
With Burford-Gerchen Deal, Litigation Finance Comes of Age

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The announcement that Burford Capital will buy litigation funder Gerchen Keller Capital, creating an industry giant with a portfolio of over $1 billion, is being met with a mix of enthusiasm and puzzlement by other figures in the litigation finance industry.

The $160 million, mostly cash deal was generally greeted by other funders as a sign that the nascent industry has come into its own and is starting to see the kind of consolidation that is common to mature markets. But some are also scratching their heads as to why Gerchen Keller—which is roughly the same size as Burford in terms of investments—would sell just three years after its launch.

"It is a little bit surprising because Gerchen was perceived—and I think it's a fair assessment—as one of the market leaders," said Radoslaw Góral, a Dentons attorney who did his PhD at Stanford University on the litigation funding industry. "They entered the market later than Burford did, but they were developing really fast and they seemed to be really well-equipped in terms of capital."

Lee Drucker of litigation funder Lake Whillans said he was "shocked" to wake up to the news on Wednesday. "Given their relative sizes and growth trajectories, I would have expected a consolidation to" be structured as a merger of near equals rather than an acquisition.

The deal combines the two largest players in the industry in the United States. Australia-based Bentham IMF, with offices in New York, Los Angeles and San Francisco, is No. 3, having invested around $419 million in current and concluded cases. Longford Capital, a Chicago-based, private fund, raised $56 million in 2013, according to SEC filings, and Lake Whillans says it has deployed about $60 million.

Both Gerchen Keller and Burford, which is publicly listed on the London stock exchange, provide financial backing for lawsuits in exchange for a share of the recovery if the suit succeeds.

In public statements Wednesday, the companies characterized their union as creating a business that will be better able to service the various funding needs that lawyers encounter in an increasingly budget-strapped environment.

Gerchen Keller's leaders also dismissed the notion that they were simply cashing out in the sale. In an interview, managing partner Travis Lenkner said he and the other principals of the firm, all elite lawyers in their previous careers, wouldn't be doing the deal "if we did not believe that we could contribute in a meaningful way to helping to build the combined organization and make Burford as successful as possible."

He noted that the terms of the acquisition include three-year employment agreements for himself and Gerchen co-founders Adam Gerchen and Ashley Keller and include incentives for them to ensure that their current investments perform well. "This is not an exit," Lenkner said. "It's anything but."

Since its inception in 2013, Chicago-based Gerchen Keller has drawn in more than $1 billion in private equity investments, mostly from institutional investors. It has deployed that capital in a variety of ways, including classic litigation funding in pending litigation and stop-gap funding for suits post-settlement to give attorneys cashflow while they wait to collect.

Selvyn Seidel, a co-founder of Burford who left the company and went on to create a brokerage-style litigation finance adviser firm called Fulbrook Capital Management, noted Gerchen Keller's quick growth and speculated that it may have drummed up investment faster than it knew how to deploy it. Through the deal with Burford—which has an expansive network of law firm relationships—it might be better able to find places to put the money, he said on Wednesday.

The value of what Burford gets from the deal is harder to assess. So far, the millions in profit that Gerchen Keller has recorded have come only from management fees. Due to the way the investments are structured and the fact that litigation often drags on for years, Gerchen Keller managers have not been able to collect lucrative bounties on any of the $717 million they have sunk into lawsuits pre-settlement.

Among the litigation that Gerchen Keller is publicly known to have financed are a string of lawsuits over allegedly defective transvaginal mesh products that were being pursued by Houston law firm AkinMears. It poured roughly $93 million into that litigation, according to news reports.

"Whether or not Gerchen Keller made good decisions, nobody knows yet," said Alan Zimmerman of the Law Finance Group, a private litigation funder based in the Bay Area.

That uncertainty is basically built into the transaction: Gerchen Keller will get an additional $15 million in Burford stock only if it contributes $100 million in performance fee income. One immediate gain Wednesday for Burford was in its stock price, which jumped more than 17 percent on Wednesday, according to Bloomberg.

One area where the transaction may be especially complementary is intellectual property. Gerchen Keller has made patent litigation a major focus of its investments, and has also purchased patents and then enforced them directly, essentially acting as a nonpracticing entity.

To others in the industry, the deal combining two major players legitimizes the economic value of what they have been doing. "It shows the growth and the vitality of this alternative asset class," said Howard Shams, managing principal of Parabellum Capital in New York. "When you're seeing public companies buy managers in this space, I don't think there's anything negative about that."

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