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A tale of three funders

Ben Rigby - 17 September, 2014

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London’s litigation funding market is growing. Why should law firms take note? Three reasons: increased investment, leadership changes, and expansion in the industry.

No sooner than is summer over, the serious business of promoting litigation funding cranks into gear again. With two rooftop parties held by funders in as many weeks - each enjoying its own unique aspect of London’s skyline - it seems the sky really is the limit.

INTEREST IN INVESTMENT

London’s litigation funding community is clearly confident. The first indication of that confidence can be seen in the most crucial measure of all: investment.

Without investment, funders cannot fund cases, meet their liabilities as they fall due, or else possess insufficient reserves. Funding is, after all, a guarantee that requires deep

pockets. The December 2013 *Excalibur* case, which saw **Clifford Chance** act for **Excalibur Ventures** against US oil companies, **Texas Keystone** and **Gulf Keystone** showed that funders' legal as well as financial capital can ultimately be exhausted by the risks of litigation.

That case concerned a dispute over Kurdish oil rights, in which USD 50 million of funding was raised for the claimants, but was ultimately dismissed following a scathing 300-page judgment issued by Christopher Clarke J in 2013. The trial judge ordered indemnity costs of nearly GBP 6 million to be paid by the claimants, alongside forfeiting security for costs of GBP 17.5 million that had been paid into court.

Investment has posed no problem for **Burford Capital**, which started September with strong half-year figures for 2014. These showed an increase of an 89% on pre-tax profit to USD 18.2 million, and a 40% increase in overall income, of which 85 % was drawn from the funder's litigation portfolio.

The company also committed USD 62 million of new capital in the period - a five-fold increase over 2013 - alongside a 63% net return on invested capital.

With a successful London bond issue raising USD 150 million of capital to be deployed, Burford's investment war chest is clearly well-stocked, and they are not shy about saying so.

CEO **Chris Bogart** said in a statement that the firm had adopted an "innovative approach to the way in which we structure our investments".

That had allowed it to access a diverse range of opportunities in corporate finance, distinct from those taken by traditional litigation funders, and to be innovative in developing Burford as an entity, "with the recent retail bond issue being an excellent example of that", he said.

Ex-Treasury mandarin, Chairman **Sir Peter Middleton** commented in a statement that the year so far has been "a transformative one for the business", which has allowed Burford to develop a more corporate structure in line with a growing maturity in the market.

Funding an important win in June 2014 for a client in Bolivian investor-state proceedings may serve as an equally good advertisement of meeting that demand as their financial results.

The continuing desire to meet that demand was very much the focus of the funder's late summer party in Cannon Street this week, which was abuzz with talk of a sharp spike in funding and recruitment.

Burford's success in raising capital has a broader benefit for the industry as a whole. Amongst the innovations in the **Association of Litigation Funders'** 2014 revisions to their code of conduct, there are now regulatory rules on capital adequacy, and ALF and non-ALF members alike have learned from the lessons of non-compliance by failed litigation funders.

LOOKING FOR LEADERSHIP

An appetite for recruitment over summer saw **Vannin Capital**'s Paris appointment of **Yasmin Mohammed** and Burford's Vannin poach of **Nick Rowles-Davies**.

That appetite remains, with Vannin announcing three senior appointments this month, which includes that of former High Court Judge, **Sir Stephen Silber, who will** act as the firm's investment committee chairman.

Belgian international arbitration lawyer **Bernard Hanotiau** has also been charged with developing Vannin's international offering, alongside a non-executive post for **Appleby's Paul Morris**, an experienced Isle of Man advocate.

Both will assist in the review of potential and ongoing cases, in particular in giving insight relating to the judgement, arbitration and mediation of complex legal cases in tandem with the funder's own assessment process.

Recently, the company funded Gul Bottlers in their dispute against Nichols PLC where the claimant was awarded GBP 8 million in damages plus costs, in which **White & Case** acted for the claimant.

