instructed, "NO MORE DIME SPIN[N]ING."

Cockerill handed over some—but not all—of his notes to the National Insurance Crime Bureau, a nonprofit funded by insurance companies that serves as a liaison with law enforcement. NICB gave the documents to the Prosecutor's Office for Marion County, Indiana, which in 2008 charged Radcliff with insurance fraud, corrupt business influence and attempted theft. Cockerill and his supervisor reviewed the charging documents for accuracy. A month later, State Farm sued Radcliff for civil fraud and racketeering.

Radcliff counterclaimed for defamation, seeking \$30 million in damages. His business was falling apart. By 2011, he would eventually lose most of his suppliers and all but 15 of his 400 employees.

Radcliff's criminal defense lawyer, Jennifer Lukemeyer of Voyles Zahn & Paul, began to turn his luck around. In 2009 Radcliff accepted a so-called diversion agreement, in which he admitted that there was probable cause to charge him with misdemeanor criminal mischief, but avoided a guilty plea. "Unfortunately, we do not have enough to go forward on the case," the prosecutor's office said in a press release.

The civil litigation went to trial in 2011. In response to State Farm's evidence about the text message and indications of vandalism,

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