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LITIGATION FINANCE IN THE REALM OF BANKRUPTCY

In this edition of Vannin Capital's In Conversation Series, Managing Director Carolina Ramirez from Vannin speaks to Farrington Yates and Rebecca Hume, Lawyers in the Disputes and Investigations team of Kobre & Kim based in New York and the Cayman Islands respectively, about their experience dealing with the application of litigation finance in the bankruptcy space.

Carolina Ramirez (CR): What types of parties can use litigation finance in distressed situations?

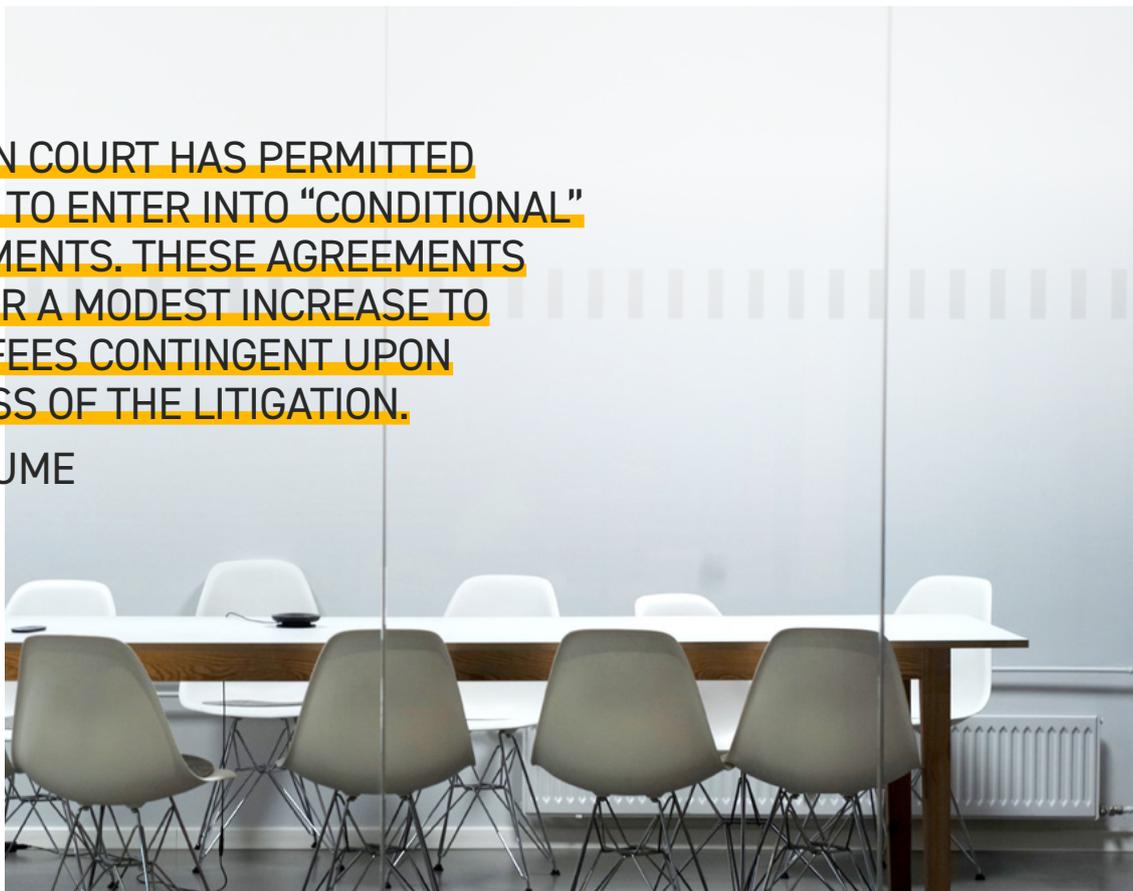
Rebecca Hume (RH): Litigation funding enables parties in distressed situations to manage risk by selling interests in proceeds recovered from their claims, if successful. A variety of parties to bankruptcy actions, including insolvency practitioners, receivers and trustees, litigation trusts, and creditors and stakeholders, are actively exploring opportunities for litigation funding. Insolvency practitioners are particularly inclined to seek funding opportunities in actions where there are substantial claims but low appetite for risk and funding.

