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Six Cost-Saving Strategies for Reducing Litigation Fees

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Litigation is costly. Even when extraordinary results are achieved, clients often feel a lingering sting from the expense of lost time and money. There are ways to reduce the sting. Here are six cost-saving strategies that litigation counsel can share with clients.

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Litigation

By Deborah Stambaugh | June 23, 2023 at 12:24 PM

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Know the Litigation Goals

Typically, the client's goal is to get out of the litigation as efficiently as possible. Sometimes the client cares more about other things, such as preserving a public image, proving a point, avoiding a reputation for paying out claims, safeguarding confidential information, and sometimes getting even. If the litigation goal is retribution, advise the client that retribution is not cheap, and it makes for an unattainable goal. If a fast end is the goal, counsel should know early. Counsel may advise against weakening the client's negotiation position (and looking guilty) by trying to negotiate a settlement too early. Whatever the goal is, an early and frank conversation about it will help counsel develop strategies to achieve it.

Stay the Course

Litigation can be intense and unpredictable. Clients may at times direct frustration toward the attorney. Maintaining a cooperative relationship with the client, which may take more of your "counselor" ways than your "advocate" ways, and sticking to the goal will reduce expense. If there is more than one way to cook an egg, there are more than a dozen strategies for litigating a case. Changing course during litigation will always result in additional attorney fees due to time needed to reshape filings so as not to contradict prior filings and to explore different discovery that will now need to be defended anew. Staying the course allows more focus on the issues and less time spent on "new" theories which will likely lead you back to the original one.

Report Lawsuits to Insurers

It is surprising how often corporate or institutional clients who have been sued do not think to report a claim to their insurance carrier. Sometimes businesses avoid reporting claims because they anticipate a reported claim will increase premiums. This is a mistake. It is unlikely any increased premium will equal or exceed litigation defense costs. In addition, when the policy renews, there is a good chance the renewal application will require that lawsuits be reported anyway. In other words, not reporting claims does little good for the client, and deprives the client of the opportunity for defense costs to be paid.

Sometimes clients do not report claims because they are unsure whether the claim is covered. If there is uncertainty about whether the claim is covered, it should be reported. If the lawsuit is covered or potentially covered by insurance, the insurer will pay for the client's legal defense. Depending on the language of the policy, the insurer may select counsel, or the client may be able to select their own attorney.

Be Straight With the Facts, Especially the Bad Ones

Nothing wastes litigation resources like discovering adverse material facts late in the litigation. Occasionally it is necessary for counsel to coax adverse facts out of their own client, especially with new clients. If the client's story seems incomplete, keep asking questions, and keep asking for documents. Clients should be advised that counsel will keep their confidences and should be further advised to share liberally all positive and negative relevant information. Confront bad facts head on with the client and let them know when a fact may have negative implications for the case. The facts cannot be changed, but recognizing shortcomings or admitting that something is not great for the case is the best way to reduce litigation costs. On the other hand, working hard to hide bad facts increases costs (and potential discovery disputes—discussed below), and often leads to failure. When bad facts are contemplated early in the litigation, counsel is more likely to target discovery toward concepts that may neutralize bad facts or may encourage the client to apply more dollars towards settling the case.

Avoid Discovery Disputes

Answering interrogatories and requests for production of documents is no fun for anybody. Often when clients push back about producing documents, attorneys will pander to the client and object to making the production. Typically, these objections do not serve the client's best interests in the long run. The objections result in lengthy letter-writing campaigns and unnecessary motions practice. Many discovery motions are resolved on the courthouse steps with a promise to produce a portion or majority of the documents that were originally requested. So, not only does the client typically produce the information, they also will have paid their lawyer significantly more to put up a fight before doing so.

Occasionally discovery motions are appropriate. Here's the question the lawyer and client should consider together before objecting to discovery: Will providing this information actually harm the client? If the answer is "no" providing the discovery requested by the other side the first time they ask for it is the most efficient strategy.

Don't Fight Just for the Sake of It

There are litigators who fight about every issue irrespective of whether it will impact the ultimate outcome of the case. Many attorneys justify this strategy by arguing that demonstrating toughness to the opponent will result in a more favorable outcome. Clients whose egos are bruised by having been served in a lawsuit appreciate and feel vindicated by these tactics, which often are not in the clients' best interests. What is actually happening is the lawyer is running up bills and wearing down the judge's patience. Battles should be picked wisely, and litigation resources should be preserved for disputes that are pertinent to client goals, such as winning on the merits.

Deborah Stambaugh is an associate with *Wisler Pearlstine* in Blue Bell. She focuses her practice on disputes relating to business contracts, construction, insurance, real estate development, employment, business associations and nonprofit entities. Stambaugh provides general counsel and litigation services to public, private, corporate, nonprofit, and individual clients. Visit www.wislerpearlstine.com.

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