



Bet-the-Company Litigation – What To Do?

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Periodically, banks confront cases or threats of litigation that could do serious damage. These so-called “bet-the-company” cases require trial counsel skilled in handling complex matters. When a serious lawsuit is threatened, what should management do?

Consult immediately with the bank’s legal counsel.

Whether in-house or outside counsel serves the organization, a lawsuit or a threat of litigation should be immediately delivered to your trusted legal advisor. Counsel will quickly assess the situation, interview key players, and take actions to preserve key documents. At this juncture, counsel may advise bringing in a trial attorney to represent the bank. This is often a good decision, as steps taken early in a case, such as undertaking a thorough investigation and preserving key evidence, can make the difference between success and failure.

Find an attorney skilled in dealing with complex cases.

Bet-the-company cases require counsel with a broad skill set. Find an attorney or law firm familiar with banking law and regulations. Make sure your counsel has handled significant cases and that the law firm has a broad understanding of banking law. Ensure that the chosen attorney actually takes cases to trial. Also, get an attorney skilled in handling mediations, as mediation is the place where most cases now are resolved. In short, your attorney has to have the soft skill set of an effective mediator and negotiator and the proven hard skills of a trial attorney.

Ask prospective attorneys how they would handle the case.

Is this person available immediately to handle your case, have relevant experience, and is he or she enthusiastic about the opportunity to be of service? Most importantly, do you have a good rapport with this person.

Bet-the-company litigation is a stressful experience. Making a good choice about whom to hire is the first and most critical step in achieving a good outcome.

Todd McMurtry is an experienced trial attorney and Harvard trained mediator. He has handled many significant cases for businesses across the Commonwealth.