LITIGATION FINANCE JOURNAL

# LFJ Interview with Bentham CIO, Allison Chock (Part 1 of 2)

**By: John Freund | August 11, 2017**

*In Part 1 of our interview, we sat down with newly-minted Bentham CIO, Allison Chock, to discuss trends and misconceptions in the litigation finance industry, as well the Chamber of Commerce's recent attempt to derail lit fin.*

**What major trends do you see over the next 12 months for litigation finance?**

We will continue to see new players enter the industry, as there has been ongoing acceptance of the concept of litigation funding. That said, I've been in this long enough to witness that it's a tough business to *stay* in. It's a very appealing and interesting industry to get into, but it's hard to do it right and make it sustainable. Which is why I caution those on the investment side to look into the track record of the firms they're investing in. Certainly the industry does have a lot of potential, but it's high risk, there's no question.

**How do you foresee this industry maturing in 5-10 years time? Are we looking at a top-heavy industry, where large firms like Bentham and Burford dominate the market, or will the industry be fragmented as hundreds or potentially thousands of smaller players enter at state and local levels?**

Those that figure out the right path will stay dominant in the industry. But there will always be new entrants trying new and different things. For instance, there is a lot of attention right now on online crowd-sourced funding, like CrowdJustice and LexShares. And there is certainly a small-to-middle market—in terms of investment size—that is not currently being well serviced in the industry right now. For Bentham, it doesn't make sense to fund those smaller cases, regardless of how meritorious they are. It takes just as much work for us to perform due diligence on a $500K investment as it does a $5M investment. So from a resources standpoint, it just doesn't make sense. We'd have to shortcut due diligence in some ways – which means lesser standards – in order to make that make sense. Additionally, the fees involved with funding smaller cases are generally not proportionately smaller compared to funding large cases. As a consequence, the risk can end up being much higher for the reward from these cases. We'd love to crack into that market in a way that does not lose quality, but major firms have yet to figure out how to do that in a way that makes sense.

**Regarding the US Chamber of Commerce's recent attempt to force mandatory disclosure: What steps are you taking to dissuade the courts from going along with that?**

Our viewpoint is that the approach being taken by the Chamber – as it frequently is – is a sledgehammer approach. There already are mechanisms in place where you could address any real concerns the judiciary or other members of the legal community may have with more of a scalpel approach. One of the main reasons we are against a mandatory disclosure at the "initial disclosures" stage of litigation, which is what

they are proposing, is because that has a huge ripple effect that may impact not only those matters that are funded, but also claimants that are *not* funded. Those claimants are then exposed as *not* having funding. Then the other side knows for sure that they can turn the screws on that party and basically bury them in expensive discovery and motions until they are financially unable to continue their case. It's a legally permissible tactic, and certainly if a defendant knows that the other side has limited resources, it's something it can wield more powerfully than otherwise.

We think the existing rules can be utilized strategically to address any real concerns without such adverse consequences. For example, we attend a lot of conferences where members of the judiciary are participating. On the West Coast we have the ABTL – the Association of Business Trial Lawyers – which has lots of events that bring the bar and the bench together, and create a nice, open dialogue for how to make the court system better. And the #1 message we receive from the courts is that they're busy. Thus, they want to be able to clear their dockets and settle cases where they can be settled. So if a litigation financier can potentially stop a settlement in a case, they want to know that, so they can bring that litigation financier in for a mandatory settlement conference if it's being ordered. But in our view, that's a question that can easily be asked well into the litigation, when you're setting up a settlement conference: "who else, if anyone, has a say in settlement?" Bentham, in our funding agreements, does not control settlements, so in our view, that question – at least for us – is inapplicable.

Another reason that we're resistant to automatic early disclosure is because the ultimate result is going to invariably be what we call 'the discovery sideshow.' The defendant will try to seek all sorts of documents that are produced to the funder, all of the funder's thoughts on the case, etc. And all of that is irrelevant. Courts that have looked at this already have determined in almost every instance that funder communications and a funder's internal evaluation of a case are not relevant to the claims or defenses at issue in the case. But the fact of the matter is the defense will try to obtain it anyway. And the fight over that discovery wastes both court and party resources. What we need is some sort of grand bargain, where funder communications are under the umbrella of attorney-client privilege (similar to the privilege that is extended to communications with a liability insurer and insurance counsel). If we had a similar automatic privilege regime around litigation finance, you'd likely see a lot of the resistance to automatic disclosure disappear, because that discovery sideshow would disappear. But for now, it invariably is the case that once defendants find out about funding, they can't help themselves. They have to go after it.

**Has there been a PR push within the industry to win over the public at large, or is that not a chief concern at the moment?**

We're not doing a PR push, as in trying to convince people of anything – it's more of an education of what our capabilities are, and what the natural result of that is.

Just because the Chamber of Commerce appears to be on the opposite side, trying to poison everyone against litigation finance and make

everyone afraid of it, I don't think the flip side has to be, 'let's make everyone fall in love with it.' It's not for everyone. I certainly understand why some businesses and even some lawyers would choose not to use litigation financing, and that's fine. They're [the Chamber of Commerce] doing what they're doing because it serves the interests of their high-level donors, but we're doing what we're doing because it's our business and it actually does have the effect of increasing access to justice, and enabling law firms to do things they couldn't otherwise do. It's an industry with all sorts of benefits, but it's not for everyone – and that's fine. We're not trying to make people fall in love with it, but it is a legitimate business like any other, and we do want to educate the legal and business communities about the ways in which it might potentially help them.

**What are the biggest misconceptions about litigation finance, and how can your industry work to disprove those?**

A lot of concerns that are raised both by lawyers and by the courts relate to the financier controlling the cases in which it's invested. And no matter how many times we tell people that we don't control the case, they just seem to not believe us until they've actually worked with us. So that's one concern that can be hard to dispel up front. People just assume, 'oh you must want to be in there pulling the strings.' Not only do we not *want* to do that, as simply a practical matter we just don't have the time. We have near 60 active investments right now, and we don't have the time to be armchair-quarterbacking each litigation. We're out looking for the next thing to invest in.

Also, the conflation between our industry—commercial litigation finance—and consumer litigation funding is somewhat troublesome. There really is a substantive distinction between the two. They have different investment criteria, have different pricing structures, serve different markets… they really are completely different. So that conflation is frustrating.

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*Stay tuned for Part 2 of our interview, where we discuss Ms. Chock's new role as CIO, and what she has in store for Bentham's near-term U.S. expansion…*