

CIT JUDICIAL CONFERENCE PRESENTATION

Are there different considerations for Plaintiff and Defendant?

Filing Deadlines

- (a) Double calendar system
- (b) Shame on you if you wait all 180 days.

If you are prepared to file in the CIT, have you thought your case through?

- (a) What is the relief you want?
- (b) Have you drafted your pleadings to yield that result?
- (c) Does the "proof" you will offer reach each element of your claim?

How to select witnesses.

- (a) Fact witnesses: personal knowledge; time in grade.
- (b) Do they communicate in English?, if not – who will serve as translator?
- (c) Experts – scientific, then *Daubert* criteria. Lay experts – can you lay a foundation?
- (d) Potential Customs' witnesses: scientists; import specialists, competitors.

What do you do with the time you have available on the Reserve Calendar?

- (a) Can you propose a settlement/stipulated judgment?
- (b) Is early mediation an option?

What is the essence of a good Complaint?

- (a) Establishing jurisdiction.
- (b) Enough, but not too much.
- (c) Rule 12(b)(5) Motions - should you file or not?

How to plan for Discovery

- (a) Initial disclosure.
- (b) Make sure your client appreciates the time and preparation that will be required during this phase of the litigation.
- (c) What did you learn during discovery?
 - (i) Can you get around the Government's designated witness or do you rely on their experience or lack of experience?
 - (ii) Depositions: Do you "try" your case in a deposition?
 - (iii) Are there claims of privilege to be resolved?

Can you dispose of your case short of trial?

- (a) Is there a genuine issue of a material fact?
- (b) Stipulations

Trial Preparation

- (a) Witness Preparation
 - (i) Do your witnesses possess information re: ultimate issue?
 - (ii) The art of the presentation.
- (b) Witness statements
 - (i) How and when to challenge

- (ii) Expert Witness Statements
 - (iii) No attorney-client privilege
 - (iv) Timing of the exchange.
- (c) Appreciating the need for authentication.
 - (i) can your witness authenticate records?
- (d) Trial notebook for the court?
 - (i) Pre-trial briefs
 - (ii) Post-trial briefs
- (d) Where to try the case?
 - (i) New York, U.S. Outport.
 - (ii) How to request outport.
 - (iii) What do you need to qualify?
- (e) Responding to Scheduling Orders.
 - (i) Non-dispositive motions
 - (ii) Partial relief
 - (iii) Jurisdiction
 - (iv) Statute of limitations
 - (v) Third party actions where govt. is the plaintiff
- (f) Fee-shifting
 - (i) Is the client eligible for an EAJA award?