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The Business of Litigation Finance Is Booming

More funding means more lawsuits—increasingly filed by corporations.

By Paul Barrett

The buying and selling of lawsuits–a decade-old practice in the U.S. known as litigation finance–continues to expand. Consider Pierce Sergenian, a six-lawyer trial boutique started this year by John Pierce and David Sergenian, refugees from the litigation powerhouse Quinn Emanuel Urquhart & Sullivan. The new firm already has an impressive array of contingency-fee cases, where lawyers get paid out of any trial or settlement award. The portfolio includes a high-profile suit against Snap Inc. filed on behalf of a former employee who alleges he was fired for refusing to help executives exaggerate the user base of Snapchat, the disappearing-image app.

The only way Pierce Sergenian could afford to handle the 10 cases it has on board is by selling a separate interest in the potential recoveries to a financier, John Pierce explains. Pravati Capital, a litigation funder in Scottsdale, Arizona, has promised to underwrite the law firm's current and future contingency cases. In return, Pravati will receive its own cut of any damages or settlement amounts--before clients collect anything. Specific dollar figures are confidential, but Pierce says Pravati has agreed to provide the firm with up to an eight-figure sum. Pravati's chief executive, Alex Chucri, didn't return a phone message seeking comment.

The financing of Pierce Sergenian marks the first time that a law firm and funder have gone public about the existence of such a portfolio-investment arrangement. "It sends a message to deep-pocketed defendants and their law firms that we can go up against the biggest and best," Pierce says. "It levels the playing field." If that sounds appealing–more suits on behalf of the proverbial little guy–then the spread of litigation finance should bring cheer.
Speaking of cheer, there's plenty of it at Burford Capital, the titan of litigation finance. Its new investments in courtroom combat totaled $378 million in 2016, up 83 percent. There's no reliable measure of the overall size of the litigation finance market, but Burford alone has more than $2 billion in capital invested or available to be invested, according to the firm's chief executive, Christopher Bogart. "There are new players in the market, and existing players are getting bigger," he says.

New York-based Burford is doing deals that resemble the Pravati-Pierce Sergenian arrangement, only on a much larger scale and generally with the recipients remaining anonymous. Currently, Burford has a $100 million investment in a global law firm's portfolio of commercial litigation and a $50 million investment in another large firm's arbitration cases. Burford has also invested $45 million to fuel the litigation efforts of a single corporation, British Telecommunications, whose identity leaked to the legal trade press. <https://www.thelawyer.com/bt-signs-45m-litigation-funding-deal-with-burford-capital/> (A request for comment from British Telecom wasn't immediately returned.)

Burford's investments show that litigation finance is not necessarily the Robin Hood affair that Pierce Sergenian advertises. "Corporate law departments and their law firms increasingly want to finance their litigation, just as other parts of the corporation finance their activities," says Bogart.

Complicating Burford's story is one ill-fated $4 million investment it made in 2010 in a pollution lawsuit against Chevron. A federal judge determined in 2014 that the suit was tainted by the plaintiffs' lawyer's fraud. By then, Burford had sold its interest to another investor.

Foes of litigation finance, led by the legal arm of the U.S. Chamber of Commerce, focus on the Chevron case to make the argument that such funding increases the volume of expensive, distracting, and sometimes-dubious lawsuits. As a logical matter, the Chamber has to be correct that the availability of up-front cash results in more suits. That's the whole idea. But in terms of dollars spent, litigation finance increasingly empowers corporate law firms and their clients. There's a killer empirical Ph.D. thesis to be done on how many–and what kind of–additional lawsuits actually stem from litigation funding.