

LITIGATION STRATEGIES THAT LOWER OVERALL COSTS

May 6, 2020

QUESTIONS?

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Look in the Mirror

- Do you spend on:
 - Discovery / document productions / e-discovery?
 - Preparing and defending corporate representative and employee depositions?
 - Legal research and motion practice?
 - Expert retention, preparation, and depositions?
 - Non-critical depositions?
- WHY? Are any of these steps critical to a fair resolution?



Know the Playing Field

- Research opposing counsel
 - Lazy / volatile / talented / greedy / trustworthy?
 - Relationships with judges, counsel, client, opponents, etc.?
 - Prior litigation/settlements with your corporation?
- Research the judge(s) and jurisdiction
 - Do you have a realistic chance at winning a discovery motion?
 - Do defendants ever win dispositive motions?
 - Prior jury verdicts



Is Your Goal Trial?

- Do you want to go to trial?
 - Strength of your case?
 - What is your exposure?
 - What is your risk tolerance?
 - What are your costs and fees through trial?
 - How reasonable is your opponent?
- If you are committed to trying the case, then do the work to get it ready



Is Your Goal a Dispositive Motion?

- If your goal to win a dispositive motion, then what do you need for the motion?
 - Bring the motion as soon as possible
 - Can you identify an issue of law at the outset?
 - Discovery? Keep it focused
 - Depositions? Limit to critical depositions
 - Experts? Can you move before the expert deadline?
 - Every step should be narrowly focused on what is needed for the dispositive motion

Most Cases Settle

- If no trial and no dispositive motion, then *you will be settling*
- *Myth*: You need to make plaintiffs work hard before settling in order to deter future claims
 - *Value controls volume*: if you are paying full value on the courthouse steps, plaintiffs' counsel *will* sue you again with similar claims
 - If you settle early, you can often settle for a lower amount
 - If the cost of litigation is higher than amount in dispute, why litigate?



Use Prior Similar Claims to Establish Value

- If you have had prior similar claims, then your values should already be set
 - Prior claims with similar factual allegations?
 - Prior claims with similar injuries?
 - Prior claims with similar theories of liability?
 - Prior claims with opposing party?
 - Prior claims with opposing counsel?



Early Claim Evaluation

- Do you already know the value of the claim?
 - Can you resolve pre-suit?
 - Many claims are resolved with SSR, medicals, and an interview
- Do you want to settle early?
 - Are there procedural steps worth taking to posture the case for a better settlement?
- What evidence is needed to evaluate the case?
 - Do you need certain documents or testimony? (do you need certain evidence for insurers?)
 - Focus efforts only on obtaining that evidence
- Get an early estimate of litigation budget through trial



Practical Tips

- Select counsel that is appropriate for your strategy/goals
- Communicate your strategy to your counsel at the outset
- Relationships with opposing counsel are important
 - Establish mutual trust where possible
- Review your existing docket for cases ready for settlement



Win-Win Settlements in COVID-19 World

- Cost of defense exceeds amount in controversy
- Opposing party in need of money now
- Plaintiff firm in need of cash to save jobs
- Change in value of property or damages at issue
- Business close to bankruptcy
- Settlement of groups of cases (negotiated individually)
- https://www.nelsonmullins.com/idea_exchange/alerts/additional_nelson_mullins_alerts/all/identifying-win-win-settlement-opportunities-in-the-world-of-covid-19

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