

## You're Hired: Now What?

### A Checklist Approach to Getting Your Hands Around Initial Considerations in Litigation

(NB: *this checklist is non-exclusive. All cases are different in some way(s)*)

- Clear conflicts before doing anything.
- Will the litigation create a business conflict, or a positional conflict with other clients? Any reputational conflict to be aware of/considered by management?
- Ability to pay and clear communication and understanding of client goals and expectations.
- Confirm dates of service on all parties, review docket and court's packet, get all existing dates and deadlines calendared ASAP.
- Go on relevant court website and obtain, read and calendar all standing orders – both of the court, and the individual judge. Be sure to advise client of deadlines.
- Provide all special rules of particular judge regarding manner, location and timing of filings to support staff (i.e., must filing be completed by COB on day of deadline or must the court receive a courtesy copy in chambers by noon the next day after a filing?)
- Existence of subject matter jurisdiction.
- Existence of personal jurisdiction.
- Removability (including under CAFA and super-preemption) and, if so, is it preferential to your client to do so.
- Determine whether there is an arbitration agreement to invoke, and client preference if so.
- Consider possible *pendente lite* relief: TRO, injunction, writ of attachment, receivership, involuntary bankruptcy.
- Any related litigation, and possibility of consolidation, coordination, low-numbering, abatement under exclusive concurrent jurisdiction or other doctrines.
- Confirm admission of you and team to jurisdiction in question. Consider whether local counsel is needed; *pro hac vice* applications if needed.
- Confirm presence of all necessary parties (joinder needed?) and possible existence of sham defendants.

- Legal status of plaintiff: capacity, standing, absence of loss of claim through bankruptcy filing.
- Consider seeking transfer under *forum non conveniens*; consider MDL if appropriate.
- Consider seeking complex designation (LA, SF, Alameda, OC, others). Or counter-designate.
- Are attorneys' fees available, under contract or statute?
- Background on judge, opposing counsel, key witnesses. Consider 170.6 if appropriate. Poll colleagues re prior experiences with these people/entities.
- Consider early retention of consulting expert(s), and seek client input on any preferences.
- Consider whether any regulatory or policing agency can/should be involved, and on what grounds and how to approach.
- Potential application of claim or issue preclusion; claim splitting.
- Assess whether causes of action alleged are actually disguised, to avoid other causes of action with a higher barrier to pleading
- Consider whether cross-claims and/or counterclaims exist and whether to file.
- Consider and advise client re possibility of available insurance coverage. In writing to document we raised the issue. If so, obtain all potentially applicable insurance policies and ensure that notice is quickly provided to the insurers.
- Consider and advise client re possibility of contractual or equitable indemnity, such as from a prior owner or other source.
- Consider immunities, such as governmental and others.
- Document hold. Learn and understand client's document/data retention practices.
- Outline task list for all these issues, and any others.
- Present client with short-term proposed plan for managing the litigation.
- Prepare budget for client and/or carrier, if required or requested.
- Discuss with client the world of potentially relevant documents and where such documents are located.