



THE FUTURE OF LAW

Winning New Business with Legal Analytics

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As a lawyer working to win new business, you are often given short timeframes to demonstrate your expertise and knowledge. See how actionable insights from Legal Analytics® can make it easy for you to create a winning pitch deck in minutes.

Our panel: Richard Baer, Chief Legal Officer at Liberty Media, Naveen Modi, Global Vice Chair of IP at Paul Hastings, and Josh Becker, the CEO at Lex Machina, discuss what corporate counsel are looking for and how to differentiate yourself from other firms with easy to access, detailed litigation and outcomes data. See how actionable insights can make it easy for you to create a winning pitch deck in minutes.

Speakers:



Josh Becker
CEO
Lex Machina



Richard Baer
Chief Legal Officer
Liberty Media



Naveen Modi
Global Vice Chair of IP
Paul Hastings

Josh Becker: Hello. Welcome to today's webcast. My name is Josh Becker, the CEO of Lex Machina. Today's webcast is, "The Future of Law: How to Win New Business With Legal Analytics." This is the second of a series of thought leadership discussions that we will host in regular intervals.

Let me start by introducing our panel for today. First, Naveen Modi. Naveen is the Global Vice Chair of the Intellectual Property Group at Paul Hastings. [00:00:30] He oversees the firm's Global Intellectual Property Group with more than 100 attorneys. Naveen's practice includes all aspects of patent-related work, including litigation, post-grant proceedings, interferences, client counseling, appeals, and opinions. With over 300 post-grant proceedings, Naveen is one of the foremost experts in challenging and defending patents before the USPTO. In fact, as we reported in Lex Machina's 2015 PTAB Report, Naveen was involved in more PTAB proceedings than any [00:01:00] other practitioner in the United States. Naveen has won more awards than we can cover on today's webcast. He is a very popular speaker and teaches courses on appellate practice at George Mason University School of Law. Thank you for joining us today, Naveen.

Also, we have Rich Baer. Rich is the General Counsel of Liberty Media Corporation. Liberty is a collection of companies, collectively worth about \$50 billion. It has investments in a portfolio of companies worth \$100 billion, including names that I'm sure you recognize: Sirius XM, Formula One, Expedia, [00:01:30] Trip Advisor, Charter Communications, and others. Rich once told me that he had spent about \$2 billion on litigation without data, and he plans to spend the next billions or such with data and analytics. Rich has been with Liberty since 2013. Before that, he held senior executive positions at United Health Group Incorporated, and Qwest Communications. Prior to his in-house experience, Rich was the chairman of a litigation department at the Denver law firm of Sherman & Howard. He holds a B.A. from Columbia University and a J. [00:02:00] D. from Duke University. Thank you both for joining today.

First, let me start out by talking about why we're doing this webcast and this series. When we built Lex Machina, we built it really for litigation strategy, to help people win cases using

data analytics. What we found is that ultimately people do use it for that, but really the way in, especially to law firms, but also to companies, was around business development. Firms were using it to [00:02:30] compete and win business.

Why is that? Well, as we can see on this slide, and quickly look at some trends, as we know, while firms like Paul Hastings are doing great, there has been an erosion of demand as there's competition from alternative service providers. Also, companies are taking more business in-house. There's some other trends and these were all noted in the 2016 Altman Weil report. Clients are demanding more efficiency and transparency and expecting [00:03:00] technology expertise.

In this environment, to remain competitive, you do have to differentiate. You do have to lead the competition. You do have to provide measurable value. That's why people have been using Lex Machina for business development.

Let me start out with Naveen. Naveen, maybe you can tell us, what are some of the challenges and opportunities you are seeing in this environment? How has winning business changed over the last five, [00:03:30] 10 years, in your opinion?

Naveen Modi:

Sure, Josh, and thanks for having me on this webcast and panel. I think it has actually changed quite a bit over the last 10 years, in terms of getting new business. What has happened is I think 10 years ago, when we went to look for new business where we were pitching a case, we had to create that data manually. Even when you were able to create the data, you didn't really have [00:04:00] the entire picture.

With the tools that Lex Machina provides, I think you can actually take the data that Lex Machina gives you, and there are many apps that are available, that you can actually use to really help you pitch a case. It certainly has helped us in the pitching process.

Let me give you an example. For example, in terms of our pitches, they're pretty data-heavy these days. Whether we're looking [00:04:30] at the particular company that was sued, who is the opposing counsel, judge, lawyer, law firm, you can

go out, get information on these from websites. But if you use Lex Machina, the kind of information you can get is actually very useful.

