



September 28, 2026

Carolyn A. Dubay, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE, Room 7-300
Washington, D.C. 20544

Re: Rules Suggestions 26-CV-8, 26-CV-30, and 26-CV-31 — Opposition to Mandatory Disclosure of Third-Party Litigation Funding

Dear Ms. Dubay:

Ramey LLP opposes any amendment to the Federal Rules of Civil Procedure that would require disclosure of third-party litigation funding as a matter of course. The immediate target of that opposition is the Rule 26(a)(1)(A) amendment that Lawyers for Civil Justice (“LCJ”) and the U.S. Chamber of Commerce Institute for Legal Reform (“ILR”) proposed in Rules Suggestion 26-CV-8, which Rules Suggestions 26-CV-30 and 26-CV-31 now ask the Committee to adopt. Under that amendment, a funded litigant would have to turn over its funding agreements and related documentation to the opposing party with no case-specific showing of relevance, proportionality, or need.

I want to be clear about what this letter does not argue. Litigation funding is not immune from discovery, and nothing here suggests it should be. Where a funding arrangement bears on standing, ownership, the real party in interest, settlement authority, judicial disqualification, or some other issue the court has to decide, the existing Rules let the court get what it needs to decide it. My objection is to a rule that presumes financing is relevant in every case and, on that presumption, hands the funded party’s contract, budget, and counsel’s view of the merits to the other side whenever outside capital is in the picture. Should the Committee decide it must act anyway, Part IX offers two narrower alternatives that answer the proponents’ legitimate concerns and avoid those costs.

I am William P. Ramey III, managing partner of Ramey LLP. For more than twenty years I have represented patent owners, startups, universities, and independent inventors in federal court, almost always against larger implementers. Some of those cases were funded. Most were not. I should say at the outset that I am not a neutral: my clients use litigation funding, and my practice depends on their being able to. The Committee should weigh what follows with that in mind. I ask that this letter be provided to the Advisory Committee on Civil Rules and its Third-Party Litigation Funding Subcommittee.

One more thing about the record. On the question now pending, the Subcommittee has not heard from anyone on my side of the caption.

I. Courts already learn about funding when they need to. The question is who else gets to.

On September 14, 214 companies asked the Advisory Committee to adopt, as written, the Rule 26(a)(1)(A) amendment that LCJ and ILR proposed on March 10 of this year, and they pointed to patent cases as an area in which judges have sought funding information (the “Letter”).¹ The Letter came six days after LCJ and ILR’s second filing of the year, Rules Suggestion 26-CV-30, and that filing makes a single argument: disclosure has to go to the parties and not just to the court, because a court-only approach would create an unprecedented system of “secret disclosure.”² The Letter makes the same argument.

That narrows things. Courts already learn about funding when they want to. They do it through local rules, standing orders, case-specific orders, and in camera review, and every example the Letter cites works in one of those ways. So the question left is whether the Federal Rules should hand every civil defendant, in every case, the plaintiff’s funding agreement for inspection and copying at the initial-disclosure stage.

The proposal says yes, without qualification. Its Committee Note states that the required materials “are not discovery and therefore are not subject to the relevancy and proportionality standards of Rule 26(b)(1).”³ Read that again, because it is doing more than clarifying existing practice. It carves a categorical exception out of Rule 26(b)(1) for a class of commercially sensitive information that may well carry counsel’s assessment of litigation risk inside it.

The Committee’s own May 2026 report already saw the problem. It calls the analogy between funding disclosure and insurance disclosure “not airtight,” acknowledges that disclosure of all funding details can raise “very serious (opinion) work product problems,” and says serious questions remain about what courts would do with the information.⁴ Every one of those concerns argues for leaving funding questions to case-specific judicial management rather than shipping the documents to an adversary automatically.

Some version of a funding-disclosure proposal has been on the Committee’s agenda for more than a decade, and the Committee has not adopted any of them. The same May report describes the Subcommittee as still gathering material and, in the Letter’s own words, wrestling with “a lot of drafting issues.”⁵ Those drafting issues are real. The one proposal on the table that solves them by dispensing with Rule 26(b)(1) altogether is not the answer to them.

¹ 214 Companies, Rules Suggestion 26-CV-31, at 1-2 (Sept. 14, 2026), https://www.uscourts.gov/sites/default/files/document/26-cv-31_suggestion_from_214_companies_-_rule_26_third_party_litigation_funding.pdf.

² Lawyers for Civil Justice & U.S. Chamber of Commerce Institute for Legal Reform, Rules Suggestion 26-CV-30, at 2-4, 6-9 (Sept. 8, 2026), https://www.uscourts.gov/sites/default/files/document/26-cv-30_suggestion_from_lcj_and_u.s._chamber_rule_26.pdf.

³ Lawyers for Civil Justice & U.S. Chamber of Commerce Institute for Legal Reform, Rules Suggestion 26-CV-8, A Revised Proposal: Amend Rule 26(a)(1)(A) to Guide Courts and Parties on TPLF Disclosure While Preserving Judicial Discretion and Protecting Parties’ Assertions of Privilege, at 5, 19-20 (Mar. 10, 2026), https://www.uscourts.gov/sites/default/files/document/26-cv-8_suggestion_from_lcj_ilr_-_rule_26.pdf.

⁴ Report to the Standing Committee, Advisory Committee on Civil Rules 47-48 (May 6, 2026), https://www.uscourts.gov/sites/default/files/document/advisory_committee_on_civil_rules_may_2026.pdf.

