

Navigating the Complexities of Litigation Funding Discovery

A photograph of a modern building's curved glass facade, showing multiple stories with dark window frames and light-colored panels, set against a clear sky.

1 MIN READ

February 12, 2024, 10:00 AM

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For those who have not had a chance to attend one of our CLE presentations on Litigation Funding Disclosure, this IAM article provides a glimpse of the complex landscape for defendants seeking discovery on litigation funding topics in their cases. Litigation funding can significantly impact the parties' ability to reach settlement. In some instances, uncovering details of litigation funding may even provide recourse for defendants under 35 U.S.C. § 285 against otherwise judgment-proof plaintiffs.

Defendants not in front of Judge Connolly in the District of Delaware often face an uphill battle in obtaining discovery regarding litigation funding (i.e., the identity of the funder and the funding terms/conditions). Our analysis indicates that certain approaches fare better than others. For example, seeking litigation-funding related discovery to rebut a plaintiff's "David vs. Goliath" story may be more successful than seeking such discovery on the basis of potential standing issues. At least 24 out of the 94 Federal District Courts have local rules or some form of mechanism for disclosure of the identity of litigation funders in civil cases. Even in the Western District of Texas, this takes the form of an approved interrogatory. A well-informed strategy can maximize the chances for a defendant to obtain and leverage litigation funding discovery.

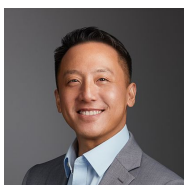
There is plenty of debate within the US patent community about whether patent holders who use third-party litigation funding should have to tell courts

and accused infringers about it. What makes the conversation even more fraught is the rules that differ from jurisdiction to jurisdiction.

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