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Cost-Effective Litigation Management

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Any business with a large number of lawsuits can achieve great savings on their legal expenses by being cost-effective in the management of their litigation. Many companies spend a large portion of their budgets on litigation expenses. Just a one percent improvement in efficiency will contribute significantly to the bottom line.

By the use of coordinating counsel whose specific task is to manage litigation, significant cost savings can be achieved. While the idea of paying another lawyer to manage litigation may initially seem to be adding to the legal costs that will be incurred, cost-effective litigation management by that counsel can lead to more efficient litigation and the overall reduction of legal costs.

Three basic strategies for effective legal cost management are:

1. Effective management of local counsel;
2. Early case evaluation and disposition, if possible; and
3. Involvement of coordinating counsel in risk management.

1. Effective Management Of Local Counsel

Effective management of local counsel is the most important way to obtain cost effective litigation. When managing legal counsel, it is important to follow certain guidelines. These guidelines are:

A. *Select local counsel based on over-*

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all efficiencies, not just based on hourly rate.

When seeking to save litigation costs, it is easy to focus first on the hourly rate charged by the law firm. However, such a focus can often be short-sighted. Just because a firm's basic hourly rates are low does not assure you of lower litigation costs. Much more must be taken into consideration. Who are the attorneys who will be doing the work on the case and what are their hourly rates? How well does the firm "pass down" basic work to associates and paralegals? How efficient are the attorneys who work on the case? While it is difficult to assess much of this information prior to retaining counsel in a new jurisdiction, a review of background information concerning the firm and the attorneys likely to be working on the case

will provide information that may help evaluate their ability to be cost-effective. Once a firm has been used for one case, you will have a "feel" for their efficiency and will be able to determine whether to use them for any new cases filed in that or nearby jurisdictions.

B. *Limit the number of local counsel used in order to obtain the benefits of scale.*

Some companies erroneously believe that it is necessary to have a whole stable of law firms ready to work on cases. More does not always mean better. In most jurisdictions, one, or at the most, two law firms are all that is needed. Unless you have a great deal of litigation in a large state, such as Texas, or many conflict-of-interest problems, there is really no reason to use more than one local firm. A limited number of local firms will allow for easier communication with your local counsel. Periodic status conferences to review the status of litigation can discuss multiple cases at one sitting, rather than necessitating multiple meetings.

A side benefit of such concentration of counsel is the ability to negotiate lower-than-standard hourly rates in exchange for the agreement to use that one firm as exclusive counsel in that jurisdiction.

C. *Don't re-invent the wheel in each case.*

Much of litigation involves the same basic allegations with a slightly modified set of facts. For example, in the case of a manufacturer, it will quickly become apparent to coordinating counsel that there are certain "problem" products that result in more litigation than others. These lawsuits provide the most fertile ground for cost-effective litigation man-

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agement. In lawsuits involving these products, standard pleadings and discovery can often be prepared by coordinating counsel to be provided to local counsel. While these standard pleadings and discovery may need to be tailored to fit the individual lawsuit, this is certainly more effective than "starting from scratch."

These standard pleadings and discovery can also provide guidance for the preparation of pleadings and discovery in the non-"problem" product case. Once such non-standard pleadings and discovery have been prepared, they can be filed away by coordinating counsel for use in any future litigation involving that product and similar allegations.

D. Work closely with local counsel to ensure efficiencies.

One of the most important aspects of cost effective litigation management is the need for coordinating counsel to work closely with local counsel. As discussed above, coordinating counsel has the ability to guide local counsel along a cost-effective litigation path by providing standard pleadings and discovery. Coordinating counsel should also work closely with local counsel in planning cost effective litigation strategy. Preliminarily, this may involve the creation of a discovery plan, which can be modified as the lawsuit proceeds. By regularly discussing how the litigation is proceeding and the next step to be taken, coordinating counsel can help to keep the litigation cost-effective and avoid any surprises in the local counsel's bills when they arrive. In some instances, savings can be achieved through simple changes in how cases are handled. One cost-effective change that we have implemented is the use of e-mail for most communications. In addition to the obvious minimal savings on postage, use of e-mail has provided significant savings by allowing quick communications to be accomplished without the need for the dictation of letters to be typed by a secretary or the need for repeated telephone calls. (This is, of course, in addition to the benefit gained by virtually immediate communication, rather than having to wait for the mail to arrive.)

