

Best Practices

in Litigation Using LexisNexis® CourtLink®



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Contents

05 INTRODUCTION

Introduction to LexisNexis CourtLink Litigation Tools06

09 SECTION 1: Early Case Assessment

Best Practice 1: Determine the Experience Level of an Opposing Counsel or Judge . . .10

Best Practice 2: Evaluate Litigation History of Key Players12

15 SECTION 2: Strategic Planning in Litigation

Best Practice 3: Evaluate the Chance of a Settlement16

Best Practice 4: Evaluate Opposing Counsel and Litigant Strategic Decisions18

Best Practice 5: Examine Judicial Tendencies20

23 SECTION 3: Assistance From Outside Parties

Best Practice 6: Evaluate and Select Local Counsel24

Best Practice 7: Evaluate Potential Expert Witnesses25

27 SECTION 4: Identify and Evaluate Effective Arguments

Best Practice 8: Identify Past Arguments Made by Opposing Counsel28

Best Practice 9: Determine How a Judge Has Ruled on Previous Arguments29

Best Practice 10: Identify Effective Arguments with a Judge30

Introduction



Introduction to LexisNexis CourtLink Litigation Tools

LexisNexis CourtLink offers innovative tools—including Strategic Profiles, Document Retrieval, Search, Track and Alert—that can be used throughout the litigation workflow to help you argue your cases more effectively and gain a strategic advantage.

The vast majority of cases never make it to written or published decision. If you are reviewing only published cases to help you gain insight into the parties involved in your case or to help identify litigation trends, you could be missing out on as much as 97% of total cases filed. The CourtLink® service is your link to 100% of the activity.

ENHANCED!

Litigant and Attorney/Law Firm Strategic Profiles are now updated every 35 days until defense counsel information appears.

LEXISNEXIS COURTLINK STRATEGIC PROFILES

The CourtLink service helps you build Strategic Profiles to gain insight into the litigation history of the litigants, opposing counsel and judge in your case.

Litigant Strategic Profile

Gain meaningful insight into the litigation history of a public or private company, a subsidiary or an individual. View an overview of litigation activity by nature of suit and geographic location. Determine which law firms have represented a company in the past.

Attorney/Law Firm Strategic Profile

Examine the experience of an attorney or law firm's experience in a specific nature of suit or in front of a particular judge. View associated dockets to see patterns in legal tactics and to identify case resolution history.

Judicial Strategic Profile

Identify a judge's ruling history in a specific case type and review a list of attorneys or firms that have appeared before the judge.

COURTLINK DOCUMENT RETRIEVAL SERVICE

Once you have run a Strategic Profile, you will want to view relevant dockets and order motions, pleadings, and other supporting documents to see the legal tactics attorneys have used and to identify arguments the judge has found compelling. Retrieve dockets and documents from all federal and state courts online directly from the CourtLink Document Retrieval Service.

COURTLINK ALERT & TRACK

Once Strategic Profiles have helped you identify the cases, trends, competitors or litigation activity you want to follow, use Track to find out about new activity in existing cases and Alert to be notified of newly filed cases of interest.

COURTLINK SEARCH

Search the most in-depth court records by names, case types and docket numbers. Search the broadest court coverage available from a single source.

Early Case Assessment

OVERVIEW

CourtLink Strategic Profiles help you gain insight into the experience levels and strategies of the opposing counsel, opposing litigant and judge in your cases. This information can help shed light on how similar cases involving these parties are likely to proceed. The following best practices provide examples of how litigators have used Strategic Profiles in their early case assessment process to make critical strategic decisions.

