

Watching your money

Controlling litigation costs through process management **Interviewed by Meredith McKenzie**

Regardless of why or how it arises, litigation is a tremendous investment of time and money. Every hour your attorney spends collecting documents, taking statements and working with the opposition is another chunk of cash that is deducted from your bottom line.

As with most aspects of running a business, part of controlling those costs is simply a matter of being prepared.

"If you can get your attorney what he or she needs for the litigation, there won't be much intrusion on your day-to-day activities because everything will be under control," says Richard J. Decker, senior attorney with Theodora Oringher Miller & Richman PC.

Smart Business spoke with Decker about how to prepare for the possibility of litigation, what should be outlined prior to litigation beginning, what costs can be managed easily and which are harder to control.

Is there any way to prepare for the possibility of litigation?

One of the best ways is to know who you are getting involved with. For example, if you're entering into a contractual relationship with a person or entity, you should know with whom you are doing business and research these people and entities. If you do your due diligence, the odds are greater that things are going to work out and there won't be litigation. If you don't, you end up with a lot of surprises that could have been avoided in the first place.

When you are entering into business relationships with potential adverse parties, you want to document your transaction in the best way possible so you are precluding possible litigation subjects. Especially in this economy, if people or entities are litigious and things do not work out as planned, they are more likely to sue you. Sometimes it is economically beneficial for a party to litigate rather than agree, and in that situation, litigation may be unavoidable.

What should be outlined prior to starting the litigation process for it to be successful?

The best ways to increase your chances of success are communication and



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preparation. You need to communicate openly with your attorney so he or she completely understands where you are coming from and what the facts are. This will allow the attorney to know what he or she needs to research and investigate to construct the plan of attack or defense. If communication is poor and your attorney does not understand your needs, the plan, research and investigation are not going to be on point. It is crucial that you both understand what the true issues are, what legal position you are going to take, and what you need to obtain via discovery and witnesses.

You also have to share your goals for the litigation. For example, your goal might be to get an injunction and keep it in place as long as possible. The attorney might approach the case differently than if it were a damage case. It is crucial that you share your intentions and what you want to achieve in advance, because that will dictate how the case moves forward.

You want to anticipate as well as you can what the other side is going to do and say, have a handle on everything and be prepared. That is the best way to increase your chances of success. The worst thing that can happen, and what

you want to work very hard to avoid, is surprise.

What costs can be managed more easily and which are the most difficult to predict?

All costs you can control can be managed. The more work you do, the less the attorney has to do, and the less expensive it will be. For example, if you are gathering documents for a document production, make sure those documents are organized. It will save the attorney time and you money. If you are given interrogatories to provide initial draft responses, make sure you give all the information you can. The more you answer, the less time the attorney will have to spend. It is all about time when you are paying your attorney by the hour. Your attorney also needs to staff the matter appropriately so that you are not overpaying a higher-priced attorney for what a lower-priced attorney can do.

Significant attorney fee dollars are incurred during discovery, and it is difficult to control that cost. If your attorney has a good relationship with the opposing counsel, attorney fees and associated costs will be substantially reduced. One of the keys to saving on costs is being able to agree to disagree, so then the lawyers and their clients are not spending significant dollars fighting about issues that do not warrant real dispute.

How important is insurance in managing costs?

Having proper insurance can significantly reduce your litigation costs. Based on the nature of your business, you should be able to predict what kind of litigation exposure you are most likely to have. Avoid being penny-wise and pound-foolish. Engage in a cost benefit analysis and procure appropriate insurance for situations you believe could likely arise. You know your business and personnel best, so you need to play a prominent role in this important decision. <<

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