



**INVENTORS**  
DEFENSE ALLIANCE

**Kristen Osenga**  
CHIEF POLICY  
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**Earl "Eb" Bright**  
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**Russell Slifer**  
BOARD MEMBER

**William Melofchik**

National Council of Insurance Legislators  
616 5th Avenue, Suite 106  
Belmar, New Jersey 07719  
November 21, 2024

Dear Mr. Melofchik,

I write on behalf of the Inventors Defense Alliance, a nonpartisan advocacy organization working to build support for small businesses and entrepreneurs, safeguard justice, and protect access to capital.

The IDA strongly opposes the National Council of Insurance Legislators' draft "Transparency in Third-Party Litigation Financing Model Act." The Act's supporters claim it would bring much-needed transparency to court proceedings. But, in the context of IP infringement litigation, mandatory disclosure requirements are simply a veiled attempt to tip the scales in favor of large corporations who knowingly steal from their smaller competitors.

The Act unfairly and dishonestly targets so-called litigation financing agreements, which level the playing field by helping small companies defend against intellectual property theft from large corporations many times their size. Enforcing one's IP protections in court can take years and cost millions of dollars. Outside funding agreements help ensure that IP disputes are decided according to the underlying merits -- not which party has deeper pockets.

Prior to the rise of litigation financing, wealthy mega-corporations could infringe on their competitors' patents and copyrights with relative impunity. Many startups and small companies lacked the resources to hire teams of lawyers to defend their IP in court. Faced with financial ruin due to the cost of prolonged litigation, many patent owners had no choice but to settle for pennies on the dollar.

Litigation financing threatens this pernicious, yet highly effective, "efficient infringement" model, and that's precisely why big corporations are doing everything they can to restrict it.

Disclosing the terms of litigation financing agreements may sound benign, but it could end up giving patent infringers a back door to highly sensitive information about plaintiffs' legal strategies and the financial resources available to them. Using this information, large companies could deploy stall tactics intended to prolong the case and bleed their adversaries dry. Defendants could even use disclosed information to target litigation financiers and their investors with negative publicity campaigns.

More broadly, the Act purports to fix a transparency problem that does not exist. Existing civil procedure rules grant judges total authority to investigate litigation financing arrangements and enforce



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reasonable disclosure requirements. This means judges evaluate the need for disclosure on a case-by-case basis. A one-size-fits-all approach is neither necessary nor desirable.

Further, concerns about outside financing leading to frivolous lawsuits are unwarranted. Litigation financiers only see a return on their investment when their plaintiffs win. As such, they only back cases they believe have a reasonable chance of succeeding on the merits. Data back this up; though the number of new patents granted annually has risen over the last decade, the number of patent infringement lawsuits initiated in U.S. District Courts has decreased.

Small businesses are the engine of the U.S. economy, employing 62 million Americans across the country. To maximize America's innovative and economic potential, every business must be able to participate in the justice system on equal footing. Mandatory disclosure requirements would undermine this key principle by favoring big corporations over startups and small businesses.

Thank you for your consideration of this important matter. We welcome any opportunity to collaborate on ways to strengthen America's innovation system and economy.

Sincerely,  
Kristen Osenga  
Chief Policy Counselor  
Inventors Defense Alliance

## **ABOUT THE INVENTORS DEFENSE ALLIANCE**

The Inventors Defense Alliance is a nonpartisan, nonprofit, 501(c)(4) advocacy organization that works to build support for inventors' rights, safeguard justice, and protect access to capital. Learn more at [www.InventorsDefense.org](http://www.InventorsDefense.org).