2. Early Case Evaluation And Disposition, If Possible

The best way to limit your litigation costs (other than by avoiding litigation completely) is to dispose of the cases as

early as possible. This can best be accomplished by early involvement of an in-house expert who can provide an educated evaluation of the case and by early involvement by management.

A. Have an in-house consultant to assist in evaluating cases.

It is important that you learn the strengths and weaknesses of your case as early as possible. Having an in-house consultant who is "on call" to provide such an evaluation is imperative to cost-effective litigation management. In the case of a manufacturer, this consultant should be an expert regarding the manufacture or use of the equipment at issue in the lawsuit. This consultant should be provided with all available information concerning the lawsuit and the product and should be encouraged to provide a candid, unbiased evaluation of the potential liability of the company.

B. Be prepared to settle early.

If the in-house consultant's conclusion is unfavorable to the company, serious consideration should be given to what it would take to settle the case before significant litigation costs are incurred. Even if the conclusion is that liability is questionable, an early determination should be made as to the practicality of reaching a settlement as a business decision, rather than proceeding with costly litigation with the potential for an ultimate finding of liability. Local counsel can often provide excellent insight into settlement values and settlement strategies for negotiating with plaintiff's counsel and should be utilized in this early settlement evaluation process.

C. Get management involved early in the litigation.

Ultimately, management is going to have to approve any settlement that is reached or, if a case cannot be settled, will need to be prepared for the risks of trial. Therefore, it is important that management be involved early in the litigation. Status reports should periodically be given so that management can make the necessary internal and financial reports required regarding the litigation.

3. Involve Coordinating Counsel In Pre-litigation Risk Management

Unfortunately, many companies wait until lawsuits have been filed before they seek the advice of counsel. Preemptive use of coordinating counsel prior to any

claims being made can provide significant costs savings by limiting the number of claims or lawsuits. Involvement of coordinating counsel in risk management can take several forms. First, counsel can engage in a preventive function by providing assistance in minimizing the likelihood that an incident occurs. Counsel can become involved with prevention techniques in the areas of design, manufacture and marketing. For example, with a manufacturing client, counsel can provide advice as to the adequacy of any warnings or in the wording of instruction manuals or warranties provided with the product. Counsel can also work with in-house counsel as to the wording of any hold harmless agreements received or given to others.

Coordinating counsel can also assist in risk management by engaging in a loss-mitigation function, by providing advice seeking to limit the company's liability should an incident occur. This advice can consist of assistance in making sure that the company can demonstrate that it is well-managed, makes safe products, is aware of its responsibilities to its employees, its customers, and the community, and conducts its business in an ethical manner. The essential goal of this function is to prepare for litigation. Counsel should confirm that actions crucial to the defense of litigation are being undertaken by the company, such as safety risk assessments of new products, and that proper documentation of such efforts are being recorded and maintained. Procedures should be in place for the investigation and evaluation of any product-related complaints, and coordinating counsel should be involved in the investigation and evaluation.

Experienced coordinating counsel can do a great deal to limit the litigation costs incurred by a company. They can provide advice on prevention and mitigation of potential damages for any future claims or litigation. On learning of a claim, coordinating counsel must quickly utilize the expertise of the company to evaluate potential liability and keep management advised of the company's risk. Finally, if a lawsuit is ultimately filed, coordinating counsel must retain efficient and knowledgeable local counsel and work closely with them to achieve cost-effective legal services and, when practicable, early settlement.

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