IMLA

JUUL—The New Tobacco Litigation

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Swing—Don’t Swing



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Is the Juice Worth the Squeeze?

- How has the local government been harmed by the alleged wrongdoing?
  - Are there money damages?
    - How would the client capture/measure the monetary loss?
    - Can you establish proximate cause?
- *Parens Patriae*—province of the State?
- Equitable relief—stopping the bad behavior—is that important to the client?
- What will filing suit cost the client—more on that later?

Outside Counsel?

- Can the litigation be effectively pursued with in-house counsel?
  - Can the work be absorbed by current resources?
  - How complex is the litigation?
  - Has anyone on staff done this type of litigation before?

For many of us using outside counsel is a foregone conclusion. Yes, you need outside counsel.

Picking the Right Firm

- What is the firm's track record in similar cases?
- What are the credentials of the attorneys who will staff the case?
- How will the firm communicate with your office? Is the point of contact someone that you believe you can easily work with?
- Talk with current or former clients of the firm.
  - Effective?
  - Responsive?
  - Would you hire the firm again?

What Are the Firm's Economic Terms?

- Contingency fee—what are the terms? Is it comparable to other firms? Generally contingency fees are in the 20-30% range
- Will the firm assist in discovery?
- How will costs be handled?
  - Many firms will cover costs without recourse to the client.
  - Will costs be deducted before or after contingency fee applied?
  - Will costs carry an interest charge?
    - Some firms obtain outside financing—this often means that the client will be asked to pay some sort of interest. Some investors will front the costs but demand 30-40% of recovery.
    - Some firms self-finance and do not add interest.

    If a firm is willing to invest time and money in the case, it is an important benchmark for me.

Sweat Equity

- Your in-house point of contact—do you have a suitable attorney who can devote sufficient time to act as liaison to the firm and coordinate discovery responses?
- What sort of records do you anticipate having to produce? Ask the firm. Are the records already kept and easily retrieved?
- Will you have to produce fact witnesses? Are these key officials? Will they have time to devote to the case?
- Will client's employees have to serve as expert witnesses?

May You Hit a Homerun



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