For example, you can very quickly look at how many cases has a firm that just sued a particular company that you're trying to pitch to, how many cases this firm handled. What kind of cases have they been? What that gives you is [00:05:00] a picture as to how aggressively, for example, you want to pitch for a case. What are the strategies you want to use? If they settle very quickly, do you want to build that into your pitch?

Really, I think depending on the case, what has changed over the last few years is clients want to hire a firm that can handle the case most efficiently. When I say most efficiently, I mean not only from a cost perspective, but also [00:05:30] a strategy perspective.

For example, many times you get sued, or a client gets sued, and there are 10 different companies involved. When you can go down and get data not only on the lawsuit, but also the companies that are involved, lawyers that are involved, the judges that are involved, and the courts that are involved, and get that data in a fashion as it's presented, with Lex Machina it's very useful.

Josh Becker: Excellent. Let me turn that over to [00:06:00] Rich. Rich, first, what reactions do you have to what Naveen said, and how do you see being able to use a product like Lex Machina when you are deciding which law firms to use?

Rich Baer: Sure. Again, thank you for including me as well this afternoon. Look, in the past, and frankly still a lot today, most clients like myself are making decisions as to who to hire based on anecdotal information as opposed to actual data. What's anecdotal [00:06:30] information? It's just personal accounts of lawyers' experience and of their record.

We spend collectively, as general counsel of Fortune 50 companies or Fortune 100 companies, literally billions of dollars a year on lawyers. We are making procurement decisions just like the rest of our company is making. But the rest of our company, if they are deciding to buy a telephone

switch, or buy software, [00:07:00] they're making those decisions based upon actual data that assesses the competitive products, that assesses the performance of a particular product. We are, again, just doing it based on anecdotal information.

The data that Lex Machina can provide me as an acquirer of legal services allows me to make a far more intelligent decision on: one, the particular law firm; [00:07:30] two, how the particular law firm compares to other law firms that we're considering; and also how they compare to the norm before a particular judge, or within a particular district, or with respect to a particular type of case. Again, we're looking at this as being a more informed customer. That's what Lex Machina allows us to do.

Josh Becker: You mentioned when we were chatting before this about [00:08:00] the opportunity that this provides to law firms, in your opinion.

Rich Baer: Well, again, and maybe it's just the law firms I'm using, but I still see these pitches coming in where they're just using anecdotal information. "Oh, yes, we've been in front of this judge approximately 10 times." If you try to drill down as to the nature of the cases that they've handled in front of the judge, and the records, and how the cases were resolved, it's like pulling teeth. It's certainly not verifiable data. Again, it's just personal accounts of [00:08:30] experience.

I encourage all firms to use a product like Lex Machina's to distinguish their pitches from all of the other firms that are coming in with anecdotal information. You can use the data to show, "Look, here's our record in front of this judge." Indisputable. "Here is the average record in front of this court." Indisputable. "Here are the other firms you're considering. Here are their records." That's real data that allows a client [00:09:00] to make a far more informed decision. If you as the firm are serving up that data, you will be looked at, frankly, much more as the speaker of truth than someone who is just doing the classic marketing.

Josh Becker: Excellent. Before we go back to Naveen, maybe for some specific examples, Rich, maybe you can talk a little, and you've touched on this, but a little bit more about how you

think about valuing a case, and risk/reward, [00:09:30] what's a reasonable settlement, and how a product like Lex Machina, how data can help you maybe value a case more accurately?

Rich Baer: Sure. I think any sophisticated client looks at litigation the same way it looks at a transaction. It has a value. Now, what are the components of assessing that value? Some are more easy to document and quantify than others, but [00:10:00] all cases have a value.

Again, we will go, and in the past we would go, to our outside litigation firm and, "Tell us. Give us your view on what is a reasonable settlement value of this case." They would use anecdotal information based upon their prior experience with these type of cases to say, "Look, we think you have a 50% chance of winning. We think if you're a defendant that the likely [00:10:30] verdict or judgment against you, if you were to lose, would be \$200 million. We think the reasonable settlement value is \$100 million." Well, that is so elemental and so simplistic of a way to value a case.

