

EFFICIENTLY MANAGING DISPUTES TO WIN

Forensic consultants provide a competitive advantage to attorneys handling disputes

The market demands efficient handling of business disputes. Qualified forensic consultants can help law firms realise enormous efficiencies and a competitive advantage throughout the litigation cycle from early case assessment through trial testimony.

Early case assessment

It is important to have realistic expectations regarding the potential financial return when evaluating disputes. Damage theories should be developed and critiqued early in the case to determine the likelihood and amount of actual recovery prior to incurring significant costs. Forensic consultants should not only be engaged early to assess the loss periods, discount rates and damage calculation variables, but also to assess causation and mitigation.

In regard to causation, did a company's business loss result from a breach of contract, or economic/market downturn, unrelated product quality issue, a natural disaster or fraud?

As to damage mitigation, consider a manufacturing company that suffered a contract breach on the part of a supplier. Cheap alternative supplies that are readily available may indicate there are no damages to award. Substitute supplies, however, may not be available and the manufacturer may have significant damages for many years to come.

Discovery

The massive amount of electronically stored information has increased both the costs and complexity of disputes.

Forensic consultants should have e-discovery capabilities that include a secure platform and consistent process to facilitate intelligent collection, tracking, production and analysis of evidence.

Using an outsource forensic consultant allows the law firm the opportunity to use the e-discovery services when needed, as opposed to incurring the substantial costs of an in-house e-discovery platform and professional team. Forensic technical expertise is a key element to controlling costs and enabling informed analytics.

Forensic consultants can also ensure that evidence is sufficient to support sustainable findings in adversarial proceedings. An experienced forensic consultant's accounting, auditing, and industry expertise adds value to discovery requests and deposition preparation, and

secures financial and business facts to support case themes.

Contractual provisions, which allow review of an opponent's books and records independent of litigation, may identify important information that can be used to develop case themes. Regulatory inquiries and internal investigations may run parallel with disputes, and the forensic consultant should also analyse information in connection with these investigations and determine the potential impact to discovery.

Trial

The success at trial can be highly dependent on testifying experts. Credentialed forensic consultants should possess the knowledge to testify regarding damages and use tested, reliable methods to calculate damages that survive an opponent's challenge. Experienced consultants also provide useful insight to impeach an opponent's testimony. Successful consultants understand the importance of communicating and connecting with triers of fact, and have an aptitude for presenting complex facts simply and efficiently. Forensic consultants also may be called upon to testify regarding causation in accounting malpractice and other cases that require specific industry knowledge.

Summary

Use of forensic consultants with financial, business and technological expertise provides multiple efficiencies benefiting lawyers and their clients throughout the business dispute process. In early case assessment consultants can assist with strategy in terms of the value of a case and the likelihood of success. In discovery and through trial, the use of qualified forensic consultants provides a competitive advantage over opponents by efficient identification, analysis and presentation of critical facts to achieve favourable outcomes.



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