

Choosing a litigator

How to find the right lawyer when you or your company needs one **Interviewed by Heather Tunstall**

If you find your company facing litigation, the right lawyer can make a big difference in the outcome of the process. So, how do you know where to start? One of the first steps is determining whether or not your insurance will be paying for the claim.

“Depending on the claim, a defendant may tender to his or her insurance carrier,” says Sandra K. Wootton, partner at Ropers Majeski Kohn & Bentley PC. “In that instance, if a company or individual is being sued and the insurance carrier picks up the defense, sometimes the insurance carrier will help in the selection of the lawyer that will be defending the client’s claim.”

If a claim is being presented to an individual or a client, Wootton recommends that they tender to an insurance company no matter what to ascertain whether or not the claim is covered under any policy. However, sometimes matters will not be covered and a client is required to select an attorney and pay them hourly or some other negotiated sum.

Smart Business spoke with Wootton to find out the best way to choose the right lawyer for your situation.

What are some of the characteristics to look for in a lawyer?

One of the factors you should consider is the lawyer’s experience. If you’re not familiar with lawyer shopping, you may want to ask other colleagues or friends for a referral if any have dealt with litigation in the past. If you are attempting to find a lawyer on your own or if the insurance company is providing a lawyer, ask about the lawyer’s experience. Another smart thing to do is to check the lawyer’s status with the California State Bar to determine if that lawyer has ever been disciplined. With respect to a particular claim, you should ask how much experience that lawyer has in handling those types of cases and what were the results achieved.

Do you recommend looking at different lawyers for each individual case or sticking with one for the company?

Some people get acquainted with a lawyer, and over time the lawyer is familiarized with the company and is able to effectively and competently represent all types of claims that come up with respect



Sandra K. Wootton
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to that particular company.

However, there are lawyers who specialize in particular areas of business law, such as anti-trust or unfair business practices, or intellectual property. If it were a multimillion-dollar anti-trust action, you would feel more comfortable getting someone who deals with anti-trust or unfair business practices. If it’s a slip and fall case, the anti-trust lawyer could most likely effectively represent that case equally as competently.

What should business owners keep in mind in regards to fee agreements?

It depends on whether the lawyer is operating under private pay or insurance pay. If it’s private pay, you should always ask for a written fee agreement so you understand what’s expected of you and what’s expected of the lawyer. Fees and costs are covered in that agreement, including how that lawyer bills for his time, whether it’s a tenth of an hour or a quarter of an hour, and when you are expected to make payments.

What part does a lawyer’s personality play in the selection process?

The lawyer’s personality plays a big part, and the reason is some people pre-

fer handholding and other people may prefer a hired gun, so to speak. It really depends on what you need for a particular claim. If the thought of litigation scares you to death, then you may want somebody that will hold your hand and nurture you along the process. If you’re more aggressive and you believe that the claim should be litigated no matter the cost, then you may want somebody with a more aggressive style. And sometimes you may want a little bit of both, so it really depends on whom you want representing your company.

Remember, the lawyer is going to be the face of the company in a court of law and out in the public, and so it’s an extension of the company’s representation in public. Therefore, it’s important that the chemistry between the company and the lawyer are a good match.

How can you effectively determine if the lawyer is a good fit?

You should interview the lawyer, if at all possible. It can either be done personally or on a telephone call. You should find out how the lawyer communicates, the likely outcome of the case and whether there are any other strategies than litigation to resolve the case. Not all cases have to go to trial and most cases don’t ever make it to trial. You should be wary of any lawyer that guarantees a result — results should never be guaranteed in the process of law.

One of the most important questions during the interview process is to determine how much the litigation is expected to cost. You should continue to ask the lawyer about his or her projected budget every 60 to 90 days or after significant litigation events. If the lawyer changes his or her estimate on the original projected litigation costs — up or down any more than 10 percent — then you should ask that the new projected budget be immediately confirmed in writing.

It’s best to interview several different lawyers because, again, that goes back to personality and experience. By interviewing several lawyers, you will get a feel for the personality type of that lawyer and understand whether the lawyer has had similar claims and what were the results on those claims. <<

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