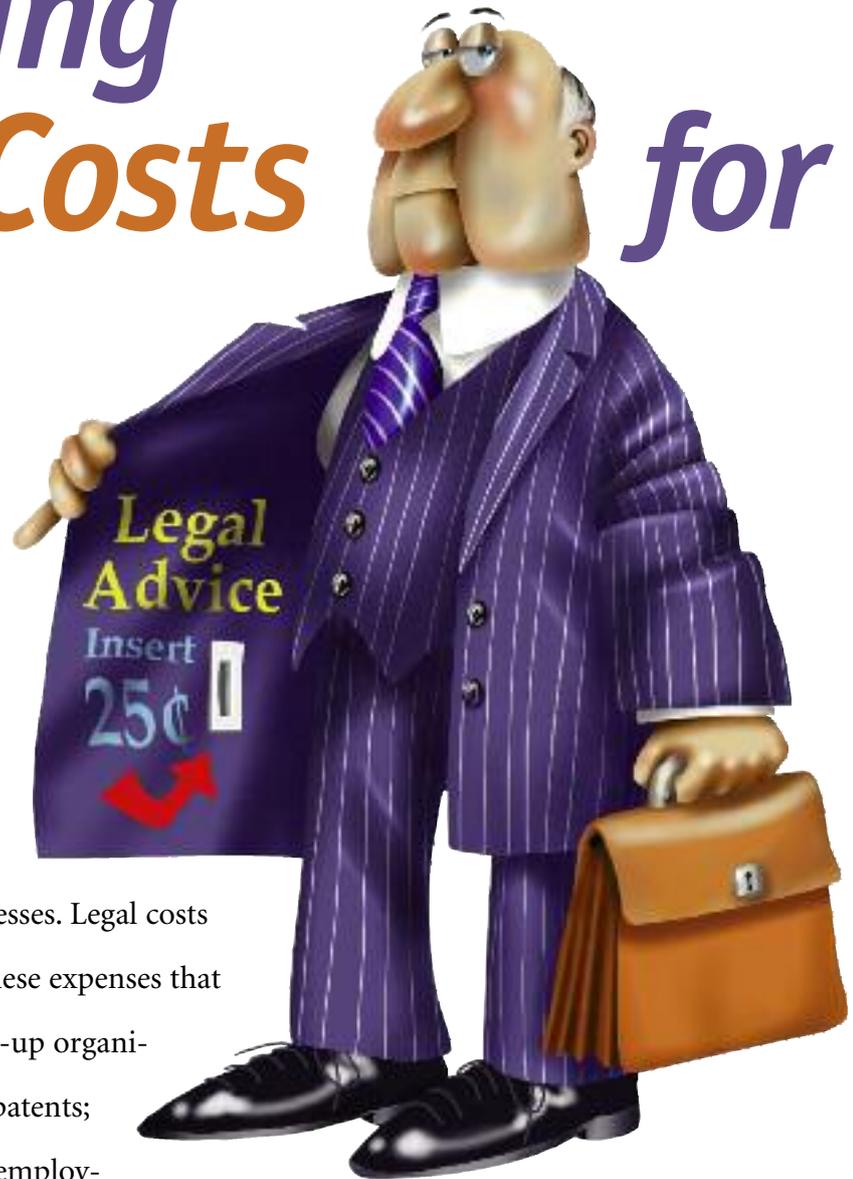


Controlling Legal Costs *for*

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During an economic downturn, eliminating or drastically reducing nonvalue-adding expenses becomes an especially vital strategic goal, particularly for small businesses. Legal costs represent one of the most significant of these expenses that a company faces. Whether it involves start-up organizational costs; the cost of copyrights and patents; costs incurred to defend against lawsuits, employment claims, or other judgments; or some other legal expense, effectively managing these costs can have a significant impact on a company's financial viability.

Large corporations generally have their own legal departments complete with in-house attorneys, and minimizing legal costs usually involves the development of a comprehensive risk management strategy. With fewer resources and smaller revenues, small businesses generally have limited options for controlling these expenses, but there are several commonsense methods that can be employed to help manage and reduce legal costs.



Small Businesses

Advance Preparation

The more prepared you are before you even begin addressing specific legal issues and generating billable hours, the more money you'll likely be able to save your business.

