Michael German
Managing Director

VANNIN CAPITAL

Alan Guy
Managing Director

VANNIN CAPITAL

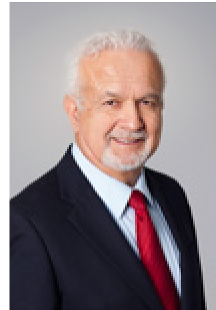
COMING TO AMERICA > VANNIN CAPITAL LAUNCHES IN NEW YORK

In August 2017, Vannin Capital announced the opening of its New York office, providing a foothold in one of the largest legal markets in the United States (and arguably the world). Leveraging the skill and experience gained through years of funding cases around the globe, Vannin has turned its focus toward the United States with six high-profile appointments.

Michael German

Alan Guy

Carolina Ramirez


Judge Moreno

Judge Smith

Judge Urbina

Investment Directors

Vannin recently welcomed three new Investment Directors based in New York. As in our other jurisdictions, the Investment Directors are drawn from leading law firms and have primary responsibility for identifying and monitoring Vannin's investments. The Vannin team in New York includes: Michael German, a commercial litigator previously with Arnold & Porter Kaye Scholer LLP; Alan Guy, a commercial litigator previously with Freshfields Bruckhaus Deringer US LLP and Cravath, Swaine & Moore LLP; and Carolina Ramirez, a commercial litigator previously with Dentons US LLP and White & Case LLP. Together, this highly-experienced and well-credentialed team of litigators will usher in an expansion of focus on the United States market for Vannin.

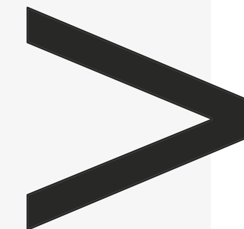
Investment Committee

With the addition of the New York office, and further expansion in the United States on the horizon, Vannin recognised the need to expand its Investment Committee. As is typical of Investment Committee members in other regions, the Investment Committee in the United States is tasked with reviewing cases generated in country and advising Vannin Capital on new investments going forward. Traditionally, Investment Committee members at Vannin Capital are well-credentialed, highly-experienced former judges who can provide unique perspectives when assessing cases. The United States Investment Committee members are no exception and will provide an unparalleled view from the bench and provide an unmitigated advantage to Vannin Capital and the clients it funds.

Judge Moreno is a former jurist in California with over 25 years' experience at all levels of the state and federal judicial systems, including four years as a federal district court judge and ten years as a justice on the California Supreme Court. Prior to his appointment to the bench, he practiced in the private sector for over ten years with the law firms Kelley Drye & Warren LLP and Irell & Manella LLP.

Judge Smith is a partner at Friedman Kaplan Seiler & Adelman LLP in New York, where he heads the firm's appellate practice. Before joining Friedman Kaplan, Judge Smith was an Associate Judge of New York's highest court – the New York State Court of Appeals, where he served for more than a decade. Since joining Friedman Kaplan, Judge Smith has been active primarily in appeals, trial-level commercial litigation, expert witness testimony, and alternative dispute resolution. He is a fellow of the American College of Trial Lawyers.

Judge Urbina has 31 years of service on the District of Columbia federal and superior courts. He served 18 years as a US District Court Judge for the District of Columbia and issued well over a thousand memorandum opinions. In April 1981, Judge Urbina became the first Latino ever appointed to the bench in the District of Columbia.



THE APPOINTMENTS OF JUDGES MORENO, SMITH AND URBINA ARE AN IMPORTANT ADDITION TO VANNIN'S US PRESENCE AND CAPABILITY. THE US WILL BE A VERY EXCITING OPPORTUNITY FOR US IN THE YEARS AHEAD AND WE ARE LOOKING FORWARD TO THE CONTRIBUTION THAT THEY WILL MAKE. I AM DELIGHTED TO HAVE ADVISERS OF THIS CALIBRE ON OUR INVESTMENT COMMITTEE.
DAN CRADDOCK, CHAIRMAN, VANNIN CAPITAL

> COMPELLING CLAIMS ARE OFTEN ABANDONED OR COMPROMISED AT UNREASONABLE DISCOUNTS IF THE CLAIMANT LACKS FUNDS TO LITIGATE EFFECTIVELY AGAINST AN OPPONENT WITH SUPERIOR RESOURCES. LITIGATION FUNDERS CAN EVEN THE PLAYING FIELD. THE THOROUGH ANALYSIS OF A CLAIM THAT IS PART OF A FUNDER'S DUE DILIGENCE, MOREOVER, CAN PROVIDE A REALISTIC ASSESSMENT, FOCUS LITIGATION STRATEGY AND FACILITATE SETTLEMENT.
> CHARLES G. BERRY,
> LITIGATION PARTNER,
> CARTER LEDYARD & MILBURN LLP

The risks and rewards of funding in the United States

The decision to enter the United States market was an easy one for Vannin Capital. The United States offers a sophisticated and stable legal environment, the decisions and judgments of which are recognised globally by other nations and dispute resolution centers. And the jurisdictional reach of courts in the United States is also exceptionally broad. Multinational corporations and other large businesses, government and governmental actors, and high net worth individuals invariably conduct business that has at least some touchpoint to the United States. And even when they do not, those same actors typically are engaged with large banks and other financial institutions that have significant ties to the United States. The result of this constant contact with the United States is that many disputes end up being litigated in United States courts or through dispute resolution programs sited in the United States, and the results of disputes resolved elsewhere are often enforced here.