Best Practice 1:

Determine the Experience Level of an Opposing Counsel or Judge

Best Practice 2:

Evaluate Litigation History of Key Players

Best Practice 1: Determine the Experience Level of an Opposing Counsel or Judge

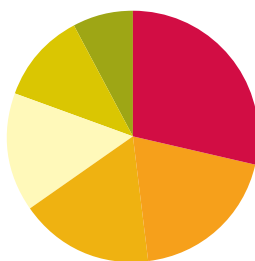
EXAMPLE

A Southern firm was hired to represent a large technology company for an Antitrust case in another judicial district. By running an Attorney Strategic Profile the firm learned that opposing counsel had engaged in several antitrust cases in the district in the past five years. The firm then began to evaluate this counsel's success in those cases and determine what arguments were successful.

The firm also ran a Judicial Strategic Profile on the judge assigned to the case. The attorneys were surprised to find out that no Antitrust case had been on his docket in the previous seven years. This provided the firm with both a challenge and an opportunity. Since the judge did not regularly deal with Antitrust litigation, the firm knew that they had to delve more deeply into the basics of Antitrust law. They were also prepared for the fact that the preconceptions of this judge in this area of the law would be limited, allowing them to present the law and arguments without having to be concerned about the impact previous counsel had with this type of case.

Opposing Counsel Has Significant Experience in Antitrust Litigation

Nature of Suit	Count
Antitrust	15
Securities	10
Insurance	9
Other Contract	8
Product Liability	6
Other Statutory Actions	4

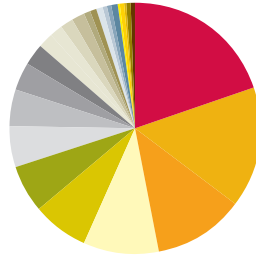


Source: CourtLink Attorney Strategic Profile

Note: Information shown in charts is representative of online court records data, but does not relate to the provided example.

Judge Lacks Experience in Antitrust Litigation

Nature of Suit	Count	Percent
Other Civil Rights	92	19.57
Prisoner—General	72	15.32
Asbestos	55	11.70
Prisoner—Civil Rights	45	9.57
Prisoner—Other	33	7.02
Employment	28	5.96
Other Statutory Actions	25	5.32
ERISA	22	4.68
Product Liability	17	3.62
Labor Litigation	12	2.55
Vacate Sentence	9	1.91
Fair Labor Standards Act	5	1.06
Marine	5	1.06
Securities	5	1.06
Labor/Management Relations	4	.85
Taxes	4	.85
Airplane	3	.64
Fraud	3	.64
Personal Injury	3	.64
RICO	3	.64
Banking	2	.43
Environmental	2	.43
Housing/Accommodations	2	.43
Insurance	2	.43



- Other Civil Rights
- Prisoner—General
- Asbestos
- Prisoner—Civil Rights
- Prisoner—Other
- Employment
- Other Statutory Actions
- ERISA
- Product Liability
- Labor Litigation
- Vacate Sentence
- Fair Labor Standards Act
- Marine
- Securities
- Labor/Management Relations
- Taxes
- Airplane
- Fraud
- Personal Injury
- RICO
- Banking
- Environmental
- Housing/Accommodations
- Insurance

Source: CourtLink Judicial Strategic Profile

Note: Information shown in charts is representative of online court records data, but does not relate to the provided example.

Best Practice 2: Evaluate Litigation History of Key Players

EXAMPLE

A large firm on the East Coast knew that it was unlikely to actually go to trial in an Employment matter, but they were unsure about what stage the case was likely to settle. The firm ran an Attorney Strategic Profile on the opposing counsel to gain insight into his case experience and strategies used in similar cases, as well as a Litigant Strategic Profile on the opposing party to dig into the resolution of any past, similar cases. One objective was to uncover whether they had engaged in contentious discovery practices.

By viewing the Employment case dockets listed in the opposing counsel's Strategic Profile, the firm learned that opposing counsel had filed 15 Employment cases in the last five years. Opposing counsel had never gone to trial, instead settling within four weeks of the scheduled trial date in 70% of his cases. Other cases were resolved via summary judgment motions granted for the opposing side. This information allowed the firm to determine that opposing counsel was likely to seek resolution as trial approached, but settlement was unlikely early in the process.

