

Litigation Funding: A Tool for Risk Mitigation and Revenue Generation

00:00 – 00:05: Introduction and Welcome

Panel #1: What is litigation funding, what types of cases are suitable, how do companies typically use funding, and how does the process work?

Moderator: Monique Jilesen, Lenczner Slaght

Speakers: Jim Bunting, Davies Ward Phillips & Vineberg LLP; Patrick Cotter, Senior Litigation Counsel, Toronto District School Board, Tania Sulan, Bentham IMF

00:20 – 1:05

What factors might lead a company to consider litigation funding?

What are the reasons that a company would use litigation funding? What are the key drivers behind the decision, and what factors would a company weigh in deciding whether it is appropriate for a specific case?

Funding solutions

What types of funding arrangements are available, and what is the cost? How can companies transfer all the cost and risk, and how can they share the risk with a funder and/or their legal counsel? How can the funding be used to help companies manage the additional work they assume by pursuing the litigation?

Panel #2: Due Diligence Process

Moderator: Monique Jilesen, Lenczner Slaght

Speakers: Geoff Moysa, Bentham IMF; Myriam Seers, Torys LLP,

1:05 – 1:45

Preparation

What needs to be agreed upon before diligence commences? How long does diligence take? What questions should companies be prepared to answer and what information will they need to provide?

High level assessment

When initially discussing a case, what are the key elements that a funder will consider in order to determine if the case seems suitable for funding? What are the high-level factors that make a case suitable or unsuitable for funding?

Deep dive due diligence

As the company seeking funding, their counsel and the funder work together during due diligence, what do they assess? What work is required from the company seeking funding and their counsel during this process? What is the role of second-opinion counsel or outside experts and who pays their fees?

1:45 – 2:00: Coffee Break

Panel #3: The “nuts and bolts” of a funding relationship and selecting an appropriate funder.

Moderator: Lincoln Caylor, Bennett Jones LLP

Speakers: Simon Bieber, Adair Goldblatt Bieber LLP; Terra Rebick, Chief Counsel, Canada, Thomson Reuters; Tania Sulan, Bentham IMF

2:00 – 2:50

Key Terms of a Litigation Funding Agreement

What are the “nuts and bolts” of a funding arrangement? What are the key terms in the agreement, including return structure, rights and responsibilities, who directs counsel, who makes settlement decisions, what happens if the case goes over-budget, and termination rights? What “red flags” should companies seeking funding watch out for in the proposed terms?

After funding, what happens?

Once the parties enter into a funding agreement, how does the relationship work going forward? Is the funding disclosed to the court/defendant? What kind of updating is required? How can the funder add value during the case, how are settlement offers or disputes dealt with? What happens if substitution of counsel becomes necessary? How and when are each of the parties to the agreement paid upon resolution of the litigation?

What criteria should companies consider in selecting a funder?

There are a variety of funders active in the market, and their approaches and offerings vary. What are the differences, and what criteria should companies consider in choosing a funder for a particular case?

Panel #4: Canadian case law, international trends and special issues for arbitration

Moderator: Lincoln Caylor, Bennett Jones LLP

Speakers: Hugh Meighan, Borden Ladner Gervais LLP; Naomi Loewith, Bentham IMF; Deborah Palter, Thorton Grout Finnigan LLP

2:50 – 3:30

Canadian Case Law

Schenk v. Valeant Pharmaceuticals

Seedlings Life Sciences Ventures LLC v. Pfizer Canada Inc.

In re Bluberi

Houle v. St. Jude

International trends

How has litigation funding evolved since it emerged 20 years ago? What are the trends in other jurisdictions?

Special issues in arbitration

Arbitrations raise special issues for funding, including confidentiality and disclosure. What are the extra considerations at play in funding of an arbitration?

3:30 – 3:45: Q&A