CR: Is there a specific point in a bankruptcy that you think is best suited to bring in a funder?

Farrington Yates (FY): While each bankruptcy action presents different considerations, in general clients are most receptive to discussing financing when large claims are present without monies to fund pursuit or collection. In our practice, we have seen litigation funding used most frequently by post-confirmation litigation trusts looking to resolve certain claims and interests in a Chapter 11 case or by a foreign officeholder who has obtained Chapter 15 recognition to pursue claw-back and director/officer claims. Litigation funding in this context maximizes the capital available to the estate, thereby allowing for a faster and more efficient recovery for creditors. With increased liquidity, a trust or foreign officeholder can more effectively strategize to increase the value of its/their remaining claims.

THE CAYMAN COURT HAS PERMITTED ATTORNEYS TO ENTER INTO "CONDITIONAL" FEE AGREEMENTS. THESE AGREEMENTS PROVIDE FOR A MODEST INCREASE TO ATTORNEY FEES CONTINGENT UPON THE SUCCESS OF THE LITIGATION.

REBECCA HUME



CR: Is there a difference in using funding in Cayman as opposed to the US?

RH: Currently, litigation funding is prohibited by law in the Cayman Islands. However, litigation funding arrangements are permissible in bankruptcies and are most often approved by the court to enable a liquidator to pursue litigation in another jurisdiction, most commonly in the U.S. A series of decisions by the Cayman Court in recent years have also made inroads into litigation funding in Cayman cases. The Cayman Court has permitted attorneys to enter into "conditional" fee agreements. These agreements provide for a modest increase to attorney fees contingent upon the success of the litigation. A number of conditional fee agreements between Cayman Islands attorneys and plaintiffs who could not otherwise bring a claim without such funding have been approved. Legislation permitting litigation funding is currently pending and has the full support of the Chief Justice of the Cayman Court.

CR: That is fascinating. We look forward to seeing how this all plays out, please let us know of any developments. What types of bankruptcy claims are suitable for funding?

FY: Litigation funding can be used in the bankruptcy context to fund any type of action that creates an opportunity for significant recoveries for the estate. Most claims, if large enough, can justify funding for a commercial return on investment basis. Claw-back or avoidance claims and claims against directors/officers and professional advisors are particularly well-suited for litigation funding, especially those claims that are both high-value and low-risk. Litigation financiers can provide significant capital to the benefactor by purchasing the claim(s) outright or purchasing the right to fund and manage the claim(s).



CR: Have you sought/used funding in the past and if so, can you describe the process of obtaining litigation funding?

FY: Yes, we have a number of cases where litigation funding is being used. By way of example, Kobre & Kim currently represents a litigation trust out of a confirmed Chapter 11 plan, which is pursuing several multi-million-dollar avoidance claims with complex tracing elements against former principals. The litigation trust did not wish to invest substantial amounts of capital up-front to pursue these claims, and sought litigation funding. The litigation trust solicited competitive bids, and after a period of due diligence, selected what it considered to be the best proposal submitted. The selected funder financing the litigation requires periodic status reports, budgets, draw requests when additional funds are needed, and meetings to discuss material issues in the case. The litigation funder will share in any recovery with the litigation trust.

CR: What do you see as the benefits of litigation funding in the bankruptcy context?

FY: Litigation funding allows clients to pursue claims for the benefit of creditors and stakeholders. In many cases, litigation funding enables the litigation of claims that might not otherwise have been pursued. Bankruptcy trustees and liquidators are less likely to elect to pursue potentially valuable claims when capital is scarce and risk appetite of creditors and stakeholders is low. Additionally, trustees and liquidators may be forced to settle at a loss due to a lack of resources to manage the high cost and uncertain duration of litigation. Litigation funding provides a creative approach to addressing these concerns, and lowers risk exposure in order to encourage the litigation of claims.