⁵ Cited in Letter at 3-4 & n.14.

II. The existing Rules already separate legitimate funding discovery from fishing expeditions, and the patent cases demonstrate that.

Rule 26(b)(1) requires discovery to relate to a claim or defense and to be proportional to the needs of the case. That framework fits litigation funding well, because funding arrangements are not all alike. Some contain provisions bearing on settlement approval or ownership rights. Others are passive financing; strategy and settlement stay entirely with the party and its counsel. A rule that treats those two as the same thing replaces the factual inquiry Rule 26 ordinarily requires with a presumption that financing alone entitles the adversary to the agreement.

The proposal also runs the sequence backward. Rules Suggestion 26-CV-8 would require disclosure of any nonparty that directly or indirectly provides funding and holds a financial interest in the action, along with the agreements or other documentation defining that interest. Only after production would the funded party be left to seek a stipulation, redaction, protective order, or in camera review for whatever protected material turned up. In ordinary discovery the party asking for information has to show why it falls within the permissible scope. Here the funded party produces first and then carries the burden of protecting material that may never have been discoverable under Rule 26(b)(1) in the first place.

Patent litigation, the field the Letter singles out, is a good place to test whether a categorical rule is needed. The patent decisions do not hold that funding agreements are relevant across the board. What they show is courts drawing lines according to the issue presented, the showing made, and the protection that attaches to the materials sought.

In *Fleet Connect Solutions LLC v. Waste Connections US, Inc.*, the Eastern District of Texas refused to compel litigation-funding agreements where the defendant had not shown their relevance to any claim or defense, and it treated the asserted need to test patent ownership as no basis for a fishing expedition without a good-faith standing challenge.⁶ In *Hardin v. Samsung Electronics Co.*, the same court took up documents given to prospective funders that included counsel's analysis of the patents and the legal issues; after in camera review it held them protected work product and not discoverable.⁷ *Odyssey Wireless, Inc. v. Samsung Electronics Co.* shows that valuation-related funding information may be discoverable on a different record,⁸ and *Preservation Technologies LLC v. MindGeek USA, Inc.* shows work-product protection doing its own separate work even where funding information may bear on valuation.⁹

⁶ *Fleet Connect Solutions LLC v. Waste Connections US, Inc.*, No. 2:21-CV-00365-JRG, 2022 WL 2805132, at *2-3, 5 (E.D. Tex. June 29, 2022); see Zacharias Shepard, Disclosure of Third-Party Litigation Funding Arrangements: An Overview of Recent Decisions From Top Patent Venues, Baker Botts (Sept. 2023), <https://www.bakerbotts.com/thought-leadership/publications/2023/september/disclosure-of-third-party-litigation-funding-arrangements>.

⁷ *Hardin v. Samsung Electronics Co.*, No. 2:21-CV-00290-JRG, 2022 WL 14976096, at *2-3 (E.D. Tex. Oct. 25, 2022), <https://docs.justia.com/cases/federal/district-courts/texas/txedce/2%3A2021cv00290/208045/119/>.

⁸ *Odyssey Wireless, Inc. v. Samsung Electronics Co.*, Nos. 3:15-cv-01738-H-RBB et al., 2016 WL 7665898, at *6-7 (S.D. Cal. Sept. 20, 2016).

⁹ *Preservation Technologies LLC v. MindGeek USA, Inc.*, No. 2:17-cv-08906-DOC-JPR, 2020 WL 10965161, at *6-7 (C.D. Cal. Dec. 18, 2020); see Mark A. Behrens, Third-Party Litigation Funding: State and Federal Disclosure Rules and Case Law, International Association of Defense Counsel (Jan. 2025),

The value of those cases is that they do not announce one outcome for every funding arrangement. They apply ordinary discovery principles to the issue in front of the court. Where an agreement transfers substantial patent rights, affects standing, gives a nonparty real authority over settlement, or contains information material to valuation or some other pleaded issue, the court can order discovery fitted to that issue. Where none of that is present, the bare fact of financing should not entitle the adversary to the contract.

The national numbers run the same direction. By the count of the International Legal Finance Association (“ILFA”), which LCJ and ILR themselves cite, federal courts deny roughly sixty percent of funding-disclosure motions.¹⁰ I suspect most of those denials come down to relevance, the material simply not bearing on any claim or defense, though the court does not say why. Either way, a nationwide party-facing rule would override that judgment in every case.

III. The proposal exposes one side’s financing and exempts the other’s. The signatory list indicates why that matters.

Under the LCJ/ILR text a party must identify any nonparty providing funding with a financial interest in the action and produce, “for inspection and copying as under Rule 34,” the agreements and documentation concerning the funding terms.¹¹ Contingency-fee arrangements, insurance, and ordinary personal and bank loans are carved out.¹²

Look at what that carve-out leaves in the dark. A liability insurer’s reserves and litigation-management guidelines. A component supplier’s indemnity to a manufacturer. Joint-defense and cost-sharing agreements among co-defendants. Captive and reinsurance programs. A public company’s equity or debt raise undertaken to pay for litigation.

