



# The SA Business Briefing Breakfast Series<sup>SM</sup>



## Business Litigation 101: Your Business Has Just Been Sued – An Essential Guide to the Critical Realities and Decisions in the First 48 Hours

Litigation is a fact of business life, which consistently results in high costs, stress, and uncertainty. The decisions you make in the first 48 hours after being served with a lawsuit are critical. This program will offer practical, real world advice, to help you confidently deal with this challenging situation.

SHELOWITZ & ASSOCIATES PLLC • ATTORNEYS AT LAW • 11 PENN PLAZA 16TH FLOOR • NEW YORK, NY 10001 • WWW.SALAWS.COM

## Objectives of Program

- (a) To provide practical insights into the litigation process;
- (b) To provide a roadmap on how to respond to a lawsuit; and
- (c) To offer tips and tools that can be immediately put into practice when you return to your offices after our program today regarding emerging business disputes.

## Summary of Program

- **(1) Introduction of Program**
- **(2) About Shelowitz & Associates**
- **(3) General Thoughts on Litigation**
- **(4) State and Federal Court Systems**
- **(5) Background on Litigation Process**
- **(6) Top 8 Actions in First 48 Hours**
- **(7) Q & A and Conclusion**



# About Shelowitz & Associates



big law firm quality.  
no big firm fees.



## About Shelowitz & Associates

- **Founded by M. Shelowitz (March 2007)**
- **Current headcount of 10**
- **6 Lawyers**
- **2 Admin**
- **2 Legal assistants**

# About Shelowitz & Associates

## Mitchell Shelowitz- Experience

- ✓ Proskauer Rose, NYC (1991-1996)
- ✓ Nixon Peabody, LI (1996-1997)
- ✓ Goldfarb, Levy, Israel (1997-1999)
- ✓ Sr. Counsel, Gilat Satellite Networks, Israel (1999-2000)
- ✓ General Counsel, Ceragon Networks, Israel (2000-2004)
- ✓ Nixon Peabody, NYC (2004-2006)
- ✓ Greenberg Traurig, NYC (2006-2007)
- ✓ Shelowitz & Associates (2007-Present)

# General Thoughts on Litigation

➤ Litigation:

In most cases, litigation is the most ineffective, inefficient, costly, and uncertain method to resolve disputes, collect payment, or correct potential wrongs

# General Thoughts on Litigation

- **Why is this So?**
  - Costly - legal fees; business interruption
  - Uncertain Results - technicalities and judge's bias; law clerk's role as judge; caseload congestion
  - Lengthy Process - court process is slow
  - Disruptive to Life and Business - forced time priority due to deadlines; stress; emotional
  - Tortuous - must live with issue or person that is not improving your business or life for extended period



# State and Federal Court Systems

- **Two Court Systems in New York**
- **1. New York State Judicial System:**
  - Judges are elected
  - Jurisdictional requirements
  - Assorted levels of courts
  - More congested system
- **2. Federal Judicial System**
  - Judges are appointed by President of US
  - Confirmed by Senate
  - Faster and more efficient in many cases
  - Strict jurisdictional requirements

## New York State Courts (simplified)

NY Court of Appeals

Appellate Division

NY Supreme Court  
(Located in Counties)

## New York Federal Courts

U.S. Supreme Court

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graph BT; A[U.S. District Courts (in Districts)] --> B[U.S. Circuit Court, 2nd Circuit]; B --> C[U.S. Supreme Court];
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U.S. Circuit Court, 2<sup>nd</sup> Circuit

U.S. District Courts (in Districts)

