

VCEXPERTS

How Venture Capitalists Keep Attorneys' Fees Down

VCExperts

Stuart Gasner

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[Venture capitalists](#) are among my favorite clients. Whether the client is the firm or an individual or a portfolio company, they are often very good at keeping litigation costs down, relatively speaking. Here's how they do it.

1. Cut to the chase.

VC's tend to be time-constrained and face innumerable competing demands in their day-to-day business lives. They know how to have short meetings, short phone calls, and to cut to the chase. When you are paying your legal team by the fraction of an hour, these are valuable habits.

2. Learn the legal system quickly.

In most lawsuits, I have to learn a lot about my clients' business and they have to learn a lot about the legal system. VC's are used to learning about new things on short notice, and quickly come to terms with the strange game of litigation. The faster you can learn the game, the more likely it is that you can avoid spending money on strategies and efforts that are not likely to be worth it.

3. Make decisions with less than perfect information.

Gathering information costs time and money, and clients who want to "leave no stone unturned" end up with large legal bills. VC's are more willing than most clients to make decisions with a minimum amount of information. This is a trait that pays off particularly well with respect to the biggest "money pit" in litigation, document review. Even the average business lawsuit these days can involve millions of pages of documents, and a willingness not to look at all of them can pay off with much lower bills for document processing and review.

4. Accept [risk](#) and be ready to improvise

The flip side of a minimalist approach to litigation, of course, is increased [risk](#). VC's are generally good, however, at evaluating [risks](#) and rewards. This often allows them to collaborate with their legal team to come up with more cost-effective approaches. For example, you may be able to take 6 depositions rather than 10; not file a summary judgment motion that has only a marginal chance of success; or ask for an early trial date.

5. Make things happen.

Legal bills often creep up when individual tasks take longer than expected or require repeated followup. Imagine a world in which your lawyer asks for something once (so-and-so's email folder, the deal documents, whatever) and it is emailed/fed-ex'ed/hand delivered a day or two later. Compare that to the situation in which task lists languish and 10 emails are required to knock each one off. Guess whose legal bills will be lower? VC's tend to have world-class assistants who are used to making things happen.

6. Get salaried people to do the work.

If you are already paying talented people a salary, you might as well enlist them to do things rather than hire paralegals and document reviewers and contract lawyers paid by the hour. Nothing (well, almost nothing) warms my heart like a smart, detail-oriented person who works for the client already. They are free dedicated soldiers who already know the business at hand and want to win. In one of my recent cases, we enlisted and trained a cadre of employees to review documents and they found some of the best ones. VC's usually have a lot of clout in their [portfolio companies](#), and can make helping the lawyers a priority; they save lots of money on legal fees in the process.

7. Constantly ask the one best question for litigation clients

The basic elements in analyzing a lawsuit are straightforward: (a) lawsuits, like companies, have a [burn rate](#), so the longer it takes to get to resolution, the more money gets spent; (b) there are only two ways to resolve a case, consensually (settlement) or coercively (court order or arbitration award); and (c) there are only four potential outcomes in a lawsuit (really good, pretty good, pretty bad, and really bad). At any stage of litigation, the best question a litigation client should ask is: "What are my chances of the four potential outcomes right now, and what is it going to cost to get there?" VCs are generally pretty good at asking this question, because it's basically the same one they ask about their investments.

8. Be fearless.

After asking the "best litigation question" repeatedly, the answer is sometimes that the only way to a good outcome is to go to trial. Often, the adversary has offered no acceptable alternative; in many cases, the destruction of the portfolio company is the adversary's goal. In these circumstances, VC's often show the courage of their conviction by stepping up to fund the trial. While this is not the way to save on attorneys' fees in the short-run, it is often preferable to slinking away and "cutting one's losses." In parting, I offer a quick surfing analogy. I used to be a federal prosecutor in Hawaii and was (an am) an avid surfer. In surfing larger waves, paddling hard on the take-off and "going for it" works vastly better than hesitating at the top and looking down at the reef. The former generally leads to a great ride, or, at worst, a more benign wipe-out; the latter practically guarantees a wipe-out, often of the embarrassing "over-the-falls" variety. While some VC's subscribe to the "don't throw good money after bad" doctrine, the ones who are fearless in the face of an imminent trial often do better....getting more out of their attorneys' fees in the end. A thrilling tube ride rather than reef rash, if you will.

Stuart Gasner is a Partner at Keker & Van Nest LLP, sgasner@kvn.com



Stuart Gasner is a Partner at Keker & Van Nest LLP in San Francisco where he centers his practice in the areas of white collar criminal and securities defense, intellectual property litigation and complex corporate disputes. His clients include venture capital firms and their portfolio companies, investment partnerships, and companies in industries ranging from biotechnology to semiconductors. He can be reached at sgasner@kvn.com and (415) 676-2209.

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