ILFA catalogued some of those arrangements in its October 2025 submission, though it did not get to insurer reserves, supplier indemnities, joint defense agreements, or captive programs. Since January 2020 the U.S. Chamber of Commerce has filed thirty plaintiff-side suits in federal court, paid for by contributors it does not name, and the 2025 proposal the Chamber backed carves out funding for injunctive relief. When Bayer AG needed litigation money in 2025, it went to Wall Street for an equity raise, and no disclosure proposal now on the table would touch it.¹³

The imbalance follows the case from start to finish. No rule requires a patent defendant to disclose its internal litigation budget, its expected defense costs, its settlement reserve, whether it will fund an appeal, or what it thinks the case is worth. A funding contract, on the other hand, lets an adversary infer the funded party’s capital requirements, expected duration, risk tolerance, and financing constraints. A rule should not build that kind of

https://www.iadclaw.org/assets/1/6/5.1_-_Third-Party_Litigation_Funding_-_State_and_Federal_Disclosure_Rules_and_Case_Law.pdf.

¹⁰ Rules Suggestion 25-CV-O at 22.

¹¹ Letter at 4; Rules Suggestion 26-CV-8 at 5–6.

¹² Rules Suggestion 26-CV-8.

¹³ Rules Suggestion 25-CV-O, at 5–6 & nn.12–13 (citing Ludwig Burger, Bayer seeks investor approval for 35% cash call to gird for litigation, Reuters (Mar. 7, 2025)). Bayer U.S. LLC is a signatory to the September 14 letter.

strategic imbalance unless the information meets a demonstrated adjudicative or case-management need.

The signatory list deserves a closer look. By my count of the Letter's fourteen pages, 160 of the 214 signers are legal officers, and 33 of those carry litigation-specific titles: heads of litigation, chief litigation officers, litigation counsel. Twelve more are chief claims officers, claims directors, or risk managers. Roughly sixty-five of the organizations are insurers, reinsurers, or mutuals, six of them medical-malpractice carriers. The rest are pharmaceutical and device makers, technology platforms and telecom carriers, trucking companies and trailer builders, automakers and aircraft makers, energy and chemical companies, retailers, and hospital systems.¹⁴

The technology companies are worth singling out. Amazon, Google, Meta, Microsoft, Cisco, Intel, IBM, Qualcomm, Samsung, Lenovo, Comcast, AT&T, and Verizon are vertically integrated producers. They design, build, and sell the products in which other people's patents get practiced.

As far as I can tell, no inventor signed. Two universities did. Two founder-level companies did.

It is not necessary to guess at what the signatories want, because the Letter says so in their own words, quoting their 2024 predecessor: they cannot make informed decisions without knowing who controls the litigation, and settlement "unravels" when the plaintiff must obtain a funder's approval.¹⁵

That is a description of bargaining leverage, and it is the same leverage a defendant gains from learning that the plaintiff has no funder at all. The Government Accountability Office collected stakeholder views on exactly this point in its 2024 report on patent litigation funding: knowing how much money a plaintiff has may push a defendant to settle quickly, but it may also hand the defendant an unfair advantage.¹⁶

A rule that gives every defendant in every case that information, and exempts every defendant's own financing, has little to do with transparency. It decides who gets to read the other side's budget.

IV. The proponents' best arguments, stated fairly, do not carry the proposal.

The Committee has been hearing the case for disclosure for twelve years, and the Letter and the September 8 filing make it about as well as it can be made. I take the strongest points one at a time.

A. The 1970 insurance amendment.

The proponents have the history right. Before 1970, courts were split on whether insurance agreements were discoverable, and the Committee settled the split by rule, in favor of disclosure to parties. Its reasoning was that an insurer who controls the defense and pays

¹⁴ Letter at 4–14.

¹⁵ Letter at 2 & n.6, quoting Letter from 124 Companies to H. Thomas Byron III (Oct. 2, 2024), Rules Suggestion 24-CV-U.

¹⁶ U.S. Gov't Accountability Office, GAO-25-107214, Intellectual Property: Information on Third-Party Funding of Patent Litigation (Dec. 2024).

the judgment is the real adversary, and both sides ought to be able to make the same realistic appraisal of the case.¹⁷ The Letter takes that reasoning as its own: insurance is disclosed because an insurer liable for the judgment “may” have influence over the litigation.¹⁸

I accept that premise. Followed to its end, it hurts the proposal. If influence over the litigation is what triggers disclosure, the rule has to reach the arrangements through which influence gets exercised on the defense side, and the proposal exempts every one of them.

And if the object is the “same realistic appraisal,” put the two instruments side by side. A liability policy is written before the accident. It tells the plaintiff what money exists to pay a judgment and says nothing about how the insurer values this particular claim. A funding agreement is written after the complaint. It sets out the plaintiff’s budget, the date the money runs out, the funder’s return hurdle, and, in the diligence file the Rule 34 language would sweep in, counsel’s candid view of where the case is weak. GAO drew this exact distinction: a funding agreement can reveal what a plaintiff is able to spend on the litigation, and an insurance disclosure cannot.¹⁹

The two instruments do different jobs as well. Liability insurance is an asset that responds to a claim against the insured. The insurer may be obligated to defend, to indemnify, to satisfy a judgment, and to exercise contractual rights over defense or settlement, and the policy limits often define the practical source of recovery. Litigation funding finances the prosecution of a claim. It does not ordinarily undertake to satisfy a judgment against the funded claimant, and its existence says nothing about whether the funder has displaced the client or counsel as decision maker. The Advisory Committee has already said the analogy is imperfect.²⁰

The 1970 rule gave both sides the same kind of knowledge. This proposal gives one side the other’s appraisal while letting it keep its own, which is the 1970 amendment turned inside out.