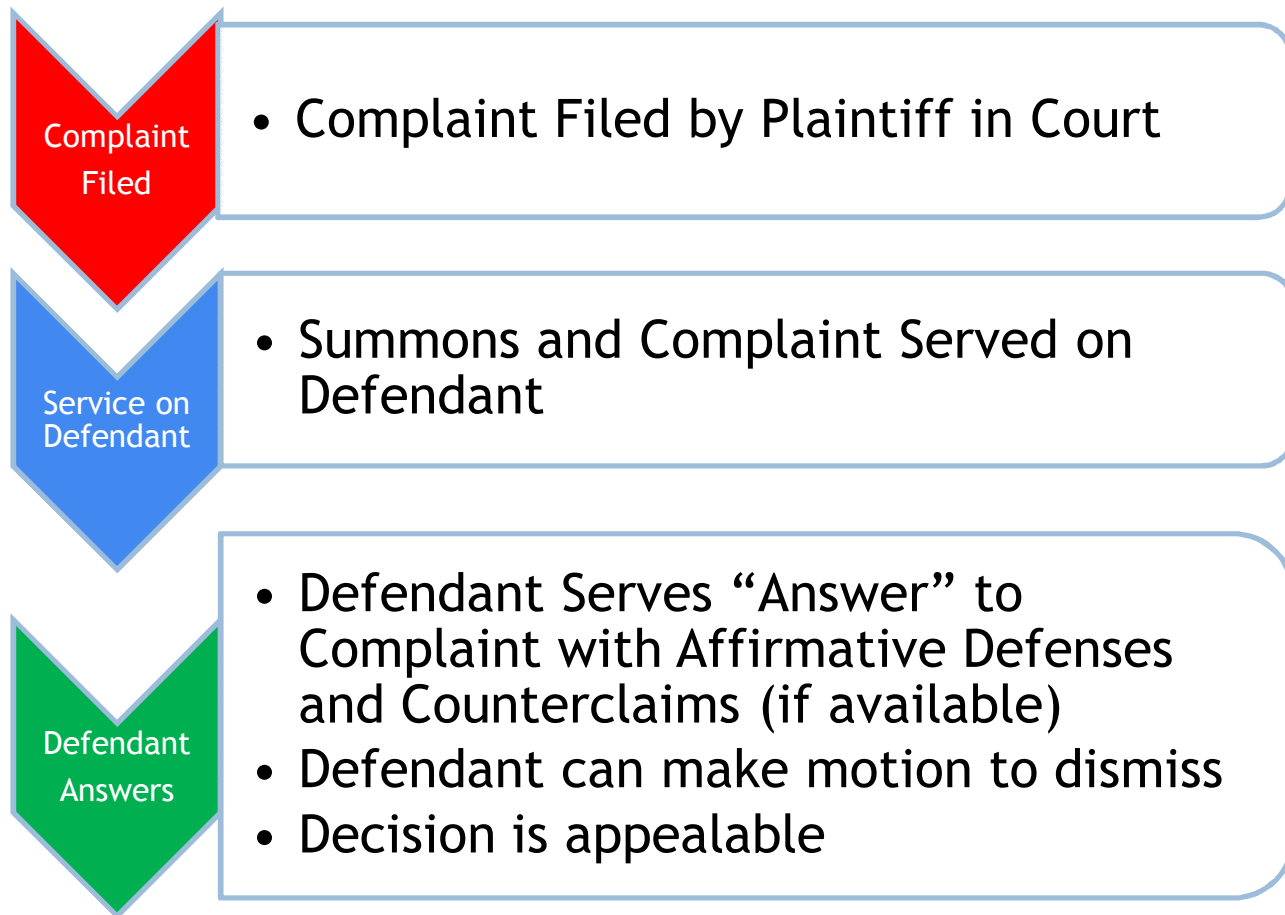
# Summary of Litigation Process

## Four Primary Phases

1. Commencement of Action
2. Discovery
3. Pre-Trial Motions
4. Trial

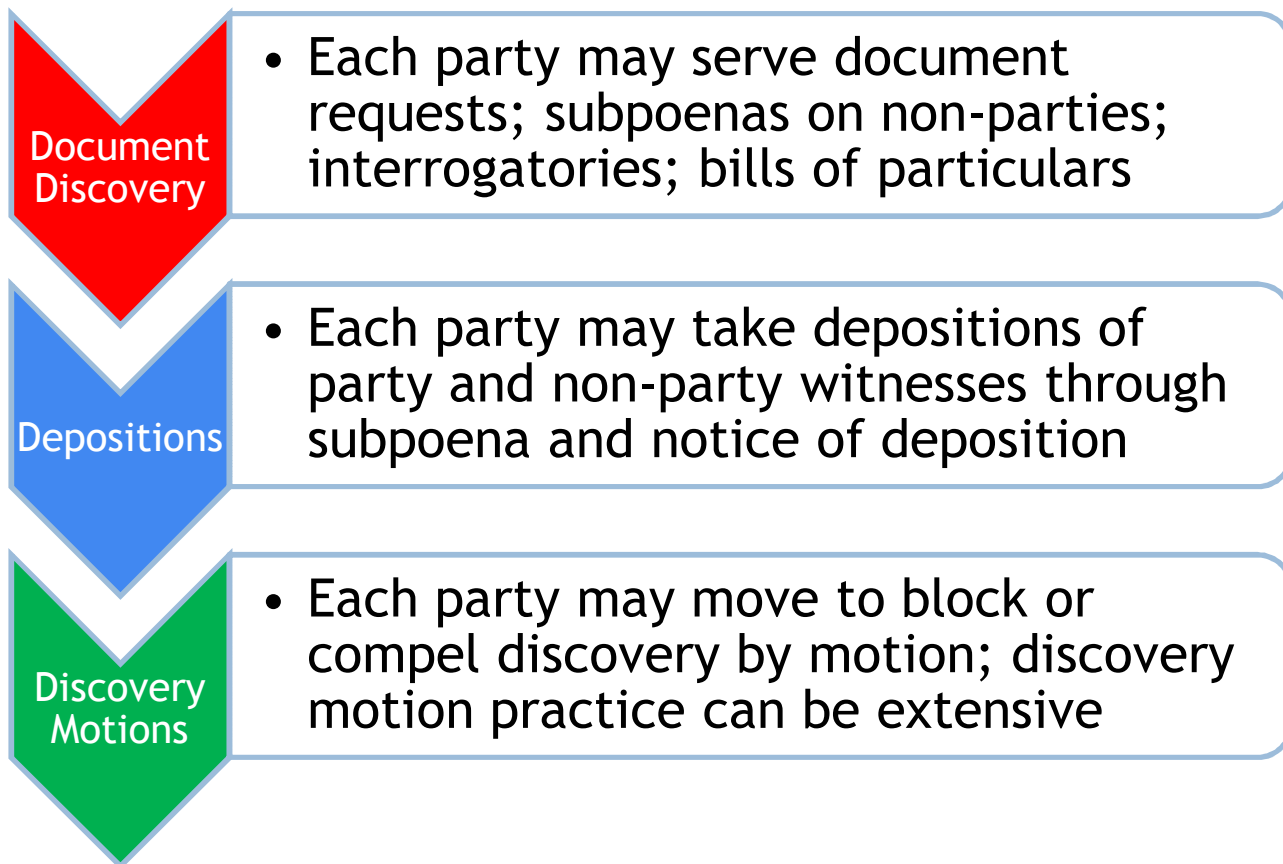
# Summary of Litigation Process

## Phase 1 - Action Begins



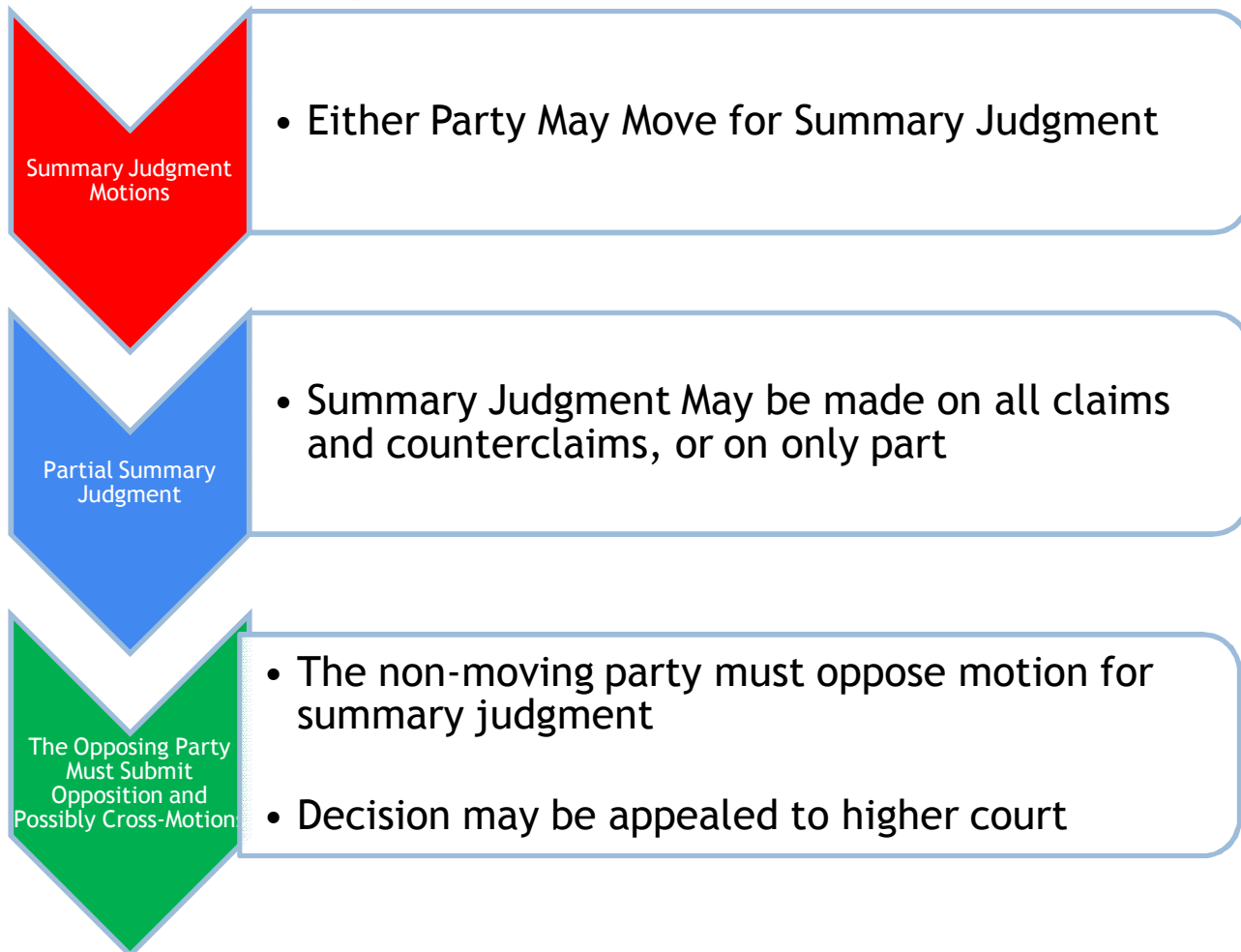
# Summary of Litigation Process

## Phase 2 - Discovery



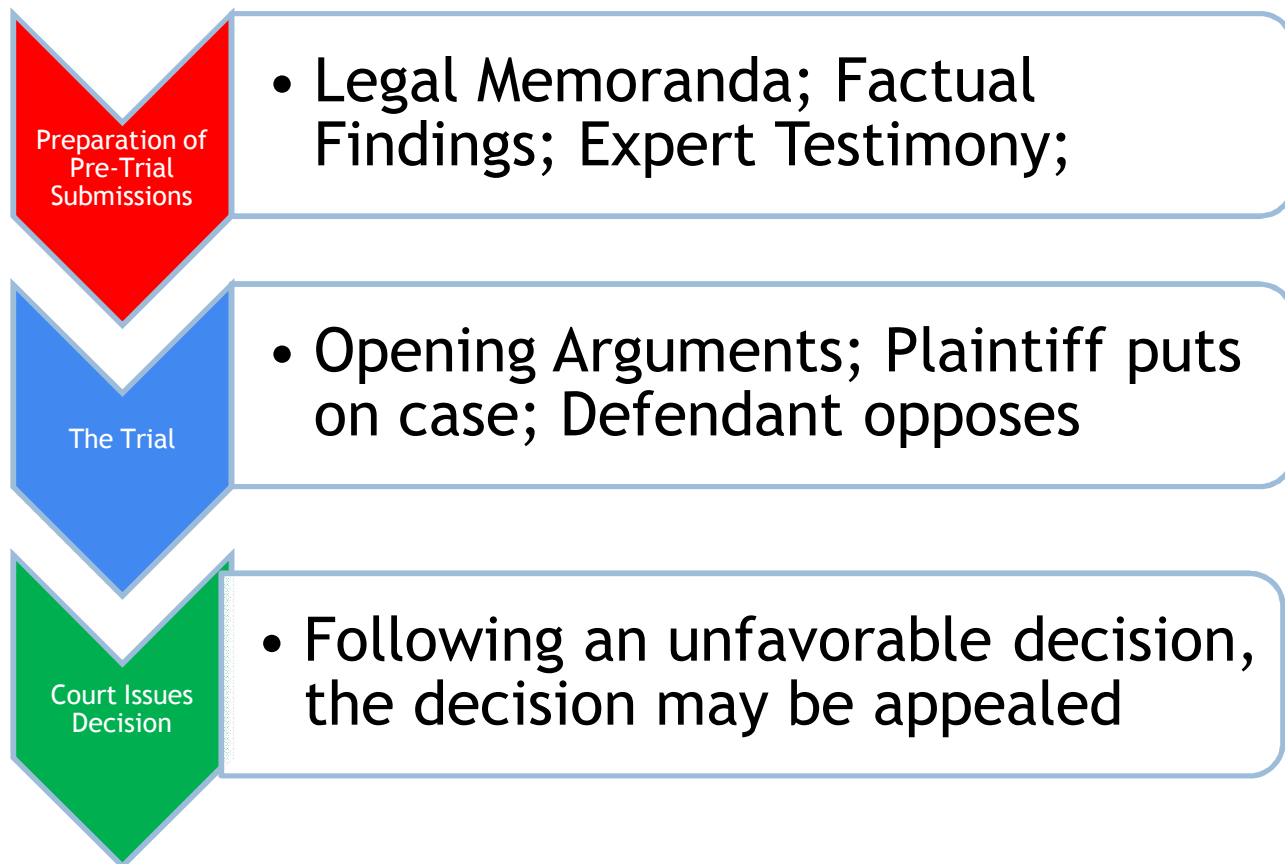
# Summary of Litigation Process

## Phase 3 - Dispositive Motions



# Summary of Litigation Process

## Phase 4 - Trial





## Typical Conservative Estimated Litigation Budget for Pre-Trial Activity (excluding appeals)

<u>Work Product</u>	<u>Typical Legal Fee</u>
Complaint	\$5-10,000 +
Answer	\$5-10,000 +
Document Request	\$3-5,000 +
Response to Document Request	\$3-5,000 +
Review Documents Produced (dependent upon no. of docs)	\$1,500 +
Interrogatories	\$3-5,000 +
Response to Interrogatories	\$3-5,000 +
Bill of Particulars	\$3-5,000 +
Response to Bill of Particulars	\$3-5,000 +
Motion Practice (dependent on how aggressive adversary is)	\$5,000 +
1 Deposition (including preparation; conducting deposition; court reporter fee)	\$5-10,000 +
