

Cost-Effective Litigation

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Businesses face serious financial challenges in this economic climate. Apart from running a business in a down-cycle, leaders must carefully re-evaluate litigation options.

During good times, many businesses have the luxury of employing large law firms to assist in resolving complex business disputes. When budgets are limited, given high litigation costs, many executives abandon hope of retaining top litigation counsel. Fortunately, there are cost-effective alternatives that offer a meaningful choice. We offer considerations for selecting counsel and overseeing litigation.

Priorities

When your company is sued or seriously harmed, your critical choice is what counsel to retain. If your resources prohibit you from hiring big-firm lawyers, the choice is not “all or nothing.” Cost and quality are not necessarily linked. But you should set priorities for your lawyer and ask key questions relating to indispensable qualities:

- Experience in the relevant legal area and in complex litigation generally, including trial experience, and familiarity with the court system (e.g., federal or state) where your litigation will occur.
- Intelligence, academic training and writing skills. In any business litigation, clear thinking and excellent writing and briefing skills are critical because so many issues are resolved based on the briefs, often without a hearing.
- Communication skills. Your attorney should not just communicate well with other lawyers, but must be able to explain strategy to you and understand your goals properly (rather than imposing his goals upon you).
- Hands-on involvement (rather than delegating to inefficient junior lawyers).

- Flexible rate structure.
- Willingness to promote cost-effective approaches.
- Knowledge and ability to resolve the litigation not just on favorable terms, but promptly (rather than unnecessarily extending the matter).

Motions to dismiss /practical discovery

Once you find and retain cost-effective, experienced attorneys who understand your perspective, counsel’s first steps include undertaking a practical approach to the motion to dismiss and, if necessary, pre-trial discovery.

If you are the defendant, particularly in federal court, a thoughtful and comprehensive motion-to-dismiss brief will be your first and best opportunity to convince the judge that the claims against you are meritless. Effective and experienced lawyers will seize that opportunity to efficiently resolve matters early with this critical filing. An investment at this stage can save significant time and money. After the motion to dismiss phase, anyone involved in business litigation knows that most of the legal fees surround “discovery” costs.

This phase involves events like depositions, document requests, interrogatories, and – critically – reviewing and organizing the voluminous documents from your records as well as from your opponents’. When a litigation budget is unlimited, some lawyers will (from our perspective, incorrectly) claim that there are benefits from expanding and delaying this process.

However, in this economy, you are better off with attorneys who are experienced in overseeing the discovery process and who can work comfortably with the technology of electronic discovery. This experience will enable them to make decisions regarding which discovery disputes are worth the fight, which depositions are essential, and how to focus document requests.

Consider settlement early, but hire effective trial lawyers

Given the uncertainty surrounding any dispute and costs of continued litigation, it makes sense for lawyers to consider early settlement. Mediation is an effective approach. The parties themselves should meet and explore resolution – as opposed to only speaking through hired guns (who may have incentives to perpetuate the lucrative fight). If settlement does not initially work, remain open to revisiting settlement as the dynamic picture changes.

However, Roosevelt correctly endorsed “speaking softly and carrying a big stick.” For ideal settlements, your opponent must know that your lawyers are ready, willing, and able to try cases, and that they regularly do.

Business disputes do not stop during turbulent economies. Executives still have a fiduciary duty to protect their companies, and have choices regarding which lawyers to retain. This economy presents opportunities to re-examine your lawyer’s role and qualifications and make your legal budget stretch further without sacrificing professional skill. [BL](#)

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