B. “There are no secret disclosures in the Federal Rules.”

True, as far as it goes. Rules 17, 7.1, and 26(a)(1)(A)(iv) and the amicus provisions all run to the parties and the public.²¹ But two things follow from the Committee’s own materials, and neither helps the proposal.

First, each of those disclosures is narrow and built for one purpose. Rule 17 names the party. Rule 7.1 identifies ownership so a judge can decide whether to recuse, and its 2002 Note explains that the rule deliberately stops short of everything that might bear on disqualification, because unnecessary disclosure burdens parties and courts and raises the risk that a judge misses the one item that matters.²² Rule 26(a)(1)(A)(iv) discloses coverage

¹⁷ Rules Suggestion 26-CV-30 at 4–6, quoting Fed. R. Civ. P. 26 advisory committee’s note to 1970 amendment.

¹⁸ Letter at 1.

¹⁹ GAO-25-107214 at n.35.

²⁰ Report to the Standing Committee, Advisory Committee on Civil Rules 48 (May 6, 2026), https://www.uscourts.gov/sites/default/files/document/advisory_committee_on_civil_rules_may_2026.pdf.

²¹ Letter at 3.

²² Fed. R. Civ. P. 7.1 advisory committee’s note to 2002 adoption, quoted in Rules Suggestion 25-CV-O at 15.

available to pay a judgment. No Federal Rule has ever made a party hand its adversary its litigation budget or its lawyer's assessment of the case. This would be the first.

Second, lodging a document with the court under a rule that spells out what is lodged, when, and how a party may move to see it is not an ex parte communication. It is the in camera procedure courts use every day in privilege disputes and have already used in roughly thirty funding matters.²³ Canon 3(A)(4) is aimed at substantive communications with the judge behind the parties' backs, and a rule-mandated filing that the parties know about and can move on is nothing of the kind. The Opioids and Zantac MDL courts, the disclosure forms Judges Henderson and Calabrese use, and the Kansas statute the Chamber itself negotiated with ILFA in 2025 all route funding information to the court first.²⁴ The mechanism is already there. What remains is whether the Rules will give it structure.

So the choice the proponents offer is a false one. The Committee is not confined to picking between automatic adversary production of every funding contract and a regime in which judges secretly decide substantive issues on undisclosed evidence. Ordinary motion practice supplies the middle course, and always has. A party with a concrete basis for funding-related discovery moves for it. The funded party responds. The court decides relevance, proportionality, privilege, and work product on an adversarial record, reaching for in camera review only when it has to resolve a protection claim. Nothing about that is secret or novel; Rules Suggestion 26-CV-8 itself contemplates in camera review when a funded party seeks a protective order.

Nor does a judge's need for disqualification-related information translate into an opponent's right to the underlying agreement. Conflict screening and merits discovery serve different ends, and a national rule can serve both without turning every judicial disclosure concern into adversary access to commercially sensitive, and potentially protected, material.

The September 8 filing lists six practical objections to a court-directed rule: no guidance for judges, no education about control clauses, no adversarial briefing, no case law, new burdens, unfairness to litigants.²⁵ Motion practice answers most of them, because wherever a real dispute exists it generates briefing, orders, a record, and room for appellate review. The symmetric rule in Part IX.B answers the rest. It defines the trigger, requires the party to say whether any control or approval right exists, and lodges the agreement with the court, which supplies both the guidance and the education on precisely the clauses that matter.

What a court-directed approach withholds is the automatic entitlement, and with it the satellite litigation that, on ILFA's census of more than one hundred disclosure motions, tends to follow party access.²⁶

C. The patchwork.

The Letter is right that practice varies. There are local rules in New Jersey and the Middle District of Florida, standing orders in Delaware, the Northern District of California, and the Northern District of Ohio, and case-specific orders in the Uber and Depo-Provera

²³ Rules Suggestion 25-CV-O at 22 & App. B.

²⁴ Rules Suggestion 25-CV-O at 25 & App. E; Kansas S.B. 54, ch. 60, 2025 Kan. Laws 442.

²⁵ Rules Suggestion 26-CV-30 at 7–9.

²⁶ Rules Suggestion 25-CV-O at 22 & App. C.

MDLs, in class actions, and in patent cases.²⁷ Uniformity is the Committee’s mandate, and it is a fair goal.

But the fact that practice varies does not mean every case should produce the same disclosure result. Different outcomes often reflect different records. A court ought to be able to compel focused disclosure when funding affects an issue in the case and deny it when it does not, and when that happens Rule 26 is doing exactly what it was written to do.

Uniformity is also only worth having if its content is fair. A uniform rule that hands every defendant every plaintiff’s funding agreement, while exempting every defendant’s own financing, is worse than a patchwork in which judges keep the discretion that, as Part II shows, most of them now use to deny disclosure. Codifying an imbalance and calling it uniformity does not make it reform.

The Letter’s footnote 12 shows why content matters. Its examples of “disclosure” measures include a Tennessee consumer-lending statute, a proposed International Trade Commission rule for Section 337 investigations, and a North Carolina statute that the Letter itself describes as banning litigation investment.²⁸ Those measures differ from one another, and from the LCJ/ILR text, in trigger, recipient, and scope, and a prohibition is not a disclosure rule at all. When the proponents present all of that as a single movement, the Committee should ask what a Rule 26 amendment is supposed to accomplish.

