
Bentham Announces New Unit to Invest in US Bankruptcy Claims

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Having raised \$200 million earlier this year, the Australian litigation finance firm Bentham IMF will begin investing in U.S. bankruptcy claims and has made two hires to support its new foray.

On Monday, the firm announced it hired Ken Epstein, who joins from bond insurer MBIA, as an investment manager and legal counsel to lead its U.S. bankruptcy practice. It also hired Christopher Young, formerly of Royal Bank of Scotland, as a corporate counsel.

“We have a lot of capital to deploy,” said Epstein, “And this market in the U.S. is really just starting to take off.”

Epstein was a managing principal in the restructuring group at MBIA, while Young was a vice president and counsel at RBS.

Bentham’s decision to invest in U.S. bankruptcy claims — in which it will provide cash to a bankruptcy trustee to pursue claims in exchange for a percentage of any recovery — comes at a time when commercial bankruptcy filings appear to be stabilizing.

Commercial filings peaked in 2010, during the height of the financial crisis, and then declined until 2016, according to the American Bankruptcy Institute. In September, there were just under 3,000 commercial bankruptcy filings, including Toys R Us, which was roughly the same amount as occurred during this period in 2016, according to the ABI.

Epstein said that the overall economy remains strong, which means commercial filings may not rise. But he said many industries are facing pressure: Last year, when crude oil prices dipped, more than 100 oil and gas companies filed for bankruptcy. Now, many retail stores such as Toys R Us, or American Apparel, are facing pressure, he said.

“For us [to invest in a claim], the potential damages need to be significant,” said Epstein.

He suggested Bentham would look to invest at least \$1 million and would only look at cases where the damage estimate would be several million dollars.

“We want to insure that the claimholder gets the bulk of the recovery,” he said. “Unless you have damages that are far in excess of the cost, then you’re not really going to have that.”

The lucrative returns provided by litigation investment is attracting attention from investors chasing high yields: In February, Bentham IMF, which is publicly listed in

Australia, disclosed it had raised \$150 million from Fortress Credit Advisors and that it was pitching in an additional \$50 million of its own cash in order to create a \$200 million U.S. litigation investment fund.

Since then, Burford Capital, which is publicly listed in the UK, and Longford Capital, a private company announced they had each raised \$500 million investment funds.

In the U.S., litigation finance is regulated on a state by state basis and disclosure rules vary by jurisdiction.

Epstein said Bentham believes strongly in transparency. Investing in a bankruptcy claim, in which the client would be either a creditor or a trustee, who is by definition squeezed for cash, is different than investing in a private party's litigation claims because a bankruptcy judge has to approve the trustee's plan, he acknowledged.

"It may be best practice to disclose in all cases," he said.