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Complex Litigation

Excellence in litigation involves a number of skills: intellect, diligence, aggressive pursuit of client objectives, understanding of the art of persuasion before different forums, and other talents. When the litigation involved can be characterized as "complex," all of these skills remain important, but complex litigation typically requires additional skills and experience that many highly competent commercial litigators do not possess.

Litigation can be characterized as complex because it incorporates one or more of the following features:

- Massive document populations to be produced by or to the firm's client, and mastered as plaintiff or defendant;
- Very large numbers of potential deponents and witnesses;
- Issues involving complex calculations and large quantities of data;
- Complexity and interrelationship of multiple issues;
- Extreme time pressures imposed by judges, opponents, or client imperatives;
- Class action claims;
- The need to present and defend, or cross-examine, expert witnesses in arcane and highly technical or otherwise complex subjects; and
- The need to persuade through the use of sophisticated graphics and technologically sophisticated courtroom persuasion techniques.

The members of Steptoe & Johnson LLP's Complex Litigation group have faced all of these situations and combinations of them. Together, the group offers many decades of litigation experience in complex litigation in federal and state courts and in administrative trial-type adjudicative proceedings. Because so many Steptoe lawyers are experienced in complex litigation, we are able to assemble teams tailored to the particular elements of complexity, to utilize the skills of these lawyers in conjunction with the latest technology to achieve efficiency, and—ultimately the most important factor—to deliver results in the courtroom, before juries or judges.

These talents are combined with understanding the need for cost-consciousness and efficiency. Complex litigation is expensive, but the costs can be controlled through litigation management skills, use of risk-assessment techniques, and selective use of alternative dispute resolution techniques suitable to the particular situation. Some situations are appropriately characterized as "millions for

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defense, not once cent for tribute," while in others the sense of "when to hold and when to fold" is of preeminent importance.

Some of the particular advantages that Steptoe brings to complex litigation are as follows:

Litigation Support and Pretrial Computer Management Systems

Steptoe lawyers have been involved in the use of sophisticated litigation support computer systems for more than 25 years. We have our own software and hardware systems, fully developed and ready to apply to client needs, without needing to hire litigation support consultants and spend months designing a workable system. We can be up and running with a full-featured litigation support system from the beginning of a litigation, and know how to use such systems—data bases, imaging, and OCR systems—to reduce the amount of time lawyers and paralegals spend finding the right documents for taking or defending depositions or preparing motions or briefs. Our approach recognizes that every case is different, and that there are economic tradeoffs between possible approaches that only the client can decide.

Computers have revolutionized the process of taking depositions, particularly on the road. Our lawyers routinely go to depositions with every relevant prior transcript immediately available on notebook computers, and often with every potentially relevant document available as an image on a CD-ROM reader. Use of these techniques has tremendously reduced the costs of repeated document copying and the practice of carting masses of document boxes around the country.

Use of Sophisticated Expert Witnesses

Success in many complex cases depends upon the ability to identify those issues that require expert witnesses, identify the potential experts, evaluate them, and recommend the ultimate selection to our client. The lawyers at Steptoe understand how to manage the expert selection process on behalf of clients, and how to work with such experts to obtain the best possible presentation in support of the client's case.

Analysis of Masses of Data and Use of Complex Computer Programs

Some cases involve more than masses of documents: masses of data, such as where there are many claimants or damage issues involving long time periods and multiple variables. The failure to understand and master the pertinent data can seriously damage a client's interests. Early and complete mastery of the data to assess exposure or potential recovery can drive choices regarding settlement vs. continued litigation. In the most complex cases of this kind, it may be important to identify consultants who can create the necessary computer models, enter the necessary data, and quickly and inexpensively produce analyses based

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on various assumptions. Such consultants may be accounting firms, economic consultants, or other types of experts in managing complex calculations. Steptoe lawyers have confronted many situations involving the management and mastery of data in such situations, and are accustomed to guiding the selection of appropriate consultants or working with the client's in-house personnel to locate, organize, and present persuasive evidence drawn from complex data sources.

Class Action Cases

While not every class action qualifies as a complex matter, many do. The potential liability in possible class situations demands aggressive management on the part of defense counsel. Attacks on the effort of plaintiffs to achieve class certification involve a set of special skills and the understanding of the issues presented, such as typicality and numerosity. Steptoe lawyers have dealt with class action defenses in many cases in numerous areas of the law, including securities, employment, and product liability.

Trial Presentation Techniques

The typical complex litigation matter today extends the complexity of pretrial discovery and trial preparation into the courtroom. We face today a generation of jurors who are accustomed to acquiring information through television and other visual systems, and who may not be adept at handling conventional document materials.

This situation requires trial lawyers to recognize and adapt to current reality. Courtroom technology has advanced at a rapid pace in the last few years. Unfortunately, many experienced trial lawyers are computer- and technology-phobic, and fail to understand and take advantage of the revolution that is taking place in courtroom persuasion techniques.

Steptoe lawyers understand the new technology, and how it can be employed to advance their clients' interests, while at the same time understanding that "high-tech" is not the right answer in every trial situation. We are experienced in using systems that quickly call up pertinent documents on large monitors for court and jury, and that permit such documents to be annotated right before the trier of fact in a way that drives home key points. We are experienced in using the videotape deposition, transferred to CD-ROM for immediate, random access, as an effective tool for presenting the testimony of witnesses who cannot be brought to court and impeaching those who have come to court.

Building the Litigation Team

Steptoe employs the concept of the "tailored team" for complex litigation. That means that those responsible for the client representation will analyze the particular case to determine which kinds of complexity issues are involved, and

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present to the client a recommended team whose skills and experience best fit the needs of the client. We believe that the most economical approach in most situations involves the use of experienced lawyers who have been there before. Appropriate use of technology offers the opportunity to avoid the expensive cast-of-thousands approach to staffing complex cases.

Case Management and Budgeting Techniques

Litigation is expensive. Complex litigation can be particularly so. But overall costs can be controlled by using case management and budgeting techniques and by closely coordinating outside litigation counsel and inside corporate counsel.

What is at stake for the company often drives the approach to cost management. On bet-the-company cases, litigation counsel may be asked to follow the leave-no-stone-turned approach to the case, but even in such situations, case budgeting and planning impose an important discipline on all involved.

Where the company's viability and survival are not at stake, reasonable approaches to risk assessment should be employed. How much is risk increased by taking only 10 depositions rather than 40? How much is risk reduced by the depose-until-they-drop approach, rather than less expensive targeted depositions that go after core information?

Legal research, too, can be expensive. We do not believe in throwing associates into the library to research every possible issue. First, our collective experience is such that on many issues little research is required, because we have been there, done that. Surgically targeted research to fill in gaps or focus on cases in a particular forum, rather than writing legal tomes, can do much to reduce costs. We also draw upon our prior work product, which often can be updated at modest cost compared to a research project that starts from scratch.

Assessing the right approach must be a collaborative effort of our team and the client's internal team. We recognize that, after all, it's the client's business and the client's money that are at stake.