



## Falex Litigation Technical Investigations Early Resolution of Insurance Claims and Litigation

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Falex Litigation Technical Investigations conducts accident and materials and wear failure analysis investigations for insurers and litigators. Our cases typically involve the performance of materials, materials compatibility, friction and wear, lubrication, the design process, and issues involving installation, maintenance, and adherence to codes and standards. In addition to providing traditional insurance claim and litigation technical investigations, we are unique in offering a proven way to help resolve cases early.

We are keenly aware of our clients' need to cut litigation costs. The only way to cut litigation costs is to resolve the case early, but the only way to resolve a case early, while having a reasonable basis for establishing liability and achieving the best outcome, is to establish the key issues clearly in a way that is authoritative and compelling, but how can one do this? How can the key issues be established without extensive discovery, which is what must be avoided to substantially cut costs?

Discovery establishes the key issues involved and the positions of each party. Any alternative must 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. Our approach 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 take to succeed.

Our Approach - The initial facts of the case often fail to identify the key issues and can be misleading, especially for complex and multidisciplinary technical cases. Our physical-science based approach, coupled with our superior analytical skills, provide the experience, insight, and skill to find the key relevant existing information. We gather information from the civil complaint, prior related cases, trade association publications, patents, manufacturer's marketing materials and reports, and Internet blogs and forums. Our comprehensive research is coupled with top-notch analysis to fill the gaps that exist to applying existing information to the specific incident we are investigating. 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.

A few examples follow to demonstrate how our approach might be used.



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*Property Estimation Investigations* - We have conducted a number of scientific investigations where we have used existing information, often from manufacturers' published studies, to establish the likely performance of materials or chemicals in specific situations. These studies have included estimating the volatility of lubricants, the moisture absorption properties and expansion and contraction of engineered wood products, the likelihood for corrosion to occur due to exposure to a chemical, the ability of substances to clog drains and the conditions under which that might occur, and the properties of aggregates, asphalt, and concrete. Our reports in these types of cases are used by insurers to resolve claims, and by litigators as the basis for mediation and arbitration. Our physical-science based approach allows highly effective information searching, analysis, and modeling to produce scientifically supported estimates without the need for expensive testing.

*Class Actions* - Our approach is valuable in class actions because it provides a scientifically reliable way to estimate the performance of materials and the factors that influence them, which supports determination of if the key technical issues are common to the class, or if key technical issues are unique to individuals of the class. For example, we successfully applied our approach to a chemical process used in building materials to show that key factors that could contribute to the alleged problem depended on scientific principles that varied from one individual of the class to another. The chemical process in question was complex, and our approach provided previously unknown insight that was critical not only to determining if a class action was appropriate, but the insight we developed also guided the investigation for the ensuing litigation by individuals, which focused the expensive testing, lowering costs, and improving the outcomes.

*Strategic Direction* - We applied our early resolution approach to another building product investigation to develop the strategic direction for mounting a defense. Our research discovered relevant patents and academic research that established the technical direction for further scientific investigation.

**Falex Litigation Technical Investigations**

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Falex Litigation Technical Investigations was formed to provide litigators, insurers, and corporate counsel with expert witness consulting and scientific investigations that are informed by core competencies in the physical sciences, materials performance, and tribology - the science of friction, wear, and lubrication - to provide better outcomes at lower cost with intellectual property disputes, product failures, process incidents, accident investigations, and Consumer Product Safety Commission recalls and issues.