D. Control.

The Letter’s strongest evidence sits in its footnote 5, which quotes the chief operating officer of a funder, also a member of ILFA’s board, testifying to the New Jersey Assembly on June 15, 2026 that there are lots of instances where financial backers do have control.²⁹ LCJ’s September 2025 review of nine funding agreements turned up termination rights, consent-to-settle clauses, and step-in rights.³⁰

I concede the point, and the concession cuts my way. Some funding agreements contain control provisions, and those provisions matter. A court managing a case and presiding over settlement has a legitimate interest in knowing whether the person across the table can bind the party. The Rules of Professional Conduct already forbid a lawyer from letting a nonclient payor direct professional judgment,³¹ and a court that sees a control clause has every tool it needs. It can ask. It can order the funder into the settlement conference. It can refer the matter to disciplinary authorities. Control is precisely the interest a court-directed, control-limited approach addresses head-on.

The concession has limits, and my firm’s experience marks where they are. Ramey LLP has represented patent litigants whose cases were supported by third-party funding. In those matters the funders did not control the litigation. They did not set strategy, choose

²⁷ Letter at 2–3 & nn.7–11.

²⁸ Letter at 3 n.12.

²⁹ Letter at 2 n.5. This letter does not characterize the testimony beyond the words quoted. The Committee should review the recording for the question asked and for any distinction the witness drew between consumer and commercial funding.

³⁰ Rules Suggestion 25-CV-L at 2–3.

³¹ Model Rules of Prof'l Conduct R. 1.8(f).

arguments, run discovery, decide which motions got filed, or decide whether and on what terms the client would settle. Those calls stayed with the client and with counsel. I do not claim that every funding arrangement in the market looks like ours, and I do not suggest a court should ignore evidence that a particular agreement confers real decision-making authority. My point is narrower and goes to the core of the rulemaking question: in our experience, the existence of funding is not a reliable proxy for nonparty control. A national rule should address actual control where it exists rather than presume it from the financing.

That distinction decides the settlement question. A sophisticated funder can hold an economic interest in the outcome without holding any legal or contractual authority to accept or reject a settlement. What neither the Letter nor the September 8 filing explains is why the adversary, and not the judge, should be the one reading the clause. A party trying to settle needs to know whether a funder's approval is required. A statement to that effect, available to the court, tells the court, and the court can then require the approving party to show up. The adversary does not need the budget, the term, the return waterfall, and the diligence file to learn the same thing.

The same targeted approach handles every concern the proponents raise. If a party offers a particularized basis to believe a funder holds authority over material litigation or settlement decisions, the court can order disclosure of the provisions bearing on that question. If ownership or substantial patent rights are in dispute, standing discovery is available. If a judge needs a funder's identity to evaluate disqualification, the court can require what that inquiry needs. In *In re Nimitz Technologies LLC*, the Federal Circuit denied mandamus against a district court inquiry after the district court identified concrete concerns about potential legal issues and the functioning of the court, and it stressed that the ordered records did not have to be made public and that privilege and work-product objections could still be raised.³² *Nimitz* shows focused judicial tools working when an actual concern arises. It shows no need for nationwide automatic adversary production of every funding contract.

The nine-contract sample carries less weight than the Letter puts on it. Two of the nine involve non-U.S. disputes. One was amended after the funded party materially breached. One is an Americans with Disabilities Act case. Five are dated 2020 or earlier.³³ That sample justifies judicial attention. It does not justify an automatic entitlement in every one of the roughly 350,000 civil cases filed each year in order to reach the few hundred that are commercially funded.³⁴

E. Feasibility.

The Letter says drafting a disclosure rule is not as hard as some have suggested.³⁵ On the drafting I agree, and Part IX.B shows why; the Committee's "drafting issues" reduce to three choices, trigger, recipient, and scope. The hard question was never whether a rule can

³² *In re Nimitz Technologies LLC*, No. 2023-103 (Fed. Cir. Dec. 8, 2022) (nonprecedential order), https://www.cafc.uscourts.gov/opinions-orders/23-103.ORDER.12-8-2022_2045190.pdf.

³³ Rules Suggestion 25-CV-O at 23.

³⁴ Rules Suggestion 25-CV-O at 11 (citing Westfleet Advisors, 2024 Litigation Finance Market Report (287 new investments in 2024), and Administrative Office caseload statistics (347,991 civil filings)).

³⁵ Letter at 3.

be written. It is whether one is needed, and on that question the Committee's own study is not finished. Part VIII comes back to it.

V. Mandatory production creates work-product and strategic-disclosure problems that are acute in patent litigation.

Patent litigation requires counsel to evaluate infringement theories, claim construction, invalidity risk, damages methodologies, licensing history, prior art, expert needs, discovery costs, trial exposure, appellate risk, and settlement value. Every one of those judgments can end up in a financing request, a budget, a due-diligence presentation, or an amendment to a funding agreement. *Hardin* shows what that means in practice: the materials exchanged in the funding process may carry core attorney analysis.

The May 2026 report is right, then, to separate disclosure of the fact of funding from production of the details of the arrangement, because the details may expose opinion work product. A rule that requires production first and leaves privilege and work-product disputes to protective-order practice does not solve that problem; it builds it into the Rules. Courts would end up adjudicating redactions, protective orders, and in camera submissions in cases where the funding agreement would never have come within Rule 26(b)(1) to begin with.