The data that Lex Machina allows us to have access to allows that risk assessment to be far more reliable because it has far more information. We can really understand how a particular type of case [00:11:00] is resolved nationwide, within a particular district, in front of a particular judge, whether it's a jury trial, whether it's a bench trial. All of that data can be incorporated into our risk assessment so, frankly, we can get a much more accurate view of what is the reasonable settlement value of a case.

Josh Becker: Excellent. Thank you. Very helpful. Naveen, any comments on that before we turn it back over to you for some specific examples?

Naveen Modi: [00:11:30] No, I think we, actually, we go through some examples. I think it will actually help, I think, expand on what Rich just pointed out.

Josh Becker: Okay. Oh, the viewers, you should be seeing my screen. Quickly, for those of you have not seen Lex Machina, just to orient you, as you can see at the top bar, there's information about courts and judges, about counsel, about law firms and

attorneys, about parties, [00:12:00] cases, documents, patents, and these apps that Naveen referred to that we will show. What I'm looking at here is these are patent cases filed this month, so 279 patent cases filed thus far this month. Naveen, do any of these look interesting to you?

Naveen Modi: You know, the Phillips case looks interesting. Can we maybe pull that up and we can maybe use that as an example?

Josh Becker: [00:12:30] Sure. Okay. I've clicked into that case.

Naveen Modi: As we can see-

Josh Becker: [crosstalk 00:12:39]-

Naveen Modi: Sorry go ahead.

Josh Becker: Well, you can see a couple things at the top about the court and the judge. Does that give you any information right away?

Naveen Modi: Absolutely. Right. This screen, and I think it may be a little slow in refreshing because what I'm seeing on [00:13:00] my screen, Josh, is still the case list.

Josh Becker: Okay. Let's see. I'm showing-

Naveen Modi: Okay, now I see it.

Josh Becker: Okay.

Naveen Modi: Okay, great. We can see this is a fairly new case. If I am a law firm that wants to, let's say, go after this case and pitch for this case, this tool can really help us. Lex Machina can really help us. If we can click on the plaintiff on this [00:13:30] screen ...

Josh Becker: If you-

Naveen Modi: I just want to get to the law firm. Right. I think if you click on the plaintiff, it will show us the law firm that's representing them.

Josh Becker: Yeah, that's showing on my screen, but it sounds like it's taking a little time to filter through the webcast itself. Let me know

when you can see that. [00:14:00] But you mentioned at the top part, we see that this is in front of Judge Gilstrap in the Eastern District of Texas, which we have a lot of information on Judge Gilstrap. We'll come back to a judge example. Are you seeing the law firm now?

Naveen Modi: I am seeing it, so right. What I want to do is let's say, again, if I'm using this tool, I want to learn more about this law firm, so if you can click on the law firm-

Josh Becker: Okay. I've just done [00:14:30] so.

Naveen Modi: We'll just give it a minute and while we're waiting for it to update, I'll just preview it because I certainly have used this tool in the past. I think what you'll see is once we get the data, and I know it's actually much faster than it's showing right now, you'll see when the screen pops up, there are a lot of metrics that are shown for this law firm. There will be a summary screen. There will be client lists and a lot more detail that we can get. It should be pulling [00:15:00] up here in a minute. Here we go.

If you can look, if you just stay on this screen for a minute, on the top you can see there's a summary. There's district court cases, PTAB trials, client lists, district court judge appearances, and PTAB appearances. It also shows you on the summary the cases that they've done. You can see on the plaintiff's side, they've been more of a plaintiff firm. That gives you [00:15:30] some information when you're pitching for a case. But let's drill down a little bit more. Can we click on district court cases?

Josh Becker: Sure. Okay, let me know when that updates.

Naveen Modi: It hasn't come up yet, but again, and I'll preview this, when it comes up, it's going to show us some information about the types [00:16:00] of cases they've handled and the disposition of these cases, again, which can be very useful information. It should be pulling up here any minute.

Josh Becker: As you noted, one tab we're not clicking on is the client list, which if we did so, we would see the kinds of firms, kind of companies that this law firm generally represents. In this case, it shows they're very much NPEs, non-practicing entities, or

what some [00:16:30] call PMEs, patent-monetizing entities that are shown in the client list.

Naveen Modi: That's right. That's right. Now we have a summary of the cases, the types of cases they've handled. Again, you have a summary. Can we click on timing?

Josh Becker: Yep.

