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Maximizing Firm Growth and Profitability Using Intelligent Business Financing

Two years ago, plaintiffs' lawyer Phillip Galyen knew he wanted to grow his firm's law practice, especially the mass tort and pharmaceutical litigation dockets.

At the time, his Bedford, Texas based firm, Bailey & Galyen, represented about 400 clients who allegedly had been harmed by Vioxx and other prescribed medications, but Mr. Galyen knew that thousands of other potential clients still needed attorneys.

The problem was, taking on additional clients required a massive cash infusion to cover everything from additional staff salaries to advertising to the cost of medical reports. He needed more than the firm could borrow from a bank. So, instead, he turned to Counsel Financial Services, an Amherst, N.Y.-based company that makes loans exclusively to litigators.

"Counsel Financial came in and understood the need to have this kind of funding," Mr. Galyen says. "Within a very short period of time, we had a relationship and were funded." Since then, his firm has been able to expand its pharmaceutical docket to 2,500 clients and also launch a new class-action practice.

Mr. Galyen's experience is just one of the success stories for Counsel Financial Services, a company that has made loans to plaintiffs' lawyers since 2002.

The company currently has loans outstanding to well over 100 law firms across the country. Among the firm's most famous clients are Masry & Vititoe, the Westlake Village, Calif. firm represented in the lawsuit against Pacific Gas and Electric Company featured in "Erin Brockovich." Other members of the client roster include Denenberg & Tuffley, Bloomfield Hills, Mich; The Romano Law Group, West Palm Beach, Fla; and Zwerling, Schachter & Zwerling, New York.

"There's an enormous need for contingent fee litigator financing," says company president Paul Cody.

Lately, the company has been especially busy. As the credit crunch has caused banks to tighten lending standards in recent months, Counsel Financial is seeing more and more lawyers who have been non-renewed or shut out of traditional borrowing avenues.

"The credit crisis is increasing the demand for our product," Mr. Cody adds. Chief financial officer Michael Callahan says that queries from potential clients have skyrocketed this year. "In the last three to six months, there's been a dramatic increase in applications."

Overall, Counsel Financial placed almost $60 million in loans during the first quarter of this year, marking a new record for the company; a 200% growth from the first quarter of 2007, according to Callahan. Counsel Financial Services' typical loan is approximately $1.8 million, but the amounts range from $50,000 to $25 million.

Unlike banks, which often require lawyer-borrowers to pledge personal assets as collateral, Counsel Financial assesses the cases of the law firm and then lends money against the value of the contingent fees the law firm is expected to garner. As a result, Counsel Financial's credit lines are typically substantially larger than banks can provide.

The company has a staff of approximately 30, including six full time attorneys, who evaluate the law firms' pending cases. That process involves learning about the nature and status of the firm's case list and estimating cases values.

The attorney-borrowers remain in control of all legal decisions. They also don't provide any information that would violate client confidentiality.

Borrowing attorneys have four years to repay the loans, with interest-only payments for the first two. Those who wish to repay the entire amount sooner can do so without incurring pre-payment penalties. Counsel Financial also does not assess a fee for any unused portion of credit lines granted so borrowers have a great deal of flexibility.

The law firms that borrow money can use the funds for a wide variety of firm expenditures, including the cost of medical experts, advertising, salaries and overhead.

Many plaintiffs' lawyers who go up against deep-pocketed defendants find themselves outspent and outpapered, with endless discovery demands and the like. In some instances, plaintiffs' lawyers would otherwise not be able to continue with the case, without a loan.

"They have meritorious cases, but end up referring them out to other firms for a fraction of the ultimate fee because they can't fund the cost of litigation," says Mr. Cody. He adds that Counsel Financial Services' loans have enabled plaintiffs' lawyers to remain on the case and, ultimately, collect the full contingency fee.

In some instances, lawyers with a relationship with Counsel Financial seek additional loans to finance entirely new practice areas. Mr. Galyen, for instance, launched a class-action practice in 2007 with funding from the company, one year after he took out his first loan.

His firm's first class-action case involved representing Florida lawyers who alleged the government was unconstitutionally assessing an "occupational tax" on them. In other words, the lawyers had to pay extra taxes for being attorneys. Mr. Galyen says that case is now close to wrapping up, with a multi-million dollar settlement for the plaintiffs.

Even lawyers who would otherwise fund litigation out of their own pockets can come out ahead by borrowing from Counsel Financial Services, says Mr. Cody. That's because borrowing money can offer lawyers financial advantages over funding cases themselves.

Many attorney retainer agreements provide that disbursements are billable to clients. As such, they're treated as loans – not expenses – which means they aren't deductible at the time they're made. Meanwhile, while law firms wait for the case to be resolved and for that money to be repaid, they're losing out on the chance to invest that money elsewhere.

But when law firms borrow money, they can deduct the interest payments, which effectively slashes the cost of borrowing in half. What's more, many will be able to pass along much, if not all, of the remaining interest fees to clients.

For instance, if a law firm takes out a loan with an 18% interest rate, the firm can deduct the interest payments, making the true cost of borrowing around 9% (the exact amount will vary based on an array of tax-related factors). The firm is then allowed to pass along to clients a reasonable amount of interest on loans taken out to further their case.

The litigation funding field is still so new that the company faces the challenge of educating lawyers who are accustomed to financing cases themselves. "Most of us have spent our professional legal careers building the net worth of our law firms by taking the profits from our cases and plowing them back into the firm," says firm founder Joseph DiNardo. Some lawyers view this course of action as a "badge of honor," without calculating how much money it costs them, he says. "The opportunity cost of not using those assets to build personal net worth can be tremendous."

Counsel Financial Services is the only law firm funding company endorsed by the American Association of Justice, the world's largest trial bar. The company is also exclusively endorsed by the Texas Trial Lawyers Association, the Virginia Trial Lawyers Association as well as a number of other state associations. Counsel Financial itself is supported by one of the largest financial institutions in the world and in 2007 received an "A" rating from Fitch Ratings.

Mr. Cody says he's especially proud of those accomplishments, considering that the company is still early in its lifecycle. "It's a new industry," Mr. Cody says. "Getting people to understand that it even existed took time."

Counsel Financial
Loans to Litigators...Just Ask

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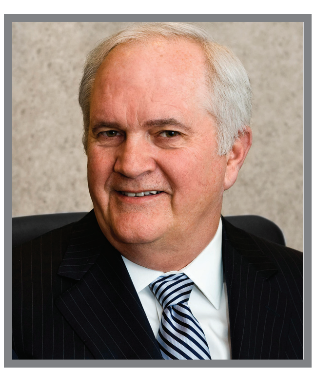
Paul R. Cody, President



Michael P. Callahan, Chief Financial Officer

Paul Cody has over 15 years of experience in the private equity and financial services areas, prior to joining Counsel Financial.

Michael Callahan is a CPA licensed in New York State, has over 25 years of diversified experience assisting companies in the development, growth and structuring of business and financial operations.

Mr. Cody and Mr. Callahan can be reached at 1-800-820-4430 or 716-568-0070.