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LAW

Litigation Financing Attracts New Set of Investors

Pension funds, others invest in portfolios of commercial lawsuits

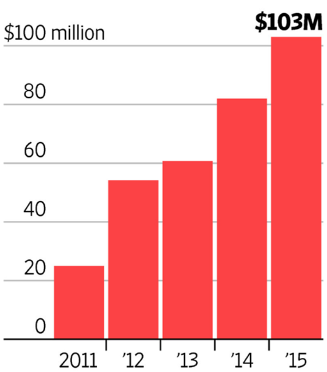
By SARA RANDAZZO

Los Angeles trial lawyer Raymond Boucher turned to an unusual lender to get his latest law firm off the ground.

Starting over after a high-profile divorce and personal bankruptcy, the attorney best known as the architect of a $660 million settlement for California clergy-abuse victims turned to IMF Bentham Ltd., one of the major players in the burgeoning and controversial business of litigation funding.

Taking Off

Burford Capital revenue



Source: The firm

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With several million dollars from Bentham, Mr. Boucher said he has been able to run his nine-person firm and take on new cases without worrying about money. He will pay back the funds only if and when the lawsuits underlying the financing are successful.

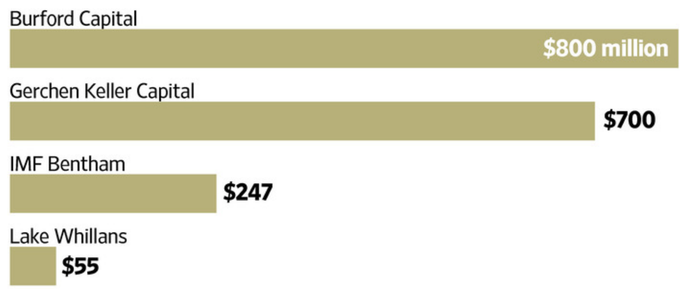
Commercial litigation funding took hold in the U.S. less than a decade ago, touted as a way for little-guy plaintiffs to fund lawsuits against deep-pocketed defendants. But these days, funders, including publicly traded Bentham and Burford Capital LLC and private funds like Chicago-based Gerchen Keller Capital LLC, cast their mission differently: to give corporations and law firms a way to shed risk from their balance sheets. Rather than betting on one-off lawsuits, today's funders are scaling up and backing large portfolios of cases to deploy money faster and create more consistent returns for their own investors.

Well-heeled investors are seeing the appeal in returns that are largely untethered to the wider markets. Pension funds, university endowments, family offices and others have collectively pumped more than a billion dollars into the sector in recent years.

Profiting in Court

Investors are pouring money into funds that finance litigation, which can be risky but offer returns unrelated to the wider markets.

Investments in litigation in the U.S. and abroad, in millions



Source: The firms

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In a major example of the industry's changing focus, Burford said earlier this year in public filings that it provided $100 million to an unnamed global law firm, supported by a portfolio of existing cases.

The size of the deal shocked the staid legal industry, which questioned whether the move flouts a ban in the U.S. on outside investors in law firms. Burford says the money isn't equity in a law firm, but rather an alternative type of financing that is only paid back if the litigation results in a payday. Even so, the deal could be the first sign of cracks in the long-held prohibition against outsiders taking a stake in the legal profession.

Burford has steadily increased its revenue since its 2009 public offering in London, to $103 million in 2015. Last year, just 13% of the $206 million it invested went to single cases, compared with 100% at its founding. Overall, the fund has 54 investments that include more than 500 cases, primarily litigation in the U.S., United Kingdom, and international arbitration.

Its investors, including Invesco Perpetual and Fidelity Worldwide Investment, have seen an internal rate of return

(over please)

of 28%, according to the firm.

Burford's latest report lists a dozen misses, including several multimillion-dollar deals that ended in an almost total loss of the funds. A few competing funds have had high-profile flameouts from too many bad bets.

Bentham, traded on the Australian Securities Exchange and active in the U.S. since 2012, says each dollar invested has brought back $2.70 within 2½ years, on average.

Gerchen Keller has coaxed $1.4 billion in commitments out of investors including the Michigan Municipal Employees' Retirement System and the Employees Retirement System of Texas. So far, they've deployed $700 million of that into 75 investments, many of those portfolio deals, and say they've only had one investment lose. The fund, which likens itself to a private-equity firm, doesn't disclose its rate of return.

Turning the legal industry into an investment vehicle isn't universally accepted in the U.S., said Maya Steinitz, a professor at the University of Iowa College of Law who studies litigation finance. "There's discomfort with this idea that litigation is not just a dispute, it's also an asset," she said.

Litigation funders have faced a few consistent opponents, including the U.S. Chamber of Commerce's Institute for Legal Reform, which argues that it prompts unnecessary litigation. "It's an industry that has absolutely no oversight anywhere in the world," said Lisa Rickard, the institute's president.

A few funds are large enough to require registration with the Securities and Exchange Commission, but the individual investments made aren't subject to disclosure and are typically unknown even to the judges and opposing counsel in a suit.

As the funders accumulate piles of money, they're getting increasingly creative in how they put their capital to work.

Bentham is helping launch new litigation boutiques, like Mr. Boucher's, and has invested $37 million into portfolios with eight law firms. Gerchen Keller funds defense work, appeals and settlements, and is willing to buy law firms' accounts receivable at year-end.

The money doesn't always need to go toward funding the court cases; Gerchen Keller co-founder Adam Gerchen said they've helped a company fund an acquisition by turning a litigation matter into cash.

"Litigation is difficult. It's expensive. It's time-consuming," Mr. Boucher said. "Generally speaking, it takes a new firm three-to-five years to become successful. The benefit of financing is that it gives you that lead-up time."