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CONVERSATIONS

An LFJ Conversation with Stephen Kyriacou, Managing Director and Senior Lawyer, Aon's Litigation Risk and Special Opportunities Groups

Aon is a leading global professional services firm with 50,000 colleagues in 120 countries, providing a broad range of risk, retirement, and health solutions.

Aon's New York- and London-based Litigation Risk Group focuses on finding ways to bring low-cost insurance capital to bear on its clients' litigation-related risks, allowing them to minimize risks and take advantage of potential opportunities.

Litigation Finance Journal Conversations

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The usage of litigation insurance has increased significantly in recent years. What spurred that growth?

When I joined Aon over three years ago, litigation and contingent risk insurance policies were being written in the marketplace, but only on an episodic basis. There was very little awareness among potential buyers and their advisors that these solutions existed because only a few underwriters focused on litigation and contingent risk.

Most of the policies were written on the defense side, insuring litigation risks that were impeding M&A deals from closing and things like that.

For several years, Aon focused on turning litigation and contingent risk insurance into a more consistent business, led by my colleague Stephen Davidson, a former commercial litigator.

We worked to educate everyone, including litigators, transactional lawyers, all manner of other advisors, litigation funders, VC firms, and corporate GCs about what these insurance solutions are, their many use cases, and the value that they can provide.

Building a start-up business within a company like Aon, a massive global firm with over 50,000 employees and deep, long-standing relationships with law firms, private equity, corporates, and insurers, allowed us to leverage those relationships as we built out the business.

Another primary reason for the significant growth that we've seen was how the team began to shift the focus away from insuring M&A-adjacent litigation risks.

The best example of that shift is judgment preservation insurance, or "JPI," a term we coined at Aon and that has now been adopted by the entire industry, including insurers and other brokers.

ABOUT THE SPEAKER

Stephen Kyriacou

Managing Director and Senior Lawyer

As a member of the Litigation Risk Group, Stephen evaluates litigation-related risks and structures and places litigation risk insurance policies.

Stephen also provides consulting, broking, and advisory services on:

- Litigation-related risk management solutions;
- Litigation-driven, insurance capital-based investment opportunities; and
- Litigation claim, insurance claim, and subrogation rights sales.

Before moving to Aon, Stephen was a complex commercial litigator in the New York City office of Boies, Schiller & Flexner for almost a decade.

Stephen earned his J.D. from the New York University School of Law in 2010 and is a New York State Bar member. He also clerked for the Honorable Tanya S. Chutkan in the United States District Court for the District of Columbia.

JPI protects plaintiffs that have won significant lower court judgments against the risk of reversal or damage award reduction in post-trial motion practice or on appeal. Some insurers were initially reticent about JPI and insisted on only writing risks that had some connection to an M&A deal.

Over time, most insurers have grown increasingly comfortable with JPI because they understand that we can provide them with a fixed and finite appellate record to diligence.

Judgment holders and their contingency fee counsel appreciate JPI because it allows them to lock in a guaranteed floor value of their judgment and take a meaningful amount of chips off the table – sometimes upwards of 90% of a judgment's value.

Funders, in particular, have embraced JPI for those same reasons.

What are the most important advancements in litigation insurance of late?

The shift towards plaintiff-side judgment preservation insurance marked the first recent advancement in this marketplace. But the advancement that has supercharged JPI, along with the broader litigation and contingent risk insurance industry, was an Aon-developed innovation that we call insurance-backed judgment monetization.

The best way to explain insurance-backed judgment monetization is with an example. Imagine winning a $100 million judgment at trial. You may not see that amount for a very long time because the defendant will likely appeal, which can take years to resolve.

The defendant could win on appeal, or you could fail to replicate your initial success on remand and win less than $100 million, or perhaps nothing at all.

As a judgment holder, you can strike a deal with a litigation funder or some other entity that invests in litigation-related assets. You will be paid a portion of the face value of the judgment in exchange for giving the investor a significant share in your upside should you win on appeal.

Another option is purchasing a JPI policy, but a JPI policy by itself isn't putting any money in your pocket right now. On the contrary, money will come out of your pocket to pay the insurance premium, and any payout under the policy will only occur when the judgment goes final, which may be years later.

"We worked to educate everyone about what these insurance solutions are, the many use cases for them, and the value that they can provide."

With insurance-backed judgment monetization, however, we are effectively using judgment preservation insurance to cash out a portion of your judgment right now while the case remains pending.

We're able to do that because, by insuring the judgment, we are taking a contingent asset that could be worth anywhere from $0 to $100 million, in this example, and fixing a "floor" value set at the coverage limits that are purchased.

When lending against the combination of a judgment and a JPI policy, the lender doesn't need to consider the legal risk of the judgment dropping below the floor value set by the limits on the JPI policy.

Instead, the lender must form a view as to the durational risk of the insured litigation because both the judgment and the JPI policy will only pay out once the case has gone final.

Insurance-backed judgment monetization allows the judgment holder to monetize a significant portion of their judgment at a lower cost of capital when compared to traditional uninsured judgment monetization deals, where the monetization counterparty is taking on the legal risk itself.

Litigation finance firms appreciate insurance-backed judgment monetization as it allows them to cash out a significant portion of their return without waiting for the appeal to wend its way through the courts and then either return that cash to their LPs or use the funds they receive to make new investments.

"We have also seen the loan-to-policy value ratios on insurance-backed judgment monetization deals steadily increase since our first such deal in early 2021."