However, the decision to resolve disputes in the United States is often a high-risk, high-reward proposition. In exchange for a neutral judiciary and a deep-bench of talented advocates, litigants in US courts often face substantial costs associated with resolving disputes. And while arbitration often serves to limit those costs to some extent, the bloat of costs in the United States is often felt regardless of the form of dispute resolution chosen. This presents a unique opportunity for clients to benefit from funding – it provides a mechanism for clients to control costs, improve financial statements, and manage risk, all while benefitting from the advantages the United States offers as a forum.

"LITIGATION FUNDING IS ONE OF THE MOST IMPORTANT DEVELOPMENTS IN THE LITIGATION LANDSCAPE OVER THE LAST DECADE, PARTICULARLY IN THE ANTITRUST ARENA. ANTITRUST CASES CAN BE EXPENSIVE, AND IT IS DIFFICULT TO PREDICT HOW EXPENSIVE AT THE OUTSET. THIS CAN SCARE FIRMS FROM TAKING POTENTIALLY MERITORIOUS CASES. LITIGATION FUNDING ALLOWS A FIRM TO LAY OFF RISK AND BRING CLAIMS THAT OTHERWISE MIGHT NOT BE PURSUED. IT EXPANDS THE PIE FOR LAW FIRMS AND ACCESS TO THE COURTS FOR LITIGANTS."

DOMINIC SURPRENANT
PARTNER
QUINN EMANUEL URQUHART & SULLIVAN, LLP

Benefits of dispute resolution in the United States

The legal system in the United States draws on a substantial body of substantive and procedural laws that govern everything from where a claim may be properly litigated, to the types of claims that are recognised, the evidence that may be offered (or not) in support of those claims, the method and by whom decisions are to be rendered, and an appeal process to ensure that the rules are followed correctly and fairly. This system of jurisprudence draws rules from the US Constitution and similar documents adopted by the US states and territories, federal and state legislation, rules of procedure, decisional law, administrative law, and traditional common law. And, as noted previously, the rules are administered by neutral, well-trained and highly-experienced members of the judiciary and there is a deep bench of able advocates available to assist clients as needed.

While not entirely equivalent, arbitration and other private methods of dispute resolution are similarly supported. The existence of numerous agencies that provide fora for dispute resolution, well-established and stable procedural and substantive rules often incorporated into agreements to privately resolve disputes, a deep-bench of experienced neutrals, and private decisional law all play to the strengths of private dispute resolution in the United States.

While benefitting from these systems of justice, litigants in the United States also enjoy financially substantial judgments and awards. A number of factors contribute to large damages awards in United States courts. Once again, clients vindicating rights in United States courts benefit from the talent possessed by the judiciary and the bar: courts and counsel can be expected to understand the evidence regarding damages in even the most complex cases. And because there is a robust system of review, even when lay juries are involved, post-trial motions and appeals provide litigants an opportunity to challenge awards that are not consistent with the evidence.

More importantly, rules governing damages are generally designed to put a claimant in the same position it would have been in but-for a defendant's misconduct. The measure of make-whole damages is often uncertain, which the law tends to resolve in favor of the party that was wronged, not the wrongdoer. Moreover, certain types of claims may also allow for trebling of damages or for awards of punitive damages. As a result, awards in the United States can easily reach into the billions of dollars. For example, in 2016, a database that amalgamates judgments and awards from all over the United States reported the largest verdict of the year, USD $3.01 billion in a contract law dispute between Hewlett Packard and Oracle. This case was not an outlier. In the same year, a patent infringement claim related to a Hepatitis C drug resulted in an award of USD $2.5 billion. All told, that same database was able to identify at least 100 cases in which damages awarded met or exceeded USD $20 million.

Importantly, these figures and averages only derive from publicly available information about judgments and awards. Out-of-court settlements and private dispute resolution awards are generally not public in the United States. In fact, the parties often contract to keep those figures private or settle on the basis that the agreement will remain confidential and not be disclosed. But experience dictates that these awards and out-of-court settlements can be just as significant as those awarded at trial.

Dispute resolution in the United States is expensive

Not surprisingly, the benefits of resolving disputes in the United States come with concomitant risks and expenses. For example, a recent survey reported that corporations spend in excess of USD $1.5 million per year on attorney fees for every USD $1 billion in revenue the companies generated. And a government report from 2008 suggests that companies spend on average nearly USD $115 million on litigation costs per year.

Aside from the costs of external counsel, there is one enormous driver of these expenses: discovery.

