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Balmoral Wood eyes upstart litigation-finance industry with $150 mln fund

October 16, 2016 By Kirk Falconer

Balmoral Wood Litigation Finance has launched a US$150 million ($200 million) fund targeted to an emerging industry that specializes in bankrolling lawsuits, a person with knowledge of the matter told *PE Hub Canada.*

Balmoral's fund is earmarked for opportunities in the commercial litigation-finance industry, the source said. It is expected to operate like a fund-of-funds, committing capital to a select number of established global firms.

The fund is being marketed to a range of limited partners, including family offices, high-net-worth investors and pension funds, the source said.

Toronto-based Balmoral confirmed with *PE Hub Canada* that it is raising a fund but declined to share further details.

The rise of litigation finance

Litigation finance, or third-party funding of legal disputes in exchange for a portion of the payouts, is a new and fast-growing asset class. Originating in Australia in the 1990s, it has in the last decade gained a foothold in North America and Europe.

Its spread has been enabled by a series of court rulings in key jurisdictions.

Rulings have overturned historic prohibitions on third-party funding, often in support of small plaintiffs battling well-heeled defendants. In such cases, outside investors were allowed to fund plaintiffs, typically with restrictions on how much of the proceeds could be collected.

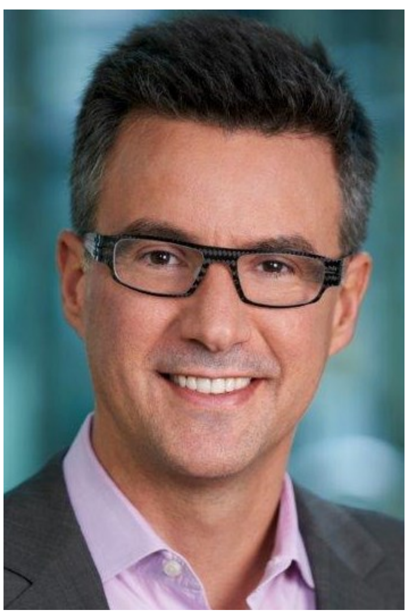
Bankrolling of commercial suits broke ground in Canada last year. In a US$10 million contract case involving **Valeant Pharmaceuticals**, an Ontario Superior Court judge ruled the plaintiff could access third-party funding. The investor in *Schenk v. Valeant* was **Redress Solutions**, a U.K. firm owned by family offices.

Redress is part of an industry spawned by such precedents. Its highest-profile members, including **Bentham**, **Burford Capital** and **Gerchen Keller Capital**, have scaled up large, widely-diversified portfolios of commercial and arbitration cases.

Supply and demand

Some of these firms have posted outsized returns, prompting sizeable commitments from institutional investors. Earlier in 2016, the *Wall Street Journal* reported the global litigation-finance industry raised more than a billion dollars in recent years.

Balmoral Principal **Edward Truant** said performance is being driven by strong demand for litigation financing, which is far outstripping supply.



Edward Truant, Principal, Balmoral Wood Litigation Finance

"Litigation finance is becoming a global phenomenon, he said. "But we are in the early stages of the asset class. It remains an inefficient industry in need of capital. Early entry can give investors of all types and sizes access to its primary attributes, which include superior returns."

Other benefits include investment hold periods that are shorter relative to other private equity categories, averaging two to three years for completed cases, Truant said.

Proponents and detractors

Along with securing backers, litigation-finance firms have attracted criticism. Opponents include the U.S. Chamber of Commerce, which called third-party funding "a clear and present danger" that will result in more "abusive" lawsuits and undermine the attorney-client relationship.

But contrary arguments, sometimes coming from lofty heights, have proved influential. Three years ago, **Lord Neuberger**, president of Britain's Supreme Court, defended litigation finance as "a means of securing effective access to justice." He called it "the life-blood" of the system.

Myriam Seers, Senior Associate, Torys LLP

Myriam Seers, a senior associate at Canadian law firm **Torys**, says Neuberger's view is increasingly holding sway. She said international experience and rulings like *Schenk v. Valeant* have intensified interest in litigation-finance opportunities and helped validate its role in the legal process.

"Litigation-finance firms often take on claims that could not be pursued otherwise, but only those with a high probability of success," she said. "They add a lot of experience and value to the process."

Third-party funding is also seen by many businesses as a valuable risk management tool, Seers said. By helping to remove suits from balance sheets, outside investors provide executives with "another option as they decide how to deploy limited legal spend budgets."

First of its kind?

If Balmoral is successful in marketing its fund-of-funds-like vehicle, it may be the first of its kind. Fundraising reports point to few, if any, examples of a multi-manager investment strategy focused on the global industry.

Truant, formerly a partner at **Imperial Capital Group**, joined Balmoral in mid-2015. His colleagues include Principals **David Sedgwick** and **John Fisher**. Fisher, founder and CEO of **Bridgeport Asset Management**, was previously a senior investment pro at **Clairvest Group**.

Photo of Edward Truant courtesy of Balmoral Wood Alternatives

Photo of Myriam Seers courtesy of Torys LLP

Photo of gavel and coins courtesy ©iStock/DianaDuda

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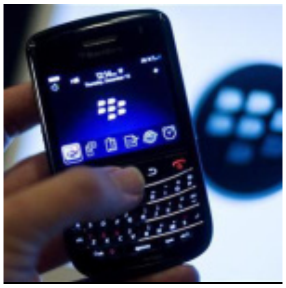

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