VI. Funding is what makes the research-specialist model enforceable. The proposal aims at the wrong end of the patent system.

Question 2, one of the nine the Committee posed in April 2025, asked whether the funding problem is confined to particular kinds of litigation, and it named patent cases as a concern. The Subcommittee should understand why funded patent litigation exists at all, because the answer shows what the proposal would actually reach.

Professor Jonathan Barnett of the USC Gould School of Law describes a kind of firm he calls the “idea factory,” a company that specializes in research and development and does not integrate forward into manufacturing and distribution.³⁶ His examples run from Edison's Menlo Park laboratory to Dolby, Genentech, Qualcomm, QuantumScape, and IonQ. The mechanism he relies on is Kenneth Arrow's information paradox: an innovator cannot safely show an invention to a prospective partner unless a property right stands behind the disclosure, so the patent is what makes the licensing relationship possible at all. On his account royalties fund the next round of research, and licensing decentralizes technology markets by letting specialists and producers divide the work. He frames the stakes in terms of national competitiveness, arguing that a weak-enforcement environment favors vertically integrated firms, and he names Huawei as the beneficiary.

I do not rely on his royalty numbers; the structural point holds without them.

A firm that develops technology and licenses it rather than making products has one asset, the patents it can enforce against those who practice them. An implementer that uses the technology and declines to pay is betting the specialist cannot afford to collect. Patent

³⁶ Jonathan Barnett, *Idea Factories: How Intellectual Property Sustains and Cultivates Technology Ecosystems* (ICP Analytics LLC, June 2026), Parts 1–2, 5. The report discloses that it was commissioned by Dolby Laboratories, Inc., a licensing-dependent firm, and its empirical claims about aggregate royalty burdens are contested in the literature. This letter does not rely on those figures.

owners call that efficient infringement, and GAO's stakeholders used the same term.³⁷ Take first, pay late, and let the cost of the courthouse do the rest.

If the implementer loses the bet, it pays a royalty it owed anyway. If the specialist calls the bet, it is looking at a multi-year federal case against a defendant with a litigation department, an in-house patent group, and a balance sheet that can carry seven figures of fees through trial without noticing. Professor Barnett's idea factories exist only so long as that call is credible, and for most specialists smaller than a Qualcomm, litigation funding is what makes it credible.

His framework also shows where the documented costs of patent assertion sit, and they do not sit where the proposal aims. The Federal Trade Commission's 2016 study of twenty-two patent-assertion entities found two business models. Portfolio entities held large portfolios, negotiated broad licenses, frequently without suing first, and produced roughly eighty percent of reported licensing revenue. Litigation entities asserted fewer than ten patents at a time, settled for sums typically under \$300,000, produced about a fifth of the revenue, and filed ninety-six percent of the suits, conduct the Commission described as consistent with nuisance litigation.³⁸ Professor Golden, answering Lemley and Shapiro two decades ago, traced the worst of that conduct to litigation cost asymmetry rather than to the strength of the patents, and he pointed the cure toward procedure, meaning fee-shifting, pleading standards, and venue, rather than toward weakening the right itself.³⁹

Now lay the proposal over that line. Commercial funders made 287 new investments in 2024. By their own account, and by the basic economics of non-recourse capital, they fund a small fraction of the cases brought to them, and the ones they fund are large enough to return a multiple on a seven-figure budget.⁴⁰ A litigation entity filing dozens of suits and settling each for under \$300,000 does not need a funder and would not attract one. The funded cases sit on the other side of the FTC's line. They are high-stakes assertions by patent owners who developed or acquired technology a large implementer is practicing and who cannot carry the case on their own.

Those are the cases the LCJ/ILR text would reach at the initial-disclosure stage, and the technology signers named in Part III are the defendants in them. Four of the seven technology companies GAO interviewed put the share of funded patent suits they face at somewhere between half and three-quarters.⁴¹

A rule that hands those defendants the plaintiff's budget and term in every such case does nothing about the nuisance conduct the FTC documented. What it does address is the cost asymmetry Professor Golden identified, and it addresses it by putting the asymmetry back.

The procedural tools Professor Golden pointed to already exist. Fee-shifting under 35 U.S.C. § 285 turns on the substantive strength of a party's position and how it litigated, not on what the defense cost.⁴² Pleading and venue have tightened. Inter partes review is

³⁷ GAO-25-107214 at 22.

³⁸ Fed. Trade Comm'n, Patent Assertion Entity Activity: An FTC Study (Oct. 2016).

³⁹ John M. Golden, "Patent Trolls" and Patent Remedies, 85 Tex. L. Rev. 2111 (2007).

⁴⁰ GAO-25-107214 at 11–13.

⁴¹ Id. at 14.

⁴² *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545 (2014).

available.⁴³ None of those tools requires the plaintiff to disclose its budget to the defendant, because none of them screens for merit by asking who is paying. The Committee should ask why the one procedural change the signatories now want is the one that does.

Professor Barnett's competitiveness point rounds this out. He argues that a weak-IP environment favors integrated producers over research specialists, and that the United States, with a \$115 billion surplus in intellectual-property trade in 2024 on his figures, has the most to lose from that shift.⁴⁴ Whatever one makes of the trade number, the direction is not seriously in doubt. A rule that raises the cost and lowers the credibility of enforcement by specialists, while leaving the integrated implementer's defense financing undisclosed, pushes the system toward integration.

