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CORPORATE

Litigation finance puts boots in LA

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With many forecasting doom and gloom in the legal industry, an idle observer might never guess that one of the hottest investment markets in both the U.S. and abroad is litigation itself.

The growth of litigation finance firms — outfits that lend money to clients entangled in expensive legal cases — in the U.S. has been centered in Chicago, New York and elsewhere in the eastern part of the country.

That's changed.

Bentham IMF, a subsidiary of the one of the most venerable litigation finance firms, IMF (Australia) Ltd., has opened a Los Angeles office. Headed by former McKool Smith partner Allison Chock with an eye to expand its footprint in California, the location is the first brick-and-mortar litigation finance outpost west of the Mississippi.

"We know how robust the litigation market is in Los Angeles

and San Francisco," said Ralph Sutton, Bentham's chief investment officer. "The quality of lawyering is very high. We think it's a tremendous opportunity for us."

The investments from firms like Bentham are focused on large commercial cases. It's swiftly become at least a billion dollar industry, with many of the firms, IMF (Australia) included, traded publicly.

The practice was first adopted abroad, with Australia and the United Kingdom embracing the model of non lawyer-owned firms as financiers of litigation.

The incursion into the U.S. has been met with more resistance, and a sizeable number of jurisdictions around the country still forbid the practice. Opponents, like the U.S. Chamber of Commerce, say it increases frivolous and drawn-out litigation while reducing client and lawyer control over cases.

Cardozo School of Law professor Anthony Sebok, who specializes in litigation finance, says the concerns are overblown, pointing

out that the criticisms leveled at the industry could easily be made of the widely accepted practice of liability insurance.

"Litigation finance is only a problem if you think that the status quo of the multibillion-dollar liability insurance industry is a problem too," he said. "The differences are microscopic."

Christopher Bogart, co-founder and CEO of litigation finance giant Burford Group LLC and a former Time Warner general counsel, said the business model has matured at a rapid pace.

"We moved with this business from something that was an entirely new concept that had to be explained in great detail to attorneys and clients," he said. "Now we're at a point where people are aware of what [litigation finance] is and we're seeing very rapid growth."

Bogart said Burford has committed close to \$400 million in capital to cases in the less than four years it's been in existence and, in the last year alone, has generated more than \$50 million

in income. He estimated that more than half of the 100 largest U.S. law firms have used Burford.

Cases that have involved litigation finance include the massive, decades-long suit against Chevron over pollution in Ecuador and the prolonged patent battle between Microsoft Corp. and Singaporean software company Uniloc, which Bentham backed. The Uniloc case yielded a \$388 million jury verdict for the software company, though a confidential settlement was ultimately reached after the case was partially overturned on appeal.

Chock, the newly minted head of Bentham's Los Angeles office, said the finance practice was a great way for clients and firms to spread around the liability in large cases.

"The attitude in the past has been, 'We don't need this because we have contingency lawyers,'" she said. "However, in these large commercial disputes, it's often just too much of an investment or risk for a firm to take on. We help provide those firms and clients with access to justice."