Some funders are now including provisions in their LFAs that permit them to seek judgment preservation insurance as of right in the event of a favorable lower court judgment in the funded case. These provisions require their funded counterparty and its counsel to cooperate and assist them in obtaining coverage.

We have also seen the loan-to-policy value ratios on insurance-backed judgment monetization deals steadily increase since our first such deal in early 2021.

In one recent transaction, the insured plaintiff obtained a $54 million loan backed by an approximately $70 million JPI policy that we placed to protect their $80 million patent infringement judgment.

That deal represented a more than 75% loan-to-policy value ratio, a marked improvement over the ratios we saw on these deals just one year ago.

It used to be that judgment holders themselves would find their way to us. But, in the last few months, litigation funders, hedge funds, private equity firms, and other sources of capital who are aware of what we're doing in this space have begun signing term sheets with judgment holders based on the expectation of being able to obtain insurance and then coming to us to line up the coverage that will unlock the lending opportunity.

Insurers are also more willing to insure early-stage plaintiff-side cases before the case has reached a lower court judgment, both for plaintiffs and funders.

We are also seeing insurers become much more open to doing portfolio-based deals, where they are insuring the principal invested in a group of uncorrelated litigation-related investments, and they are also becoming more open to insuring litigation funder upside. Insurers are becoming more open to wrapping loans to law firms – including mass tort law firms – with insurance coverage, as well.

Our team at Aon has also placed policies for some unique structures where insurance coverage facilitates funding for early-stage cases, specifically in the patent space.

Can you speak to the Special Opportunities Group? What kind of clients are likely to benefit from it?

My work in Aon's Special Opportunities Group, or "SOG," basically encompasses everything I do that doesn't involve structuring and placing insurance policies. SOG has historically been part of Aon's new business incubator, which identifies new solutions and products for mitigating and transferring risk.

SOG has established and maintained relationships with sources of capital, including hedge funds, credit funds, private equity firms, venture capital firms, family offices, and commercial banks.

In situations with a financing opportunity, the SOG team is equipped to refer clients to sources of capital that best meet the risk-reward profile of that particular opportunity.

Many of the same sources of capital that I just mentioned have an interest in partnering with claim holders to pursue litigation and share in any successful outcome. The sorts of opportunities I work on when wearing my SOG hat often arise from damages and business interruptions caused by natural disasters, supply chain distortions, and geopolitical disruptions.

You've been described as 'a pusher of boundaries.' Is this a fair statement, why or why not?

I think that's fair, at least in certain respects. What the Aon Litigation Risk Group team sees ourselves doing here is building not only a business, but really the broader litigation and contingent risk insurance industry.

We genuinely believe that the sky's the limit for how big that industry can grow and how successful it can become, as long as all of its leading players are doing things the right way.

At Aon, we are building this industry arm-in-arm with our insurance carrier partners, more than two dozen of whom are now writing this coverage. But the insurance industry is, generally speaking, conservative.

We could not have built what we've built so far, and we can't develop what we intend to over the next few years, by being complacent and without pushing to grow this industry.

We aim to innovate new solutions like judgment preservation insurance and insurance-backed judgment monetization and widen the aperture in terms of litigation-related risks that can be insured.

We push the boundaries of what's previously been considered possible in bringing insurance capital to bear on litigation-related risks.

At Aon's Litigation Risk Group, we have:

- Encouraged insurers who only want to look at litigation risks adjacent to M&A deals to broaden their appetite to include JPI deals where no M&A transaction is involved.
- Continued to push insurers who aren't willing to write coverage for litigation funders to consider those sorts of risks, and we address and try to put to rest whatever concerns they may have.
- Motivated insurers to dedicate more resources towards underwriting this heavily diligenced, resource-intensive coverage, including by hiring dedicated litigation and contingent risk underwriters.
- Pushed insurers who shy away from insuring patent, tort, portfolio-based, or early-stage litigation to consider those risks when we present them to expand the frame of what's insurable.
- Inspired insurers who have historically only acted as excess capacity on these policies to step up and offer primary coverage.

However, we don't ever push insurers to write bad risks; litigation risk insurance is not "bad case" or "bad deal" insurance.

We provide coverage for good cases and strong litigation-related investments to deliver ancillary benefits to our clients.

Our internal team of high-level former practicing commercial litigators analyzes every litigation-related risk that comes across our desks. We bring to market only those risks that we have concluded are worthy of being underwritten.

We never want insurers to write a policy they don't believe in. And I think the insurers we work with all understand and appreciate that.

How do you envision the growth of Aon's Litigation Risk Group in the near future?

The sky's the limit for what our team at Aon can do in this space. The deal flow that we deliver to insurance carriers will only continue to increase.

I think we will continue building our team while maintaining our status as the best-in-class broker in the litigation and contingent risk insurance space and our exceptionally high standards for what makes a litigation risk worthy of the Aon Litigation Risk Group imprimatur.

We will continue to innovate new insurance solutions and expand the art of what's possible with this insurance coverage.

More potential buyers of this insurance, on both the plaintiff and the defense sides, will become better educated about the solutions that we offer, and their lawyers, bankers, and other advisors will more regularly recommend that they avail themselves of this coverage.

As a result, more insurers will enter this space, and those already here will increase their investment in it.

In short, I believe the future for our team at Aon and the litigation and contingent risk insurance industry is unbelievably bright. And the best part is that we're still just getting started.

Learn more about Aon's Litigation Risk Group.

"We provide coverage for good cases and strong litigation-related investments to deliver ancillary benefits to our clients."