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How South Florida Law Firms Are Getting Bigger Returns With Less Risk

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To secure more substantial returns with less risk, law firms in South Florida are increasing their focus on litigation financing, by which they obtain monetary resources and the legal insight that their client needs to win its case.

Eric Ostroff, a managing partner at Meland Budwick, P.A., says he is a proponent of litigation financing.

> "It is something that can be a win-win-win," Ostroff said. "It can allow clients to get access to high-caliber lawyers for cases those lawyers would otherwise be uncomfortable handling on a contingency basis."

The practice of litigation funding is big business in the United States. Litigation spending in the U.S. aggregated $21.09 billion in the year 2019, according to Statista, which is an online provider of market and consumer data. That number is projected to rise to $22.32 billion in 2020.

The attractive returns give Jeff Gutchess, a founding partner at AXS Law Group, a different perspective. His firm finances the cases themselves.

"If you bring a financier in, you are giving away a significant portion of the upside in exchange for steady cash flow and reduction of risk," Gutchess said. "We believe we are the best at evaluating the risk and in turn, we want to take all of the reward."

While Ostoff's firm uses legal skill to evaluate the cases, usually an outside litigator financing company will do the underwriting process, in a type of three-way deal.

Ostroff said Meland Budwick, P.A. started in litigation financing with nonrecourse cases —matters where litigation funders do not expect to be compensated unless the client wins — within the last year after finding a case that made sense. That is right around the time he says litigation financing has “really exploded.”

“I know people who were at absolute top-notch firms, Ivy League education, people you would typically find chasing partnership at a large firm,” Ostroff said, “that are now doing this role for litigation financing companies.”

Ostroff, in an interview with the Daily Business Review, said litigation financing had created an alternative career path for lawyers.

“For someone who is not thrilled with the big firm litigation lifestyle,” Ostroff said, “there is now an option to work for financiers.”

‘Looking for profitable investments’

In Ostroff’s initial meeting with a potential client, he said he and his team focus on three criteria.

First, they focus on the legal viability of the case and their ability to prove that the potential defendants engaged in wrongdoing or negligence.

Second, once they determine legal viability, his team evaluates how much the damages are worth.

Third, Ostroff and his team investigate the collectability of any damage award, but if the defendant is unable to pay, or if the defendant did not insure against this type of claim, then the judgment may be worthless.

> “Litigation financing companies are doing the exact same analysis, but they have different concerns than a law firm,” Ostroff said, noting some firms may look for litigation with potential financing of at least $500,000 to invest in, while others may look for upwards of $3 million.

“A law firm is concerned about cash flow and it could be a substantial investment. Litigation financing companies have all this capital they need to deploy and they’re not worried about the cash flow in the sense of billable hours like a law firm. They’re looking for profitable investments."