Naveen Modi: Again, I know it's taking a little bit of time to pull this information up, but in real time it's actually [00:17:00] pretty quick. But what this will show you is when we click on timing, and I know it's still not up yet, but it will be up soon, it will show you how long they are taking for each of their cases. I think it's very telling when this actually pulls up. I think it's going to show, my guess is on this firm, that their cases get settled pretty quickly because they are a plaintiffs firm. Like Josh mentioned, there are cases that are NPE cases. Once [00:17:30] the timing is up ... Here we go. As you can see, they've taken only two cases to trial. Nine cases have reached summary judgment. Then [504 00:17:41] cases have terminated. If you can go to the top here, Josh-

Josh Becker: Yeah. Would you like me to click on ... Should I go right to the damages?

Naveen Modi: If you can, that would be great.

Josh Becker: Great. I just clicked on that. [00:18:00] By-the-way, while that's loading, if you have any questions, we've kept this to a quick 30 minutes, but we may have time for a few questions at the end. There was a window for you to type in questions for those listening. Feel free to type in questions and we will try to work in a couple of those in our last 10 minutes here. Let me know when the damages has come up.

Naveen Modi: [00:18:30] I think it's going to come up here any second. The cursor just went there. Here we go. It's up. You can actually see that the damages amounts here aren't actually that huge. It's \$2 million. What again that tells me is, collectively, the tool gives me a lot of information. It's given me information about this law firm. It's given me information about how many cases they've handled, how many are

plaintiff cases, how many are defendant [00:19:00] cases, how many cases have they taken to trial.

When I'm pitching for this, I can really give the client, Rich, a true picture of what may happen. Rich, I don't know if you have any thoughts on this because I feel like some of this is the type of information you were talking about.

Rich Baer:

No, exactly, Naveen. This is the type of information that, frankly, we haven't seen much in pitches. But if a firm like yours was using it, I think you could really distinguish yourself because this not only can help us assess what the plaintiff [00:19:30] firm is like, it will help us determine what's the best strategy here. Do we mediate upfront?

It will also help us when we're across the table from the plaintiff's counsel, and they're making claims that they have all this trial experience and/or they've gotten all these great results. We'll have data that will probably put a lie to much of what they're saying.

For a variety of reasons, this data can be very, very helpful to the client. Again, [00:20:00] a wonderful way for a law firm to distinguish themselves from their competitors when they're pitching a business, because as he said, most of the competitors aren't using this type of data.

Naveen Modi:

Josh, I know we only looked at the law firm and we probably won't have time on this webcast to go into the plaintiff, but I'll just mention it that you can, obviously, we only drilled down on the law firm, but I think if we had drilled down on the plaintiff, I think that would probably give us more data that if I were to guess, it's going to be very consistent [00:20:30] with this law firm and the types of cases they're handling. Again, information that can be very useful for a pitch.

Do we have some time? I think so, right? Can we do one more quick example? Because I think it will be helpful that we certainly do when we do pitches here at our firm.

Josh Becker:

Yeah, that would be great.

Naveen Modi:

If we can go to Delaware, as you know, let's assume that a client of ours, or a company was sued in Delaware, and you

want to try to pitch for that case. Maybe we can pull up Delaware [00:21:00] and the resolutions in Delaware at a macro level.

Josh Becker: Yep, I just pulled it up. Let me know when it comes up on your screen. While that's loading, we did get one question in, which is for Naveen around PTAB. Obviously, PTAB is a relatively new proceeding. Do you find that data helps in PTAB proceedings as well?

Naveen Modi: It does. Absolutely. Again, with Lex Machina [00:21:30] tools, you can actually go down to even the level of a judge, how they are deciding cases at the institution and final decision. It is very helpful and I certainly use it, even two ways. One is to pitch for a PTAB case, but also to actually look at and get information about the forum, the cases, the judges. It is actually very helpful.

Okay, I think we have the Delaware [00:22:00] example up. Now, here what we can do, let's say if a company was sued in Delaware and I want to pitch for this case. If you look at Delaware, it seems like plaintiffs win more often. You have 325 wins versus 235. But I know there are a lot of ENDA litigations that are filed in Delaware. Let's exclude those and see what the data looks like. We can do that?

Josh Becker: Yep. What I'm going to do, I'm pulling up some of the tags that are in Lex Machina. [00:22:30] We have tagged all the ENDA cases, 1,300 of them in Delaware. I'm going to now exclude them. Let me know when that comes up.

It's interesting to see and, Naveen, I'm sure you've seen this, how different districts at different times are taking preeminence. Delta, obviously the Eastern District of Texas, and then Delaware rose for a long time, and then switched [00:23:00] back more to Eastern District. That's something that you can follow with these trends and with a tool like this.

