

2023 DISTRESSED INVESTING CONFERENCE: INVESTING IN LITIGATION FINANCE



MEET THE PANELISTS

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WHAT IS LITIGATION FINANCE?

- Litigation finance, or litigation funding, provides businesses, law firms, estate fiduciaries, and others with capital to pay for commercial litigation and arbitration
- Funding may come in the form of advances to cover fees and expenses as they are incurred or monetization of the claim/advance of entitlement, among other structures, and may cover a single matter or a portfolio of claims
- Funding does not impact control of the litigation, which remains with the claimant
- Capital typically is non-recourse, meaning the funder receives return on its investment only if the claimant wins

WHO ARE THE PLAYERS?

- “Pure-play” funders
- Multi-strategy Hedge Funds with side pockets
- Small players/brokers
- Litigation trustees/plan administrators

WHAT DOES THE PROCESS LOOK LIKE?

INITIAL REVIEW

- EXECUTE NDA
- SUPPLY BACKGROUND DOCUMENTS

DILIGENCE

- MERITS
- DURATION
- TERM SHEET

COMMITMENT

- EXECUTE DEFINITIVE AGREEMENT

MONITORING

- FUNDER MONITORS CASE AS IT PROGRESSES

WHAT ARE THE BENEFITS TO THE CLAIMANT?

- Eliminating the downside risk of running up fees and expenses pursuing a claim for an uncertain recovery
- Upfront capital to litigate a claim to judgment/settlement so concerns around costs or ability to pay aren't unduly driving decision-making
- Transforming unenforced judgments from "legal paper" into cash
- Opens up choices of counsel
 - Pure contingency counsel may be overly conservative/risk adverse in evaluating a settlement)
- Supports the decision to pursue or not pursue a claim, as funders independently evaluate its viability and value

HOW CAN LITIGATION FINANCE BENEFIT ESTATE FIDUCIARIES?

- Litigation trusts formed following confirmation of a plan of reorganization are frequently vested with a debtor's preserved causes of action
- These claims may be among the trust's most valuable assets and represent an important potential source of recovery for creditors
- However, plan may not provide sufficient "seed money" to allow a plan administrator or litigation trustee to litigate as desired
- Funding is a non-recourse way of supplementing seed money to maximize creditor returns

WHY INVEST IN LITIGATION CLAIMS?

- Access to a growing alternative asset class
- Investments in legal claims are generally uncorrelated to volatility in capital markets
- Outsized historical returns compared with other alternative asset classes
- Moderate time to liquidity compared to other alternative investments

KEY TAKEAWAYS

- Litigation funding can be a valuable tool to assist companies, law firms, and estate fiduciaries in monetizing complex claims
- Funder can be a valuable partner in evaluation and pursuit of litigation/arbitration
- While paying returns to funder may be expensive, the investment is non-recourse: funder only gets paid if pursuit of claim is successful
- For estate fiduciaries in particular, can provide a source of funding in excess of plan “seed money” that allows monetization of estate causes of action that may not otherwise be possible



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