Using Dispute Finance to Unlock Value in a Company

In these very challenging times, businesses can leave no stone unturned in its efforts to maximize available cash flow and maintain laser focus on its core business to ensure survival. Much has been written on strategies to enhance cash flow and preserve cash in this time of extreme crisis, but there are certain classes of assets and expenditures that are not immediately obvious as opportunities. In this excellent article by our friends at Omni Bridgeway (formerly Bentham IMF) in Canada, they summarize some of the benefits of considering litigation funding to unlock litigation recoveries and improve the bottom line by moving litigation costs off the income statement.

Further, in challenging times like these with asset values seriously depressed, insolvency & restructuring professionals like GlassRatner will be looking for all viable sources, including litigation claims, to boost recovery. Litigation funders help to unlock this value for stakeholders and bring rigour and discipline to assessing the merits of cases and pursuing them.

– Allan Nackan, Partner

Dispute finance, also known as litigation funding, is a specialized form of capital that can be used to unlock value hidden within a company. Where the company has an ongoing or potential legal claim that is likely to yield a monetary recovery, a litigation funder can advance capital on the basis of that anticipated result. It is not a loan – it is a non-recourse investment secured only against the proceeds of the litigation. Litigation funders are experts at analyzing litigation, helping companies identify and monetize hidden assets.

Dispute finance can unlock value and open avenues for cash in the following ways:

1. **Legal Fees:** Companies are often forced to choose between using their cash to advance litigation or for their core business. Litigation funding allows the client to do both. The funder provides the resources for the client to retain the law firm and experts of the their choice, thereby maximizing the chances of success, and the client can use its own capital for its business. This ensures that the company does not leave a valuable asset on the table while focusing on business priorities.

2. **Working Capital:** Where the size of the claim justifies it, clients can use litigation as collateral for working capital. This working capital can give companies the breathing room they need to stay afloat during litigation, or additional resources to pursue growth opportunities the company might otherwise have to forego.
3. **Signaling confidence to lenders or investors:** By involving a funder, a company may be able to assuage the worries of lenders or investors wary of litigation. Sophisticated funders assess cases carefully before funding them. A funder's decision to invest in a matter can therefore send a strong signal about the strength of the claim, thereby removing a hurdle to other financial support.
4. **"Rebalancing" the balance sheet:** Under generally accepted accounting principles, litigation expenses are recorded when incurred but no corresponding asset is recognized until the litigation is resolved. This is true regardless of the likelihood of success, and may have an impact over many years. This can have a significant effect on a company's bottom line. Moreover, even if the company wins, the recovery is recorded as a non-recurring event "below the line." By partnering with a funder, a company removes the expense of litigation from its balance sheet, improving its EBITDA, and ameliorating the financial consequences of bringing meritorious suits.
5. **Protecting Your Position:** Because of concerns about cost, a company may allow meritorious claims to fall by the wayside or accept a low settlement. Litigation finance allows a company to realize the full, merits-based potential of the claim and demonstrates to the marketplace that it will protect its rights – deterring potential wrongdoers and competitors, and attracting further investment.
6. **Turning a paper judgment into cash:** Companies may have engaged in litigation in the past, resulting in a favourable judgment that was not paid, often because they did not know how to enforce it in a foreign jurisdiction or against a defendant who has absconded. Litigation funders with enforcement expertise can turn these paper judgments into cash.

Dispute finance is a flexible tool rooted in an asset that is often untapped. A wide range of companies use it, and during difficult financial times, it can provide a new route to capital. To learn more about how dispute finance might assist you or your company, contact Omni Bridgeway, a global litigation funder with 33 years of experience helping companies. Paul Rand, the Chief Investment Officer for Omni Bridgeway's Canadian operations, can be reached at prand@omnibridgeway.com.

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