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Omni Bridgeway On How Litigation Finance Will Mature

By **Kevin Penton**

Law360 (January 26, 2022, 10:57 AM EST) -- With every year that passes, litigation funding increasingly becomes an accepted part of the legal industry, says Matthew Harrison, co-chief investment officer of Omni Bridgeway's U.S. operations.


Matthew Harrison

"When I started in this job seven years ago, it was more of a David versus Goliath proposition, and we didn't really know where the industry was going to go," Harrison said. "Now, it's obviously here to stay."

Assets managed by the litigation finance industry doubled from 2017 to 2020, reaching $10 billion, according to the International Legal Finance Association, a global industry association launched in 2020 by several of its biggest players, including Omni.


Jim Batson

Harrison and Jim Batson, the other co-chief investment officer for Omni in the United States, recently spoke with Law360 Pulse about the present state of the litigation finance industry, and how they anticipate it evolving in 2022.

The interview has been edited for length and clarity.

How do you anticipate the increase of capital into litigation funding will impact the market in 2022? It appears that money is coming in from broader sources, as more look at litigation funding as an investment possibility.

Harrison: There has been a trend over the last few years of more and more entities coming into the marketplace wanting to fund litigations. More hedge funds or family offices that are interested in dabbling in the space. And then there have been new litigation funding companies that have announced that they have raised capital and they're opening up shop. I've actually seen that type of capital taper off significantly over the last year or so. I suspect part of that is because the slowdown in the courts have given new entrants a little bit of pause, because they recognize that their money might be out there longer than it otherwise would've been.

The other thing is the broader types of entities that are interested in investing in this space, such as pension funds, university endowments and so forth. Those entities don't tend to be the ones that invest in cases directly, but they are becoming the kind of entities that are investing in litigation funding companies like Omni. That kind of capital will continue to come in because they realize that they want to invest with people who have experience and who know how to do this.

You mentioned that there's been a growth in the number of funders. How is this increase affecting the market? Is there a possibility that there could be too many lenders, and we'd be looking at some form of consolidation over the next year?

Harrison: We've seen an increase in competition every year that we've been here, and I think it will continue into 2022. I don't see market consolidation happening. What I do see are new entrants that might not have as much experience as some of the key players in the industry. Competition is good: It could benefit consumers, in terms of pricing. As a company, we've become more flexible because of competition. But I do want to note that there are risks. When you have new entrants into the market who have not been in this space and don't really know how it works, you can have hiccups.

Claimants should be wary of folks who come in with pricing that is too good to be true. They start at a low price, and then they change the terms or the pricing when they have the claimants over a barrel. Or companies that aren't properly capitalized or companies that aren't cognizant of the legal ethics risks that are out there. So I think there is some risk. I think you're going to see more and more of what we call fly-by-night funders or garage funders who may not know all the ins and outs of the industry. I think consumers need to be cognizant of that and think about the track records of the players in the market.

The District of New Jersey in June created a local rule that requires litigants to disclose certain types of litigation funding agreements. Is that something that may broaden in the next year or so, and if so, how would it affect the industry?

Batson: I think it's too early to tell. Since that court ruling took effect, I'm not aware of very many disclosures having taken place. I don't expect that to increase rapidly or to become accepted. I think the District of New Jersey is really an outlier in that regard. At the same time, it could increase awareness of litigation financing as a solution, as more plaintiffs and defendants become aware of it. That could be a positive for the industry.

I think the big concern is that the proponents of disclosure are really interested in getting discovery that they otherwise would not be entitled to, as a means of creating a sideshow that further increases the costs for the plaintiffs.

Harrison: I think Jim is right: The push for disclosing who the companies are is a precursor to discovery in this area from funders and from the companies that use funding. But what we've also seen is an overwhelming number of courts rejecting discovery, either because of relevance grounds or because of the attorney work product doctrine.

Are the types of clients that use litigation funding evolving? Are larger firms or companies coming to you that may not have come before?

Batson: I've seen an acceleration, in part due to the pandemic, in the awareness of litigation finance. When the pandemic first hit, everything shut down pretty quickly. Litigators in particular were not doing as much business. All of a sudden, lawyers and in-house counsel had time and an interest in learning about things that they just didn't have time to focus on previously. The demand for us to give presentations to law firms and companies increased considerably, along with inquiries.

I think that was a function of the time that lawyers had on their hands, but also the recognition that they were going to need to look for additional sources of revenue, both because of the negative impact the pandemic had had, but also the recognition that the practice of law was going to take a while before it came back.

The types of companies that are interested are far greater now. It didn't use to be that the largest companies out there used litigation finance. Now they do. It didn't use to be that the top 10 law firms in the country were focused on litigation finance. But now they are.

--Editing by Brian Baresch.
