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Several strategies can help businesses cut legal costs

Experts advise companies to utilize arbitration and handle more work in-house

BY BRAD BERTON
CONTRIBUTING WRITER

As the recession prompts company brain trusts to cut costs wherever possible, many businesses are looking at the sticker-shock hourly rates they pay to lawyers. And given that commercial litigation activity is likely to rise as the economy sours, businesses are likewise looking internally to lower their legal costs while they seek more bang for the bucks they pay outside counsel.

Indeed local companies are employing a variety of strategies to reduce legal costs. Among the more popular:

- Handling more legal-related activities internally, rather than farming work out to law firms.
- Scrutinizing all legal-related budgets.
- Negotiating more cost-effective compensation structures with outside counsel, including contingency and incentive arrangements.
- Pursuing less risky and costly means of dispute resolution, such as arbitration and mediation, rather than litigation.


Glasgow

A combination of these strategies – including some relatively simple, pragmatic adjustments – can add up to double-digit savings on legal costs.

Will Glasgow, general counsel of the Portland real estate investment firm ScanlanKemperBard Cos. LLC, said his company's thrift-minded strategies have probably reduced the costs of its legal bills between 10 percent and 15 percent.

As the economic picture has continued to deteriorate, some businesses have relied more on in-house legal teams rather than paying for outside advice, said commercial litigation specialist Rob Shlachter, a shareholder with the Stoll Berne law firm.

When companies farm out legal services, business clients are more focused on setting and sticking to budgets than has traditionally been the case, Shlachter said.

Companies with in-house counsel should focus on building expertise in the area of law most relevant to their business.

For instance, companies in labor-intensive industries might want to develop expertise in employment law. That way when business slows and employees are laid off, the internal legal team is well-positioned to handle the company's needs. Outside help would only be required for transactional or litigation assignments unrelated to core operations.

Thrift-minded businesses with small internal legal teams should use a few practical strategies to contain legal costs while revenue and profits are squeezed. SKB, for instance, has saved on legal bills by having non-lawyer staffers handle functions that would likely be farmed out to law firms under less belt-tightened circumstances.

For example, clerical staffers, rather than outside attorneys, now scan loan documents tied to SKB's nearly 25 active real estate projects for specific clauses. It's a function law firms would have overseen under better economic conditions.

And don't be so quick to call an hourly-billing lawyer when questions arise, Glasgow advised. Taking a bit more time to research a legal question, rather than just picking up the phone, can be a far thriftier alternative.

It can also behoove business clients to "micromanage" an outside law firm's service strategy from a billing perspective. For instance, in-house attorneys might more heavily scrutinize whether the related benefits justify the costs of involving another law firm associate, scheduling another meeting, having another memo drafted, etc.

SKB's evolving arrangements with its law firms also illustrates the trend toward more flexible, customized and incentive-oriented compensation structures. Depending on the firm and the particular attorneys handling an engagement, hourly rates might range from $200 up to $600 or more.


Shlachter

In litigation matters, businesses looking to save on legal services costs these days are generally more willing to use law firms on a contingency basis than was the case just a year or two ago, Shlachter said. In other words, rather than charging by the hour, the law firm takes a hefty cut of a judgment in the client's favor – but nothing if the client loses.

Another alternative taking hold in the thrift-minded environment: a "hybrid" compensation structure with a reduced hourly rate combined with a lower-than-traditional contingency fee.

Glasgow said performance incentives are an effective way to contain outside legal costs.

ScanlanKemperBard has an arrangement under which the company pays its outside counsel perhaps 115 percent of its normal hourly rate if a business transaction under consideration goes forward — but only 85 percent if it craters.

Due to related business profits, "we'd be in better position to pay the higher rate if the transaction goes through," Glasgow explained. Alternatively, SKB would incur "dead deal" costs if the transaction failed; hence its preference for the lower hourly rate.

Stoll Berne clients have also shown more interest in paying flat fees or capped fees. One all-too-prevalent example: helping debt-holders foreclose on multiple loans secured by similar collateral.

The tough economic environment is also prompting principals to pursue less-expensive alternatives to litigation, namely arbitration and mediation.

Litigation has become so time-consuming and expensive that more businesses are willing to accept alternatives to hedge against potentially costly court resolutions.

portland@bizjournals.com 503-274-8733