BENTHAM IMF

Document Disclosure Overview

Protecting a client's confidential information is a top priority for Bentham IMF. From the execution of a written non-disclosure agreement ("NDA") at the outset of any communications, to our strict document retention policy, Bentham employs important safeguards to shield from disclosure confidential information that claimants and law firms provide to us.

Bentham's NDA provides that all confidential information exchanged between the parties is for the sole purpose of evaluating the feasibility of a funding transaction and will not be disclosed to any non-affiliated third parties without the client's written consent.

Documents and other written information provided to litigation funders under the protection of an executed NDA have, in almost every case, been found to be protected from disclosure by the work product doctrine,[1] and in many cases the common interest privilege as well.[2] As courts have routinely held, the policies underlying both the work product doctrine and common interest privilege strongly support these conclusions.[3]

The case law continues to evolve on these issues, however, and the possibility of aberrant orders compelling disclosure cannot be entirely discounted—at least not yet.[4] At the same time, any reputable funder will likely require access to all material information available on the matters to be funded, some of which may be non-public information. Accordingly, lawyers and clients should exercise caution before transmitting highly sensitive information to any funder. When in doubt, clients and lawyers are encouraged to contact Bentham by phone with any questions or concerns regarding disclosure. Bentham will work together with clients to obtain the information Bentham needs while best protecting the client's confidential information.

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[1] *Miller v. Caterpillar*, Case No. 10 C 3770 (N.D. Ill. Jan. 6, 2014); *see Lambeth Magnetic Structures, LLC v. Western Digital Corporation et al.*, Case No. 2:16-cv-00541 (W.D.P.A. Jan. 18, 2018); *Viamedia, Inc. v. Comcast Corp., et al.,* 1:16-cv-05486 (N.D. Ill. June 30, 2017); *Ioengine, LLC v. Interactive Media Corp.*, 1:14-cv-01571 (D. Del. Aug. 3, 2016); *In re Int'l Oil Trading Co., LLC*, Case No. 15-21596 (S.D. Fla. Bankr. Apr. 28, 2016); *USA Ex rel., Michael J. Fisher, et al. v. Ocwen Loan Servicing, LLC, et al.*, No. 4:12-cv-00543 (E.D. Tex. Mar. 15, 2016); *Morley v. Square., Inc.*, Case No. 4:10-cv-02243 (E.D. Mo. Nov. 18, 2015); *Charge Injection Tech., Inc. v. E.I. Dupont De Nemours & Co.*, Case No. 07C-12-134 (Del. Super. Ct. March 31, 2015); *Carlyle Inv. Mgmt. L.L.C., et al. v. Moonmouth Co. S.A., et al.*, No. 7841–VCP, 2015 WL 778846 (Del. Ch. Feb. 24, 2015); *Doe v. Society of Missionaries of Sacred Heart*, 2014 WL 1715376, (N.D. Ill. May 1, 2014); *Walker Digital v. Google*, Case No. 11-cv-00309-SLR (D. Del. Feb. 12, 2013); *Devon IT, Inc. v. IBM Corp.*, No. 10-2899, 2012 WL 4748160, at *1 (E.D. Pa. Sept. 27, 2012); *Mondis Tech. v L.G. Elec., Inc.*, 2011 WL 1714304 (E.D. Tex. May 4, 2011); *see also MLC Intellectual Property, LLC v. Micron Technology, Inc.*, No. 14-cv-03657, 2019 WL 118595, at*2 (N.D. Cal. Jan. 7, 2019) (holding that fact, terms, and source of litigation funding were irrelevant and not discoverable).

[2] *See, e.g., In re Int'l Oil Trading Co., LLC*, Case No. 15-21596 (S.D. Fla. Bankr. Apr. 28, 2016); *Walker Digital v. Google*, Case No. 11-cv-00309-SLR (D. Del. Feb. 12, 2013).

[3] *See, e.g.*, cases cited in n.1 and n.2.

[4] *See, e.g., Acceleration Bay LLC v. Activision Blizzard, Inc.*, No. 16-453-RGA, 2018 WL 798731 (D. Del. Feb. 9, 2018) (holding that documents sent to a litigation funder were "not work product" and thus were discoverable where the plaintiff had previously advised the court that there were no funder communications to produce or log, and to the extent that any such documents did exist, that they were not claiming any privilege applied to the documents).