

Top Australian Litigation Finance Company Opens New York Subsidiary

By Nate Raymond

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The largest third-party litigation finance company in Australia is coming to America.

IMF (Australia) Ltd., which pioneered the field of third-party litigation finance down under, has launched a New York subsidiary, Bentham Capital LLC. Bentham is hoping to use IMF's 10 years of experience as an Australian public company to compete with established U.S. litigation funders like Juridica Investments Ltd. and Burford Capital Ltd. and newcomers like BlackRobe Capital Partners LLC. Ralph Sutton, who helped Credit Suisse establish its litigation finance arm from 2006 to 2010, is leading the effort.

Bentham formally opened in August, adopting the name of the utilitarian philosopher and champerty critic Jeremy Bentham to avoid confusion with the acronym for the International Monetary Fund in Washington, D.C. In Australian dollars, IMF has \$87.2 million in assets and is funding nearly \$1.78 billion in claims, according to its annual report. In Australia IMF is known for funding class actions, but Bentham will focus instead on breach of contract, patent, international arbitrations, antitrust, qui tam, art restitution, and environmental litigation.

Bentham is at least the third funding company to enter the U.S. market this year, after BlackRobe Capital Partners and Fulbrook Management LLC. While the founders of those firms both say they are looking to take active roles in managing the cases they fund, Sutton said Bentham will likely have more in common with Juridica and Burford, which are known for a more hands-off approach. "We're not seeking to control the litigation," Sutton said.

IMF was already funding some U.S. litigation prior to launching Bentham. Most recently, in March 2010 IMF agreed to provide \$5 million to Uniloc USA to help fund new cases and finance the appeal of a Rhode Island federal district court decision that overturned a \$388 million patent infringement award against Microsoft. In January the U.S. Court of Appeals for the Federal Circuit reinstated Uniloc's infringement verdict against Microsoft and ordered a new damages trial. A new damages trial is set for January 2012.

In a regulatory filing, IMF said Uniloc will pay it up to \$30 million from any recoveries in the Microsoft case or from suits Uniloc has filed against 120 companies, including Sony, McAfee, Adobe, Symantec, Intuit, AutoDesk, and Electronic Arts. Some of those cases have since settled, but many remain pending and are listed as "current" by IMF, suggesting its \$30 million cap hasn't been reached. Uniloc chief executive Brad Davis declined to comment on IMF's funding terms, but he praised IMF's "efficient" approach.

Before IMF began contributing funds to Uniloc, Paul Hayes, then at Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, was financing the company's litigation on a contingency basis. Charlie Gollow, a litigation manager at IMF, said the contingency arrangement remains in place with Hayes. Hayes and five other lawyers left Mintz Levin in April to form Boston-based boutique Hayes, Bostock & Cronin. (Hayes did not respond to a request for comment.) Uniloc was represented in the Microsoft appeal by Finnegan, Henderson, Farabow, Garrett & Dunner.