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Welcome to the Resolution Strategies® Newsletter

The role of specialized settlement counsel continues to gain recognition. There is an increasing appreciation in the business and legal communities of the value of settlement counsel in expediting resolution of disputes at every level. While the role is still misunderstood by many (e.g., settlement counsel is not neutral), articles and continuing education conferences are elevating the awareness of the resource, including most recently the ALI-ABA teleconference co-sponsored by the ABA Section of Litigation and the ABA Center for Continuing Legal Education: "Use of Settlement Counsel to Achieve Better Outcomes of Disputes" held Tuesday, July 13, 2010.

Our newsletter will provide information on the role of settlement counsel and updates on related developments. We will also talk about Resolution Strategies® LLP (RSLLP), and our efforts to define best practices for settlement counsel. Our objective is to elevate the visibility of settlement counsel — a proven resource for effective, directed dispute resolution.

A Perspective on Settlement Counsel

Something old is new again.

The growing trend in the use of settlement counsel to help resolve difficult cases was the subject of an article in *The Lawyers Weekly* titled "Settlement Counsel: A New Approach to Resolving Difficult Issues" [Tarnowsky, Gordon and Rea, Noel (of Fraser Milner Casgrain LLP, Calgary, Canada), *The Lawyers Weekly* (published by LexisNexis Canada Inc.) (September 12, 2008)]. The article is right on point on the trend, but rather than a new approach, we believe the role of settlement counsel is something very old that is "new again."

Settlement counsel, in one form or another, has been around for a very long time. Since ancient times, emissaries have been used effectively to provide active channels for resolving disputes whenever the

warriors' aggressive positions point only to war. Today, difficult disputes and complex litigation present opportunities to take advantage of this proven resource. Over the past six years, we have seen settlement counsel become an accepted resource for defining and facilitating exit strategies. Clients embrace the business model that leverages the role of trial counsel, yet sends the clear message that a door is also open to a principled resolution. The "two-hat" model where the vigorous trial attorney also manages settlement activities remains the norm for many. However, more and more we see clients and their trial counsel embracing the benefits of involving settlement counsel to increase focus on fostering and capturing advantageous resolution opportunities without diluting the leverage or focus of the trial



team. Without question, the use of settlement counsel in difficult cases brings focus to the resolution process—and we all know focus brings results. While the role of settlement counsel can vary significantly depending upon the practitioner and the situation, there are developing "best practices" that allow clients and trial counsel to better understand how this resource can best serve the client's interests. In the end, whether pre-filing, during litigation, or on appeal, settlement counsel is another tool—another resource for the trial attorney to assist the client in getting to "the right resolution."

Resolution Strategies® Representative Cases

2010 marks our 6th year in bringing settlement counsel services to our clients involved in domestic and international disputes, whether the matter involves hundreds of thousands or hundreds of millions of dollars. We continue to enjoy success in assisting our clients and their trial counsel in expediting resolution of risks, claims, and litigation.

A few highlights:

Commercial Litigation:

RSLLP was instrumental in facilitating resolution of a complex commercial dispute involving national and international manufacturing companies. Despite the extremely contentious litigation, settlement counsel was able to establish and maintain a separate settlement track that successfully resolved the longstanding dispute. RSLLP represented the plaintiff in this matter.

Patent Dispute:

RSLLP was brought in as settlement counsel in a longstanding patent case pending in the Eastern District

of Texas. The matter involved companies in a commercial relationship who had been unable to engage in productive settlement discussions due to the extreme adversarial nature of the dispute. RSLLP successfully fostered resolution. RSLLP represented the defendant in this matter.

Public Entity—Section 1983—Wrongful Death:

Representing one of the public entity defendants in a complex, multi-party, civil rights-wrongful death claim, RSLLP was instrumental in opening the door to productive settlement discussions and successfully resolved its client's case. RSLLP represented the defendant in this matter.

Patent License Negotiation:

As part of our continuing representation of the owner of a telecommunications patent portfolio, RSLLP successfully concluded a license settlement on behalf of our client with a leading Asian international cell phone manufacturer.

Multi-Party Police Sex Abuse:

After an initial engagement to assist the public entity and the City Attorney in evaluating the case and risk, RSLLP was retained as settlement counsel. Working closely with trial counsel we successfully resolved all claims and the related complex insurance matters. RSLLP represented the defendant in this matter.

Breach of Merger/Complex Litigation:

The CEO of a publicly held company retained RSLLP to focus on resolution strategies in a complex case that had been pending over three years. The role of settlement counsel became increasingly important in maintaining resolution communications in the extremely adversarial litigation. The case, and all related cases and disputes, was successfully resolved through a \$1.5 billion merger transaction. RSLLP represented the plaintiff in this matter.

What is Settlement Counsel?

Settlement counsel is an attorney who represents the client on settlement matters only. Settlement counsel is not neutral. Involving settlement counsel simply separates the trial role from the settlement role. Trial counsel handles the litigation. Settlement counsel does not appear in court and his or her work is the emissary role—leaving the litigation to the trial attorney. Settlement counsel effectively “keeps the embassy open while the war rages on.”