Furthermore, the opposing party's past litigation showed that the party had previously filed similar claims against two other companies, a fact that led the firm to examine the veracity of the claim even more closely.

Attorney Strategic Profile Reveals Opposing Counsel's Litigation Experience and Employment Case List

Action	Court	Docket	Heading	NOS	Filed	Case Law
View Track	Arkansas-Western	2:04cv2242	Bishop v. Wal-Mart, Inc.	Employment	11/04/04	n/a
View Track	Michigan-Western	1:04cv734	Richardson v. Wal-Mart Stores, Inc.	Employment	11/03/04	n/a
View Track	Georgia-Northern	1:04cv3171	Remy v. WalMart Corp.	Employment	10/29/04	n/a
View Track	Alabama-Northern	2:04cv3124	Hopkins v. Wal Mart Stores, Inc.	Employment	10/29/04	n/a
View Track	Alabama-Northern	2:04cv3097	Saunders v. Wal-Mart Stores, Inc.	Employment	10/29/04	n/a
View Track	New Mexico	1:04cv1227	Fields-Jefferson v. Wal-Mart Stores, Inc.	Employment	10/29/04	n/a
View Track	Illinois-Northern	1:04cv6842	Portis v. Wal-Mart Stores, Inc.	Employment	10/29/04	n/a
View Track	Indiana-Southern	1:04cv1747	Mason v. Wal-Mart Corp.	Employment	10/29/04	n/a
View Track	Alabama-Middle	3:04cv1002	Ayers v. Wal-Mart Corporation	Employment	10/29/04	n/a
View Track	Alabama-Northern	2:04cv3003	Saye v. Wal-Mart Stores, Inc.	Employment	10/29/04	n/a



Docket Sheets Reveal Resolution of Key Employment Cases

Source: CourtLink Attorney Strategic Profile

Note: Information shown in charts is representative of online court records data, but does not relate to the provided example.

Strategic Planning in Litigation

OVERVIEW

CourtLink Strategic Profiles provide critical information to help litigators plan their strategies and advise their clients on how a case might proceed. Strategic Profiles can help shed light on the chances of settlement, indicate how contentious the opposing counsel and opposing litigant might be during the discovery phase, and suggest how a judge might rule in a case based on prior behavior.

Best Practice 3:

Evaluate the Chance of a Settlement

Best Practice 4:

Evaluate Opposing Counsel and Litigant Strategic Decisions

Best Practice 5:

Examine Judicial Tendencies

Best Practice 3: Evaluate the Chance of a Settlement

EXAMPLE

A Midwestern firm was involved in a Product Liability case in a District Court in the South. The attorney was interested in learning how likely the case was to settle. While the firm had experience in this area, the attorney had not previously faced the opposing counsel or judge assigned to the case.

As referenced in the charts here, the firm ran an Attorney Strategic Profile on the opposing counsel and a Judicial Strategic Profile on the judge assigned to the case. A review of the dockets showed that the Product Liability cases on this judge's docket were resolved at a settlement conference nearly 75% of the time. Further, the opposing counsel had settled two Product Liability cases previously before this same judge. This gave the attorney insight into the likelihood of settlement and helped him plan his negotiation strategy.

Judicial Strategic Profile Reveals List of Attorneys and Law Firms Who Have Appeared Before the Judge in the Past

