

Litigation Funding Industry Deepening Law Firm Ties

By **Andrew Strickler**

Law360, New York (November 16, 2015, 8:09 PM ET) -- Litigation funding firm BenthamIMF's announcement Monday that it will throw its money behind the launching of new practice groups and attorney recruiting at law firms represents another breakdown in the traditional wall between third-party investors and firms, experts said.

Along with portfolio investments in related cases and closer partnerships with plaintiffs firms, the New York-based Bentham said the assembled investments and business model "could signal a new model for litigation risk-sharing."

"In short, we help incubate firms and practice groups," Bentham Chief Investment Officer Ralph Sutton said in a statement.

Following the recent partnership between Burford Capital LLC and antitrust plaintiffs firm Hausfeld LLP in a Germany venture, Washington and Lee University assistant law professor Victoria Sahani said the litigation finance industry is moving in the "inevitable" direction of investing in entire law firms in return for a cut of verdicts or settlements.

"This looks like one step closer to one of these groups being a full investor," said Sahani, an adviser to the Alliance for Responsible Consumer Legal Funding, an advocacy group promoting "sensible" regulation for the emerging litigation funding industry.

"When you're talking about helping them recruit lawyers, and using words like 'partnering' and 'incubate,' that's the language of venture capital, and that's what venture capitalists do," she said.

Bentham IMF is the U.S. branch of IMF Bentham Limited, the biggest commercial litigation funder in Australia, which also has a joint U.K.-based venture.

While Bentham has traditionally focused on single-case investments, it also invests in portfolios of three or more cases with estimated damages of at least \$25 million each with a funding range of \$4 million to \$20 million.

Bentham made \$30 million in deals with seven separate law firms and backed more than 60 cases in intellectual property, insurance coverage, entertainment, health care, contracts and other areas over the last year.

"In one instance, Bentham helped launch a new litigation firm, supporting its work in several areas of trial practice and a docket of more than 150 cases," the firm said in the Monday announcement.

Bentham's move toward a portfolio model and a deeper relationship with partner firms comes just weeks after Burford Capital LLC announced a **\$33 million commitment** to D.C.-based Hausfeld for its planned launch of a Berlin office focused on plaintiffs-side competition cases.

Jonathan Molot, Burford's chief investment officer, said while there is "nothing new" in a portfolio focus, the litigation funding industry is moving "across the spectrum" from backing single cases and groups of similar cases "to underwriting the firm and evaluating its overall financial health and its lawyers."

For many investors, he said, that focus on the viability of an overall firm, as well as current and potential clients, is far more familiar than the narrow view on the merits and potential value of a single case.

Burford has about \$500 million in assets under management and saw operating profits up 56 percent to \$28.4 million in the first half of the year, according to the fund.

In addition to single-case funding and backings of case portfolios, Burford also offers credit to U.S.-based contingency firms, supplementing their bank credit lines and other lending sources.

"A lot of businesses extend credit, and the move from single-case financing ... to evaluating the creditworthiness of an entire entity, that's actually a move back to something they can understand," he said.

While every U.S. jurisdiction save the District of Columbia bans nonlawyer ownership of firms and fee sharing with nonattorneys, Sahani said deeper firm-funder partnerships are appearing "more like a multidisciplinary practice where you have the firm on one side, the funder on the other."

"It's like venture capital in law firms, and venture capitalists don't just want to give you money," she said. "They want to come in and reorganize."

--Editing by Jeremy Barker and Mark Lebetkin.

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