CITY OF PHILADELPHIA
LAW DEPARTMENT

Utilizing Outside Counsel in Affirmative Litigation Practice Opportunities and Challenges

City of Philadelphia

AGENDA

1. Introductions
2. Outside Counsel Development of Municipal Litigation (Stephanie Biehl)
3. Engaging and Working with Outside Counsel (Benjamin Field)
4. Using Outside Counsel To Expand Opportunities (Lydia Furst)
5. Moderator Questions

Outside Counsel Development of Municipal Litigation to Address PFAS Contamination

- Issue
  - Per- and polyfluoroalkyl Substances (PFAS) contamination of water supplies and impact on governmental entities
  - PFAS Background
  - Health Issues and Potential Costs
  - Role of Litigation and Outside Counsel in Addressing Problem
- Case Initiation
  - Identification of Issue
  - Client Identification and Engagement
  - Contracting and Representation Agreements

PFAS Litigation from the Outside Counsel Perspective

- Case Development
  - Working with Client on Pre-Complaint Investigation
  - Complaint Drafting
- The Complaint: Key Issues
  - Standing
  - Causes of Action
  - Jurisdiction
  - Harm and Damages

PFAS Litigation from the Outside Counsel Perspective

- Initial Litigation Steps
  - Removal / MDL Positioning
  - Motions to Dismiss
- Discovery
  - Fact Development & Damages
  - Role of Client
  - Document Collection and Management
  - Use of Experts

PFAS Litigation from the Outside Counsel Perspective

- Discovery (continued)
  - Ensuring careful review of discovery responses
  - Preparing and defending depositions for government clients
- Trial Preparation
  - Involvement of Government Client Attorneys
  - Client witness time management
  - Press and communications

PFAS Litigation from the Outside Counsel Perspective

- Settlement Negotiations
  - Working with multiple clients
  - Developing the analysis and recommendation
- Takeaways: Key issues and challenges in working with governmental entities as clients

Engaging and Working with Outside Counsel: PFAS From the City Perspective

- Generating Affirmative Litigation – Issue Identification
  - Increased knowledge of and concern over PFAS contamination
  - Evolving regulatory standards implicating potential future remediation costs
  - Expansion of local governmental litigation against PFAS manufacturers
- Client and Stakeholder Identification: PFAS Litigation
  - Water Department, Fire Department, Airport
  - Administration and Elected Stakeholders – Environmental Issues

Engaging and Working with Outside Counsel: PFAS From the City Perspective

- Developing Strategy and Approach
  - Scope of Case and Resource Allocation
  - Pre-Litigation Investigation
  - Internal Approvals to take externally visible actions
- Selecting and Engaging Outside Counsel
  - Process considerations – to RFP or not to RFP
  - Contracting Considerations
    - *New Hampshire v. Actavis Pharma, Inc.*: retaining client control
    - Fee Agreements

Engaging and Working with Outside Counsel: PFAS From the City Perspective

- Investigation and Discovery
  - Overseeing Outside Counsel
  - Managing Client Expectations
  - Identifying Client Issues
  - Mitigating Client Resource Demands
- Strategy and Settlement
  - Developing client position
  - Advocating client position through outside counsel

Takeaways: Key issues and challenges in working with outside counsel on large affirmative litigations

Using Outside Counsel to Expand Opportunities and Resources

- Outside Counsel as a Capacity Resource
    - Cases not focused on financial recovery
        - Pro-bono opportunities
    - Cases without financial recovery that require additional resources
        - Traditional fee structure
        - Pro-bono opportunities

Using Outside Counsel to Expand Opportunities and Resources

Example: Gun Violence Litigation

- *City of Philadelphia v. Tanner Operations, LLC*
- *City of Philadelphia v. Polymer80, Inc.*

- Developing the case internally
- Identifying and engaging outside counsel
  - Issue experts – working with non-profit legal organizations
  - Firm resources – obtaining pro bono counsel resources

Using Outside Counsel to Expand Opportunities and Resources

Example: Gun Violence Litigation

- Overseeing Outside Counsel
  - Government attorneys as team leaders
  - Managing the message and policy-centered approach
  - Identifying and vetting downstream implications of legal positions
  - Addressing document issues including privileges, privacy, and statutory protections
- Communications and Press
  - Advance preparation for public launching of case
  - Preparation for ongoing questions and focus

Using Outside Counsel to Expand Opportunities and Resources

Example: Philadelphia Juvenile Justice Services Center Litigation

- Issue: Overcrowding at PJJSC and Commonwealth of Pennsylvania's approach to transferring children to Commonwealth facilities
- Pre-Litigation internal approaches
- Developing the Litigation
  - Resource Assessment
  - Outside Counsel role consideration
- Balancing hybrid City / outside counsel team construction

Using Outside Counsel to Expand Opportunities and Resources

Example: Philadelphia Juvenile Justice Services Center Litigation

- Leveraging outside counsel for resource requirements
- Balancing outside counsel and City role
  - Discovery and opposing counsel negotiations
  - Court hearings
  - Client management

Takeaways: Key issues and challenges in working with outside counsel in pro bono and collaborative engagements

Questions

Moderator Discussion

Audience Questions