

How 'dispute funding' can mitigate the risks of legal claims

COMPANY PROFILE
Augusta Ventures sets out the benefits of third-party finance to cover the cost of litigation, arbitration and adjudication



At some point, even the least litigious of companies will find itself in a legal dispute. In the construction sector, where cashflow is tight and margins are low, paying to conduct a claim is risky and can have a significant impact on the financial position of a business.

A potential solution may be found in the form of 'dispute funding', where a third party provides finance to cover the cost of litigation, arbitration and adjudication in return for a share of the damages if the claim is successful.

Funding is available for all or part of the cost of the claim, including legal fees, claims-management fees, barrister fees, expert-witness fees and other costs.

Critically, third-party funding is 'non-recourse', meaning that a funder

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only recovers its investment and uplift if a claim is successful.

If the claim is unsuccessful, the funder is not repaid.

"We see funding as a risk-management tool and a way of pursuing claims without the financial burden," says Chris Paterson (pic, right), an investment manager at UK-based funder Augusta Ventures.

"The cost of conducting a claim is a significant commercial burden for any business, particularly in the construction sector, and we are set up to provide a solution to that problem."

Gaining a strategic advantage

According to Augusta Ventures, disputes funding provides a range of commercial and strategic benefits for claimants.

"Funding allows businesses to pursue claims without the downside risk," says Augusta investment manager Andrew O'Connor (pic, left).

"The cost of pursuing the claim is shifted to Augusta, which frees up

cashflow for a claimant and allows them to focus on their core business rather than the cost of the dispute.

"As funding is non-recourse, it is recorded 'off balance sheet' and the client will still receive the benefit of the claim if successful, which represents a risk-free source of revenue.

"The overall effect of funding is the ability to shift claims from being a 'costs centre' to a positive source of income for a business."

Mr Paterson agrees, adding that the use of disputes funding can also provide access to justice for firms that might simply not have the financial

1:5
Minimum ratio of costs to damages

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resources to pursue a claim.

Augusta says that funding can also provide a strategic advantage for a claim.

Traditionally, if one side has deeper pockets, they may decide to pursue a strategy whereby they string out a case for as long as possible, in the hope that the claimant’s costs will reach the point where they will be forced to fold.

“Once the claim is funded, there are also strategic implications for the way in which both sides view the situation,” says Mr O’Connor.

“For the claimant, it means that the funder will support the most effective strategy possible for the duration of the claim. For the defendant, it means that the classic ‘war of attrition’ strategy is not going to work. We find that this dynamic often means that a defendant is likely to consider early settlement.”

When it comes to Augusta’s fee, the company looks at claims on an individual basis, but it is generally calculated as a multiple of the funds deployed or a percentage of the damages and costs recovered.

“Our success fee is set on a case-by-case basis, taking the individual risks and merits of each claim into account,” says Mr Paterson.

He adds that Augusta’s win rate stands at 80 per cent, something that he says underlines the company’s commitment to funding valid claims and rigorous due diligence.

“For us, as a funder, we are built on a thorough due-diligence process



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and on being a price leader,” Mr Paterson says. “What that means is that we provide efficient funding solutions for valid claims – we are not in the business of funding speculative claims.”

Fast response

However, such rigorous due diligence doesn’t mean that it takes Augusta an age to decide whether to fund a claim.

“Our scale means that we are able to move quickly and invest in cases of any size,” says Mr O’Connor.

“The combination of our legal team, business expertise and secure capital allows us to assess claims and deploy funds as soon as possible.”

Mr Paterson adds: “The time required for us to analyse a claim and agree commercial terms will naturally depend on how developed the claim is at the time we are notified about the dispute.

“In practice, the shortest amount of time in which we have funded a claim is less than one week.

“However, it is more commonly three-to-six weeks.”



At the end of the day, it appears that disputes funding can provide the sector with an optional solution to the cost of conducting claims.

Not every claim will be suitable for funding. However, if used effectively, funding represents a clear opportunity to manage the risk of adjudication, arbitration and litigation.

To find out more call 0203 510 0555 or email Christopher.Paterson@augustaventures.com

AUGUSTA VENTURES ANSWERS FAQs ON DISPUTE FUNDING

Is there a minimum claim value that Augusta will consider funding?

There are no strict upper or lower limits on our funding. The key factor in any case is the proportionality between budget and claim size. For funding to be a sensible solution for a claimant, we look for a minimum 1:5 ratio of costs to damages. In our experience, even at this minimum level of proportionality, the claimant is in a position to receive a material proportion of any recovery.

Disputes in the construction sector are often complex and difficult. What makes Augusta able to provide funding for these types of claim?

We recognise that construction claims are unique and our

commitment to the sector reflects our expertise. We have a specific Infrastructure, Construction and Energy team that has decades of experience in the industry and are able to confidently support businesses to pursue good claims.

We understand that the initial stages of construction claim development can be costly and are able to provide clients with early stage funding for things like a barrister’s opinion or expert-witness report. This early stage funding covers the risk and burden of getting a case to full funding.

How do you protect against adverse costs?

We are able to offer access to after-the-event, or ATE, insurance, protecting the claimant from

adverse-costs risk. ATE insurance is an arrangement where an insurance company insures the claimant against the risk of having to pay their opponent’s legal costs in the event that their claim is unsuccessful.

Once a claim is funded, does Augusta have control over the case?

Augusta does not have control over the case, and does not have the right to make the claimant accept or decline a settlement offer. The claimant will retain ultimate control of their dispute. We will require claimants to act reasonably in considering whether to reject or accept offers, and to take advice from their solicitors and/or a barrister on whether a settlement is reasonable.