



# Seven considerations when your client needs cash “now”

*The right lawsuit funding deal may help your client's bottom line – the wrong one can kill it.*

## MARK BELLO

The lawsuit finance industry has experienced explosive growth over the past few years. When you look at the industry, you will find hundreds of companies that name lawsuit funding, litigation funding, legal finance, lawsuit finance or some variation of these descriptions as their core competency. If you look further into these offerings, you will encounter significant differences in what these companies offer. If you are considering referring your client to a lawsuit finance company or your client is pursuing financing on his own, here are seven questions you should ask to ensure making the best decision for your case and your client.

### **Why does your client need the money?**

Lawsuit funding can be an expensive method of obtaining needed dollars. Therefore, the prudent attorney (or lawsuit finance company representative) must discuss “need” with the client. Are there pressing financial issues? What are they? Often, we find that the client is being evicted from his/her rental home, or facing foreclosure of an owned residence. Food, shelter, car payments, medical care and prescriptions are all important items that can be secured with a lawsuit finance company's assistance. If the client is not faced with these types of dire circumstances or has other sources of revenue to tap, he/she is not an appropriate candidate for lawsuit financial services.

### **Is there potential for the funding to increase the value of the case?**

Litigation funding should be used as a strategic tool. Financially distressed clients are not a positive influence on settlement negotiations. In most jurisdictions, legal ethics require that the attorney take all settlement offers to his/her client. The attorney can make strong recommendations, even withdraw representation, but cannot “order” the client to reject an offer. Thus, an offer made in a time of great financial stress (like a pending foreclosure) is likely to be accepted, or at least seriously considered, by a financially distressed client. Lawsuit funding can offer a way to relieve an immediate financial burden so there is time to complete negotiations and obtain improved, case-appropriate results.

### **Does the funding amount fit comfortably into the projected value of the case?**

The size of any legal advance, regardless of the client's needs or wishes, must fit comfortably into the projected value of the case. This is an important legal funding underwriting skill. By way of example, if a case has a projected case value of \$50,000, a lawsuit cash advance, with projected profit, should not exceed one-third of potential case value. Otherwise, the attorney will have a very unhappy client at the end of the case, even though he or she obtained an excellent

verdict or settlement. Therefore, in our example, if the legal funding company is recommending an advance with contractual profit that requires a repayment above \$16,500, that company is doing the client and the attorney a great disservice.

### **When settlement is lower than expected, will the finance company compromise?**

The next issue is “compromise.” In our example, the attorney and the lawsuit funding company representative project a case value of \$50,000. What happens when the case, for valid reasons that were not apparent at the time of funding, settles for only \$30,000? The lawsuit finance company should adjust its principal and profit return to comfortably fit into the settled value of the case. Therefore, in our example, principal and profit should be approximately one-third of the case results, or \$10,000. If a lawsuit finance company will not promise you, in advance, to adjust rates for compromised, unexpected results, you should seriously consider referring your client to another lawsuit finance company.

### **Does the finance company have a “hands-off” policy on case management?**

The lawsuit funding company must understand that the lawsuit it is investing in does not belong to the finance company simply because of the investment. The pursuits of the litigation, strategy, negotiations, trial preparation, settlement



decisions, etc., belong to the attorney and the client. The litigation funding company should expect a regular if infrequent case update but should not interfere with the handling of the case in any manner. You, as the attorney, should not find yourself answering to, explaining your case strategy to, or being constantly contacted by the lawsuit finance company.

**Is repayment contingent upon the outcome of the case?**

Most lawsuit financing companies provide funding to clients and attorneys on a non-recourse basis. This means that repayment is contingent upon the outcome of the client's litigation. If the case fails, so does the repayment; the client gets to keep the lawsuit finance company's money without obligation to repay. Some attorneys complain about the cost of litigation advances, but consider the following: A litigation finance company invests money in cases it has no control over; through attorneys it often has no prior relationship *with*, and *for* clients it has never met. Then, remarkably, it completely excuses the obligation

if the case fails. Further, as indicated above, a lawsuit finance company may also compromise its return as settlement or verdict circumstances require.

**Does the finance company provide a profit cap on its charges?**

Very few lawsuit financial companies provide capped funding. Most legal funding companies charge "front-end" broker and other administrative fees along with interest. The principal, fees and interest are then compounded monthly. These charges, aside from being confusing, do not stop. If the litigation becomes protracted or, worse, goes to trial and is appealed, monthly compounding, over a lengthy litigation and/or appellate process, can easily become cost-prohibitive. You should therefore look for a company that does not utilize confusing monthly interest formulas and has no up-front administrative charges.

Ask the lawsuit finance representative if the company is a broker or a principal. If it is a broker, your client will probably have to pay a front-end broker

fee as well as monthly compounding on that fee. Ask the lawsuit funding company if it provides a cap on financing costs so that you and your client know in advance the maximum amount your client will be obligated to pay out of case proceeds.

*Mark Bello is the owner and founder of Lawsuit Financial Corporation. He has 30 years' experience as a trial lawyer and nine years as an underwriter and situational analyst in the litigation funding industry. In addition, he is a Sustaining and Justice PAC member of the Michigan Association for Justice, member of the American Association for Justice, Associate of the Florida Association for Justice, and a member of the Michigan and American Bar Associations. [www.lawsuitfinanceblog.com](http://www.lawsuitfinanceblog.com).*