Attorney Name	Law Firm	Count
Antonio Martinez	Law Office of Antonio Martinez	1
B. Thomas EcElroy	Johnson & McElroy	1
Baxter W. Banowsky	Banowsky Betz & Levine	1
Christopher B. Bradford	Clark Thomas & Winters	2
D. D'Lyn Davison	Davison Rugeley & Spurgers	1
David P. Matthews	Abraham Watkins Nichols Sorrels Matthews & Friend	17
David Stanley Lill	Clark Thomas & Winters	1
G. Sean Jez	Fleming & Associates	1
Gerald J. Diaz	Diaz Lewis & Williams	1
Grant Liser	Brown Dean Wiseman Liser Proctor & Hart	2
Gregory F. Cox	Provost & Umphrey	1
Jay H. Henderson	Cruse Scott Henderson & Allen	1
Joseph Ronald Poirot	Ferrer Poirot & Wansbrough	1
Joseph S. Cohen	Beirne Maynard & Parsons-Houston	2
Karen F. Stallings	Locke Liddell & Sapp-Houston	2
Kenneth J. Ferguson	Clark Thomas & Winters	22
Matthew T. Fibich	Fibich Hampton & Leebron	1
	Fibich Hampton Leebron & Garth	2
	Clark Thomas & Winters	2
		2

Opposing Counsel Has Settled Two Cases Before the Judge Assigned to Your Case

Attorney Name	Docket	Heading	NOS	Case Law
Texas-Northern	4:04cv399	Company A et al v. Company B	Product Liability	n/a
Texas-Northern	4:04cv316	Company C et al v. Company B	Product Liability	n/a

Source: CourtLink Judicial Strategic Profile

Note: Information shown in charts is representative of online court records data, but does not relate to the provided example.

Best Practice 4: Evaluate Opposing Counsel and Litigant Strategic Decisions

EXAMPLE

An attorney at a mid-sized firm in the Pacific Northwest was interested in determining how contentious the opposing counsel and litigant were likely to be during discovery in one of her existing cases. She ran a Litigant Strategic Profile on the opposing party and an Attorney Strategic Profile on the opposing counsel. The goal was to identify how opposing counsel had approached discovery in the past. After reviewing the relevant dockets on the opposing counsel's case list, it was determined that the opposing counsel had been routinely forced to appear on Motions to Compel Evidence during discovery, which indicated to her that the likelihood of contentious discovery was higher.

In addition, viewing the dockets of the cases that the opposing party had been involved in, she uncovered that the opposing party had engaged in similar discovery practices in different cases across the country. There was a clear pattern of limiting information during discovery. This information helped the attorney prepare her client and the case strategy.

Attorney Strategic Profile Provides Opposing Counsel's Case Experience

Court	Docket	Heading	NOS	Filed	Case Law
Washington-Western	2:04cv2141	Ornelas v. Fidelity National Title Company of Washington Inc. Et A	Banking	10/15/04	n/a
Washington-Western	2:04cv2132	Johnson v. Scesniak et al	Banking	10/14/04	n/a
Washington-Western	2:04cv1935	Robert D. Jafee Trust v. Washington Mutual Inc. et a	Securities	09/15/04	n/a
Washington-Western	3:04cv5516	Pesheck v. Bank of America NA et al	Banking	08/19/04	n/a
Washington-Western	2:04cv1738	Burda v. Killinger et al	Securities	08/06/04	n/a
Washington-Western	2:04cv1693	Russo v. Washington Mutual Inc. et al	Securities	07/30/04	n/a
California-Central	2:04cv6038	Angelika Libera v. Getty Images (Photographers) Inc. et al	Personal Injury	07/23/04	n/a
Washington-Western	2:04cv1627	Clark v. Washington Mutual Inc. et al	Securities	07/21/04	n/a
Washington-Western	2:04cv1599	Rucker et al v. Long Beach Mortgage Co. et al	Securities	07/20/04	n/a
Washington-Western	2:04cv1613	South Ferry LP #2 v. Killinger et al	Truth in Lending	07/20/04	n/a
Washington-Western	2:04cv1513	May et al v. Washington Mutual Bank FA et al	Banking	07/01/04	n/a
Washington-Western	3:04cv5107	Washington Mutual Bank FA v. Cooper et al	Foreclosure	02/27/04	n/a
Washington-Eastern	2:04cv25	Cauvel et al v. Metropolitan Invest, et al	Securities	01/20/04	n/a

Source: CourtLink Attorney Strategic Profile

Note: Information shown in charts is representative of online court records data, but does not relate to the provided example.

