

# Get the Most Out of Your Attorney

In this challenging economic environment, companies of all sizes are searching for ways to lower their legal costs. The following tips can help those seeking to avoid or minimize legal expenses, especially those incurred in litigation. **Don't Get Sued.** This sounds simple enough, and no one thinks their conduct invites litigation. Yet these are often the same people who rely on "handshake" deals, adopt overly hard-line negotiating tactics, and then shout "I'll see you in court." Such tactics provide litigation attorneys with a steady flow of work. The solution is easily enough stated, but sometimes difficult to adhere to: be fair and reasonable. If that doesn't work, seek a prompt business resolution. When necessary, consult an attorney.

**Put it in Writing.** Litigation often arises out of oral agreements that fail to clearly define the parties' rights and obligations. Each party will often remember the terms of a verbal agreement or transaction differently, especially when a dispute arises. Conversely, most parties are willing to abide by the terms of a written agreement if it clearly sets forth the parties' rights and obligations. They may wish they had negotiated a better deal, but they are less likely to resort to litigation if the deal is clearly defined. Simply put - do yourself a favor and put it in writing.

**Other Preventative Measures.** The old adage "an ounce of prevention is worth a pound of cure" rings as true today as it did centuries ago. It pays to send out that confirming letter, call the references of a potential employee, provide safety training, etc. Some companies have a remarkably low rate of litigation despite engaging in countless transactions and having thousands of employees. If your company isn't one of them, implement measures to become one.

**Assess Insurance Coverage.** Many companies have a commercial general liability policy that offers insurance coverage for certain risks arising in the business setting. Although such policies vary, they often provide broad coverage against a variety of risks and may provide the insured with a defense and indemnity against a claim. This can make the insurance coverage determination as important as the underlying claim. If you are sued, call your insurance agent or, better yet, your insurance broker and send them and the insurance company a copy of the summons and

complaint. If the insurance company denies coverage, consult an attorney to closely scrutinize the denial of the claim.

**Don't Settle on the Courthouse Steps.** There's nothing wrong with having your day in court, but if you are going to settle, do so before spending a fortune on attorneys' fees.

Don't spend tens of thousands of dollars litigating "at all costs," and then settle the lawsuit on the eve of trial. If you don't have a strategic reason for litigating the case, determine early on if settlement is a viable option. If it's not, litigate - but don't do so only to then settle on the courthouse steps.

**Resist Settling Frivolous Lawsuits.** As stated above, if you are going to settle, do so before spending a fortune on attorneys' fees. Having said that, don't get a reputation as an easy mark. Word travels quickly - especially among employees - when a company becomes known as an easy source of settlement dollars.

**Work with Your Lawyer.** Certain clients get better service than others, and it's not just due to their legal budget. You know your business best, and your insight concerning its daily workings can be invaluable. Keep involved. Your enthusiasm will be helpful and contagious. If this is a "bet the company" type case, let the attorney know. If it's not, explain why this case is important to you and your business.

**Assign a Point Person.** You can lessen your fees by providing your attorney with a "point person" who knows the background of the underlying matter and will be primarily responsible for obtaining information, documents, witnesses, etc. No single employee is likely to know everything there is to know about a particular case. However, a responsive point person, with their insider's perspective, can help focus and streamline your attorney's investigation and development of the case.

**Ask for a Litigation Budget.** Many feel that litigation is so inherently unpredictable that asking for a litigation budget is an exercise in futility. This is a fair opinion. Litigation costs are extremely difficult to estimate because, among other things, costs are heavily dependent on how the opposing party decides to conduct itself. Nevertheless, a litigation budget can be a valuable planning exercise and will give you at least some idea of the cost and time that may be required to take your case from



"cradle to grave." The budget should set forth not only the estimated cost of certain tasks (depositions, written discovery, etc.), but also the cost of proceeding through each stage of the litigation (summary judgment, trial, etc.).

**Professionalism.** Some litigants want their attorney to be difficult, to be a bully and, above all else, to let their adversary know they're in for a fight to the bitter end. This has its pluses and minuses. Sometimes the adversary caves in, while other times it strengthens their resolve. Whatever tactics you and your attorney adopt, make sure you conduct yourselves in a professional manner. Your credibility, and that of your attorney's, will be crucial during settlement or at trial. Professionalism will ultimately save you money two ways: first, you will avoid needless attorneys' fees incurred in discovery disputes or other squabbles that don't advance your case and, second, you will present yourself as an effective witness during depositions and at trial. This will help your case far more than saber-rattling which, like the threats of a school-yard bully, are often viewed as the refuge of a reluctant adversary.

**Practice Full Disclosure with Your Lawyer.** There are two parts to this tip: be completely truthful with your lawyer; and try to resist the natural urge to gloss over "insignificant" details. The first part is absolutely key to any legal representation. No case is perfect and everything generally comes out during the course of litigation. Parties on both sides will inevitably have to address facts that are less than ideal for their case. Disclosing all the facts (good and bad) known to you up front, rather than waiting to do damage control later, can save you time and money. In the same vein, try not to omit or gloss over the details. Let your attorney make the determinations as to what facts are or aren't significant. Potential claims and defenses can be hidden in facts that may, at first, appear to be insignificant.

**Have an Exit Strategy.** You and your lawyer should develop an exit strategy as soon as possible. If you are a defendant, don't just plow forward spending more and more fees in wide-ranging discovery or law and motion

practice. Spend your legal dollars by focusing on the key issues to resolve or defeat the lawsuit. If you are the plaintiff, your goal is probably to seek as much money as possible. Don't let that goal drive up your fees to the point where you are forced to settle the litigation on unacceptable terms. Stated differently, if you allow your legal fees to escalate out of control, they may well dictate the resolution of your case. Discuss and establish your long-term goals, or exit strategy, with your attorney - and then periodically check to see that you're on the right path.



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