Case 5: Lawsuit Futures

Litigation financing is a relatively new practice in the United States. When a person or small business wants to bring a lawsuit against a large corporation, very often the defendant can afford top-notch lawyers and long delays while the case winds its way through the courts, but the plaintiff can't afford the same. Litigation finance companies change this dynamic by paying all or some of the costs of the plaintiff's suit. If the plaintiff wins, the finance company recovers the total amount of their investment plus a percentage of any judgment or settlement. If the plaintiff loses, the finance company gets nothing. The financing is paid to the plaintiff as a lump sum up front, and the plaintiff does not need to provide an accounting. Thus, the money may be used for anything: not just the legal costs, but also such things as unexpected medical costs, keeping a child in college, or anything the plaintiff might have to sacrifice for the sake of keeping a multi- year lawsuit alive.

There are clear advantages for those who would not otherwise be able to afford a lawsuit, but the industry is currently unregulated, and questionable practices could easily emerge. The standard counsel-client relationship is fairly simple: the client's and lawyer's interests mostly coincide. But the introduction of a third party on the plaintiff's side, whose interest is merely that of an investor, could throw a monkey wrench into the works. Since investors want to recover their investment plus interest, they might apply pressure to settle early and for less than the potential recovery value of the case. Thus, a lawsuit potentially worth $20 million and costing $100,000 to prosecute might receive a settlement offer for $200,000, which the investor might try to pressure the plaintiff into accepting. After the investor gets back the initial $100,000 investment, the remaining $100,000 would be split: $40,000 to the lawyer, $40,000 to the investor, leaving only $20,000 for the plaintiff. The investor would take a 40 percent profit, while the plaintiff would receive only 0.1 percent of the potential value of the case. Should the plaintiff nevertheless insist on going forward and should the defendant prevail, the investor might be inclined to sue the plaintiff's lawyer.

Case from the 2017 International Ethics Bowl on February 26, 2017 in Dallas Texas