Best Practice 5: Examine Judicial Tendencies

EXAMPLE

In a recent Patent litigation case, the lead attorney had never appeared before the judge assigned to the case. He asked around the firm about the judge, ran case law searches, but he was also interested in learning how the judge had dealt with complicated Patent cases before. Given the complex nature of the case, the attorney was concerned about how the judge would deal with sorting through the technical evidence. By reviewing the case list presented as part of the Judicial Strategic Profile and then viewing the dockets, the attorney found that several cases had been referred to Special Masters for evidentiary issues. The attorney then retrieved the motions filed by the parties who had requested such an appointment to help prepare a similar argument.

In addition, the attorney reviewed the outcome of each of the cases. In the past 5 years, the judge had 25 Patent cases on his docket. Of those 25 cases, 15 had been settled, 5 were disposed of via Summary Judgment and 5 had actually gone to trial. Of the 5 cases that had gone to trial, the outcome had been in favor of the alleged Patent infringer on 4 occasions. While not definitive, this provided insight into the way this judge had previously viewed Patent litigation and helped the attorney with his planning.

Judicial Strategic Profile Reveals List of Patent Cases Judge Has Heard in the Past

Action	Court	Docket	Heading	NOS	Filed	Case Law
View Track	New York-Southern	1:04cv6790	Elam Electroluminescent Industries, Ltd. et al v. Solution Industries	Patent	08/24/04	n/a
View Track	New York-Southern	1:04cv6654	Biosig Instruments, Inc. v. the Nautilus Group, Inc.	Patent	08/17/04	n/a
View Track	New York-Southern	1:04cv2502	Powersine, Inc. v. Network-1 Solutions, Inc.			n/a
View Track	New York-Southern	1:04cv80	MacRoVision Corporation v. 321			n/a
View Track	New York-Southern	1:03cv4859	Villeroy & Boch, vAG, et al v. Fo			n/a
View	New York-Southern	1:03cv5161	Advanced Technology v. Praxair A&A Jewellers Ltd. et al v. Cor			n/a

US DISTRICT COURT CIVIL DOCKET
US District Court for the Southern District of New York
(Foley Square - NYC)

Cellence Design Systems, Inc. v. Microsoft et al
This case was retrieved from the court on Sunday, February 15, 2004

Date Filed: 06/27/03	Class Code: CLOSED
Assigned To: Judge Richard Owen	Case: New
Reference To: Patent (330)	Statute: 35 USC
Nature of Suit: Patent Infringement	Jury Demand: Plaintiff
Case: Patent Infringement	Demand Amount: \$0
Lead Docket: None	
Other Dockets: None	
Jurisdiction: Federal Question	

Litigants	Attorneys
Plaintiff: Cellence Design Systems, Inc. Plaintiff	Defendant: Microsoft Corporation Plaintiff: Villeroy & Boch AG Plaintiff: Praxair, Inc. Plaintiff: A&A Jewellers Ltd. Plaintiff: Corning Incorporated Plaintiff

Date	Proceeding Text
06/27/03	1. 03060001 Case Summary filed and then amended to 03 010001 FILED FOR 03060001 03/07/03 (jl) (Entered: 06/27/03)
06/27/03	2. Rule 1-1 DISCOVERY filed by Villeroy & Boch, AG, Villeroy & Boch AG (jl) (Entered: 06/27/03)
06/27/03	3. Reply filed by Villeroy & Boch, AG (jl) (Entered: 06/27/03)
06/27/03	4. Reply filed by Villeroy & Boch, AG (jl) (Entered: 06/27/03)
06/27/03	5. NOTICE OF Voluntary Discontinued Pursuit in Rule 41(b)(1)(B) of the F.R.C.P. in order not to prejudice, with respect to any motion to set aside and otherwise, the status of the parties' settlement agreement. (jl) (Entered: 02/04/04)

Docket Sheets Reveal the Outcome of Each Case

Source: CourtLink Judicial Strategic Profile

Note: Information shown in charts is representative of online court records data, but does not relate to the provided example.

