



LITIGATION FINANCE & INSURANCE

Collegio dei Consulenti in Proprietà Industriale
2022

AFFILIATE PARTNERS

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ERSO CAPITAL - INTRODUCTION

- Established in 2020 by the principals of TheJudge Group.
- Offices in UK, US and IOM but with a global funding mandate.
- Erso is a litigation funder providing capital for litigation and arbitration financing opportunities.
- Dedicated patent litigation fund allocated to patent litigation and monetization opportunities.
- Typical investment size per case - \$0.5m - \$25m (single case); \$5m - \$100m+ (portfolio)
- Dedicated capital pool for SME disputes (for funding amounts <\$0.5m)

INTRODUCTION



- Erso Capital's affiliate insurance arm
- A litigation insurance provider established in 2000.
- Offices in London, California, Manchester, Toronto & Dusseldorf
- Part of the Thomas Miller Group, a global insurance and asset manager founded in 1885, and currently managing over USD \$3.5bn of AUM and over USD \$1bn GWP per annum across 18 offices across Europe, America and Asia.
- Global market of insurers and reinsurers.
- Ranked tier 1 by Chambers & Partners.

LITIGATION FINANCE OVERVIEW

- Litigation funders invest in legal claims
- Capital can be provided for :
 - Legal fees
 - Litigation expenses
 - Other expenses (e.g. patent maintenance fees)
 - Working capital / operational expenses for the IP owner
- Financing is secured only against litigation proceeds collateral (non-recourse / limited recourse)
- Funder is usually passive – IP owner retains ownership and control of the litigation and the IP
- Who should use litigation finance?

LITIGATION FINANCE VARIATIONS

- Variations:
 - Single case litigation finance
 - Law firm financing
 - Portfolio financing (e.g. patent assertion campaign)
 - Monetization of a judgement or claim
 - IP purchase transaction / “Active” Litigation Finance
- Commercial terms (for ‘traditional’ litigation finance):
 - [Preferred] return of capital, plus
 - Multiple of invested capital, and/or
 - Percentage of proceeds
 - Waterfall depends on overall funding structure



LITIGATION FINANCE REQUIREMENTS

- What are funders looking for:
 - Good legal merits / likelihood of success
 - Case economics – expected damages recovery v. legal spend
 - Good prospects of enforcement
 - [Can non-monetary cases be financed?]
- Underwriting process:
 - Stage 1 – In house review
 - Term sheet
 - Stage 2 – Deeper due diligence (prior art search, external counsel)
 - Transaction documents and closing

LITIGATION INSURANCE OVERVIEW

- Closely related to litigation finance
- Insurance for an IP owner (and/or law firm) involved in an **existing** legal dispute (After the Event)
- Covers the risk of an adverse outcome to the litigation
- Can cover:
 - Adverse costs award / liability for opposing party's legal fees (security for costs)
 - Own side's legal fees and/or expenses financed by IP owner
 - Other litigation exposure? (e.g. bond to enforce injunction)
 - [Usually does not cover damages risk]
- Premium usually involves:
 - Single upfront premium, [plus]
 - An additional premium which is contingent upon success (usually lower than a litigation funding return)
 - Often used alongside litigation funding, but can be used as an alternative
- Can be used alongside litigation funding, or as an alternative if IP owner has liquidity

GET IN TOUCH



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