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The Pre-Litigation Playbook with Timothy Mungovan

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Engaging with the client from the outset is critical for strategic positioning of potential litigation. Partner Timothy Mungovan explains how being proactive will allow the client to effectively prepare and increase their chances of achieving successful results. Hear his insights on how to navigate this process successfully.

Transcript:

Timothy Mungovan: My playbook is the pre-suit litigation playbook, which is how to shape your own destiny for your future dispute. So a lot of clients think of litigators as someone who comes in after the events have already occurred, the breach has already occurred. I like to get involved early on where the breach hasn't happened yet. The pre-suit phase is the critical phase, in my view, of putting yourself in the best position possible in the event that there is litigation. If you recognize, *"I have control right now, over what may happen in future litigation*", you begin to think differently about how you communicate and the actions that you take.

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Timothy Mungovan, Partner, Litigation

Everything has to be viewed through the prism of “what are your rights, duties, and obligations?” – and “what are your counterparties’ rights duties and obligations?” All of your language and all of your conduct – everything that you say and do – needs to be viewed through that prism, but with also the point of view of, “I'm writing history in the middle of this.” And that history that I'm writing now will be judged by *someone else* potentially down the road. When that judge, jury, arbitrator, or fact finder is weighing the evidence and evaluating the conduct of each side, if you've been thoughtful and careful about the positions you've taken, and the words you've used in writing and orally, then you are going to be in a much stronger position before that third party to say, I was the “good guy”, “I was the one who was harmed here”, “I did what I was supposed to do.” That always puts you in a stronger position.

What I try to do is work with my clients pre-litigation, to make sure that their words – the words they use, whether in writing an email or otherwise in a conversation – are clear and unmistakable because oftentimes, those are the most important words in the entire case.

Related Professionals

- **Timothy W. Mungovan**
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