



# 2026 International Client Seminar

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### Litigation Cost Control

*Identifying and Managing the Hidden  
(and not so Hidden) Internal Costs of Litigation*

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## Litigation is Expensive . . . It is Not Just Legal Fees

When discussing “legal spend,” conversations typically focus on hourly rates and invoices – the legal expenses we can see and easily quantify. Beyond the obvious, there are other costs as well – ones that are less tangible and not as easy to measure. Those hidden costs can significantly increase the cost of litigation. Indeed, a \$100,000 legal bill easily could require an additional \$200,000 or more of internal costs when organizational disruption is calculated. Lower legal bills are only a piece of the puzzle when it comes to reducing the cost of litigation.

### Business Disruption Costs

Litigation consumes resources that could otherwise fuel growth, marketing, or innovation. Very simply, litigation results in the loss of productivity – and therefore the loss of profit. Employees often are pulled into discovery, interviews, and document requests. What’s more, litigation tasks get tacked onto the daily job duties of employees – resulting in a slowdown of business operations and frustrated employees who now have additional tasks without additional pay. Litigation also causes unwanted distraction at the executive level and amongst leaders in the organization. Even the simplest case has hidden costs that cause significant business disruption.

### *Goal: Minimizing Litigation Costs (All of Them)*

Efforts to minimize legal costs have many benefits. One of the most obvious benefits is a reduction in the total legal spend, but that is not the only benefit. When litigation is handled properly, internal business disruption is minimized and efficiency improves. With that comes predictability and improved outcomes with higher morale among executives and employees.

### *Understand the Scope of Litigation*

The first step you can take to minimize litigation costs is to conduct an early case triage. Counsel should ensure understanding of the allegations and the company’s view of the events at issue. This often requires a conversation with at least one (1) or two (2) employees. Once the basic events are understood, counsel can assess the seriousness of the matter and the potential business exposure. Understanding both the seriousness and potential exposure allows the appropriate stakeholders to be alerted. In addition, it helps counsel, as well as company leadership, understand the internal resources that may be required.

Some companies require legal budgets to be submitted early in the litigation process, and often those budgets must be updated throughout litigation. If you do not understand the scope of the matter, the budget will not be sufficient to alert the potential legal costs that will be incurred.

### *Define the Objection*

Once the matter is appropriately triaged, a business can streamline objectives with counsel in an appropriate and reasonable manner. Some cases lend themselves to a quick resolution - whether because the amount at issue is small, the dispute can be easily resolved, or because the business risk that comes with continuing litigation is not an acceptable level of risk.

In other instances, a company may determine that the appropriate response to litigation is a vigorous defense. Whether because of a potentially huge jury verdict, the potential for the loss of intellectual property, or other reasons – the result is the same: costly litigation. Since the costs, both financially and otherwise, can be substantial, it is important that this path is *chosen* rather than being the result of missteps early in the litigation.

Part of defining the objective is evaluating whether any counterclaims or cross-claims should be made. A properly asserted counterclaim or cross-claim conveys that the “plaintiff” (here an actual plaintiff or a co-defendant in the case of a cross-claim) has risk as well.

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It is important to remember that as litigation evolves, the objective may change as well.

### *Designate a Point of Contact*

To effectively manage litigation, limit business disruption, and control legal fees, it is best to designate a point of contact both at the company and outside counsel's firm.

Within the company, the designated point person should know the players (and how to contact them) and where to find and retrieve relevant information. The point person should be someone in a position of trust within the company and be capable of explaining relevant company procedures to outside counsel or quickly connecting outside counsel with the person who can. For some companies the appropriate person will be in-house counsel, or for others an executive or manager. Importantly, in administrative agency actions, for example, a designated point person may have to bind the company to an agreement or covenants of non-disclosure because many of those processes requiring confidentiality as the case pends before an administrative body.

Just as it is important to designate a point of contact within the company, it is equally important to designate a point of contact at outside counsel's firm as well, whether that be the partner in charge or an associate involved in the day-to-day aspects of the case.

### *Identify Key Witnesses*

Another important aspect of managing litigation costs and business disruption is to identify early the key witnesses. Sometimes those employees will be in sales, at other times product design or quality control, and still other times accounting. If the case was not properly triaged in the beginning, it will be challenging to identify key witnesses. Key witnesses can educate counsel and the business itself on information that is not contained in the pleadings. Whether that information is helpful or harmful, it is important to learn the information as early as possible. As we all know, sometimes the best defense is offense.

In identifying key witnesses, it is important not to educate uninvolved employees.

### *Identify & Preserve Evidence*

If you have identified key witnesses, you are well on your way to locating and preserving evidence. The first step to preserving evidence is to identify the people who may have documents or other evidence. These individuals are often referred to as "custodians." Often, a number of the appropriate custodians will also be key witnesses in the case. The litigation team – including outside counsel, in-house counsel, and any designated points of contact should work together to ensure all appropriate custodians are identified. All custodians should be provided a document referred to as a litigation hold letter: a formal written directive advising the company to not only stop the routine destruction of documents or electronically stored information, but to maintain copies of relevant information for purposes of the pending or anticipated litigation. The purpose of the litigation hold letter is not just to be able to respond to discovery requests or to avoid spoliation claims, but also to ensure the company has the documents and information necessary to both defend itself and pursue its counterclaims or cross-claims.

Identifying and preserving evidence, in particular electronically stored information ("ESI"), substantially is easier when a company has a clear document organization structure that employees are required to follow. IT departments – whether in-house or contracted – are valuable resources when it comes to identifying and preserving evidence.

### *Managing the Discovery Process*

If you take the appropriate steps early, the business disruption caused by the discovery process can be significantly reduced. You will already have identified the key players, and you will understand where relevant

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documents and ESI reside. Your next step will be to collect that information.

When a large volume of emails or other ESI is involved, the use of e-discovery software can prove to be invaluable. Although e-discovery software increases the dollars spent on litigation, sometimes considerably, it can significantly reduce the business disruption cost of litigation by streamlining the collection and review process, outweighing this additional cost. Moreover, it is critical to use appropriate search terms when using e-discovery software to collect information or working with an IT department to run system wide searches. The key witnesses that were identified earlier can inform you of the appropriate search terms, in particular shorthand or industry language that may not be commonly known. Searches conducted prior to the filing of discovery in a case further will inform strategy and goals to streamline scope, objectives, and directives.

When working with employees to respond to discovery requests, it is important to distill the requests into plain, easily understood language.

While initial document collection will cause some base level of business disruption, that disruption is multiplied ten-fold when information is not well organized, or the claims are not appropriately understood. If the first round of data collection fails to collect all relevant and responsive information, the process will need to be performed again – causing a second or many more rounds of business disruption.

### *Communication*

The key to controlling litigation costs, of all types, is effective communication. In-house counsel or other company contacts must give clear directives to outside counsel with respect to the company's goals and objectives. Outside counsel must communicate litigation risks and litigation support needed from employees and management.

Litigation is expensive – but it does not have to be more expensive than necessary.