CR: Music to my ears! In all seriousness, I truly do believe that litigation funding in the Bankruptcy context does provide relief to those who otherwise may not recover money that they really should not have lost in the first place, at least in certain circumstances. Have your clients typically approached you about using funding or do you present your clients with funding as one of the many options they can pursue in distressed situations?

RH: Clients have approached us in the past to suggest pursuing litigation funding, but more often, we approach clients about funding opportunities. Clients are generally receptive to the suggestion for third-party funding, and view the team positively for suggesting the idea.

FY: Litigation funding is becoming quite competitive as new entrants including investment funds and non-traditional lenders are looking to deploy capital. We actively network with these sorts of funds and lenders in order to present our clients with the most effective options for litigation funding.

CR: Farrington, Rebecca – Thank you both so much for taking the time to meet with me and for your candid responses. I learned a lot and hope to turn to you in the future with further questions as funding in the Bankruptcy practice grows.

BIOGRAPHIES



Farrington Yates
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D. Farrington Yates is an experienced bankruptcy lawyer who focuses on complex, cross-border insolvencies and restructurings. He has successfully represented debtors, creditors, shareholders, indenture trustees, official committees, asset purchasers, investors, foreign representatives and officeholders in high-value insolvency proceedings, including U.S. Chapter 11 and Chapter 15 matters. Mr. Yates has particular experience serving as counsel in matters that involve competing creditor claims and stakeholder interests. He has represented clients worldwide, including in the U.S., Europe and Asia.

Mr. Yates often works with the firm's international judgment enforcement team on cases involving fraud, misconduct and asset concealment.

Recognized by The Legal 500 US as "very responsive, always available and highly dedicated," Mr. Yates has effectively counseled clients in a variety of industries through global judgment enforcement and asset recovery campaigns that have maximized recoveries in contentious cross-border insolvencies. In addition, Mr. Yates is a Fellow of INSOL International.



Rebecca Hume
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Rebecca Hume handles international judgment enforcement, fraud and asset tracing, insolvency litigation, complex commercial disputes with particular emphasis on hedge funds, and joint venture and partnership disputes.

Her practice covers both offshore and onshore regions, and she represents shareholders and other stakeholders in both solvent and insolvent liquidations. She also regularly represents clients in high-stakes shareholder disputes including dissenters' rights matters.

Ms. Hume represents interests in the Cayman Islands and the UK in disputes related to the financial services and insurance industries, among others. Working frequently with onshore co-counsel, particularly in the United States, Ms. Hume strategizes to find creative, multijurisdictional solutions to recover assets for clients who include trustees, investors, creditors, managers, and independent directors of distressed investment funds. She also advocates for financial institutions and governments.



Carolina Ramirez
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Carolina works with law firms and claimants on how third-party funding can be pursued and utilised across a broad range of high-value commercial litigation disputes. Based in New York, her role focuses on identifying and providing a full appraisal of disputes that Vannin will consider for funding, as well as monitoring disputes that Vannin has committed to fund.

Prior to joining Vannin Capital, Carolina was a Senior Associate at Dentons US LLP, representing clients in government investigations and litigation with a primary focus on violations of the Foreign Corrupt Practices Act.

Previously, Carolina was a member of the commercial litigation team in the New York office of White & Case LLP working on a variety of general commercial claims across a multitude of different industries.

Carolina also serves on the Penn Law Board of Overseers and is a member of the junior board of New York Lawyers for Public Interest.

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About Vannin Capital

Established in 2010, Vannin Capital is the global expert in legal finance, supporting law firms and corporations in the successful resolution of high-value commercial disputes.

From single case funding, to portfolio finance and enforcement arrangements, we offer creative capital solutions that are tailored to our clients' needs.

Our global team of legal and financial experts cover the key commercial litigation and arbitration centres from our offices in London, Jersey, Paris, New York, Washington, Sydney, Melbourne and Bonn. More than just capital, we combine global experience with local knowledge to deliver the highest standard of service and expertise to our clients around the world.

A market leader, we are a member of the Association of Litigation Funders of England and Wales (ALF), conducting our business to the highest standards in line with its code of conduct.

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