

## Discovery

Delivering a comprehensive discovery strategy rooted in scientific knowledge and led by seasoned trial lawyers driven to make your discovery smarter.

### **DISCOVERY COUNSEL SERVICES & eDISCOVERY**

The defense of complex litigation – whether in the form of one case or thousands – presents significant discovery challenges. These include extensive, adverse discovery demands comprised of multiple requests for documents; rounds of written questions and requests for corporate admissions; and requests for depositions of current or former employees, among others. Preparing for, challenging, and, when appropriate, responding to the discovery onslaught is expensive and distracts corporate employees from the crucial roles they play in our clients' organizations.

These serious challenges require an even more serious defense. Our team of litigation strategists provides comprehensive Discovery Counsel Services whether our clients grapple with a single case, sprawling serial litigation, or a need to coordinate company-wide strategy to ensure consistency across numerous litigations. Because our discovery counsel are seasoned litigators with decades of experience in all phases of pre-trial, trial, and appellate proceedings, we are positioned to align corporate discovery efforts with the merits needs of a case and provide counsel focused on both trial and business needs. Having represented some of the largest corporations in the country in high-profile matters, we also have met the discovery needs of mid-sized clients. We have developed and executed these strategies across many industries including pharmaceuticals and medical devices, consumer products, construction, railroads, insurance coverage, and others reflected in our practice areas.

### **COMPREHENSIVE DISCOVERY SOLUTIONS**

With a goal of adding predictability and control over litigation, we identify issues early and find solutions before they become problems. Our deep experience and understanding of how and why discovery needs evolve and change over the life of a litigation has resulted in numerous successes for our clients. A testament to the talent and depth of our team is a sampling of accomplishments below for our clients:

- We secured voluntary dismissal with prejudice of our client from toxic tort claims by showing plaintiffs' counsel through production of available records, limited corporate discovery, and related meet and confers that (to the extent they ever existed) the requested decades old records were unavailable due to reasonable and lawful records retention practices.
- We avoided substantial burdensome discovery on corporate conduct and/or punitive damages

issues by securing bifurcation of proceedings to first address threshold causation issues where the discovery record showed that plaintiffs could not prove our client was the source of alleged contamination in town wells.

- We efficiently and effectively managed document production and written discovery in a national mass tort involving production of more than three million documents, responding to tens of thousands of written discovery requests, and meet and confers and motions practice with dozens of unaffiliated plaintiffs' law firms across dozens of federal/state courts.

## **EFFICIENT DISCOVERY APPROACH**

Our extensive expertise in managing electronic discovery preservation, collections, and review ranges from production of a few thousand pages to millions of electronic and other files. In collaboration with the in-house and/or outside litigation support team, we guide clients through important decisions concerning the costs and benefits of different methods of data preservation, acquisition, and processing tailored to the different data sources and case needs involved. Our team also is experienced in the use of analytics (e.g., near duplicate identification and email threading), predictive coding, and the latest AI tools, to improve the efficiency and quality of review efforts. Many of our clients are global companies, and we work closely with them to implement strategies that balance U.S. litigation obligations with data privacy obligations such as those arising under the European Union's General Data Protection Regulation (GDPR).

## **CUSTOMIZED eDISCOVERY STRATEGY**

Because we specialize in integrating technological advances and litigation preparation with defensible, cost-effective eDiscovery strategies, the results we achieve for our clients do not rest on a one-size-fits all strategy. Rather, we work collaboratively with our clients to develop custom strategies that fit their business goals and the litigation or investigation at hand. Our goal is not simply to identify and produce documents to meet litigation obligations, but to know and understand the documents being produced as part of the overall litigation strategy.

Our work in other aspects of discovery is equally personalized for each client by our experienced team. In the current environment, our clients must respond to numerous (and often overly broad) questions about how their businesses operate and why certain decisions or events occurred. They also must identify and prepare corporate witnesses for depositions, including at times high level corporate executives or key employees not accustomed to the litigation process. These depositions can shape the course of a litigation, and our process ensures our clients and other stakeholders understand the key issues. Everything we do from selecting custodians and drafting responses, to written discovery and deposition preparation, is done with an eye on the trial implications. We also help clients achieve efficiency and alignment on corporate discovery issues that may span overlapping or future litigations.

