

News Story

Is lawsuit funding worth it?

Many plaintiffs' lawyers steer clear of service, but realize it may be necessary in desperate times

By Natalie Lombardo

When Livonia attorney Terry L. Cochran first heard of lawsuit funding companies charging up to 200 percent interest on cash advances for plaintiffs in pending litigation, his reaction was: "Someone should go to jail for even offering this product."

Cochran, like many local plaintiffs' lawyers, isn't fond of lawsuit funding because of the burden such loans place on already stretched-thin plaintiffs, but he now realizes there is a need for it — in very limited circumstances.

"We only turn to [lawsuit funding] companies if the client is absolutely desperate — to the point where they're going to have their home foreclosed or something of that magnitude," he said.

"Unfortunately, with so many foreclosures ... you can't go to a bank and ask for an equity line if you've lost your job and you're hurt," said Southfield attorney Barry J. Goodman, who is past chair of the State Bar of Michigan Negligence Law Section and past president of the Michigan Association for Justice. "This is a common problem in the metro Detroit area."

Like Cochran, Goodman tries to talk clients out of using lawsuit funding because of the cost.

But if they insist, and the circumstances leave no other option, Goodman said he has helped clients secure lawsuit funding.

According to Mark M. Bello, a 30-year Michigan trial attorney and owner of Lawsuit Financial Corporation, "lawsuit funding" is a name for what companies like his do.

Lawsuit Financial provides cash advances to plaintiffs for necessary living expenses and to trial attorneys for litigation costs during the pre-settlement or post-judgment phases of litigation.

The advances allow a case to proceed through the legal process without pressure to settle early, Bello said.

As good as that sounds, however, it's the string that's attached that gives pause to attorneys like Cochran and Goodman.

Plaintiffs must use whatever settlement or verdict monies they receive to pay interest and possible fees.

Bello said the interest charged by his company depends on the quality of the plaintiff's case and the length of time the advance is out.

After all, he said, Lawsuit Financial only gets its money back if the plaintiff wins.

"A good outcome is a 100-200 percent profit basis," Bello said. "A bad outcome is the loss of our principal."

But, negotiations "are available at any numbers in between that allow for an appropriate settlement for the plaintiffs, the attorney and the funding company," he said.

Bello didn't skirt around the fact that his company is profitable.

But he stressed the profit margin is justified for two reasons: First, he's taking a large risk with his money; and second, the profits help offset the cases that fail.

Profit or not, however, the fact that Lawsuit Financial and other companies are still in business proves one thing for certain about lawsuit funding — the service fulfills a need.

That's because Michigan lawyers are not permitted to loan their clients money for personal expenses while lawsuits are pending, said Robert E. Edick, deputy grievance administrator for the Attorney Grievance Commission of Michigan.

Bello told *Michigan Lawyers Weekly* he handles about 500 transactions throughout the country and funds up to \$1.5 million annually, which is a very small margin compared to national companies.

Calls seeking comments from Chicago-based Oasis Capital and the American Legal Finance Association in New York were not returned to *Lawyers Weekly*.

Not all plaintiffs' lawyers to whom *Lawyers Weekly* spoke shared Cochran's and Goodman's support, albeit reluctant, for lawsuit funding.

Lawsuit funding companies "may have found a niche for themselves known as a necessary evil," said Jules B. Olsman, a Berkley personal injury attorney. "But I don't believe in them personally or professionally."

Southfield attorney Steven M. Gursten, who specializes in auto no-fault litigation, said he doesn't like lawsuit funding companies or what they charge.

But he can appreciate them.

"In today's world, when someone can be hurt in a bad accident and can't go back to work, but at the same time the no-fault insurance company isn't paying the wage loss or medical bills that they are supposed to be paying ... these companies can serve an important purpose," he said.

"Funding companies can prevent insurance companies from getting away with settling cases for pennies on the dollar by taking advantage of plaintiffs' crushing financial pressures."

If you would like to comment on this story, please contact Natalie Lombardo at (248) 865-3103 or natalie.lombardo@mi.lawyersweekly.com.

Seven tips for considering whether lawsuit funding is right move

Southfield attorney Mark M. Bello runs Southfield-based Lawsuit Financial Corporation, a company that provides cash advances to plaintiffs for necessary living expenses and to trial attorneys for litigation costs, during the pre-settlement or post-judgment phases of litigation.

He told *Michigan Lawyers Weekly* lawyers and clients should consider the following issues before pursuing "lawsuit funding" options:

- If the client is not faced with dire financial circumstances, i.e., he can't afford shelter, car payments, medical care or food, or has other sources of revenue to tap, then the client is not an appropriate candidate.
 - By relieving a client's immediate financial burden, lawsuit funding may eliminate the client's resolve to settle the case immediately, and, possibly, for less than it's worth.
 - The size of the lawsuit funding advance should be proportionate to the case's projected value.
 - The lawsuit funding company must have a "hands-off" policy regarding case management decisions, i.e., whether to settle, for how much, and whether to go to trial.
 - A lawsuit funding company's fees and costs must be contingent on the case's outcome.
 - A lawsuit funding company must be able to provide, in advance, a formula for its compensation, which includes, but is not limited to, the maximum amount a client may be expected to pay for the company's lawsuit funding services.
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- In order to make sure a lawsuit funding company is up-to-date with the latest developments in the growing legal finance industry, a prospective client must inquire about the company's experience and past clients' satisfaction with the company's services.

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