Naveen Modi: Absolutely. Absolutely. I think, again, because I've done this before with Lex Machina when I've tried to pitch for a case, I think this is going to show ... Okay. Here we go. The screen is up now. As you can see, when you exclude the ENDA cases in this example, I had assumed the case was not an ENDA case. It was, let's say, [00:23:30] an ANP case that was filed

against a technology company. The defendants actually have a better win ratio than the plaintiffs. Now let's say we have one more data point. Let's say we know who our judge is in Delaware. Let's assume it's Judge Andrews. Can we drill down to Judge Andrews and see what his cases look like in Delaware?

Josh Becker: Yep. Great. I clicked on that. Let me know when that comes through. Again, for the viewers, [00:24:00] we have five minutes left. If there is any questions, please let us know. We will be recording this. There's another question that came in. We will be recording this and everybody who is registered will get a link to the webcast. That was another question that came in. We will make sure to do that.

Naveen Modi: Okay. I know what's going to happen here because I certainly have had cases before Judge Andrews. Here we go. It is [00:24:30] up. You can see actually, once you drill down to the judge level, we are now at 57 cases for defendants versus 18 cases for plaintiffs. You can see Judge Andrews is pro-defendant, at least in the data that's shown.

What this shows us is that initially, if you were a company that was sued in Delaware and if you were pitching for that case, you may think, "Okay, maybe we want to transfer out of Delaware." But once you drill down to the right case, type of case, and the judge, you [00:25:00] can actually get a lot more information. You may say to yourself, "This is not such a bad jurisdiction. Maybe we do want to litigate in this jurisdiction."

I know we're running out of time. Josh, I think those are the kind of examples that I had in mind. Rich, I don't know if you want to add anything. Otherwise, I guess we can take questions.

Rich Baer: Yeah, no, I have nothing to add, but why don't we try to turn to the questions? Because this type of data is really powerful and allows us to have so much more [00:25:30] insight into a value of a case.

Josh Becker: Great. Just got another question in for Rich. The question is, Rich, you talked about how law departments are changing to some extent. You contrasted them to other parts of the

business in terms of access to data. I guess the question is do you see law departments changing and becoming more data driven, generally?

Rich Baer: I'm not seeing it, but I'm predicting it. If they don't, they're going to get outsourced [00:26:00] as most companies are starting to hold their law departments to the same rigor that they're holding the rest of their company to by way of procurement decisions. No one likes to admit it, but what lawyers do in-house is procure legal services. I see much more rigor being applied going forward by the CEOs and CFOs of various organizations.

Josh Becker: A related question came [00:26:30] up for Naveen. Naveen, within your firm, do you see the firm embracing technology more generally? Any predictions for what's on the horizon?

Naveen Modi: Absolutely. We definitely rely on tools like Lex Machina when we are either pitching for cases or strategizing about cases. We definitely embrace it and use it not only for business development, but also actually in our cases.

Josh Becker: [00:27:00] Excellent. Well, since we just have a couple minutes left, I want to mention as [inaudible 00:27:09] brings up the last slide here, that this is a series. The next Future of Law webcast will be about, "Judge Analytics: Predicting the Behavior of the Courtroom's Boss." We touched on that a little bit today when we dove into Judge [00:27:30] Andrews and saw how different he was than from the rest of Delaware.

As a preview, Naveen, any other comments on judges and assessing judges using data? Do you see judges relatively consistent over time or do you see if you're able to slice down into a period of, say, the last few years, do you see judges changing behavior much?

Naveen Modi: [00:28:00] You know, obviously I think it depends on the judge. But if you have a tool like Lex Machina, it really does give you the type of information you need to really help not only, I guess, like I said, help you run a case, but also help you advise a client, whether it's in a pitch or otherwise. But I think you will definitely see trends with this data. You'll actually learn a lot about a judge, whether they're consistent or not in certain types of rulings and what they do.

Josh Becker: [00:28:30] Excellent. One more question came in, but we're going to get cut off in the last 30 seconds. We'll try to respond to that offline. I want to thank Naveen. Naveen, that was great teeing up our next webcast on the 25th. I want to thank Naveen and Rich for joining us. Thank you to all our viewers. We'll look forward to seeing you on the next webcast.

Rich Baer: Great. Thank you.

Naveen Modi: Thanks, all.