

The New York Times

Investing in Lawsuits, for a Share of the Awards

New York Times

By Jonathan D. Glater

June 3, 2009

Richard W. Fields says he has come up with a win-win financial strategy for the downturn. He is investing in lawsuits.

Not in trip-and-fall cases, mind you, but in disputes that are far larger, more costly and potentially more lucrative, often pitting major corporations against each other.

Mr. Fields is chief executive of Juridica Capital Management, which runs a fund that invests in one side of a lawsuit in exchange for a share of any winnings.

“It’s always a good time to invest in litigation,” Mr. Fields said, though he added that the weak economy helped. “When the recession started to bite, the phones started ringing off the hook. Last year, we looked at 122 cases and we made 17 investments.” A small but growing number of investors are exploring this idea, helping companies avoid some of the risks and costs of litigation in exchange for part of any money paid out when the case is settled or resolved by a court. After all, it can be costly to hire lawyers, who may charge close to \$1,000 an hour at the most elite firms.

Credit Suisse has a unit devoted to this kind of investing. Juris Capital, a Chicago firm backed by two hedge funds, also does it. Several other hedge funds do, too.

“Given the conditions in the economy, you have a set of circumstances that are pushing both clients and law firms” to look for outside investor help, said David Desser, managing director of Juris.

Companies often jump at the chance to have an investor help pay for litigation, and lawyers usually appreciate having money set aside to pay them.

Firms in this business do not reveal which cases they invest in, but they claim strong returns. Shares of Juridica Investments, the fund, have risen 24 percent since they began trading on the London Stock Exchange in December 2007. The company’s average investment is \$7.5 million, Mr. Fields said, and it has about \$200 million under management.

Juris typically invests \$500,000 to \$3 million in a case, Mr. Desser said. He would not identify the company’s backers, but said that “on the portfolio as a whole, our returns are well in excess of 20 percent per year.” He added, “We’re certainly beating the market.”

One case that Juris invested in was a dispute between WaKuL Inc., an apparently defunct company that once offered high-speed Internet and other services, against Ericsson Inc. WaKuL charged Ericsson with breach of contract and fraud, and won nearly \$3 million in damages in an arbitration. Ericsson challenged the result in federal court and in a federal court of appeals.

Because of an outside investment from Juris, WaKuL could afford to keep fighting, said Geoffrey R. Unger, a lawyer at DLA Piper in Austin, Tex., which represented WaKuL.

“For any law firm — and for clients that may not have the financial wherewithal to pursue things — it makes a big difference,” Mr. Unger said.

Mr. Desser declined to disclose how much Juris invested or received. WaKuL ultimately persuaded the court to enforce the result of the arbitration. The lawyers in the case received a total of more than \$650,000.

Other firms that invest in lawsuits either would not discuss their practices publicly or did not return calls.

The investing companies say that because they do not take control of the lawsuit from the company and lawyers waging it, their most important task is identifying cases likely to produce a substantial return. That means, for example, rejecting claims that raise novel legal questions or that will probably end up before a jury, Mr. Fields said.

“Juries are a coin toss,” and that is too much uncertainty, he said. The company also avoids cases where the outcomes are difficult to predict because they could draw political attention or could be reversed on appeal, and cases in which the other side lacks deep pockets.

When considering a case, the investors talk to the company and its lawyers about the facts and about their legal strategy. They also seek analysis from outside specialists, usually experienced lawyers.

Mr. Fields said that he initially worried about getting lawyers with enough expertise to review cases for Juridica. “But we found that they were very intrigued by it because they could look at somebody else’s case,” he said.

Law firms refer cases to the investors, no doubt because they want to make sure their clients pay the bills, Mr. Fields and Mr. Desser said. Relationships with lawyers at big firms are critical, and each man has many contacts from his own time practicing law.

The use of outside money raises potentially tricky legal questions, said Anthony J. Sebok, a professor at Benjamin N. Cardozo School of Law in New York, who has studied the business.

It would be improper for the outside investor to interfere with the relationship between lawyer and client by trying to influence the case, Mr. Sebok said.

The larger question, though, is whether the mere existence of outside investors makes possible lawsuits that might not be pursued otherwise.

If the claims are valid, then they may benefit from being litigated more effectively because the lawyers have more resources. "Having funding available for cases that are good cases, cases that from a God's-eye point of view, so to speak, should've been brought, is a good thing," Mr. Sebok said.