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Q&A: Litigation funder Stuart Grant says pandemic has raised demand, and risk

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(Reuters) - As the coronavirus crisis shutters courts and businesses nationwide, law firms and companies across the U.S. are seeking ways to conserve cash or access credit, leading some of them to turn to litigation funders, said Stuart Grant, the co-founder and managing director of Bench Walk Advisors.

Grant said his litigation financing firm has seen a "dramatic increase in demand" for funds since the pandemic hit the U.S.

Reuters recently spoke with Grant, who was previously a prominent shareholders' lawyer at Grant & Eisenhofer, about where that demand is coming from and the impact of the pandemic on litigation finance investments.

This interview has been edited for clarity and length.

REUTERS: Where is the increased demand for litigation finance coming from?

GRANT: Top-tier plaintiffs' side contingency-fee law firms, who up until this time were financing things themselves are saying, "We're concerned that our income stream could be stretched out and we're not sure that our balance sheet can deal with that."

We're also seeing corporate litigants say, "We were fine paying hourly rates and weren't interested in litigation finance. Now the world has changed, and our ability to borrow, our revenue is going to be dramatically off. We have to find quick access to capital to finance our case."

We're even seeing large AmLaw 100 or 250 firms seeking funding, because their standard bank financing has dried up.

REUTERS: What do those firms want funding for?

GRANT: They're trying to hire more bankruptcy lawyers. They need money for that. Banks are willing to finance firms' receivables. They're not really interested in laying out \$5 million to bring a bankruptcy group over.

REUTERS: Were you hearing from that sort of firm before the pandemic?

GRANT: No. This is in the last couple of weeks.

REUTERS: Are there any trends in what you're being asked to fund since the pandemic hit?

GRANT: More people than usual who had self-funded are coming to us in the middle of a case instead of the beginning.

REUTERS: Why is that?

GRANT: Litigants who put a few million dollars into a case see they're going to have to put in another \$5 to \$10 million next year. They're saying, "That's not a choice we want to make with the limited capital we have now."

REUTERS: Are you concerned that even though you're getting more requests for funding, that firms losing revenue because of the pandemic may not be able to pay you back?

GRANT: Absolutely the credit risk has increased. Again, firms who had never come to seek funding because their credit was so good that they could write to a bank are now writing to us for options.

The other issue in single-case financing is that cases are now going through courts that will have a significant backlog. They're not even going to get to civil cases until September, if things are going well. So now as you're underwriting you have to think, "Cases I thought would take two years are going to take three years." If what you're lending against is a recovery in a specific lawsuit, the longer that takes to recover, the less your return is, or the more you have to charge to be able to make the same return.

REUTERS: Are you charging more? And what does that look like, if you are?

GRANT: We don't have off the shelf products. The pricing is related to the likelihood of success on the case, the length of time, etc. But, for example, if there were things that were priced at, and I'm now just making up a number so you can see the magnitude, at 25% of the expected [internal rate of return] now it might be 28% to 30%.

REUTERS: How are court closures impacting your return on existing investments in cases?

GRANT: That depends on how they were structured. If a person is paying a flat interest rate, or a guaranteed internal rate of return then the risk is on the borrower. Conversely, when you've agreed to a piece of the recovery, then the longer something takes you're still going to get the same amount of money. If you get \$1,000 two years from now, that's worth a lot more than if you get \$1,000 three or four years from now.

REUTERS: What impact do you think this will have on the plaintiffs' bar?

GRANT: They're going to be a little bit hurt. As long as the courts aren't around it is tough to settle things, get approval, have cash flow come in. Assuming we get through this, I think the opportunities for the plaintiffs' bar will be extraordinary.

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