Efficient Litigation Balancing Time and Cost

Sarah Sawyer: Welcome to this week's OK at Work with myself, Sarah Sawyer, and my colleague Russell Berger, both attorneys at Offit Kurman. And today we are talking about trials and litigation, and we've talked about that in a lot of different ways, talking about kind of the cost burden of litigation, the conflicts aspect of it. Various things that you might need to know just going into litigation.

But one thing that is definitely comes into play when deciding where you're gonna litigate, how you're gonna litigate, what that strategy looks like, is the timelines of when you can practically actually get into court. So obviously there's some things that are within the parties' control as it relates to types of motions you might file or substance and those types of things, but there's some things that are a little bit more out of the parties' control, which is [00:01:00] just the judicial forum itself.

How many judges are available? How does the court assign cases? How long, is it gonna be till you get to your trial date? Some of that is some external factors. So what are some things that come into play, Russell, as far as, timelines and what people would expect when they go to court?

Russell Berger: Yeah. Well, and I think as you're framing this, it's a really important conversation 'cause we talk about litigation budgets and, risk reward with respect to outcomes. But that has to be measured on a time horizon, and you don't do this analysis and get a result 15 days later. It takes a much longer period of time to get there. To use Maryland as an example, we have a trial court, the circuit court, that is jury trial and has full-blown discovery, and we have a non-jury trial court called the district court that has a much more limited discovery process and no juries, and it also has a $30,000 jurisdictional limit.

That process goes much faster, [00:02:00] and by much faster, maybe from the time you file to the time you get a trial, maybe four months, five months, six months. Maybe it gets kicked out a little bit, but, it's, comfortably under a year in that forum.

Whereas, circuit court jury trial process, that's gonna be over a year. You might be put on a scheduling order that seems less than that but it's gonna take at least a year. So while, things like prejudgment interest, postjudgment interest, those things exist, and the prejudgement interest obviously can, mitigate some of the cost of waiting.

But if it's important to get to cash sooner or get to a resolution sooner that's leverage against you in a litigation, and, there's a reason why The vast majority of civil disputes settle because not only is it expensive to get to a result, it is time-consuming to get to that result too.

Sarah Sawyer: Yeah, and it's something that also you want to make sure you're keeping an eye on how just other factors might be impacting those schedules as well. Which state you're in will make a difference. Even what [00:03:00] county you're in within a state can make a difference just based on, the resources available.

Or we obviously saw things slow down during COVID when, people couldn't be in person or there were more, more people were out and different, judicial resources were stretched. I think we're gonna see also some impact of AI and pro se litigants and things like that.

So sometimes volume's impacting that as well. There might be a lot of cases coming in to a certain jurisdiction. So having someone who has a good pulse on that particular court also, that venue and what county you're in. To use Maryland again as an example, so we have some counties in Maryland that are, more rural and, their speed of and their pace is a lot different than maybe a major metropolitan area as far as the types of cases they're handling and how long things are gonna take and how likely things are to get pushed and those kinds of things.

Definitely good to have folks who are familiar with that local jurisdiction often with that too.

Russell Berger: Yeah. Well, and, A couple other [00:04:00] considerations are, if you're near that $30,000 threshold and again, it's gonna differ in different states and different forums, but, if you can get it into kind of that more streamlined process there might be advantage to that.

Even if it doesn't get you top dollar, it might be worth it to trade, the max dollars on the potential recovery for speed. So that's a consideration that's worthwhile. And also, depending on the context, you might be able to use your form agreements to include arbitration provisions that might get you to resolution much faster.

So for example, one of the arbitration agencies has commercial arbitration rules that if the dispute is under a certain dollar threshold, and which is higher than the 30,000 you get to an arbitration hearing in, I wanna say it's 60 days. You can get there a lot faster and you can certainly contract to that too.

So you can get to things a lot faster in a lot more streamlined fashion. And again, there's trade-offs, there's pros and cons to doing this, but depending on the specific situation, these are all things that are, worth throwing into the calculus. [00:05:00]

Sarah Sawyer: Yeah. Definitely something to think about.

Well, thanks, Russell. We'll see you next time.

Russell Berger: Thanks, Sarah.