

***An LFJ Conversation with
Andrew Goldenberg,
Managing Director,
Goldenberg Law***

Litigation Finance Journal Conversations

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With over 15 years of experience in business and commercial litigation law, Goldenberg Law provides honest treatment and clear advice to its clients. We bring direction and sense to litigation disputes while also providing effective and aggressive representation to commercial disputes. Every day, we advocate for individuals, businesses and entrepreneurs to get results inside and outside of the courtroom.

Your practice focuses on commercial litigation. How did you first get involved with litigation finance, and to what extent does your firm utilize funding as a resource?

I first got involved with litigation finance six years ago on a large multinational litigation with many parties in different parts of the world. At that time, the industry was going through a major growth spurt with funds eager to deploy their capital (they still are!). In the end, we took a non-traditional route and went with an individual who provided my client with non-recourse funding. What was interesting at the time was negotiating a funding agreement without any real template or prior agreement to work off. The negotiation process was time-consuming, but well worth it because it forced me to issue-spot and really think through critical issues to ensure my client's interests were fully protected.

Six years later, I am constantly looking for opportunities to use litigation finance. If the case has a solid foundation, and the client is willing to give up part of the claim, third-party funding is always a great option as long as the financials make sense. That is the biggest challenge – making sure the funder, client and lawyer are all on the same economic page.

ABOUT THE SPEAKER



ANDREW GOLDENBERG

Managing Director, Goldenberg Law

Andrew Goldenberg is the managing partner of Goldenberg Law. Andrew has an active trial and appellate practice focused on complex commercial litigation. His clients and matters span multiple industries and subject areas. For example, Andrew has represented distressed debt hedge funds seeking to collect over €2 billion owed under defaulted notes issued by private equity funds, hedge fund creditors in an involuntary bankruptcy proceeding seeking to collect €110 million in monies owed under a subordinated debt offering, former employees in a bankruptcy proceeding in connection with over \$300 million in claims for unpaid compensation and an international consulting company in a \$20 million bankruptcy reorganization in New York, Tunisia and the United Kingdom.

What has your experience been when it comes to securing funding and working with litigation funders on case management? Any positives and/or negatives you can share?

When you have a good case and the client wants to pursue third-party funding, the first thing I do is reach out to funders I have previously worked with. It's great relationship-building, but more importantly it's a known quantity that I trust. The next step is negotiating a term sheet and due diligence. This is usually a prolonged and arduous process even with funders I have previously worked with. On the one side, it's understandable that a funder would want to ensure all bases are covered before deploying non-recourse funds. On the other side, litigation realities and opportunities oftentimes are presented to you with urgency and you have strike against your adversary at exactly the right moment. That urgency does not always translate to immediate funding which can take months to secure. Explaining the timing process to an eager client who wants to pursue its claims immediately can be a challenge.

As for case management, the funders I have dealt with take a hands-off approach, unless I reach out with specific questions or concerns. That said, most funders expect lawyers to provide regular litigation status reports. In my opinion, the best practice is to provide funders with status reports at least on a monthly basis.

From the perspective of a law firm, what if anything should litigation funders be doing differently when they seek to partner with law firms on claims funding? Is there any advice you can give to funders in this regard?

Do your homework and make sure in-house counsel is present through each step of the process. My initial conversations with funders are often with non-lawyers who, while very experienced and great at client/lawyer relations, do not necessarily understand all the factual and legal theories at play in a given matter. Having lawyers speaking to each other ensures the right questions and issues are addressed from the very beginning. This can save the funder and me a lot of time in the wrong run.

Also, funders should strive to be transparent on timing. They should be firm on how long each step of the funding process will take from initial case review to closing. For example, if there is a closing date in a term sheet stick to that date. The lawyer and client rely on that date for when they will commence the litigation or continue an existing litigation.

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How do your clients typically respond when you pitch the idea of working with a funder on a claim? What sorts of questions do they ask?

Who doesn't love the idea of non-recourse funding? It sounds great in theory, but to get it you have to give up a lot because of the inherent risk funders take when investing in your case. This is the most difficult part of securing funding. Trying to explain to your client the pros and cons of third-party funding. Typical questions asked of my clients are: How long will it take to get funding? What percentage of my claim do I have to give up to the funder? What do you get out of this? What happens if we lose, do I owe anything to the funder?

What are your future growth plans? How do you plan on scaling your business going forward?

I do my best to pick winning cases and aggressively pursue them to the end. That is easier said than done. I have found the best way for steady growth is to find a healthy mix of contingency and hourly cases. When the contingency cases prove successful, I try to reinvest the proceeds in the firm through marketing and client outreach initiatives.

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