

Litigation Management: Key Things to Know from the Demand Letter to Preparing for Trial

Case Study: *Loretha “Cookie” Holiday v. Empire Entertainment,
Inc. and Lucious Lyon*

Loretha “Cookie” Holloway v. Empire Entertainment, Inc. and Lucious Lyon - Complaint

- Plaintiff alleges that defendants used her capital, strategy and connections and promised her a 50% stake in the company, but never abided by those promises upon the company’s IPO.
- Plaintiff seeks the value of her interests in Empire
- Causes of Action
 - Breach of Joint Venture/Partnership Agreement
 - Breach of Contract
 - Constructive Fraud
 - Fraudulent Inducement
 - Quantum Meruit

Phase I: Pre-Litigation

Loretha “Cookie” Holloway v. Empire
Entertainment, Inc., et al.

Pre-Litigation

- When you receive the demand letter
 - Preservation of records
 - Investigation
 - Does in-house counsel handle or outside counsel or combination?
 - Do you retain outside counsel, and if so, when?
 - Certain communications between lawyers may not be protected (*FTC v. Abbvie, Inc.*, 2015 WL 8623076 (E.D.Pa. Dec. 14, 2015))

Pre-Litigation

- When you receive the demand letter (Cont'd)
 - Insurance coverage – tender opportunities/obligations
 - Pre-Litigation discovery
 - Do you retain forensic analysts as undisclosed consultants?
 - Do you retain other experts before the other side does?
 - Who needs to know at this time?
 - Do you (can you) pursue early resolution?

Phase II: Litigation

Loretha “Cookie” Holloway v. Empire
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Retaining Counsel

- Factors to consider
 - Prior relationship/experience
 - Cost predictability
- Insurance considerations
 - Are the asserted claims covered?
 - Is there a looming coverage dispute?
 - Do coverage issues impact outside counsel selection?

Preserving Documents and Privilege

- Legal Hold Notice
- Identify key custodians
- Preserving privilege
- Joint defense agreements

Business and Regulatory Concerns

- Assess business relationships that may be implicated
- Assess reporting obligations
- Who is the client?

Case Assessment

- Learn the Facts
 - Internal investigation
- Relevant legal theories
- Forum, judge, parties
 - State v. Federal court
 - Arbitration
 - Mediation
- Identify witnesses

Communication Protocols with Stakeholders

- Management
- Outside counsel
- Insurance carrier
- PR
- Controllers and Auditors

Risk Assessment

- Identify damages exposure
- Litigation budget
- Strategic impact of litigation
 - Is this case a one-off?
- Define success
 - What does a win look like?

Discovery

- Disclosures
- Documents
- ESI
- Discovery requests
- Prepare witnesses
- Corporate representatives
- Expert witnesses

Dispositive Motions

- Has discovery sufficiently positioned the matter for summary adjudication
- Likelihood of success
- Cost/Benefit Analysis
- Can issues be streamlined for trial/settlement

Settlement Strategy

- Settlement value
 - Monetary factors
 - Nonmonetary factors
 - Reputational risk
- Settlement barriers
 - Monetary factors
 - Nonmonetary factors
 - Reputational risk
- Securing authority
- Negotiating settlement
- Mediation

Settlement Agreement

- Ironing out details
 - Maintain list of material terms during negotiations
 - Exchange redlined drafts
 - Ensure decision-makers/stakeholders approve all changes
 - Finalize document for execution

Trial Preparation

- Develop theme (Likely different from focus of dispositive motion)
- Identify elements to prove and supporting evidence (testimonial and documentary)
- Subpoena necessary witnesses
- Prepare witness outlines
- Consider mock jury/focus group
- Jury Consultant?

Trial Preparation (cont'd)

- Develop voir dire questions
- Pretrial statement/trial brief
- In limine motions
- Outline directed verdict motion
- Jury instructions
- Opening/Closing Statements