Assistance From Outside Parties

OVERVIEW

CourtLink Strategic Profiles are excellent resources to use when your firm needs to find co-counsel and evaluate potential expert witnesses for your cases.

Best Practice 6:

Evaluate and Select Local Counsel

Best Practice 7:

Evaluate Potential Expert Witnesses

Best Practice 6: Evaluate and Select Local Counsel

EXAMPLE

A Washington DC-based firm was involved in Securities litigation in a North Carolina court. The attorney assigned to the case needed to find local counsel in North Carolina but did not have a reference. To evaluate potential local counsel, the attorney ran a search on the judge assigned to the case and then narrowed the nature of suit to Securities cases. At that point, the attorney sorted the list of counsel in order of frequency in appearing before the judge. From that list, he was able to determine which local counsel had the most experience in front of the judge assigned to his case. He then contacted several individuals to begin the process of selecting local counsel.

Judicial Strategic Profile Provides List of Attorneys Who Have Appeared Before the Judge in Prior Securities Cases

Attorney Name	Law Firm	Count
Alan E. Toll	Stevens, McGhee, Morgan, Lennon & Toll, LLP Actollbigrussian yahoo.com	7
Daniel Francis Basnight	Robinson, Bradshaw & Hinson Dbasnight rbh.com	7
David C. Wright, III	Robinson, Bradshaw & Hinson, P A	7
L. Bruce McDaniel	McDaniel & Anderson, LLP McDas mcdas.com	3
	Fdmisten & Webb	6
		6

Source: Judicial Strategic Profile

Note: Information shown in charts is representative of online court records data, but does not relate to the provided example.

Best Practice 7: Evaluate Potential Expert Witnesses

EXAMPLE

An attorney in Seattle had a Patent case in California where he needed an expert witness to testify in regard to technical issues in microtechnology. There were several potential experts he could use, but he wanted to make sure no prior experience would make one of the experts less desirable than another.

He started his effort by identifying Patent litigation cases in the California District Court. He then sorted through the cases to find those involving the judge that had been assigned to his case. Then, by looking at the docket sheets, the attorney was able to find a case where one of his potential experts had appeared for a losing party and where there had been substantial arguments over the expertise of the witness. Thus, the attorney decided he should use one of the other potential experts.

Then, by looking at his opposing counsel's profile he cross-referenced Patent litigation in the California District Court and viewed all of the dockets where opposing counsel had been involved. He was able to find a case where another of his potential experts had been involved as a witness for the prevailing party at trial. This gave the attorney the ability to talk to the expert witness about his previous experience when discussing his case.

Identify and Evaluate Effective Arguments

OVERVIEW

One of the greatest benefits of CourtLink Strategic Profiles is the quick and targeted access they provide to dockets and documents from past cases of interest. Rather than doing broad searches through CourtLink or case law, you can quickly drill down into cases of interest from Strategic Profile reports. Once you have identified the documents you would like to obtain, you can retrieve copies online and/or place orders through the CourtLink Document Retrieval Service

Best Practice 8:

Identify Past Arguments Made by Opposing Counsel

Best Practice 9:

Determine How a Judge Has Ruled on Previous Arguments

Best Practice 10:

Identify Effective Arguments with a Judge

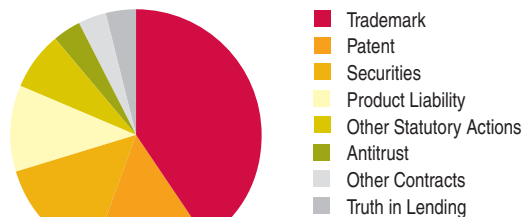
Best Practice 8: Identify Past Arguments Made by Opposing Counsel

EXAMPLE

In a Trademark case in Texas, an attorney with a large firm knew that a Motion for Summary Judgment was likely to be filed by the opposing party after depositions were complete. In order to prepare for the potential Motion, the attorney ran an Attorney Strategic Profile on the opposing counsel to find other Trademark cases in which the opposing counsel had been involved.

