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## **State Farm defamation case lifts lid on litigation finance**

By Nate Raymond

NEW YORK (Reuters) - A lawsuit in which an Indiana roofing contractor landed one of the biggest defamation awards in U.S. history last month provides a rare look inside the emerging field of litigation financing.

Litigation financing is a relatively recent phenomenon in the United States, and most such cases run their course without the public even knowing that a financing arrangement exists.

But in the Indiana case, in which the contractor said State Farm wrongly accused him of insurance fraud, the company that provided financing has confirmed not just that it was involved, but also the size of its cut and the fact that it helped the plaintiff find appellate counsel.

In a regulatory filing last week, Bentham IMF Ltd, a publicly traded litigation financing firm, said it took \$5.1 million of a \$17 million award, of which \$2.1 million was profit. While the filing didn't mention the case by name, Bentham officials confirmed it was the State Farm case.

Bentham IMF was founded in 2001 in Australia, where third-party litigation finance has long been a regular feature of complex disputes. It established a subsidiary in New York in 2012 as it looked to expand its U.S. case load.

The State Farm case was attractive because it provided a short-term investment in a case involving "shocking" conduct, said Ralph Sutton, the company's chief investment officer.

"Once we looked at the facts, we were really knocked out," Sutton said in an interview with Reuters last week.

The case stems from a big hailstorm that slammed central Indiana in 2006.

State Farm denied many of the almost 50,000 property damage claims it received in the wake of the storm, according to court papers, prompting an investigation by the state's insurance regulator, a class action lawsuit, and reports on a local ABC television affiliate.

Joseph Radcliff, a roofing contractor, noticed that other insurance companies were approving claims, even where adjacent homes were turned down by State Farm, according to the court papers.

Radcliff approached the Indiana Department of Insurance, contacted a reporter at the ABC affiliate and began advertising that his company would "fight State Farm," the papers said.

As the bad publicity mounted, State Farm initiated an insurance fraud investigation into Radcliff. Radcliff was arrested in September 2008 on 14 felony charges, including insurance fraud, corrupt business influence, criminal mischief and attempted theft.

The charges were dropped in April 2009 under an agreement in which Radcliff would pay \$650 and admit there was probable cause for his arrest on a newly filed misdemeanor charge of criminal mischief.

### **CLAIM AND COUNTER CLAIM**

State Farm had by then sued Radcliff and his company, accusing him of engaging in a fraudulent scheme to damage homes to imitate hail and wind damage. It said he submitted fake insurance claims under powers of attorney obtained from homeowners.

Radcliff counter-claimed, accusing the insurer of defamation, abuse of process and interference with business relationships.

In 2011, a jury in state court in Noblesville, Indiana, rejected State Farm's claims and returned a \$14.5 million verdict in favor of Radcliff on his defamation counterclaim, which State Farm appealed.

It was at that point that Bentham IMF stepped in, giving Radcliff an initial sum of \$2.1 million and more money later, Sutton said.

Radcliff did not need money for legal costs, since his trial team was working on contingency, said William Riley, his lawyer at Price Waicukauski & Riley.

But his company had closed in the wake of his arrest, leaving him with a number of debts, Riley said. "He had a judgment, but he had no money," Riley said.

Bentham also helped Radcliff hire the law firm Frost Brown Todd as appellate counsel.

When State Farm became aware of Bentham's involvement, its lawyers urged the appeals court to find that Radcliff no longer had a "substantial interest" in the case, which the appeals court denied.

In April, the Indiana Court of Appeals upheld the verdict. State Farm has pursued further appeals, but in November, the appeals court refused to stay the judgment, forcing State Farm to pay \$17 million, including interest.

Missy Dundov, a spokeswoman for State Farm, declined to comment on the case or its funding, citing pending appeals.

## **U.S. IPOs**

The case is one of a growing number in the United States in which hedge funds and other funding companies have provided financing for lawsuits in exchange for a slice of any settlement or judgment.

The field picked up steam after Juridica Investments Limited and Burford Capital Ltd, two of the largest companies investing in U.S. lawsuits, launched initial public offerings in 2008 and 2009, respectively.

The companies rarely disclose what cases they fund by name, and the funders' presence in a case is not routinely revealed in court filings.

Companies including Apple Inc, Microsoft Corp and IBM Corp have in recent years faced lawsuits where plaintiffs have accepted financing by outfits similar to Bentham.

In one of the more prominent cases, Burford for a time agreed to provide \$4 million to back a lawsuit by Ecuadorean villagers suing Chevron Corp over environmental contamination that resulted in an \$18 billion judgment. Burford later terminated the agreement, and a court in Ecuador last month cut the award to \$9.5 billion.

Litigation finance remains controversial, with opponents such as the U.S. Chamber of Commerce calling for its ban, contending it promotes frivolous litigation.

But the argument that litigation funders spawn frivolous lawsuits is beside the point when a case gets to appeal, said Anthony Sebok, a professor at Cardozo School of Law, because at that stage the main issue is whether the outcome at trial is deemed appropriate.

Without financial backing, Sebok said, some litigants in important cases could be forced to settle. "It seems to be helpful as it keeps issues alive into appeals, so the law progresses," Sebok said.

The State Farm case is the first one Bentham funded in the United States since opening in New York, and the fund plans for more, Sutton said. It has funded 13 cases in the United States, seven in the last 18 months, he said.

The \$2.1 million profit it made from the case is likely to make a significant contribution to Bentham's results this year. In its last fiscal year, which ended June 30, it reported A\$13.8 million (\$12.4 million) net profit on gross revenue of A\$43.9 million (\$39.3 million).

It is unclear how much of the \$17 million award Radcliff himself will now receive, after subtracting for Price Waicukauski & Riley's contingency fee and Bentham's \$5.1 million cut.

Riley said Radcliff got a "substantial amount of money," though he declined to give an amount. Radcliff did not respond to a request for comment.

The case is State Farm Fire & Casualty Company v. Radcliff, Indiana Court of Appeals, No. 29D01-0810-CT-1281.

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