

HDLI's 2015 General Counsel Forum
10 Lessons Learned from Managing Monster Litigation
Prepared by Kelly D. MacNeal

- 1) Send out appropriate notices to insurance carriers and "litigation hold" notice to relevant departments so that records that will be the subject of the litigation are not destroyed, lost, or stored in a vulnerable area.
- 2) Have a definite clear, practical ideal, a goal, an objective in other words- Answer the following: (a) Are you willing to try the case, (b) Do you have the requisite documents that you anticipate will be the subject of discovery, (c) What is the record retention policy? And (d) Does your agency store and maintain its records according to its record retention policy?- ALSO try to retain an attorney who has litigation experience who can be your go -to resource when evaluating the objective (mediation, arbitration, settlement or trial).
- 3) Do you have the necessary means to achieve your ends? (What is the projected cost of litigation and projected duration of litigation period? Can you respond to and produce relevant records in a timely fashion once the litigation begins?) Other pertinent questions to answer:
 - a) Are your business units on board with your defensive or offense strategy? B/c they will be your partners throughout the duration and you may need Executive staff, Operations, and Finance departments as a resource when the litigation begins.
 - b) Designate a point person for the litigation in a similar manner that you would have a departmental liaison for an audit (if at all possible)
- 4) Balance any legal obligations and requirements with business strategy of the agency.
- 5) Research top firms for relevant subject matter – your strategy begins with the type of outside counsel that would serve you best, whether an in-state provider or an out of state provider, What is the culture of your local courts, Is it state/federal litigation?
- 6) Legal v. technology solutions- a) what kind of data bases does the agency have? b) Are you able to query information from your technology that is helpful in discovery phase or in performing analysis for possible outcomes? C) Do these products require any ancillary services?
Tip: If you can manage data production in-house then your outside counsel does not have to bill you for pulling together information.
- 7) Do you need to retain a project management specialist (both legal and administrative professionals) to manage the outside counsel and other retained professionals (engineers, finance professionals, etc.) to prepare for the litigation?

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- 8) If at all possible, delegate responsibilities to both in-house counsel and outside counsel.
- 9) Preparation before outside counsel retained: Draft a time line of the activities which are the subject of the litigation, include names of relevant employees who have information of the claim, start gathering documents, have employees gather any relevant documents which should be reviewed by in-house counsel before turning over to outside counsel.
- 10) Outside Counsel - a) Who is the team comprised of? Attorneys and any other professionals, paralegals, administrative staff, b) What do you want? – a small team of senior or large team of inexperienced attorneys? c) What is the proposed time frame for each phase of the litigation? d) What is the standard litigation workflow for this type of case? [e.g., pleadings, discovery, depositions, motions, mediation, trial etc.], e) What is the litigation budget? f) What is the preferred billing monthly? Tip: the billing line item detail should stand up to an audit.