It bears noting that discovery is one of the major benefits of litigating or arbitrating in the United States. Indeed, the idea that a claimant is entitled to access information held by a defendant is ingrained into our judicial and arbitral systems (although on a more limited basis in arbitration). This is particularly so in situations where the wrongdoer retains much, if not all, of the information that the wronged party requires to prove their claim to degree necessary to be entitled to discovery.

But discovery of information, particularly in the advent of the information / digital age, comes with excessive costs. Most US courts will allow discovery of relevant information in a party's possession, custody, or control. Accordingly, claimants are often able to obtain evidence held by a defendant's affiliates or in jurisdictions where disclosure would not be required in a local suit. Moreover, a claimant may also be able to obtain discovery of relevant information from third-parties who are not even participants in the dispute. Rules governing discovery in civil cases may also require both sides in a dispute to collect and disclose large amounts of information and make witnesses available for depositions and again at trial. Overall this process is expensive. For example, the 2008 government report referenced above, reported that average discovery costs often run as much as USD $2.4 million in a given case, which undoubtedly has increased since the figure was reported nearly a decade ago.

United States litigation and arbitration makes its own case for litigation funding

Taken together, the case for dispute resolution funding in the United States is obvious. Clients are often left with the need to make risk-reward calculations arising from limited resources and small or otherwise non-existent appetite for risk. In a high-risk, high-reward litigation and arbitration environment, the bar to entry for litigants with meritorious claims can be steep, and in many cases, insurmountable. Dispute resolution funding changes that calculus and can provide a significantly broader range of options for many claimants and in many types of cases.

"While third-party litigation funding has existed in the U.S. market for over a decade, its growth has accelerated rapidly over the last few years. An increasing number of contract and other kinds of commercial disputes now involve third-party funding of one form or another, the clients involved are increasingly sophisticated and diverse, and, as a result, firms like ours are much more likely to be engaged in these cases. Even large, well-capitalized clients are leveraging third-party funding to manage risk and cash flow in substantial legal matters. The U.S. market is still developing, but we expect funding to continue to grow in importance to a broad array of commercial clients and to the law firms that represent them."

Mark Goodman
Partner
Debevoise & Plimpton

David vs. Goliath Disputes

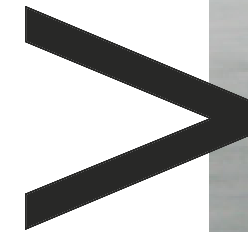
The paradigmatic example of dispute resolution funding, a small company deciding whether to take on its much larger and much better capitalised competitor, presents an even more acute situation in United States dispute resolution. Large corporate defendants often use discovery as a sword and a shield, dumping millions of pages of "responsive" documents on a smaller opponent with the hope of burying them in paper, and the expense required to review those documents. While litigants may turn to the court for relief, they are often stuck figuring out ways to sort through massive amounts of information to find that which is truly relevant to the dispute. The appearance of a well-capitalised funder, like Vannin Capital, changes the landscape of the litigation, often securing a change in tactic that focuses on the merits of the dispute and the potential for settlement.

Small / Medium-Sized Businesses

For small and medium-sized businesses facing the spectre of litigation, there is often a choice to be made: take a risk on litigating a case to right some transgression or push the business forward while ignoring the grievance. These businesses have limited capital and must constantly take stock of the resources at hand and the best way to deploy those resources, particularly as measured against risk. Engaging with a funder like Vannin Capital makes these choices unnecessary as funded businesses are able to leverage themselves on multiple fronts. Not only do they get access to capital allowing them to pursue the litigation and the business, they get access to an Investment Director at Vannin who is a trained attorney with years of experience to guide them through the process.

Well Capitalised Global Entities

For global entities, access to capital often is not an issue. Yet the demand for funding remains significant. Often, these organisations are far more interested in some of the ancillary benefits that arise from funding both single cases and portfolios. At its most basic, these types of entities are interested in risk transfer – an investment from Vannin Capital is non-recourse, so if the litigant loses the case, they do not have to repay Vannin. In that sense, global entities can offload the risk of pursuing an offensive litigation strategy while at the same time enjoying increased cash flow, greater certainty in expenditures and relatively cleaner earnings and financial statements. In those instances, Vannin Capital is able to provide a unique and bespoke solution to fit the needs of the entity



In summary, dispute resolution funding offers clients a distinct advantage in the United States, flexibility. In all situations, claimants may be reluctant to engage counsel on a billable-hour basis and major law firms may be reluctant to agree to alternative arrangements. By working with Vannin Capital, both claimant and counsel take cost concerns off the table when deciding whether to pursue a meritorious claim. Claimants can select the law firm best suited to their case and counsel can continue to serve important clients.

The law governing funding is still evolving in the United States, with different states and jurisdictions taking different views on issues like disclosure of funding and the discoverability of communications with funders. In upcoming articles and future editions of Funding In Focus, we will tackle these and other topics to provide continued insight into the law (and strategy) involved in funding claims in the United States. We see exciting opportunities to deploy our expertise and capital in the United States and look forward to exploring those opportunities with you.