## **OFFENSIVE DISCOVERY**

We believe a strong offense is a key part of excellent defense. Offensive discovery into plaintiffs' cases presents unique challenges in every litigation—from assessing individual case strengths and weaknesses, to evaluating entire inventories, to conducting discovery that allows us to build toward dismissals and favorable trial verdicts. We have extensive experience handling offensive discovery, including working with co-counsel to advise on potential corporate discovery implications.

## **NATIONALLY RECOGNIZED DISCOVERY EXPERTISE**

Not only do our attorneys lead national teams comprised of multiple law firms in roles such as National Coordinating Counsel and ESI Liaison Counsel, but they also present on related topics at national conferences. This experience also includes eDiscovery training programs such as Georgetown's eDiscovery Training Academy, publishing, and memberships in leading discovery groups such as the Sedona Conference and Lawyers for Civil Justice.

For whichever of our customizable Discovery Counsel Services clients select for a particular litigation, we use our expertise to develop a discovery strategy that matches their needs. With an ability to scale up to the case needs in coordination with our vendor partners or those of our clients, we can provide comprehensive discovery services both as a part of our representation of a client generally on a matter and as part of a virtual firm in which we are retained because of our mastery of the discovery issues.

### **Corporate Discovery Services:**

- National Discovery Counsel
- eDiscovery / ESI Liaison Counsel
- Employee interviews and identification of key custodians
- Document preservation, legal holds, and collection
- Managed document review and production
- Procedural orders to govern discovery (e.g., Protective and Confidentiality Orders, ESI Orders, Privilege Log Orders, Fed. R. Evid. 502(d) Orders)
- Case Management Conferences and Reports (including under Fed. R. Civ. P. 16 & 26(f))
- Discovery meet and confers and motions practice
- Confidentiality and privilege challenges involving company document productions
- Legal advice on litigation related media and public relations activities
- Written discovery responses (including efficient solutions for mass torts and with careful consideration and planning for their potential use at trial)
- Defense of depositions of company witnesses (directly or supporting co-counsel on factual and document intensive issues)
- Public records requests in support of litigation from federal and state agencies/entities
- Issue modules and key document memoranda assessing document productions, company interviews, and other sources
- Support of trial teams before and during trial on document/factual issues (including necessary redactions of trial exhibits for trade secret or personal privacy reasons)
- Representation of Indemnified Non-Party Fact Witnesses and/or Co-Defendants (providing any/all of the above services where separate or additional counsel is desired)

### **Expert Discovery Services:**

- Assessment of scientific literature and studies (e.g., on exposure, risk factors, and other causation issues)
- Identification and vetting of potential expert witnesses

- Negotiation of procedural orders and agreements regarding discovery of experts including draft reports
- Expert depositions and/or training and coordinating a multi-firm national team
- Expert admissibility hearings under Fed. R. Evid. 702 or state laws

**Plaintiff-Specific Discovery and Motions Services:**

- Model deposition outlines for plaintiffs, treating physicians, employers, and other witnesses, particularly in mass torts for consistency across the litigation
- Depositions of plaintiffs, treating physicians, employers, and other witnesses (and/or training and coordinating a multi-firm national deposition team) with an eye toward how they may be used in motion practice and at trial
- Management of Plaintiff Fact Sheet (PFS) programs including related motions to show cause and dismiss, which may include working with outside vendors for efficiency
- Assessments of case inventory, strength of individual matters, and potential bellwether trial picks
- Written discovery of plaintiffs including interrogatories, requests for admission, requests for production, requests for inspection, and related meet and confers and motions practice
- Motions to dismiss and motions for summary judgment on plaintiff-specific grounds (e.g., lack of a proper personal representative, pending federal bankruptcy, statutes of limitation) and other issues identified through discovery