

Extracting Strategic Value from Prior Proceedings



Supplementing the traditional civil discovery process with complementary sources of information can significantly enhance litigation strategy and bolster the odds of success in high-stakes business disputes.

One potential source is records from other litigation proceedings, which can reveal powerful insights and highly relevant facts. However, finding relevant court records can be challenging unless the investigator is experienced and facile with varying court-specific practices and processes.



How can an advocate leverage these insights?

Experts

- Expert reports and transcripts, either from depositions or trials, can sometimes be found in past litigation. Prior opinions and testimony from substantially similar matters may be inconsistent with opinions in the instant matter, thereby creating potential credibility challenges for a given witness.
- Experts may have altered or omitted key elements of their CVs over time. Finding prior expert reports can often reveal earlier versions of CVs, thereby providing more time for an advocate to comprehensively analyze.
- Judges may have issued rulings in which an expert's ethics or work product were criticized in a way that creates potential credibility risk.
- Experts may have written articles or publications that are inconsistent with anticipated opinions in the new litigation.

Parties

- Parties may have been sanctioned by courts or ruled against in matters that create ethical or reputational concerns.
- It may have been necessary in a prior lawsuit to disclose or produce lists of assets or financial information, which could reveal that certain party assets were not fully disclosed in the instant matter.
- Prior litigation may reveal the names of corporate parties or relevant individuals not previously known to be related, which may create opportunities for additional witness testimony, support fraudulent conveyance claims, assist with efforts to pierce corporate veils, enhance likelihood of recovery, and/or reveal affinity and consanguinity-related concerns.
- Prior litigation matters may have required contracts or other types of exhibits to support a claim. These exhibits may have relevance to the instant matter, and/or help assess the integrity of prior fact witness testimony.



Where can these key insights be found?

Various subscription-based federal and national litigation indexes provide access to over a billion documents filed in federal courts. However, with respect to state court records, online access is much more limited and less consistent. For example, within various geographic zones, some locations make certain civil court records available online, but not criminal records, thus necessitating in-person search and retrieval.

Other options (and related search challenges, where indicated) include:

- A subscription database also provides information associated with reported and unreported “evidentiary gatekeeping” cases. The database tracks federal and state jurisdiction cases going back to the early 1990s.
- Some key locations only have county-by-county court records.
- Verdict databases may reference experts; however, these tools cover a small fraction of cases.
- Caselaw or proprietary databases as well as web search engines index the full text or metadata of scholarly literature across an array of publishing formats.
- If an expert’s testimony was challenged, there may be opinions from the trial court or the appellate court that provided other cases to consider evaluating.
- Some news databases are attached to caselaw proprietary databases.
- “Open-source” information may detail previous expert testimonies.

Extracting vital information from prior litigation proceedings can significantly enhance legal strategy. CRA has deep experience assisting clients and their counsel with these types of assignments, as well as other business intelligence and reputational due diligence matters. We invite you to contact us or other members of our team to continue the conversation.

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