



Falex Litigation Technical Investigations Litigation Defense Strategy

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. We also offer unique services, one of which is aimed at corporations and corporate counsel to help avoid and defend litigation claims involving technical issues.

Manufacturers face a complex and diverse array of litigation issues, and it is not uncommon for companies to handle each litigation claim in an autonomous way by assigning the case to one of numerous outside litigators who then obtain the required experts to oversee the technical investigation. Whirlpool, for example, had over 200 outside product liability defense firms.

Whirlpool gained control of its litigation by identifying three core technologies that were often involved in their litigation and that were repetitive. This allowed Whirlpool to dramatically reduce the number of outside litigation firms, gain efficiency in case cycle time, and achieve early resolution more often.

Falex Litigation Technical Investigations offers a consulting service to corporate counsel, insurers, and litigators to help companies do what Whirlpool did. Our physical sciences (physics and chemistry) based investigation approach, coupled with the expert witness experience and corporate R&D backgrounds of our staff, allow us to help companies analyze their products and litigation, identify the key technical issues and underpinnings and recognize the commonality across cases provided by these underpinnings.

This insight as to the key technical underpinnings and commonality across cases allows us to then develop a deep base of technical knowledge in these focused areas. This prevents duplication of effort that is common with the autonomous approach to cases, and provides a starting point in a case that is far up the learning curve. It also cuts costs, improves outcomes, and provides a unique approach to seeking early resolution of cases. We achieve this by the following process.

Defining the Technical Issues - For every core technical area, we help identify the underlying key technical issues. We can do this because we have a broad, physical sciences base of experience, superior analytical skills, and competency in finding relevant information from numerous sources. We conduct broad, first-pass research to gather information from prior related cases, trade association publications, patents, manufacturer's marketing materials and reports, and Internet blogs and forums to establish the key technical issues.



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Establishing What is Known About the Technical Issues - We then use focused, comprehensive research coupled with top-notch analysis to fill the information gaps that will exist in the relevant, available information to develop a deep understanding of the key technical issues. Manufacturers publish studies and universities conduct applied research. Relevant research likely exists and can provide 60% to 80% of the insight that may ultimately be gained. 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.

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 that the testifying experts who are eventually used will focus on their core technical competencies if full discovery is needed.

One outcome of this approach is that it places companies in an excellent position to screen claims and to achieve early resolution because our approach has already established the key issues involved. Companies can use this insight to assess who is likely to prevail, and what it will take and cost to prevail, to set a reasonable, non-negligent basis for settlement that is supportable, authoritative, and compelling to the claimant. This approach also provides a superior basis for assessing the quality of the work and results of expert witnesses. The overarching technical concepts that were identified also provide the key to effectively framing and communicating the results of the technical investigation, as well as the production of reports and courtroom presentation materials. This approach produces clarity and reliability, and greatly assists in making the technical issues easily understood by ordinary people.

An example of how we have used this approach is in the building products industry. A diverse family of products had litigation involving odors and fires. Each case appeared to be technically autonomous, but by using the approach outlined above, we identified a few core technical issues and developed significant technical insight into the underlying principles of each of those areas, which allowed the company to far better understand materials issues, installation issues, operator training, and product specification.

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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.