The Texas Lawbook

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# Litigation Finance Can Help Bankruptcy Lawyers and Their Clients Achieve Optimal Results

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There is no shortage in news coverage of the surge in bankruptcy hiring by law firms in Texas. The growth has been notable among longstanding Texas firms as well as among international firms that once lacked a presence in the Lone Star State. Numerous publications have chronicled this trend, and there is no end in sight.

The increase in hiring can be partially explained by cyclical trends in the oil patch—a staple industry for Texas lawyers, particularly in the Southern District. Experts forecast an uptick in energy bankruptcies in coming months due to maturing debt obligations and modest commodity prices.

However, the growing demand for bankruptcy professionals is also attributable to broader economic conditions. Many economists forecast slowed growth across the economy in the year ahead. Texas is home to diverse corporate enterprises from healthcare to banking that could turn to bankruptcy protection in the event of a sustained economic downturn.

In the past, Texas companies contemplating restructuring may have relied on professionals outside of the state to help them navigate choppy financial waters. However, Texas attorneys and advisers have increasingly been asked to handle these matters as the forum is now recognized as an attractive venue for complex business bankruptcies.

In this context, litigation finance is an important tool for Texas' restructuring professionals to consider. Litigation finance can provide an alternative source of capital for distressed clients seeking to monetize uncorrelated assets and pursue potentially lucrative litigation in a slow economy. Litigation finance is also a valuable tool for law firms looking to grow and compete in Texas' busy restructuring market.

## Growing Your Bankruptcy Practice Group with Litigation Funding

Litigation funders can provide "portfolio" funding directly to law firms seeking to grow their bankruptcy practices. Portfolio funding occurs when a law firm uses three or more of its contingency cases to collateralize an investment. Law firms that utilize litigation funding can use the capital for any number of purposes—including to hire individual lawyers, to entice an entire practice group to join the firm, or to open new offices. Firms can also use portfolio funding to offer hybrid fee arrangements, giving their clients a break on hourly rates without sacrificing the revenues. This flexibility allows firms to aggressively compete for work in a hot market.

Moreover, litigation funding is nonrecourse to other law firm assets and is repaid solely from the law firm's interest in the select cases. As a result, litigation funding is often an attractive alternative to traditional bank loans, which may require a pledge of all of the firm's assets and personal guarantees of the partners.

According to *Law 360*, nearly 40% of litigators who obtained litigation funding have used the capital to finance portfolios containing several cases. On the firm side, users of litigation finance run the full spectrum: from large international firms, to midsize and regional firms, to boutiques.

## Litigation Funding for Your Distressed Clients

Litigation finance is also an important tool that savvy restructuring professionals should discuss with their financially distressed clients. Not only does funding help companies pay for legal fees and costs associated with litigation, it also allows companies to record a revenue event by converting future litigation recoveries into cash today.

Funding is particularly useful for in-house legal departments. In response to organizational pressure to reduce spending, those departments are often forced to leave valuable litigation claims on the table. As one recent report showed, more than two-thirds of organizations forgo litigation claims because of their accounting impact, and nearly 60% of organizations report having uncollected recoveries or judgments valued at more than $10 million.

This frequent aversion to litigation is exacerbated by the fact that companies are unable to record their potential litigation recoveries as assets on their balance sheets. However, these same companies must reflect the litigation costs on a current basis, reducing their profitability and net income. Litigation funding helps solve this problem. When a litigation funder pays a company's litigation fees and expenses, there is no expense to flow through the company's income statement. Because funding is nonrecourse and repayment is contingent upon a successful result in the case, there is also no corresponding liability created on the balance sheet.

Moreover, the benefits of litigation funding can extend well beyond the cases being funded. Funding can provide a new source of working capital for businesses, freeing up resources to focus on core business purposes. This kind of financing can be a lifeline to companies when the economy slows, credit tightens and traditional sources of capital become scarce or more difficult to obtain.

For corporate finance teams, a funding relationship can help improve the budgeting process and help with forecasting a company's working capital needs. When a funder pays for litigation, instead of the company, the company is shielded from the unpredictable cost fluctuations associated with litigation. Financial volatility decreases and management can make more informed choices about where and when to invest in the business. In short, funding reduces the risk and expense variability traditionally associated with bringing a lawsuit.

### Choosing a Partner

Companies and law firms exploring litigation financing should consider the experience and reputation of the various funders that occupy today's market. Choosing a well-regarded litigation financier like Bentham IMF—the world's oldest and most experienced funder—helps guarantee that the committed funds will remain accessible throughout the funding relationship. Choosing a publicly traded funder like Bentham also guarantees transparency, which is often comforting to a company's board and management. Finally, an experienced partner is more likely to understand when unexpected complications arise in a case, which is important in the often-unpredictable landscape of litigation.

Bentham's U.S. team is comprised of bankruptcy and litigation experts who are adept at evaluating the potential success and monetary value of a claim. Thus, our team can offer strategic advice and litigation management assistance without adding to a company's costs. They can also offer insight that helps companies assess whether to pursue potential litigation claims in the first place. Bentham will not provide funding for a case unless our team has confidence that it is valuable and highly likely to succeed. And Bentham never assumes control over the litigation. Once a contract for financing is signed, decisions about case matters are made by the claimant and counsel.

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