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Making Litigation Management Work for You by James Shields

It's no joke that unemployment isn't going away any time soon. In this recession, the cost of staying in business increases every day. Companies are trying to increase their revenue by any means possible, yet still retain their workforce. They have cut back on benefits, on hours, and have even reduced necessary spending, including litigation costs.

An atmosphere of cut-backs has created a demand for service agencies to find unique ways to cut costs. This demand has been no more prevalent than in the legal industry.

With executives trying to reduce necessary spending and attorneys trying to make money, an inherent conflict of interest has arisen within the last few years. Executives are trying to mitigate their legal costs by pursuing alternative billing methods such as flat fee billing and competitive bidding, and attorneys are trying to work around these methods by increasing the time it takes to close a case. So while alternative billing seems to reduce costs up front, the long term costs still build up.

Frustrated executives are demanding a new option that is better for their long-term legal spending and attorneys are finally listening. A new trend is developing in the legal field called litigation management. Seasoned trial attorneys, with extensive experience in managing complex litigation, work with company executives to define a business-driven timeline and strategy with the express goal to resolve the dispute within a realistic, workable budget. While it may seem counter-intuitive to add another layer to the process, it actually aids in the resolution of the conflict.

In a recent case study, a national provider of products and services to the automotive industry was sued in New York for alleged legal violations related to the sale of certain products within the state. The plaintiff sued as a representative of a class of consumers seeking actual and treble damage recovery for a number of violations, including insurance code and consumer protection laws. Having been compensated \$250,000, the original attorney was pursuing a lengthened process of discovery, which would cost an additional \$300,000 and proposing that the company would end up settling the case for another \$250,000. At this point the company executives started to realize the budget was getting out of hand and called in a litigation management firm to help direct the litigation.

The litigation management firm made it clear to the company executives that if they followed the original attorney's plan, they would be spending approximately \$1 million to settle a case regarding \$26,000 in profit. After evaluating the legal risk and determining client objectives, the litigation management firm sourced new counsel with demonstrated expertise in the legal area and good, credible contact with the court in which the proposed class action was pending. They pursued an aggressive settlement policy, resulting in an 80 percent reduction of the company's legal fees and a settlement for approximately 20% of the expended legal fees paid by the company prior to the litigation management firm's engagement.

“I am not just looking to cut costs when it comes to our company’s litigation. I am looking for a strategic manager to advise me and my counsel to ensure that the legal process is aligned with the goals of our company to achieve the best possible results. Such a strategy should serve to take the management of litigation off my plate so that I can do my job,” said John Pappanastos, CEO, EFG Companies.

In another example, a start-up airline was sued by an established airline to prevent it from commencing business. The start-up was spending an average of \$300,000 a month in legal fees and the top executives were embroiled in the litigation process on a daily basis. With the plaintiff using the litigation process as a stall tactic, the airline needed a plan to wrap up the process quickly instead of letting it languish in the court system for years. A litigation management firm was hired to manage the litigation and act as the contact point for numerous administrative and legal fronts. Legal fees dropped drastically (to \$75,000 a month) and within twelve months a successful resolution was reached. The litigation management firm saved the client substantial money on legal fees and resolved the legal dispute much faster than if the firm had not been hired.

“Our investors, a mix of founders and private equity, were facing a total loss of their investment,” said Douglas List, Board Chairman, TTS, LLC, “our legal strategy was simply unaffordable, but our attorneys seemed oblivious to this fact. We retained a litigation management firm, which restructured our legal strategy, cut our legal burn rate by 75 percent, and gave the business a fighting chance, without requiring us to change nominal lead counsel. A year later, it was all behind us and we achieved a successful resolution because our litigation management firm focused on saving our company rather than simply arguing the case.”

In a third case study, a third party logistics transportation company was sued by a competitor, alleging intellectual property theft and computer fraud. The suit sought to recover millions of dollars in damages, the return of confidential intellectual property and the enforcement of an injunction. The company retained a large firm who executed a strategy to disgorge documents, digital and meta-data information, as well as internal confidential electronic mail and proprietary information. The company was spending an average of \$300,000 per month on legal fees to defend the lawsuit.

With legal expenses creeping upwards to possibly bankrupt the company, a litigation management firm was retained to develop a better legal strategy to keep the company afloat. The litigation managers took full responsibilities to manage the execution of a plan designed to minimize the impact of the litigation on the business operations. They freed company executives to get back to running the company and achieved a resolution that did not restrict the company’s ability to successfully compete in the market. Legal fees were substantially reduced and litigation was ultimately dismissed. A companion investigation was also terminated with no prosecution of any wrongdoing.

Within each of these examples, the executives were overwhelmed with litigation they didn’t fully understand and the attorneys were making the decisions of the direction of the cases rather than the executives. By inserting a strategic, analytical voice into the heart of the litigation, litigation managers tightly controlled the litigation process, the attorneys and the experts. Because their sole focus was to resolve the disputes as quickly and efficiently as possible, the best interests of the companies were served. Ongoing legal expenses and the uncertainty of litigation were removed from the business landscape. The resolution of these ongoing disputes helped the CEOs move forward, save time and money and concentrate on making their businesses grow.



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