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TRIAL ATTORNEY'S THOUGHTS ON LITIGATION LIKE HPI V. WELLMONT

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Preliminary Considerations

1. If you are not ready to sue to enforce your rights, you may as well not have them.
2. That said, trials are costly and settlement is always desirable, if it can be accomplished on reasonable terms.
3. Willingness and ability to sue are necessary to have leverage in negotiations.
4. Sometimes a contingency fee is necessary, but this approach has both upsides and downsides.
5. You may need a “Special Litigation Committee” to help avoid conflicts, and facilitate considered, prompt decisions.

Preliminary Considerations (Cont'd)

6. What to look for in a lawyer? It depends, but:
- Usually more important to have trial experience in complex cases than specialized expertise.
 - But you may need both, and large firms often can supply both at a premium cost.
 - A local lawyer is less expensive, needs less travel time, and knows local rules and practices.
 - Combining a local and national firm can sometimes be the most effective approach, but this requires monitoring since—very rarely—lawyers have egos.

As Litigation Unfolds

7. Preparation is essential. It is a mistake to skimp or delay, but there should be a budget and continuous monitoring to control costs.
8. As the case proceeds, each side continues to assess the staying power, financially and psychologically, of the other side.
9. Defendants (that is, those who will pay if the case is successful) often try to delay and drive up costs; Plaintiff must try from the first day to expedite the case, and should expect to get some, but not enough, cooperation from the Court in this endeavor.

As Litigation Unfolds (Cont'd)

10. Expect this: Examine documents early; use algorithms to avoid the need to review most documents; identify and meet twice with each key friendly witness.
11. Try to avoid this: Depositions and motion practice are usually far overdone, especially by those wanting to delay the case and add to costs; ask the Court to help by setting scheduling and other pretrial orders.

As Litigation Unfolds (Cont'd)

12. Expect mediations to be required by the Court, and to accomplish nothing unless both sides are ready to settle.
 - To avoid having too many imposed on you, commence settlement negotiations early and advise the court they are ongoing.
13. Risks of retaliation, and what can be done to eliminate or mitigate those risks.

Conclusion

14. In sum: Litigation is like surgery.

- A good practitioner will try to avoid it using conservative methods.
- It necessarily involves risks and expenses.
- But it has to be considered as an option to make a good decision.



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