



Friends in high places: how IP firms court litigation funders

Managing IP

Rani Mehta

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Firms explain why they focus on building strong relationships with funders and how they can serve as useful sources of work

Litigation funders provide great opportunities for ambitious patent owners that aren't willing or able to stump up the cash to see a case through to trial.

Companies and individuals often turn to law firms to help them procure funding.

Sources at firms that frequently advise plaintiffs say they have worked diligently to build relationships with funders.

Fund finding

Blair Jacobs, principal at McKool Smith in Washington DC, says he tries to treat funders like clients.

"When you have relationships with multiple funders, you can propose a case that warrants investment to several different funders. In doing that, you're getting the best opportunity for your client," he says.

"Knowing and being friends with lots of funders gives you that extra boost."

Others agree that it's important to establish these connections.

Marc Belloli, partner at Bunsow De Mory in California, says he's been building relationships with funders for years.

"If you don't have those relationships and access to capital, I think you're severely hampering yourself as a lawyer and the resources available to your client," he says.

These relationships are also advantageous because they can lead to more work.

Jacobs at McKool Smith notes that funders will often refer potential clients to his firm when they're getting closer to deciding whether to invest in a case.

Robert Kramer, partner at Kramer Alberti Lim & Tonkovich in California, agrees.

"Many of the cases our firm handles originate from funders making a recommendation to a client," he says.

Keep talking

Lawyers have a few tricks up their sleeves for maintaining connections.

Jacobs at McKool Smith says he's regularly in touch with funders even if he doesn't have a case to pitch.

He talks to them about changes in the marketplace and in the firm's strategy and lets them know that he might have opportunities in the future.

He also attends conventions where funders are likely to be.

"That really builds your network so when you have these opportunities, you're bringing more people to the table. That's ultimately of value to your client," he says.

Of course, firms should back up these gestures with merit.

It helps to highlight a firm's litigation track record as well as why particular cases are attractive investments.

Belloli at Bunsow De Mory notes that funders are looking for a return on their investment just like clients.

"While they're not clients, and you don't represent their interests, the pursuit of funding for your clients is quite analogous to the pursuit of clients themselves."

Kramer adds that it's crucial to be transparent with funders.

"That builds trust, makes people want to work with you, and creates a true partnership. If outcomes occur that are different than we expected, we're able to work through issues that arise."

But this relationship can be a two-way street.

Jason Wietjes, shareholder at Polsinelli in Dallas, says he holds regular meetings with funders.

"But the funders are generally reaching out to us just to check what's going on with our practice and what's important to our clients. They're really providing a service and want to provide the best options that they can when it makes sense."

It's also possible, however, to handle interactions with funders on a case-by-case basis.

Jason Sheasby, partner at Irell & Manella in California, says his clients usually handle the process of seeking funding themselves.

There are examples, however, in which Sheasby would also treat funders like clients.

"I treat the recommendation of a case to the funder with the same gravity that I do the recommendation of a case to the client," he says.

Sheasby adds that he makes it clear that the client has absolute control over the litigation but commits to giving the funder the same transparent advice that he's giving the plaintiff.

Data dives

When clients do want firms' help with selecting the right funders, counsel may have to do some due diligence – especially if they receive inquiries from funders they haven't worked with before.

Jacobs at McKool Smith says funders can provide the results of previous cases they've invested in.

"We'll look for that data just to make sure that if we don't already have a referral or don't already know somebody at the funder, that we're working with someone that's reputable and will serve as a partner in the process."

He notes that funders can't control the litigation, but that it's good to have partners that are nice to work with, are smart, and have been successful in the past.

He adds, however, that he's gotten to know the great majority of funders that are out there.

Kramer at Kramer Alberti Lim & Tonkovich agrees and notes that he generally prefers to work with established funders.

That said, his firm receives a lot of solicitations and is open to at least talking to newer and smaller outfits.

"We find it interesting to speak with them. We learn things from sharing experiences. But most of the time, we are more interested in working with more experienced and established funders," he says.

Finding the right balance is important.

Belloli at Bunsow De Mory notes that litigation funding is a relationship-based industry.

He's more likely to trust funders that he's done more deals with and has a track record with. Such funders will also likely have more confidence that working with his firm will lead to a significant return on their investment.

But he's always open to adding new funders to the mix. "You don't want to put all your eggs in one basket," he says.

When firms don't put all their eggs in one basket, they'll increase the odds of getting favourable deals for their clients.

Treating funders like clients and checking in from time to time can go a long way towards meeting that goal too.