Once the attorney sorted the cases by nature of suit and examined the dockets for Trademark cases, she found two different occasions which opposing counsel had filed a Motion for Summary Judgment. In one of the cases, the Motion was available at the court, so she ordered it immediately from the CourtLink Document Retrieval Service and was able to review the substantive arguments within 48 hours. In the other case, the documents had been filed through the Electronic Court Filing system and the Motion was already in electronic format. She requested the document and it was delivered electronically within minutes for her review. When the Motion for Summary Judgment was made in her case, the arguments made by opposing counsel were almost identical to the previous Motions she had already seen. The advance review had allowed her to formulate her arguments with more precision.

NOS	Count	Percent
Trademark	11	40.74
Patent	4	14.81
Securities	4	14.81
Product Liability	3	11.11
Other Statutory Actions	2	7.41
Antitrust	1	3.70
Other Contracts	1	3.70
Truth in Lending	1	3.70



Best Practice 9: Determine How a Judge Has Ruled on Previous Arguments

EXAMPLE

An attorney at a Midwest firm had a case where the key issue involved evaluating the admissibility of scientific evidence that had only recently become available. She had very limited experience with the judge assigned to the case, but had heard he was hostile to novel scientific evidence. She ran a Judicial Strategic Profile to determine what the judge's response had been to previous Motions. While there were no cases available in published form when she searched case law, she was able to find several cases listed in the Strategic Profile involving a scientific issue. One of the cases had a docket entry for a Memorandum written by the judge on a scientific evidence issue. The attorney ordered the document from the CourtLink Document Retrieval Service and was able to determine that the judge focused on the endorsement of the science more than the length of time the practice had been used.

The attorney used the precedent cited by the judge in his Memorandum in crafting her own Motion. In addition, she emphasized the same points that the judge had focused on in his Memorandum and was successful in having the evidence admitted.

Best Practice 10: Identify Effective Arguments with a Judge

EXAMPLE

An attorney at a mid-sized firm in California was about to argue a case in front of a judge he had never appeared before. His firm also had little experience overall with this judge, and the attorney needed to identify how the judge had reacted in the past to cases in very specialized pharmaceutical litigation. The attorney ran a Judicial Strategic Profile and focused on appearances before this judge by other attorneys who practiced in the attorney's own area of law.

As it turned out, one of his firm's chief competitors had appeared before the judge on two prior occasions. As the practice areas of these two firms were similar, he retrieved the dockets from relevant cases. Then, he ordered a couple of Briefs filed by that firm and a copy of the judge's response. He was able to benefit considerably from this pertinent information.

Judicial Strategic Profile Reveals List of Attorneys Who Have Appeared Before the Judge in Past Pharmaceutical Cases

Attorney Name	Law Firm	Count
Alexander H. Cote	Arnold & Porter	5
Amanda Cialkowski	Halleland Lewis Nilan Sipkins and Johnson	1
Amy Carter	Baron and Budd	4
Amy M. Power	King & Spalding	1
Andrew T. Bayman	King & Spalding	4
Arthur W. Schmidt	Mahaffey and Gore	1
Avram J. Blair	Williams Bailey Law Firm	1
Barbara Wrubel	Skadden Arps Slate Meagher and Flom	4
Barry J. Thompson	Reed Smith Crosby & Heafey	1
Bhavi A. Shah	Snell and Wilmer	1
Bonnie L. Gallivan	Ice Miller	1
Charles Cooper Gordon	Gordon Murray Tilden	1
Chilton D. Varner	King & Spalding	3
Smith	King & Spalding	1
	Gruber and Gruber	1
		1

Source: Judicial Strategic Profile

Note: Information shown in charts is representative of online court records data, but does not relate to the provided example.

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