

Managing legal expenses

How you can lower your business litigation costs this year

The cost of business litigation is inherently uncertain because of unforeseen maneuvers by your opponent and unexpected rulings by the court. However, there are things that you — as the client — can do to reduce your litigation costs, including your attorneys' fees.

"Experienced clients know how to efficiently use their litigators," says Monte L. Mann, a partner at Novack and Macey LLP.

Smart Business spoke with Mann about how to reduce your business litigation expenses.

How can you be sure your attorney has a clear understanding of your case?

Introduce your litigator to your case efficiently. Before your first substantive meeting with counsel, prepare a written narrative that:

- Provides general background on your industry and your business.
- Explains all of the material facts of the dispute in chronological order.
- References and attaches all important documents — such as key contracts and correspondence.

In other words, 'tie it up in a bow.' No doubt this will require substantial time and effort, but it is the most efficient way to convey the information to your counsel, and it will be an excellent reference point for you and your counsel throughout the entire case.

What can be done to better understand the costs you might incur?

Your first meeting with counsel should include a discussion of your goals for the lawsuit. What outcomes, short of a trial, are acceptable to your business? What

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are the essential terms that you would require as part of any settlement?

Communicate your goals and ask your counsel whether he or she believes your expectations are realistic. Insist that your counsel formulate a strategy to achieve your goals and estimate the time frame, legal fees and costs to execute the strategy to secure those goals. You may be surprised by the plan and the estimates, and this, in turn, may change your perspective about acceptable outcomes.

How are the expenses of discovery best managed?

The discovery phase in litigation requires that each side disclose all relevant facts, produce all relevant documents and present all relevant witnesses for depositions. The proliferation of computers has greatly increased the costs of producing all relevant documents because it is expensive to search computer servers for files, emails, voice mails and texts.

Have your counsel try to negotiate with the other side to reduce these costs by agreeing to limit the searches for relevant documents by date ranges and particular employees, and by limiting the number of depositions each side will take. In addition, when you produce

your own documents to your attorney, it is helpful, and saves money, if you identify the source of the documents — i.e., Employee John Doe's files — and provide a general index of the documents, for example, 'correspondence with vendors,' 'financial projections,' 'Employee Jane Doe's personnel file,' etc.

Are there different ways to handle billing?

There are many alternatives to the conventional fee arrangement, which is hourly rate billing. Examples include: contingent fees; reverse contingent fees, where compensation is based on avoiding liability; blended rates, which blend the lower rates of junior lawyers and higher rates of senior lawyers into one blended rate for all; fixed or flat fees, where the law firm charges one price for the engagement regardless of how many hours it requires; and combined approaches, such as a low blended hourly rate, plus a contingency. Explore the alternatives with your counsel.

Are attorney's fees tax deductible?

Tax deductions will not actually lower your legal fees, but they can reduce your taxable income. Remember that legal fees for securing tax advice and business legal fees are often tax deductible. ●