

## **The Nifty Tech Acquisition: Thorny One-Off Litigation Pricing**

### Litigation Exercise #1

You are the lead litigator for Friendly & Wise, Ltd. It is a few days later and an offer for Nifty Tech has been made. The general counsel of In Your Face (“IYF”) has advised Omnivore that litigation is imminent.

You have a meeting with the Omnivore CFO and GC scheduled for later today to discuss strategy and cost. The Omnivore GC advised you the CFO needs to know the cost of the litigation so that earnings estimates can be revised if needed to avoid investor surprise.

The Omnivore GC also said IYF is conducting a talent raid on Nifty Tech while the acquisition is pending. Several of the targeted Nifty Tech employees have employment agreements that restrict their ability to work for competitors. The Omnivore GC believes Nifty Tech has a claim against IYF for the talent raid.

Based on your investigation, you anticipate that the IYF lawsuit will involve several claims:

- a) IYF will challenge the acquisition based on a theory that the combination is an unlawful concentration in certain markets because of, among other things, the Nifty Tech patent portfolio that Omnivore will acquire.
- b) IYF believes it has a patent claim against Nifty Tech. IYF has not filed it because Nifty Tech was such a weak competitor. In Omnivore’s hands, this patent is likely to be exploited in ways IYF finds intolerable. IYF will sue on the patent claim.

You know from your experience that the illegal merger and patent claims will involve substantial and wide-ranging document discovery and that e-discovery and document review will be substantial litigation cost items.

The Omnivore GC reminds you that speed is critical to Omnivore, which needs to close the deal in short order.

The Omnivore GC has asked you to propose a type of fee agreement at the meeting later today. The Omnivore GC has also asked that you prepare options in the event your initial proposal will not work.