

Litigation Funder Wins Stake in \$213M Renco Judgment

Julie Friedman, The Am Law Daily

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In what may be the first public sale of a litigation claim to a third-party funder, Gerchen Keller Capital LLC has paid \$26.2 million to the estate of a bankrupt Utah magnesium company in exchange for a stake in a judgment the bankruptcy trustee won at trial last year.

The bankruptcy trustee for Magnesium Corp. of America, or MagCorp., won the \$213 million fraudulent conveyance judgment in February 2015 against its former owner, Ira Rennert, and his investment fund Renco Group Inc.; Rennert was found liable for siphoning too much money out of the company—using proceeds to build a 29-room mansion in the Hamptons, among other things—at a time when MagCorp faced massive environmental liabilities and a collapse in the price of the metal.

Under the terms of a sale to Gerchen Keller, which closed Thursday morning in New York, the Chicago-based funder will get the first \$50 million of any eventual recovery on that judgment. But if Rennert wins a pending appeal, now before the U.S. Court of Appeals for the Second Circuit, and defeats the litigation on remand, Gerchen Keller could end up with nothing.

Litigation trusts frequently tap third-party funding to help cover legal fees to pursue claims after a bankruptcy plan is confirmed—funder Burford Capital and Chilmark Partners, for example, formed a joint venture [last July](#) for this purpose. But those deals almost never become public. This time, however, details of competing funding contracts were part of the court record.

On Wednesday, U.S. District Judge Denise Cote in New York swatted down a last-gasp motion to block the sale by a group of noteholders, represented by Brown Rudnick. Rennert and his lawyers at Kasowitz Benson Torres & Friedman had also opposed the deal with Gerchen Keller.

"Defendants do not want their adversary to be well-funded for the first time ever," noted Stevens & Lee's Nicholas Kajon, counsel to the MagCorp Chapter 7 trustee, in a brief Wednesday opposing the motion for a stay of the sale.

On Wednesday, after 12 years in bankruptcy, the trustee, Lee Buchwald, had just \$650,000 left to manage the estate. "Now he has \$26.8 million in the bank," Kajon said Thursday. "Big difference there. It's a liquidity event for us, obviously."

"We think this [funding] is really an untapped opportunity," Kajon added. "There's this new tool out there, and I'm not aware that anyone's ever done this."

The trustee first approached third-party funders in March. Kajon emailed a "tickler" describing the case, including the trustee's appellate brief, filed by Michael Kellogg of Kellogg, Huber, Hansen, Todd, Evans & Figel. In June, after lengthy negotiations, Gerchen Keller agreed to be the stalking-horse bidder. In August, U.S. Bankruptcy Judge Mary Kay Vyskocil in Manhattan blessed the auction process, known as a "363 sale."

Gerchen Keller beat out another funder, Juridica Asset Management, on Aug. 11, after agreeing to increase its payment and to reduce its recovery. "That's the way a bankruptcy auction is supposed to work, increasing value for the estate," Kajon noted.

Ashley Keller, co-founder of the rapidly growing funder, said that this may be the first time that a funder has bought a litigation asset in an ongoing bankruptcy. While noteholders have alleged that the funding contract cost the estate too much, he said, "if the trustee knew that the case would settle or that the Second Circuit would affirm, he wouldn't have solicited our bid. Our capital is expensive precisely because of the risk we're taking."

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