Silber brings with him extensive commercial litigation experience from his work at **3 Verulam Buildings** and term as Law Commissioner. Being able to assess how a judge might see a case adds a unique perspective to investment decisions.

In a statement, Silber said he was "delighted to be joining the investment committee", adding "the portfolio of funded cases is already impressive and I look forward to working together with the team to build a further pipeline of successful cases".

Hanotiau is able to supply a similar level of insight as an arbitrator; his civil law experience is extensive - he is a respected figure in Paris and Brussels - and he has been a major player in developing Singapore's international arbitration academy, whilst also having links to Hong Kong and Dubai's arbitral institutions, as well as having served in leadership roles at the ICC and LCIA.

Morris adds offshore litigation experience, as well as his own brand of leadership as an ex-president of the Isle of Man Law Society between 2001 and 2003. His blend of asset tracing, corporate trust-busting, and ADR and commercial claim knowledge sits well with Vannin's existing expertise.

Director **Nick Verardi** commented in a statement that the appointments strengthen the funder's offering by encompassing "wide-ranging legal and commercial skills which we believe will enable us to fulfil our ambitious growth targets".

BENTHAM'S EUROPEAN EXPANSION

The final test for success of third party funding is whether the market is expanding. Drawing a veil over the status of **Argentum Litigation Funding**, which resigned from the ALF in April 2014 amid critical press reports as to its fundraising practices, the

market appears relatively healthy. **Calunius Capital** notably raised GBP 50 million for its most recent fund, which sits alongside Burford's own investments.

With the arrival of **Bentham Europe** in March this year, the list of funders has grown a little longer. Funded by IMF, it serves to support cases in funding-friendly jurisdictions such as the UK and the Netherlands.

Bentham, which celebrated its European launch with a rooftop party near St. Paul's Cathedral this week, is headed up by **Simon Dluzniak** and **Genevieve Labbe Beaumont**, with **John Walker** also providing support as the firm's managing director in Europe.

The funder is clear on its objectives. Walker tells *CDR* that they aim to fund a broad range of commercially viable cases, investing in high value commercial litigation and international arbitration claims.

"We are looking to reinvent the market for third party litigation funding with a streamlined approach to choosing cases and the financial ability to fund the largest multi-party claims," Walker adds.

Bentham Europe will focus on cartel cases, multi-party actions and securities litigation with a claim value of at least GBP 5 million in single-party cases and over GBP 30 million for multi-party claims. It has seized on the opportunities presented by recent European reform on private actions for damages (notwithstanding EU concerns over the use of funding in such claims).

Crucial to their success will be finding claimant groups large enough to make viable the economics of the minimum amount of costs involved in any large action.

Jeremy Marshall, formerly London head of commercial litigation at Irwin Mitchell, will be charged with this task as Bentham's new chief investment officer.

Marshall's practice experiences reflects much of the world Bentham will wish to inhabit: civil fraud claims with offshore elements, shareholder disputes, associated regulatory claims, claimant professional negligence actions, and large-scale investor claims. The firm itself has had a long history of involvement with litigation funders, thanks in part to its former senior partner, **Michael Napier QC**, whose role in developing the firm's claimant litigation practices helped create a platform for Marshall's hire and later success.

One area of expertise of particular benefit will be UK securities litigation arising out of market misconduct, in which Bentham Europe sees significant opportunity.

Marshall said in a statement that he was delighted "to be joining a funder with such a strong pedigree", and hailed the transformative qualities of the firm's existing funding experiences in Australia and elsewhere.

"The opportunities are significant and I look forward to developing the European market as we fund major commercial litigation and arbitration claims," he added.

“Having an experienced litigator, like Jeremy, with significant experience of the UK market will be a direct benefit to the law firms and the in-house community we will be working closely with,” Walker commented in a statement.

With offshore and New York experience at **Simpson Thacher & Bartlett**, Marshall is also familiar with innovative funding agreements, and he follows Napier, the chairman of **Harbour Litigation Funding**, into the industry with enthusiasm.

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