Find the Right Attorney. Like medical doctors and other professionals, lawyers tend to specialize. Find an attorney who has expertise related to your specific situation. As Daniel Harris notes in "Save on Legal Fees: Nine Keys to Controlling Costs," a specialist may command higher hourly fees, but the time required to resolve the case is significantly less, resulting in overall cost savings (www.sideroad.com/Legal_Advice/save_legal_fees.html).

It's also important to get a referral when possible and to find out as much information (including costs) before visiting the firm. Dennis Sheppard, CFO and legal counsel for Springfield Remanufacturing Corporation, advises organizations seeking legal assistance to solicit recommendations from other companies who have faced similar legal issues. Additionally, he recommends using Martindale's online rating service (www.martindale.com). Martindale is a free, online service that rates attorneys. Background information is included for each attorney, including how long the attorney has been in practice, what specializations the attorney may have, and where the attorney earned his or her law degree. Feedback is provided from clients and peers on the four dimensions

of communication ability, responsiveness, quality of service, and value for money. Sheppard also recommends that the attorney selected should be involved in the surrounding community (such as the local Rotary Club) and have a good reputation among business leaders in the community. See Table 1 for a list of questions to ask yourself while searching for an attorney.

Organize Your Data. Gather and organize as much relevant information as possible before meeting with the attorney. Think of questions he or she might ask, and try to locate the information or supporting documentation in advance. These preparations can reduce the time required for the attorney to investigate the case and thereby reduce legal costs.

Manage the Client-Attorney Relationship

Once the working relationship with the attorney begins, there are several aspects of the relationship you can manage closely that will help minimize costs.

Communicate, Communicate, Communicate. A review of the literature reveals a recurring theme associated with the importance of constant communication with your attorney. Communicate your goals clearly and succinctly. Specify exactly what you want the outcome of the case to be, if at all possible. According to Daniel Harris, "It may seem completely counterintuitive that constantly

communicating with your lawyer will save you money, but it almost surely will.”

Avoid Unnecessary Work. Be on guard against paying for unnecessary legal work. In “Leash Your Lawyer,” attorney Jeff Merrick describes how law students are rewarded for noticing every possible problem when analyzing a case in school (<http://bizzylife.com/2008/07/leash-your-lawyer-how-to-control-legal-costs>). This establishes a mind-set that every potential problem must be addressed. As a result, lawyers will often spend time working on issues that don’t really need to be addressed. Additionally, if you’re perceived to be a “deep-pocket” client, unscrupulous firms will rack up many additional billable hours researching “background issues” that are unnecessary.

Training Associates. If you hire a large law firm to represent your company, be aware of who within the law firm is working on your case. Large firms will often assign new, inexperienced associates to a case at a lower billing rate. But according to Merrick, “If you get a green associate, no matter how high their class rank, they might spend three times the number of hours on the job as a more experienced lawyer with a higher rate.” This can easily lead to higher legal costs. In short, don’t pay for the training of young associates.

Alternative Billing Arrangements

While the traditional “hourly fee” model is still the common billing arrangement, it’s increasingly being replaced by alternative models that allow a company to lessen the uncertainty over legal costs and gain greater control. Law firms have been hurt by the economy just as other businesses have, and more of them are willing to enter into alternative fee arrangements. In a survey by the Hildebrand Law Department, 55% of respondent companies use or plan to use alternative fee arrangements with their outside counsel. There are several alternative models you can pursue that can significantly reduce the cost of obtaining legal counsel.

Fixed Fees. Under a fixed-fee arrangement, the firm and the attorney agree on a fixed fee that covers specified legal services. For example, a company that requires assistance in preparing and filing the legal paperwork for a patent will simply pay a flat fee for that task. Efficient, well-run law firms that are adept at preparing and following a budget shouldn’t have an issue with this type of fee arrangement.

Fixed-fee arrangements will give you more certainty about the legal costs, making it easier to budget for the

Table 1: Checklist for Finding the Right Attorney

1. Does the attorney have the appropriate specialization?
2. Is the attorney recommended by other organizations that have had similar legal issues?
3. Does the attorney have a good rating on Martindale’s online rating service: www.Martindale.com?
4. Does the attorney have a good reputation among local business leaders?
5. Is the attorney involved in the surrounding community?

expense in advance. A potential problem with this approach is that the attorney may be incentivized to provide the minimum effort required to get the job done. Alternatively, the law firm may turn the case over to the least-busy or least-competent associate. The bottom line is that fixed-fee arrangements may result in your company not getting the best value for the amount it pays for legal services.