The technology segment of the signatory list is a list of the firms that gain from that push. I am not saying they signed for that reason. I am saying the rule would have that effect, and the Committee should know it before it acts.

VII. What is at stake for the people the Rules are supposed to serve.

The Committee's Question 4 asked whether funding prompts unsupported claims. The evidence says it does not. Funders are non-recourse investors who lose everything when a case fails, and the economic literature finds that the marginal cases funding makes possible are no weaker than the unfunded average.⁴⁵ And under § 285, as I noted above, cost of defense alone does not make a case exceptional. On this record, the cases a disclosure rule would price out of the funding market are the meritorious ones.

They are also concentrated where the signatories live. More than sixty percent of the orders granting funding disclosure have come in patent cases.⁴⁶ GAO reports that universities, funders, and law firms describe funding as especially valuable against efficient infringement, and that the large technology companies GAO interviewed raised the same cost and settlement-dynamics concerns the Letter repeats.⁴⁷

Scholars have described the dynamic in general terms. A repeat corporate litigant values a case not just for its own stakes but for the reputation it builds with the next hundred claimants, and it spends accordingly; a one-shot litigant values only the case in front of it.⁴⁸ Median civil litigation cost was already \$43,000 to \$122,000 a decade ago, and tort filings fell by more than eighty percent between 1993 and 2015.⁴⁹ A repeat player already willing to outspend a case needs only one more thing to make that strategy precise: the claimant's budget and the date it runs out. The proposal delivers both in the initial disclosures.

⁴³ *Twombly/Iqbal*; *TC Heartland*; 35 U.S.C. § 311 et seq.

⁴⁴ Idea Factories, Part 5, at 18.

⁴⁵ Samuel Antill & Steven R. Grenadier, Financing the Litigation Arms Race, 149 J. Fin. Econ. 218 (2023), discussed in Rules Suggestion 25-CV-O at 13.

⁴⁶ Rules Suggestion 25-CV-O at 22.

⁴⁷ GAO-25-107214 at 22 & accompanying text.

⁴⁸ Yotam Kaplan & Ittai Paldor, Social Justice and the Structure of the Litigation System, 101 N.C. L. Rev. 469, 473–74, 483–86 (2023).

⁴⁹ *Id.* at 482, 488–89 & nn.118, 123.

The harm does not stop with the claimants. Contingency practices and small firms that represent patent owners and injured people carry expert, e-discovery, and trial costs that funding makes bearable. Once funding communications become subpoena targets, the candid back-and-forth between counsel and funder that screens out weak cases goes quiet. The subpoena exemplars attached to ILFA's filing demand every document concerning the litigation and the funder's diligence.⁵⁰ The Committee's Question 7 anticipated exactly this: discovery forays that pull attention away from the merits.

VIII. The Committee should complete its empirical work before creating a nationwide exception to Rule 26(b)(1).

The Advisory Committee reported in May 2026 that the Federal Judicial Center was studying experience under the District of New Jersey's local funding rule and that the work was still under way. That study can answer questions the competing filings can only argue about: how often funding information has exposed an actual conflict, how often it has affected standing or settlement authority, how often broader discovery has been allowed, how much collateral motion practice disclosure generates, and whether the local rule has measurably improved case administration.⁵¹

Those questions matter because the proposed amendment would do more than standardize a filing requirement. It would take funding documentation out of the ordinary relevance and proportionality inquiry altogether. Before taking that step the Committee should have evidence that automatic production solves a recurring federal procedural problem, and that its benefits outweigh the privilege disputes, strategic disclosure, satellite litigation, and compliance costs that would come with it.

IX. If the Committee concludes that it must act, it has better options than the proposal.

Ramey LLP's position remains that no new disclosure requirement is warranted. If the Committee disagrees, two alternatives would meet the proponents' legitimate concerns without the costs described above. I prefer the first. The second marks the minimum any disclosure requirement should satisfy.

A. A Rule 16 case-management provision.

If the Committee decides that national guidance is warranted, a judicial-management provision is a better vehicle than automatic Rule 26(a)(1) production. The May 2026 report itself identifies Rule 16 as a possibility, on the reasoning that early judicial oversight would allow a response "tailored to the particular case."⁵² A provision could read, in substance:

Third-Party Litigation Funding. In an appropriate case, the court may consider whether limited disclosure concerning a nonparty litigation-funding arrangement is necessary to address judicial disqualification, standing or real-party-in-interest issues, or a person's authority to control

⁵⁰ Rules Suggestion 25-CV-O, App. C.

⁵¹ Report to the Standing Committee, Advisory Committee on Civil Rules 47 (May 6, 2026) (noting that the Federal Judicial Center is studying experience under the District of New Jersey local disclosure rule), https://www.uscourts.gov/sites/default/files/document/advisory_committee_on_civil_rules_may_2026.pdf.

⁵² Id. at 50 (identifying Rule 16 as a possible vehicle and observing that judicial management could facilitate a response tailored to the particular case).

material litigation or settlement decisions. Any disclosure or discovery ordered under this provision remains subject to Rules 26(b)(1), 26(b)(3), and 26(c).

