

Money matters

How to ensure your money is well spent with the right law firm during litigation **Interviewed by Heather Tunstall**

No one likes to be involved in a lawsuit — especially since they can be so expensive. However, if it should happen to your business, it's important to not only hire the right lawyer but also to make sure you're getting your money's worth from that lawyer.

You need to be aware of how much the litigation will end up costing you in order to make an informed decision about whether or not you want to go through with it, or to settle.

"You might want a very long, involved budget that says how much it's going to be for certain things. Try to get that in writing," says Gerald Knapton, partner at Ropers Majeski Kohn & Bentley PC.

"When the bills come in, you and your accounts payable staff should follow and make sure that it seems to be staying within the budget. If the actual invoices exceed the budget by more than 10 percent, have a discussion with the lawyer to find out what's going on."

Smart Business spoke with Knapton about what to look for when hiring a lawyer — questions you should ask and how to make sure your dollars are being used properly.

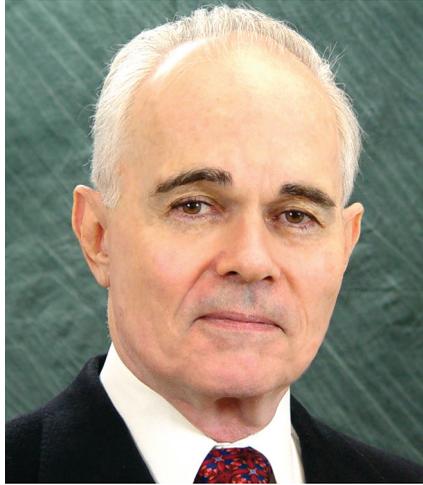
What's the first question a business owner should consider when looking for a lawyer?

"How much is this going to cost me?" Employers need to have that clearly in mind, but it's hard to tell sometimes. It's important to understand the costs on the average case and then try to position yourself at the bottom end of that range, if at all possible.

The best way to do that is ask your lawyer if they have data. Lawyers are resistant to answering how much a case will cost, but push them. Write down the estimate and confirm it in an email, and don't stop there. Once you're 60 to 90 days into the case, come back and ask for a revised estimate. That is the key, because while a good, honest lawyer will give you their best shot at the beginning, they are just estimating based on their experience.

What price points should you negotiate with the law firm?

You should negotiate the hourly rate, costs and what's going to be included in the costs at the beginning. You also



Gerald Knapton
Partner
Ropers Majeski Kohn & Bentley PC

should spell out in your retainer agreement the form of the bills. If you don't do this, some law firms won't bill in tenths of an hour, which is the standard.

Make sure the firm does not block bill — that is, if there's a day when they worked 10 hours on nine different matters, have them break it down and explain how much time for each of those discrete items; they're kept honest by having to put down actual time for actual work done.

What do you do in the case of a fee dispute?

As soon as the bills appear to be exceeding either what you've paid in the past, or what your budget said it was going to be the cost, you complain. You work your way up the chain talking to the relationship partner at the firm, then the managing partner of the office, and if necessary, you go up to the firm's managing partner. Usually, if you're not asking for free services, that works well and you wind up getting a good hearing.

You can always complain to the L.A. County Bar Association; they have a wonderful program — the Mandatory Fee Arbitration Program — where a client can come and ask professionals look

at their bills.

The L.A. County Bar Association Dispute Resolution Services (DRS) allows you to do both mediation and arbitration. If it comes to the point where you and your firm really can't agree, then you might mention the idea of Mandatory Fee Arbitration to your firm. The lawyers will treat you differently because they don't want to go through this program. If a client requests it, a lawyer has to go along with it.

What are some other cost-saving tips?

If you can shift away from an hourly rate and go to a flat fee, or a monthly cap, that can save you approximately 5 to 10 percent. Remember that 97 percent of cases are settled. You always want a provision in your agreement that says if the case is settled, the fee will be adjusted.

It's also worthwhile to look at the amount of documents that are going to be at issue, which is the biggest single factor driving cost in today's litigation. Electronic programs are now being used to sort documents, and that's been developed to enable you to perform predictive coding. You can run some samples and find out with 99.9 percent probability all of the documents that might be implicated by your request, especially with the in-house help of a sophisticated IT department. This will cut your costs down dramatically.

In addition, there should be continued discussion about how the documents will be handled. Who's going to do it? How can we do it more cheaply? Can we do predictive coding? Can we do it some way that will reduce the cost of that?

What else can you do if you're going to trial?

The first thing you ought to do, if you're a defendant, is tender this claim to your insurance company. If you don't tender, the insurance companies will probably deny the claim based on failure to tender. You may even want to try to buy insurance; you can sometimes get insurance with the disclosure that it is existing litigation. <<

GERALD KNAPTON is a partner at Ropers Majeski Kohn & Bentley. Reach him at (213) 312-2016 or gknapton@rmkb.com.

Insights Legal Affairs is brought to you by Ropers Majeski Kohn & Bentley PC