Reduced Hourly Rates. Another approach is to negotiate a reduced hourly fee. This approach has obvious benefits if you can accomplish it. In down economic times, many law firms are becoming more willing to consider lowering their rates. The danger here is that you may “get what you pay for.” The law firm may assign inexperienced associates to the case or simply fail to expend as much effort on the case.

Contingent Fees. A contingent fee is a fee that’s paid contingent on achieving a specified result. Under this arrangement, you pay a fee that’s based on the outcome of the case. This arrangement has the advantage of incentivizing the attorney to win the case or complete the task. The most significant challenge associated with this fee arrangement is finding a reputable, well-established attorney who will accept these terms. A common variation of this fee arrangement is to use it in combination with a reduced-rate agreement.

Other Cost-Saving Strategies

In “10 Trends Reshaping the Legal Industry,” Sally Kane describes how many law firms are trying to become more

Table 2: Checklist for Minimizing Legal Costs

Prepare in advance

- ◆ Find the right attorney
- ◆ Organize your data

Manage the client-attorney relationship

- ◆ Communicate clearly and succinctly with your attorney
- ◆ Guard against paying for unnecessary work
- ◆ Ensure that associates in training aren't working your case

Consider alternative billing arrangements

- ◆ Fixed fees
- ◆ Reduced hourly rates
- ◆ Contingent fees

Consider other cost-saving strategies

- ◆ Budgeting
- ◆ Technology

creative in the methods that they use to deal with clients during the recession (<http://legalcareers.about.com/od/careertrends/tp/10-Trends-Reshaping-The-Legal-Industry.htm>). These new trends also create additional opportunities for client organizations to better manage or minimize the costs they incur.

Budgeting. Many organizations now require the law firms they hire to prepare a detailed budget for all phases of the work it will perform. Companies also expect the law firm to have better control over any outsourced work. Even small businesses should investigate these types of agreements. If the law firm is unwilling to enter into an alternative fee arrangement, have the firm prepare a detailed budget for the litigation. Make sure you, as the client, have final approval over it.

A specific cost that can be managed effectively using a budgetary approach is the cost associated with hiring an expert witness. Expert witnesses generally command an hourly rate exceeding \$500. When receiving an invoice from their law firm, managers of small businesses are often surprised at the amounts paid to the expert witnesses, and they're often told by the attorneys at the law firm that the amount is simply the amount that the expert witness charged the law firm.

Take a hands-on approach in managing the costs for an

expert witness. Insist that a budget is implemented for all phases of the litigation in which the expert witness is engaged, which can include initial review of the file, discovery, responding to the other side's experts, trial preparation, and trial. Require approval over the estimates used for travel, inspecting work sites, the hours expended for the trial, and any changes to the estimates or the budget.

How the expert witness approaches his or her work can also have an effect on the costs as well as the results of the litigation. More due diligence in the discovery phase—for example, trying to find evidence that the company did exercise due care in a product liability case—can reduce costs in the trial phase.

Technology. Most law firms take advantage of technology to help them reduce costs, and these cost savings should be passed on to their clients. Commonly recognized cost-saving measures include scanning documents instead of copying them, using e-mail instead of couriers, using teleconferencing wherever possible, and using electronic billing and invoicing. As a small business client, identify law firms that use these cost-saving measures and pass the savings on to their clients.

Manage Proactively

Legal costs are classic nonvalue-added costs associated with doing business. Reducing legal expenses is a necessary part of a company's stewardship. Minimizing and/or eliminating these costs can add significantly to the profitability and long-term viability of any small business.

In today's challenging financial environment, it's absolutely essential that owners of small businesses be proactive at reducing these costs. Table 2 provides a checklist of the techniques that small business owners can use to accomplish this goal. By managing the client-attorney relationship effectively, pursuing alternative billing arrangements aggressively, and using old-fashioned budgeting techniques and new technology, the small business owner can take greater control over managing and minimizing legal costs. **SF**

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