The Committee Note could make clear that the provision creates no presumption that a funding agreement or funding-related communication is relevant or discoverable, that it leaves attorney-client privilege, work-product protection, and waiver law where they are, and that it lets the court tailor any disclosure to the issue actually presented. The same subject could be added to Rule 26(f) as a matter the parties may raise when funding has a demonstrated bearing on case management.

This approach meets the proponents' strongest case-management concerns without giving an adversary automatic access to financing terms whenever outside capital is used, and it keeps intact the distinction between the existence of an issue and the scope of discovery needed to resolve it.

B. If the Committee adopts a disclosure requirement, it should be symmetric and court-directed.

If the Committee is set on a uniform disclosure requirement over the objections above, the content of that requirement will matter more than anything else it decides. The text below gives the Committee the uniformity it wants without the one-way mirror built into the proposal, and it is in a form the Committee could publish for comment.

Rule 26. Duty to Disclose; General Provisions Governing Discovery

(a) Required Disclosures.

(1) Initial Disclosure.

(A) In General. * * *

(v) a statement, lodged with the court and not served on any other party except as provided in Rule 26(a)(1)(F), identifying any nonparty (other than counsel of record) that, under a written agreement, (I) holds a right to receive payment or any thing of value contingent on the outcome of the action, or (II) holds a right to control, direct, approve, or veto any decision concerning the prosecution, defense, or settlement of the action. The statement must state whether the agreement confers any right described in clause (II). The party must lodge a copy of the agreement with the court for in camera review. Clause (I) does not apply to an agreement to pay attorney's fees contingent on the outcome, or to a loan repayable regardless of the outcome.

* * *

(F) Nonparty Interest Statements. A statement or agreement lodged under Rule 26(a)(1)(A)(v) is not subject to discovery except on motion by a party showing that the statement or agreement is relevant to a claim or defense, or to a specific and articulable question concerning a conflict of interest or control of the action. An order permitting discovery must protect trial-preparation material under Rule 26(b)(3) and may impose conditions under Rule 26(c). Information lodged under Rule 26(a)(1)(A)(v) is not admissible

at trial unless the court orders otherwise. A party must supplement a statement under Rule 26(e).

Committee Note (draft). Subdivision (a)(1)(A)(v) responds to the growing and inconsistent body of local rules, standing orders, and case-specific orders addressing nonparty participation in civil actions. It requires every party to inform the court, at the outset, of any nonparty that holds a contingent financial interest in the outcome or a contractual right to control or approve litigation or settlement decisions. The rule applies symmetrically. It reaches a funder of a plaintiff's claim and a nonparty that holds control or approval rights over a defendant's defense, including an insurer or indemnitor whose rights extend beyond the agreement disclosed under subdivision (a)(1)(A)(iv). Disclosure is made to the court so that the court may identify potential conflicts, confirm that control of the action remains with the parties and their counsel, and manage settlement with knowledge of who must approve a resolution. Because these agreements are prepared after the dispute has arisen and commonly reflect a party's litigation budget, timeline, and counsel's assessment of the merits, disclosure to an adversary as a matter of course would supply information the Rules have not previously required any party to reveal and would invite the collateral discovery the Committee has sought to avoid. Subdivision (a)(1)(F) preserves party access on a particularized showing. Contingent-fee agreements and recourse loans are excluded from clause (I) as commonplace arrangements not warranting disclosure; they are not excluded from clause (II) if they confer control rights.

The draft answers the nine questions the Committee posed in April 2025.⁵³ It keys the trigger to economic interest or control right rather than to the label "litigation funding," which avoids under-inclusion and the definitional problems the Committee flagged. It applies in every civil case, as uniformity requires. It reaches inventory or portfolio funding where the funder holds a contingent interest or a control right in the action, and it leaves a firm's bank line alone. It sends identity and the existence of control rights to the court and lodges the agreement in camera, which answers "to whom." It limits party discovery to a particularized showing, which answers the Committee's concern about discovery forays. And it tells the court what to do with the information: find conflicts, confirm who controls the action, and manage settlement knowing whose approval is required.

The draft adds to what defendants disclose and subtracts nothing. Rule 26(a)(1)(A)(iv) stays as it is. New clause (II) reaches an insurer's or indemnitor's control rights beyond the disclosed policy in the same way it reaches a funder's. The proposal before the Committee cannot say the same.

X. Requested action.

I respectfully ask that the Subcommittee (1) decline to recommend the LCJ/ILR text, or any rule that requires production of nonparty funding agreements to adverse parties as a matter of course; (2) let the Federal Judicial Center finish its study of the District of New Jersey rule before recommending any national rule; (3) if national guidance is warranted after that, proceed through a Rule 16 case-management provision of the kind set out in Part IX.A; and (4) if the Committee concludes that a uniform disclosure requirement is unavoidable, take up a symmetric, court-directed rule of the kind set out in Part IX.B and publish it for public comment, so that patent owners, universities, inventors, and claimants,

⁵³ April 2025 Agenda Book at 271–72, reproduced in Rules Suggestion 25-CV-O, App. A.

none of whom appears among the 214 signatories, get the hearing the proponents have had for twelve years.

The 1970 Committee resolved a real split over a real and symmetric need. It did not hand one side the other's playbook, and this Committee should not do so now.

Thank you for the Committee's consideration.

Respectfully submitted,

RAMEY LLP

A handwritten signature in blue ink, appearing to read 'WPR', followed by a large, stylized loop.

By: _____
William P. Ramey III
Managing Partner