

Litigating in Today's World: Getting an Edge on the Competition

by Evelyn M. Campbell

IN THIS TIME WHEN BUSINESSES ARE DOWNSIZING, declaring bankruptcy, or closing their doors forever—and everyone is trying to grab a share of a rapidly shrinking pie—it isn't enough just to do an excellent job for your client when he or she comes calling. You have to be several steps ahead of him and anticipate his needs.

To gain this edge, you have to do a type of sleuthing known as competitive intelligence (CI). As law firms fight to keep existing clients, gain more of existing clients' business, and lure new clients, CI has gained prominence. Almost everywhere you turn someone is touting some form of CI for the legal industry.

New CI tools help show which other law firms represent different client profiles. By reviewing client profiles a couple times a year, you may be able to spot a trend in litigation for a client, or you may see an opportunity to target an untapped litigation area for another client.

Where do you find these tools? LexisNexis has Courtlink and atVantage, and ThomsonWest has West Monitor Suite. If you are searching for a company's litigation profile, these programs give "nature of suit" description of the cases, the jurisdiction of the litigation, which law firms and attorneys handled the litigation, and a listing of cases. The profile will tell you how much of its total legal business a client is sending your law firm and who is getting its other business.

For example, Chart A provides the nature of suit analysis of PepsiCo Inc.'s litigation, showing number of cases and percentage of total cases for the past two years.

Chart B shows that 32.8 percent of the PepsiCo's litigation is handled by Aultman, Tyner, Ruffin & Swetman Ltd. Another 59.9 percent of the legal work is split among multiple law firms who each have tiny pieces of the pie.

The resource also provides profiles of your competitors' client lists, and lists their attorneys.

If you do not have access to these sometimes costly tools, you will have to work a little harder. PACER (<http://pacer.psc.uscourts.gov/>) is a familiar and often overlooked resource. While not as sophisticated as the other tools, the U.S. Party/Case Index provides a means of searching for a company's litigation. This will list the company's cases—the case name, the court, the date filed, and the nature of suit.

To know what is happening to your client, track litigation and news.

In monitoring lawsuits filed against your client, there will be instances when you will know of a complaint that has been filed before your client has been served. You will be first at your client's door with the information, and the goodwill generated will be invaluable. Many services track federal litigation,

including Lexis and Westlaw and their Courtlink and CourtExpress products. Bloomberg Law also has a speedy alert service.

Unfortunately, no service provides comprehensive state court monitoring. Courthouse News Service (<http://www.courthousenews.com>) provides coverage of Virginia courts, and complaints are downloadable for a fee.

News tracking is easier. Lexis, Westlaw, and Bloomberg have substantial news databases that allow news alerts. With Google News—a powerful free tool—you can choose whether to monitor news and blog postings. When you are reading newspapers or trade publications online, check to see if they provide free alert services.

It will take only a few minutes each day to look through the CI results, and the edge gained over the competition will be priceless.

Chart A: Nature of Suit Analysis, PepsiCo Inc.

Torts/Negligence	1204	40.9 %
Commercial Law and Contracts	387	13.1 %
Employment/Labor	321	10.9 %
Small Claims	218	7.4 %
Business Organizations	180	6.1 %
Creditor/Debtor	107	3.6 %
Intellectual Property - Trademarks	63	2.1 %
Tax	53	1.8 %
Appeals	52	1.8 %
Administrative	51	1.7 %
Other Practice Areas	310	

Chart B: Law Firms That Handle PepsiCo Litigation

Aultman, Tyner, Ruffin & Swetman, Ltd.	441	32.8 %
Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP	48	3.6 %
Sheppard Mullin Richter & Hampton LLP	28	2.1 %
Phelps Dunbar LLP	23	1.7 %
Other Law Firms	805	59.9 %