In the News and Continuing Legal Education

Use of Settlement Counsel to Achieve Better Outcomes of Disputes, Teleconference and Live Audio, July 13, 2010, for additional information visit <http://www.abanet.org>.

Settlement Counsel: Is It Right for Your Business? Edward D. Shapiro, Litigation & Counseling Alert, Much Shelist Denenberg Ament & Rubenstein, P.C., (October 2009). For additional information visit <http://www.muchshelist.com/is-settlement-counsel-right-for-your-business-alert.htm>

Is Settlement Counsel Right for my Case?

How do you know if settlement counsel is right for your case? The real question is whether a dedicated resource will increase the likelihood of settlement on favorable terms. Focus brings results. RSLLP recommends a two-stage process.

- **Proof of Concept:** Settlement counsel should provide a preliminary assessment of the case and resolution options and approaches that demonstrate a value-added role for settlement counsel.
- **Engage:** If the value added is clear, define the role for the case and deploy settlement counsel. We generally recommend a success fee approach to ensure alignment and address value-added concerns.

The confidential, independent assessment from experienced settlement counsel can be a valuable tool for the client and the trial team. Regardless of what ensues, the focused analysis aligns the client and trial teams for success. Trial attorneys and clients alike will attest to the remarkable results that can stem from the sustained focus on resolution—not to the exclusion of litigation—but coordinated with it.



Articles and Publications on Settlement Counsel:

Several articles have been written on the role of settlement counsel. Resolution Strategies® LLP maintains a bibliography on our website at <http://www.resolutionstrategies.com>

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What Clients and Trial Counsel Are Saying

CEO, PUBLICLY TRADED COMPANY:

“Settlement counsel was invaluable. They were the difference between years of continued costly litigation and risk and our company nailing down a great result.”

LEAD DEFENSE COUNSEL:

“Settlement counsel was unencumbered by the hostile, adversarial history that chilled communications between the trial attorneys. They established principled, productive negotiations and the result was exceptional leadership in forging the solution our client was hoping to achieve.”

OUTSIDE PATENT COUNSEL:

“Their deep knowledge of corporate law departments, legal and business risks, and the art of negotiation, resulted in a series of favorable and rapid settlements. The results were tremendous.”

CITY ATTORNEY:

“While I seriously questioned bringing in settlement counsel, I quickly realized they made both our litigation and settlement positions stronger. They were the difference in getting the cases resolved.”

CORPORATE HEAD OF LITIGATION:

“The standard defense tactic was leading us to disaster. We needed to change the dynamic and get to productive negotiations. Settlement counsel’s innovative approach cracked the code and the cases. They also gave us tools and methods to better manage our risk and litigation in the future. A remarkable and valuable resource.”

About Us

Each of us brings a broad range of experience to our settlement counsel role. We have all tried cases in private practice, served as general counsel or the equivalent in publicly held companies, been involved in senior management of companies and private businesses, and have served as directors on various boards.



WILLIAM K. HOSKINS:

Notably, Bill was responsible for the seminal U.S.

Supreme Court case, *Merrell v. Daubert*. Bill has over 30 years of experience in the pharmaceutical industry, including serving as Vice President, Secretary, and General Counsel with Marion Laboratories, Inc. (NYSE), and its successor companies, Marion Merrell Dow (NYSE) and Hoechst Marion Rousssel, Inc. (the pharmaceutical arm of Hoechst Chemical of Frankfurt). Bill has served on numerous boards of publicly held companies, including serving as Chairman of J.C. Nichols Co., a Kansas City public real estate company. Bill graduated from Harvard Law School and received his B.A. from Yale University and began his legal career in 1962 with Frost and Jacobs (now Frost Brown Todd LLC) in Cincinnati. Bill was a founder of one of the first firms specializing exclusively in serving as settlement counsel and today, as the senior partner of Resolution Strategies® LLP, serves as advisor and business emissary for CEOs and boards nationally and internationally.



J. PATRICK O'MALLEY:

Pat O'Malley is managing partner of Resolution

Strategies® LLP. Pat brings over 30 years of business and litigation experience to our settlement counsel practice. After 15 years in private practice trying cases and representing clients in a broad range of transactional and litigation matters. Pat joined Hollywood Entertainment Corporation and was a member of the senior management team that built the small regional Hollywood Video retail store chain into the second largest video chain in the United States (with over 2,000 locations). His responsibilities included building and managing a number of departments including Legal, Leasing, Facilities, IT, Business Systems, Studio Revenue Sharing, Internal Audit, and Corporate Governance. Since specializing in serving as settlement counsel in private practice, Pat's experience has been instrumental in fostering resolutions in many complex cases.



ERIC O. ENGLISH:

Eric English brings over 20 years of experience in handling and

managing complex business and commercial matters, both in private practice and in-house. Eric has tried cases as a partner in the commercial litigation and product liability sections of a 200-lawyer firm while in private practice in Texas. His in-house experience includes managing litigation and setting up and running compliance programs as chief litigation counsel, associate general counsel, and general counsel for three publicly traded companies. He has also served as a board member, chairman of the Nominating and Governance Committee, and chair of the Special Litigation Committee for a publicly traded company. Eric's reputation as an experienced and skilled problem-solver has involved him as a resource of choice in a number of high-profile business and commercial disputes.

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