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Daniel Fleming is IR Global's designated representative for commercial litigation in New Jersey and Pennsylvania. He has conducted over 100 jury trials and 100 bench trials throughout a legal career spanning over 35 years, has obtained multi-million dollar recoveries for Fortune 100 companies and successfully defended against high value claims. He is the co-founder of Wong Fleming, a 45-lawyer law firm headquartered in Princeton, New Jersey, with offices in Philadelphia, Pennsylvania and elsewhere. He serves as national counsel for several multinational companies. He is Chairman of the Board of Directors for Asian Bank in Philadelphia and serves on its audit committee. Daniel's pro bono activities include membership on the Program Committee for the Philadelphia Chinatown Development Corporation (PCDC) and the board of directors for ETCC, PCDC's non-profit owner of its community center and residential tower. He is a graduate of Villanova University (B.A.) and the Columbus School of Law, Catholic University of America (J.D.). He is admitted to the bars of New Jersey, Pennsylvania, New York, Maryland, Washington, DC, Ohio and California. He is married to fellow IR Global Member and co-founder of Wong Fleming, Linda Wong.

Daniel Fleming and Linda Wong co-founded Wong Fleming in 1994, a national and international law firm consisting of 45 attorneys. The firm concentrates its practice for the business community in commercial, bankruptcy, employment, insurance coverage and defense, personal injury, product liability and intellectual property litigation. It is headquartered in Princeton, New Jersey, and is AV-rated by Martindale-Hubbell. Forbes has called it a "go to" firm for contract litigation. It is counsel for many Fortune 500 companies and maintains an active litigation practice for them, including serving as national counsel for



QUESTION ONE

How swiftly are disputes handled in your jurisdiction's court system? Are there any common complications to cross-border resolutions that businesses should be aware of?

The Pennsylvania courts, once notoriously slow in resolving disputes, now generally meet the American Bar Association guidelines for resolving cases within two years of filing. A 1995 study of the 45 largest state trial courts in the country concluded that the courts in Philadelphia were the second worst in the country for the amount of time it took to conclude a civil case dispute. By 2004, a National Center for State Courts study found that Philadelphia's courts were "arguably the best-managed large urban civil trial court operation in the nation," a trend that continues today.

The New Jersey courts continue to take longer to resolve disputes in comparison. State court rules generally require discovery be completed within 300 days of filing for personal injury actions, and 450 days for civil cases involving medical malpractice or other complex claims. Judges often extend these deadlines. As a result, New Jersey's timeframe for resolving civil disputes is closer to three years, or even longer.

However, federal courts in both New Jersey and Pennsylvania usually resolve their civil docket faster than the state courts. The U.S. District Court for the Eastern District of Pennsylvania is one of the busiest federal courts in the nation, but is often viewed as a model of case docket management.

litigation matters in all 50 states. Wong Fleming also provides critical transactional and immigration services for the business community. The firm is guided by its core values: (1) an absolute, irrefragable sense of integrity, without compromise to the interests of the firm's clients, (2) strong and effective advocacy, while maintaining the highest standards of professional conduct, (3) the vigorous pursuit of client interests, while maintaining civility to the bench and bar, (4) the promotion of diversity in the legal profession, and (5) a commitment to community activities.

The U.S. District Court for the District of New Jersey is the busiest federal court in the nation, but is currently dealing with a failure by Congress to confirm necessary judicial appointments, which is most apparent in its backlog in dispositive motions. A motion to dismiss can commonly take as long as six months, if not longer, for a judge to decide.

QUESTION TWO

Are there any cultural issues that businesses should be aware of when dealing with a legal dispute in your jurisdiction? How can working with a third party on the ground help to navigate these issues?

In Pennsylvania, businesses should be aware that the state conducts unrestrained, partisan elections of its judges. Judges run as candidates listing their party affiliation, with most voters never having heard of the judicial candidates. To campaign, judges raise large sums of money from lawyers, businesses and special interests. For this reason, corruption has sometimes taken place within the judiciary. On occasion, judicial decisions in Pennsylvania have unfortunately been influenced by money, with some judges going to prison. It can affect the quality and independence of the bench in Pennsylvania, and businesses should be mindful of other options (if eligible), such as removing a state court case to federal court or otherwise choosing federal court as the first choice, especially if the dispute is complex or controversial.

In New Jersey, no elections are held and instead, the governor nominates judicial candidates and the state senate confirms them. While this helps reduce the risk of corruption, and can enhance judicial independence, New Jersey state judges nevertheless have a history of favoring the "home team" and displaying hostility toward out-of-state counsel. Out-of-state counsel barred in New Jersey used to have to maintain a bona fide office in New Jersey. They could not maintain a mail drop or conduct business from their out-of-state office. This virtually guaranteed that a New Jersey barred attorney who was located outside the state had no choice but to hire a New Jersey barred attorney with offices in New Jersey. That archaic rule has since been abolished, but the bias against out-of-state counsel, even if barred in New Jersey, remains. Use of New Jersey counsel with offices in New Jersey can help reduce the risk of this unwarranted bias.

QUESTION THREE

What are the most common challenges when dealing with disputes in your jurisdiction? What measures can businesses take to navigate these obstacles to secure a cost-effective, timely resolution?

For Pennsylvania and New Jersey, the most common challenge to resolution of a dispute is the inordinate time clients must wait for a judicial resolution. Litigants must also deal with the proportionally exorbitant cost of litigation while waiting for a resolution. Litigants have no choice but to go through the time-consuming and costly gauntlet of discovery, which can take on a life of its own. Some large multi-national American companies

TOP TIPS

Cost-effective and timely dispute resolution in your jurisdiction

- ✔ Be mindful of New Jersey's Entire Controversy Doctrine. New Jersey is one of the few states in the country with such a draconian rule. An equitable doctrine, its objectives are to encourage comprehensive and conclusive litigation determinations, to avoid fragmented litigation and promote party fairness and judicial economy and efficiency. However, New Jersey case law is littered with examples of out-of-state litigants who were not aware of the rule, and innocently brought subsequent actions like insurance subrogation and legal malpractice lawsuits, only to find out they are barred forever.
- ✔ Take advantage of Pennsylvania's confession of judgment rule. Pennsylvania is one of the few states that permits a party to enter into an agreement to "confess" to a money judgment. It's a great tool to use for banks and anyone else advancing credit.
- ✔ Avoid the slower state courts and choose the federal courts, when possible. Federal courts are courts of limited jurisdiction, but if your dispute is eligible, choose federal court for a faster result.

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even retain so-called "discovery counsel" in an effort to employ a uniform, and hopefully cost-effective, procedure for discovery.

The scope of discovery is broad and, consequently, potentially extensive and expensive. The cost of completing the exchange of paper discovery and oral deposition testimony can result sometimes in shutting the courthouse doors to litigants. Sometimes, the cost to complete discovery can exceed the amount in dispute, making litigation a poor option.

The state courts in Pennsylvania and New Jersey do have arbitration panels, some of which are mandatory to participate in, but they are often feckless and ineffective. We have seen too many arbitrators who display a bias in favor of one of the litigants. The only redeeming feature is that litigants can reject the arbitration panel award and proceed with the litigation. A more effective option is often the use of private mediators who focus their practice on alternative dispute resolution. Mediation is non-binding and its only downside is the cost of hiring a mediator. Both New Jersey and Pennsylvania have an excellent ADR bar and it is money well spent. One tactic to consider is to agree to an adversary's choice of mediator; half the battle in mediation is persuading the mediator you are right. It can be a powerful weapon to have the adversary's choice of mediator tell that party that they are wrong and likely to lose.