BENTHAM IMF

FUNDING OVERVIEW

Introduction

Bentham Capital LLC, d/b/a Bentham IMF ("Bentham") provides funding for litigation and capital for general commercial purposes. This funding overview describes Bentham's general funding process, the funding agreement, risks to consider and other matters associated with our litigation funding transactions.

The Funding Process

The investing process begins with the execution of a confidentiality agreement. Under this agreement, Bentham will conduct an initial screening of the litigation to determine whether it makes sense for both sides to engage in the process.

Next, the parties will typically come to agreement on the initial economic terms for the transaction, by executing a non-binding term sheet (except that it is binding in giving Bentham a defined period of exclusivity to conduct its due diligence). The terms may change after due diligence and case evaluation (although that is not usual), but it is important that the parties share a common view of the transaction at the outset.

During due diligence, we also normally provide our litigation funding agreement so that the funding terms and conditions are agreed upon in advance and time and expense is not wasted where agreement on funding terms cannot be reached between the parties. In certain circumstances, we may require a deposit to be held in trust to compensate us for our due diligence efforts and out-of-pocket expenditures should a party choose to abandon the funding application, though this is not customary and will be discussed up front, if necessary.

Due Diligence

To assist us with our due diligence, we usually ask the party and/or its counsel to discuss the case with us and to provide us with documents and other information. In general terms, Bentham evaluates opportunities by assessing several factors, including the following:

(1) the type of case;
(2) the strength of the case;
(3) whether the case is time-barred;
(4) the jurisdiction in which the case will be heard;
(5) the strength of the documentary evidence supporting the case;
(6) the legal or factual risks;
(7) the range of potential damages;
(8) a realistic view of the settlement prospects;
(9) whether counsel is on a contingency fee arrangement (full or partial);
(10) the likely length of time to resolution;
(11) the amount of capital required to successfully prosecute the case; and
(12) the defendant's ability to satisfy a judgment.

Bentham typically undertakes this assessment at its own expense.

The Litigation Funding Agreement

The terms and conditions of our funding are always set out in a written funding agreement, to be reviewed and approved by the party's counsel.

Our funding agreements are non-recourse, meaning a contracting party will generally have no liability to Bentham beyond the recovery from the litigation itself. The agreements include a provision for filing a security lien to protect Bentham's investment and a provision for termination under certain circumstances.

Under the funding agreement, Bentham is entitled to its financial return when the party's case has been settled or the party has received a judgment in its favor. The funding agreement explains in clear terms how that financial return is calculated. Typically, in a contingency representation, counsel will disburse the agreed-upon return from a settlement or judgment directly to Bentham.

If the party's case is unsuccessful, Bentham will not be entitled to a financial return; the party will owe Bentham nothing.

Risks

Litigation is inherently risky. Although a transaction with Bentham provides the contracting party with additional resources with which to prosecute its case, it does not otherwise improve the merits of the claim or the likelihood of a successful resolution. There are no guarantees of success.

Even if the litigation is successful, the defendant may not be able to pay the judgment. Although we evaluate the defendant's likely ability to satisfy a judgment when we conduct our assessment, we make no representations regarding its ability to pay.

As mentioned, Bentham retains a termination right under the funding agreement. Bentham may terminate for fraud, for material omissions or misleading statements in the due diligence process, or where it reasonably determines that the anticipated proceeds of the litigation will be insufficient to pay its returns. Upon termination, Bentham may lose its capital and receive no financial return. If after a termination, however, the party later recovers a settlement or judgment in its favor, it must reimburse Bentham at least its principal investment.

Bentham does not provide legal or tax information or advice on the funding transaction. Parties must obtain their own independent legal and taxation advice.

CONTACT US
info@benthamimf.com
1 (800) 311-9079

New York
437 Madison Avenue, 19th Floor
New York, NY 10022
T: +1 212-257-4429
Attention: Stephanie Reckler
sreckler@benthamimf.com

Los Angeles
555 W. Fifth Street, Suite 3310
Los Angeles, CA 90013
T: +1 213-550-2687
Attention: Allison Chock
achock@benthamimf.com

Houston
LyondellBasell Tower
1221 McKinney Street, Suite 3840
Houston, TX 77010
T: +1 713-965-7920
Attention: Eric Chenoweth
echenoweth@benthamimf.com

San Francisco
Two Rincon Center
121 Spear Street, Suite 405
San Francisco, CA 94015
T: +1 415-231-0363
Attention: Matthew Harrison
mharrison@benthamimf.com