

Bet-the-Career: Tips for keeping executives from becoming collateral damage in high stakes litigation

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Small and large companies make tough decisions to “bet-the-company litigation” in prosecuting and defending itself in high-stakes litigation. But less discussed are those executives that “bet-the-career” in mounting a defense. These executives are collateral damage in the messy world of complex litigation - to the individual, fighting for one’s career oftentimes means putting it all on the line in litigation.

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Nexsen Pruet recently worked with a corporate executive to resolve a work place dispute. While the dispute was less complicated than claims that arise from securities or intellectual property disputes, it was an emotionally driven dispute that threatened the career and reputation of the client. Discovery in the case exposed weaknesses for all parties, showing both sides would be extremely vulnerable in the hands of a jury. This discovery ultimately produced the “smoking guns” that pushed the case toward settlement prior to trial. The client was not afraid to litigate, and in fact wanted to litigate to protect his reputation and to see justice prevail. However, from the day Nexsen Pruet was hired, we knew a public trial was not in his best interest. The ultimate goal was transparency, an out-of-court settlement and the ability to save his career.

If you find your career in hot water because of high stakes litigation, you should consider these strategies:

- **Trust.** When an individual hires an attorney, particularly in high profile, high stakes litigation, the client is putting a career in the lawyer's hands. Litigation brings hard-charging moments requiring aggressive decisions. But there are other situations where standing in the background is in the client's best interest. An individual is oftentimes too attached to the matter to make key strategic decisions. This is when trust in counsel is paramount. A strong attorney-client relationship will endure difficult litigation because it will be a team effort to effectively resolve the dispute.

- **Tunnel Vision v. Big Picture.** In many pieces of litigation, the dispute is laser focused on a specific issue and a finite period of time. However, in assessing risks versus rewards in proceeding to trial, a trial rarely follows a narrow blueprint. Landmines and surprises have a tendency to creep in. And in many cases, a client's decision to settle or testify hinges on unrelated issues that the client should not or does not care to publicly reveal. A seasoned litigator manages the litigation and the landmines, and in doing that, a litigator has to recognize when events and allegations unrelated to the dispute play a significant factor in betting the client's chances at trial.

- **Team Approach.** Oftentimes, the company and the executive are closely aligned in high-stakes litigation, and a collaborative defense is in the executive's best interest. But there are instances where, even aligned, some defenses are exclusive to the individual. It is important the executive feels confident that his or her individual interests are being well represented. Hiring independent counsel that works well with the company's counsel but is not afraid to advocate for the executive's individual best interest will best serve the executive well.

- **Quiet Resolution May be a Win.** Thanks to television, everyone wants their day in court, to prove their innocence in a criminal or even civil venue. However, tv portrayal is most often not real life. The fallout from real life court can be career ending regardless of the outcome in the courtroom. While having experienced trial counsel is necessary to protect your best interests, associating counsel that is a skilled negotiator will ensure you are well covered. In high stakes litigation, a favorable jury verdict may not be a victory - even with a win, public scrutiny may leave lasting damage. Quiet resolutions are oftentimes home runs for both the company and the executive.

- **True Trial Experience.** Even with every effort to a peaceful resolution, some disputes are destined for the courtroom. Very few attorneys are seasoned trial veterans. Today, the vast majority of cases are settled out of court, and that means attorneys have less and less trial experience. But if you have a dispute where your career is on the line and trial is the only viable option, you want a trial attorney who has been through the trenches by your side. An attorney who "has been there" understands the risks, rewards and realities of litigation and is best equipped when you are betting your career in high-stakes litigation. And behind every successful trial attorney is bench strength that provides a legal "dream team." A law firm that has attorneys in specialized areas of practice, eDiscovery capabilities, public relations experts and a network of available support will put their talents on display when you are betting your career.

**A result achieved on behalf of one client in one matter does not necessarily indicate similar results can be obtained for other clients.*