

Despite the alarmist statements of the AICD (of which I've been an active and supportive member for a decade), actually I DON'T think Australia risks becoming as litigious as America, for PURELY ECONOMIC REASONS, based on a vastly different regulatory regime:

- In AMERICA, lawyers can take cases (class action or otherwise) with contingency fees (No Win, No Pay) From an economic perspective, if staff salaries are a fixed cost and a firm goes through a slow period, their Opportunity Cost of launching a lawsuit on speculation are LOW, so quite likely to proceed
- In AUSTRALIA, on the other hand, lawyers are BARRED from accepting cases on a contingency fee basis. ENTER litigation funders as a workaround¹, risking money with the prospect of profitable returns if the case is won/settled for enough money.
 - o Some would say these two business models are equivalent, that litigation funding is just a dodge around the restriction imposed on the Australian legal profession.
 - o Economically, that is NOT true: the litigation funders wear the litigation costs WIN OR LOSE They have substantial Opportunity Cost of launching a lawsuit, so are unlikely to launch a lawsuit unless there is a real chance of winning/getting a worthwhile settlement.
 - o In addition, the litigation funders are mostly ASX-listed companies like IMF, Hillcrest, etc. Their business activities need to produce an ROI > WACC, so they have a strong DISINCENTIVE to launch frivolous or unwinnable lawsuits where they would have NEGATIVE returns after being tagged for COSTS.

In summary, while NEITHER Slater & Gordon nor IMF are likely to win a popularity contest OR Australian of the Year awards, they DO serve a function in preventing DEEP POCKETS ALONE from making companies immune to legal pressure on wrongdoing.

Naturally, both sides in a legal dispute can miscalculate their odds of winning, or get carried away with the momentum of litigation, but market-listed litigation funders or their targets would not likely have fought the Bell litigation for a DECADE, which blew a \$235 million matter up to a

\$2+ BILLION payout for the Bank defendants!

Regards,

Rich

1. Some would say subterfuge, but I DISAGREE with that proposition also, for the reasons explained in the following paragraph.