

# IN-DEPTH LITIGANT BACKGROUNDS



## TURNING OPPONENT RESEARCH INTO A STRATEGIC ADVANTAGE

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The sparse party information contained in a complaint, responses to interrogatories or the CV of a witness do little to arm a litigator with the information they need to confront an opponent in a deposition or courtroom.

To understand the full story behind a legal adversary, attorneys increasingly turn to skilled investigative professionals to help them piece together a narrative of a plaintiff's or witness' background from obscure and often hard-to-find sources and digital footprints.

Mintz Group is regularly asked to support counsel in class action suits, and cases from our files highlight how investigations that probe beyond the public record can provide a strategic advantage in the courtroom.



### Uncovering Contradictions (And Worse)

At its most basic, background research into the other side of a legal dispute can equip a lawyer with a better understanding of the person they are about to depose or cross-examine. Particularly in a class action context, the information uncovered by a background investigation can be used to undermine the standing of a plaintiff as a representative of the class or an opponent's expert witness. In a recent case, the lead plaintiff in a class action against a technology company claimed the company took advantage of his technological inexperience to breach his privacy.

*Uncovering the plaintiff's chat room aliases allowed us to show that far from being technologically naïve, the plaintiff had been writing his own computer code since the age of eleven.*

Sometimes, online sleuthing discovers not the contradictions of a plaintiff's claims, but instead their odious behavior, as when one lead plaintiff in a class action against a securities company was found in online forums to have made death threats against the company's executives, along with a slew of racist rants.



### Uncovering Relationships

In-depth investigation can also illuminate undisclosed connections between plaintiffs and the plaintiff's attorneys. In one instance, corporate filings and court records showed that the lead plaintiff's sister worked as

an assistant to the plaintiff's lawyer, and had formed an advocacy group that railed against the defendants, at no point disclosing the connection to plaintiff's counsel. In another case, an investigation into the background of a lead plaintiff in a class action against a car company uncovered a recent divorce, financial difficulties—and the fact that both her ex-husband and son were attorneys with a connection to the plaintiffs' counsel.

Cases such as those connecting the lead plaintiff and the plaintiff's attorney via the attorney's assistant illustrate the goldmine of information that can be harvested from a variety of public records, including litigation filings, corporate documents, social media and property deeds, among other, sometimes obscure sources. But they also underscore the extent to which important connections may not be immediately obvious from the public record and require skill and experience to uncover.



## Uncovering Alternative Theories of Harm

In-depth research into legal opponents can also point to alternative causes of alleged injury. In one class action suit against a pharmaceutical company, in which plaintiffs alleged that one of the company's therapies caused deteriorating eyesight, a deep dive into the work history of the lead plaintiff revealed that she had worked on a farm many years earlier. Further research uncovered that a pesticide commonly used on the farm's primary crop at that time was later found to cause deteriorating eyesight.

***Here again, an additional level of research was needed to provide critical context; the fact that the plaintiff once worked on a farm by itself meant little.***

Undermining the credibility a plaintiff in a class action generally doesn't put an end to the litigation—the lead plaintiffs are simply replaced. But doing so forces the plaintiff's attorneys to expend energy and resources to adapt to these curveballs.

## Uncovering Conflicts of Interest

Deep background research can also be helpful in conducting diligence on the credentials, histories and potential conflicts of expert witnesses. It is already customary for defense attorneys to examine an expert witness' prior court appearances to see if a judge has ever invalidated their testimony, and to look for conflicts of interest, such as an academic who received research funding from an advocacy group with a history of maligning the defendant. But bringing background research into the process lets litigators probe more deeply for hidden connections. In one case, a materials science professor testifying against a manufacturer was found, along with his research students, to have received funding from a company that, after further digging, was shown to be a front for the toxic torts law firm litigating on behalf of the plaintiffs. Worse still, the professor himself had incorporated the company that was funding his own and his students' research.



## Undermining Credentials

Expert witnesses who are subject matter experts testifying on the basis of professional experience generally will lack the same funding trail as academics, but they will have a work history that can be probed. In a class action against a pharmaceutical company, a police officer was brought in as an expert witness to testify to the allegedly addictive nature of one of the company's drugs; the plaintiff's attorneys presented the officer as an expert on narcotics based on the cases he worked on.

***A review of every case the officer had handled in his career, however, painted a different picture, illustrating that he had worked primarily on property crimes, not narcotics.***

In addition, he and many of the officers he worked with were the subjects of multiple internal investigations.

While the defense attorney's staff might have reviewed some of the officer's history, they very well may not have had the bandwidth or expertise to conduct as thorough of an investigation as was necessary to give a full picture of the officer—and of his shortcomings as a witness.



## A Fuller Portrait

As these examples illustrate, in-depth investigations aren't a game of "gotcha" but rather a way to achieve a deeper understanding of the whole person—their relationships, track record, strengths and weaknesses—that, in turn, can provide the litigator with an effective line of attack. An investigative report that contains only a list of findings is often of limited use to a time-pressed litigator. Instead, genuine insight comes from a skilled practitioner weaving together a robust narrative from both findings and context, drawn not only from surface-level public records, but information like social media networks and police activity reports not found in standard databases but which are accessible to experienced professional investigators.

