



**TECHNICAL PROJECT MANAGEMENT IN LITIGATION**

**A Modern Paradigm for Improved Litigation-Related Expert Investigations**

Spotlight Business Consulting offers a unique and highly innovative approach to those paying the litigation bill, insurers and self-insured companies, to substantially reduce costs and improve outcomes. The largest portion of costs in litigation is in the discovery phase, so the discovery phase needs to be short-circuited, but this presents a critical challenge without a new innovative approach. Discovery establishes the key issues involved and the positions of each party. Any alternative will have to do this and establish who is likely to prevail, and what it will take and cost to prevail to set a reasonable, non-negligent basis for settlement. An innovative and sound way to do this that is described herein that also cuts costs and improved outcomes if a case has to proceed through discovery to trial. Spotlight Business Consulting pioneered this approach and offers consulting services to adopt it.

Science, engineering, and technology are pervasive in litigation disputes. Lawyers are managing complex and multi-disciplinary scientific and engineering investigations. The technology revolution makes technical litigation issues increasingly multidisciplinary, complex, and costly. The outcome of a case is decided in many ways by the quality of the expert that is used. Legal firms face a critical challenge in that the typical single expert model is increasingly incapable of providing comprehensive insight and meeting clients' expectations, plus this model offers no opportunity to short circuit the discovery process. Technical investigations in litigation are similar to industrial R&D. Industry has radically changed its approach to first identify, analyze, and apply all existing knowledge so that the expensive hands-on work and testing is properly directed, narrowly focused on the key issues, and not duplicative of what already exists. This is opposite of what industry used to do and how litigation technical investigations are still conducted. Industry has cut costs and improved outcomes with its approach.

We propose an approach for litigation technical investigations, which we call Technical Project Management (TPM), that uses information research coupled with top-notch technical analysis early in cases to establish the key MAKE OR BREAK technical issues and everything that is known about them. This is how industry approaches R&D today, and it works because of the information rich environment that exists. Academia increasingly does applied R&D, and companies increasingly conduct and publish studies to support claims for the performance of their products. Industry uses this information coupled with top-notch analysis to fill in the gaps to identify the key technical issues that will determine success or failure, to properly focus the work they will do at their cost, to avoid duplication of what already is known, and to realistically estimate the cost and what it will



really take to succeed. TPM cuts litigation costs dramatically in those cases where it drives settlement, and it cuts costs even if the case goes to trial because it focuses the expensive, hands-on technical studies. The role of the testifying expert remains exactly as it has been.

The differences in methods used by lawyers and technical investigators makes it difficult for attorneys to manage technical investigations in the manner in which modern investigations are best managed. SpotlightTPM overcomes this challenge by:

Defining the Technical Issues - The initial facts of the case often fail to identify the key issues and can be misleading, especially for complex and multidisciplinary technical cases. Someone with superior analytical skills, broad experience, and skill in finding information from numerous sources is needed to identify, collect, and analyze all relevant existing information. Discussions with the litigation team and broad, first-pass research are conducted to gather information from the civil complaint, prior related cases, trade association publications, patents, manufacturer's marketing materials and reports, and Internet blogs and forums to establish the key technical issues.

Establishing What is Known About the Technical Issues - Focused, comprehensive research coupled with top-notch analysis to fill the gaps is conducted for the key issues. Manufacturers publish studies and universities conduct applied research. Relevant research likely exists and can provide 60% to 80% of the insight as to what happened. Conducting a search of this nature and the analysis are skills that are central to industrial R&D, but not to product liability and accident investigations, and they contribute heavily to achieving authoritative results that are credible and compelling.

Reliably Defining Testing and Costs - This process ensures that existing knowledge will not be recreated, a reliable work plan is established, work is coordinated, cost is reliably estimated, and the testifying expert focuses on their core technical competencies if full discovery is needed.

Coordinating, Overseeing, and Effectively Communicating - Technical project management ensures that the overarching technical concepts are effectively framed and communicated, and eases report preparation. Custom Internet-based project management tools, if needed, allow experts (including non-traditional experts such as professors who may lack the training and resources to effectively organize a complex investigation) and geographically dispersed teams to access key documents, coordinate activities, report status, budget, and track time and expense.