

How to Prepare for and Handle Litigation Matters

ACC SoCal
November 13, 2019

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Preparing for Litigation

Privilege

- Hats
- Legal Advice
- Cross-border
- Parents and Subs

Privilege *(Cont'd)*

- Training
- Forwards
- “Privileged and Confidential” or “Attorney-Client Privileged”

Work Product

- Anticipation of Litigation

Insurance Coverage

- Data breach

Document and Data Retention Policies

- Do you have one?

Contracts

- Repository

Employees

- Handbooks
- Acknowledgments
- Agreements
- Confidentiality

Individual Arbitration Agreements

- Consumers
- Employees
- Click-throughs

Risk and Gaps Assessments

- What do you do?

Low-Hanging Fruit

- Websites
- CCPA
- Prop. 65
- FDCPA
- TCPA

Handling Litigation

What is “Litigation”?

Internal Complaints

- Harassment
- Discrimination
- Health and Safety
- Theft
- Fraud

Internal Complaints *(Cont'd)*

- Internal Investigations
- HR
- You
- Outside Counsel
- Confidentiality
- Privilege
- Reporting

Cease and Desists

Pre-Suit Demand Letters

- Consumer class actions
- Employee/former employee

Pre-Suit Demand Letters *(Cont'd)*

- Do respond
- Don't ignore

Pre-Suit Demand Letters *(Cont'd)*

- Litigation holds

Civil Complaints

You're in Litigation: Immediate Action

Litigation/Legal Hold Notices

- When
- To Whom
- Content
- Reminders
- Updates
- Automation

Preserving Privilege

- Who is your client?
- Employees
- Upjohn warnings

Preserving Privilege *(Cont'd)*

- Legal advice
- Forwarding
- “Privileged and Confidential” or “Attorney-Client Privileged”

Confidentiality

- Trade secrets
- IP
- Sensitive matters
- Already violated?

Notifications

Insurance Tenders

- Periodic

Indemnification

Who Else Needs to Know?

- Law Enforcement
- Regulators

Public Companies

- Reporting
- Reserves

Internal Communication

- Who really needs to know
- Regular reports & meetings
- Boards

Publicity

- Industry
- Legal
- Social media

Publicity *(Cont'd)*: Plan Ahead

- Advance draft press release
- FAQs/scripts
- Privilege

Managing Expectations

- Timing
- Process
- Variables
- Costs
- Distraction

Managing Expectations *(Cont'd)*

- Goals
- Definitions of “Success”

Early Case Assessments

- Outside counsel - objective
- Source materials
- Judge
- Exposure analysis

Outside Counsel

- Necessary?
- Employees
- Recommendations
- RFPs
- Vetting
- Budgets

Budgets

- Hourly
- AFAs
- Refreshing

Evaluate Remediation

Litigating: Key Players

- Employees most knowledgeable
- Best witnesses
- Former employees
 - Consultants
 - Deponents

Litigating: Documents and Data

- IT/e-discovery
- Hot documents

Immediate Litigation Decisions

- Forum
 - Arbitration
 - Transfer
 - Removal
- Counterclaims
- 170.6

Litigation Events

- What's the point?
- Pleadings
- Motions
- Discovery

Litigation and In-House Counsel: You're Not a Potted Plant

- Fact-gathering
- Witness Prep
- Depositions
- Hearings

Safety in Numbers?

- Joint Defense Groups
- Common Interest Doctrine
- Information Sharing
- Cost sharing

Settlement and ADR

- When
- Where
- How
- Why

Success

- Winning
- Resolving
- Precedent
- Reputation

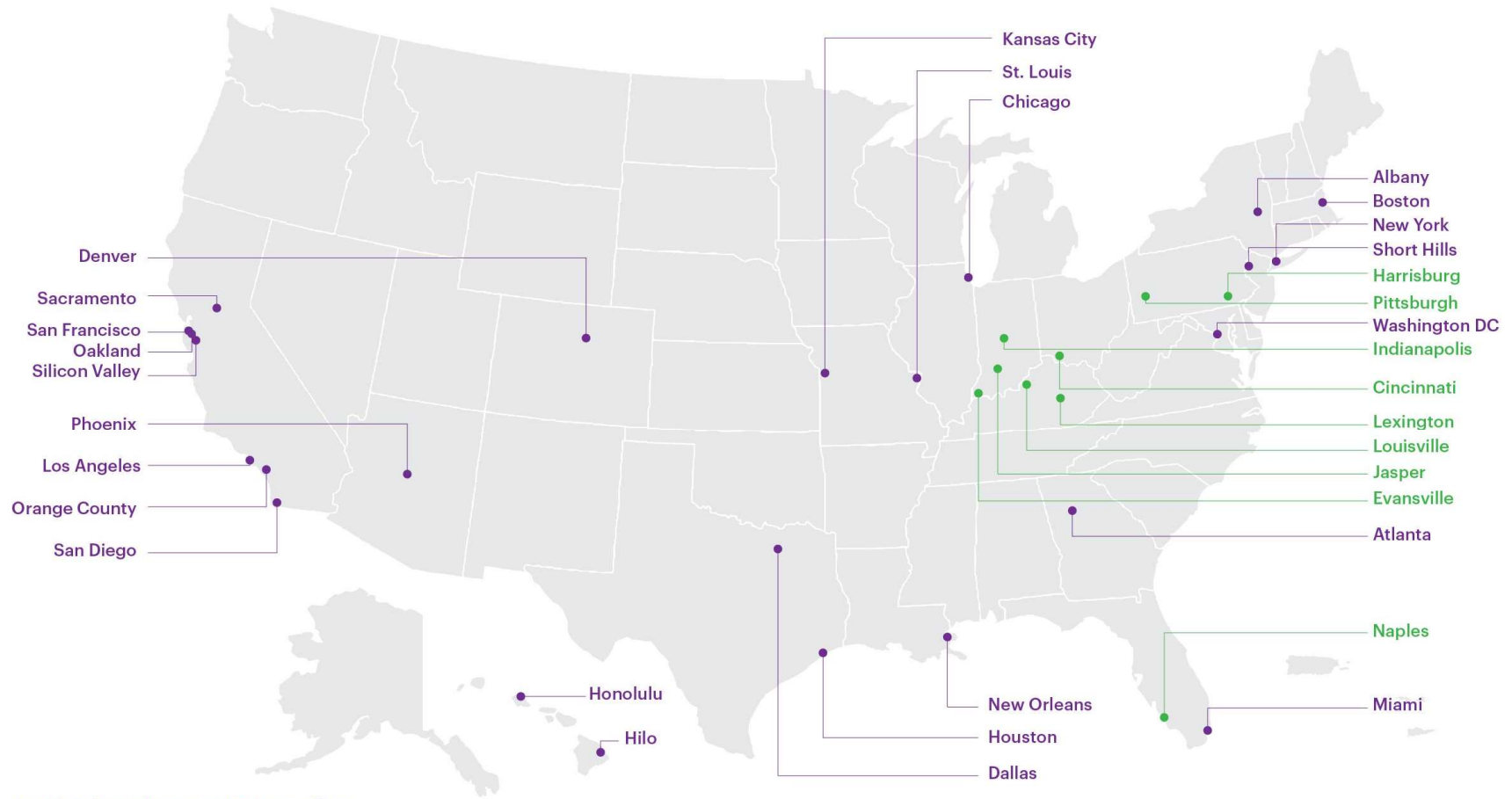
Reassess

Remediation & Follow-Through

Prevention

- Lessons Learned

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Locations in green represent proposed combinations that have not yet been formalized.

October 8, 2019

November 13, 2019

Thank you

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