Summary Judgment Motion	\$15-30,000 +
Motion to Dismiss	\$15-30,000 +
Responses to Motions	\$5-30,000 +
Miscellaneous Letter writing; responses to adversary's counsel; etc.	\$5,000 +

## 8 KEY ACTIONS IN FIRST 48 HOURS

- **1. Remain Calm**
  - You typically have 30 days to Answer complaint
  
  - Plaintiff's counsel may be willing to extend time to answer for period of time

## 8 KEY ACTIONS IN FIRST 48 HOURS

- **2. Assess Nature of Claims**
  - Carefully review complaint to understand general basis of claims and identify any inaccuracies
  
  - Determine whether there is any corrective action that can be taken immediately in order to quickly resolve the underlying reason for suit; e.g.,
    - Payment for amounts due;
    - Suspend certain action which could be breaching
    - Cease infringements

## 8 KEY ACTIONS IN FIRST 48 HOURS

### ➤ 3. Retain and Gather All Relevant Documents

- It is crucial to immediately alert all relevant employees, partners, parties and support personnel that no emails, correspondence, and other documents that are potentially related to the law suit should be deleted, shredded, or otherwise destroyed
- Failure to do this could result in claims of spoliation of evidence
- Immediately gather all relevant contracts; key correspondence; emails; and other documents; locate files; and either map out locations or move all files to single location in business office

## 8 KEY ACTIONS IN FIRST 48 HOURS

- 4. Consider Contacting PR Professional
- Litigation may harm your company's name and reputation. Consider engaging a public relations professional for potential damage control.
- Appoint one person in your company to be the single point of contact for press and related inquiries.

## 8 KEY ACTIONS IN FIRST 48 HOURS

- 5. Notify Your Insurance Carrier
- If you have business liability coverage for such matters alleged in the Complaint, you should promptly contact your carrier

## 8 KEY ACTIONS IN FIRST 48 HOURS

- **6. Separate Business From Emotion**
- In most cases, litigation is a dollars and sense game.
- Emotion and Pride often result in much higher litigation costs, and a much longer period of litigation

## 8 KEY ACTIONS IN FIRST 48 HOURS

- **7. Consider Settlement Formula**
- 95% of litigations result in settlement
- Settlement should be pursued at all costs
- Even if you think you have a good defense, the costs to prove this are so high and success so uncertain, that you will spend significant sums and end up in the same place
- Even in the absolute best circumstances, chances of a successful defense are 50-50 at best



## 8 KEY ACTIONS IN FIRST 48 HOURS

- **8. Engage Experienced Counsel**
- Speak to more than one law firm
- Experience on subject matter important, but philosophy on execution of strategy more important
- Lawyer should not discuss winning, but how to most quickly extract your company from the action
- Request pricing and budget estimate
- Immediately communicate desire to settle
- Don't let lawyer take control of action without your consent

## 8 KEY ACTIONS IN FIRST 48 HOURS

- 1. Remain Calm
- 2. Assess Nature of Claims
- 3. Retain and Gather All Relevant Documents
- 4. Consider Contacting PR Professional
- 5. Notify Your Insurance Carrier
- 6. Separate Business From Emotion
- 7. Consider Settlement Formula
- 8. Engage Experienced Counsel

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# Thank You

**For more information, please contact:**

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