



CORPORATE EXPOSURE: Controlling Legal Costs

Harry P. Mirijanian

Legal costs may or may not be covered under your insurance policy, as we have indicated in previous columns. Whether or not these expenses are covered, however, it would be in your best interest to try to control these costs.

This is not to imply that all attorney bills are inflated. Regrettably, however, the actions of a few have given a black eye to all. Billing for meals consumed on the job, the use of conference rooms, assigning two attorneys to take a deposition where one would suffice, and ridiculously high copying expense charges are minor illustrations of routine abuses noted daily in the press. Headlines in a recent journal revealed an attorney received a \$450,000 fee while his client received a \$50,000 workers compensation award. The claimant was mugged by a large black man while delivering packages for her employer. She injured her back during the altercation. Although the injury healed, the claimant alleged she now suffers from a "post-traumatic stress disorder" that prevents her from working in an office with blacks, particularly large black men. From the case description, I think the legal fee is absurd and I question the veracity of the claim. Fortunately, this decision is under appeal. Nonetheless, the legal fee, exorbitant as it was, was sanctioned and approved by the court. Some would argue that the fee itself is not the problem, but rather the fact that the judge would approve it. In fact, both issues should be criticized.

Cost-cutting Strategies

With the ever-increasing number of attorneys in the U.S. (almost 40 percent since 1981), the onus is on us to manage their actions and the resulting costs. We have highlighted below four strategies that produce results for many clients.

1. Review attorney selection pro-

cedures. The employment of an attorney or legal firm is always worthy of thoughtful review. You should conduct interviews to be certain the firm will implement your risk management philosophy and will understand your program. Review the firm's history for longevity and staff experience levels. Request details on the firm's trial record. Consider the firm's area of expertise (product, environmental, contractual, etc.).

2. Fee structure. Negotiate a reduced rate with a guarantee of a certain level of income. Clearly establish acceptable billing items before you engage a firm. Establish a budget and a legal strategy for each case, with projected costs in excess of a certain threshold. In addition, any changes in the firm's approach that affect costs should require your approval before being implemented. Some have been successful in negotiating flat fees for handling a case. We do not recommend this approach unless the litigation is highly predictable and routine. Note that today less and less litigation is routine; as the example above shows, each case may have its own creative twist. But on occasion, the flat fee approach can help control costs.

3. Assignment. Discourage multiple or overqualified attorneys on routine cases. Attempt to secure the level of expertise necessary to resolve the issue. Further, ask about the attorney's network of resources in trial preparation, research, surveillance, etc.

4. Audit. This applies not only to the bill submitted, but also the quality and responsiveness of your representative. For example, be certain your representative is present at any and all legal depositions. Plaintiffs normally are not comfortable with the legal process, and face-to-face settlement offers at this point have proven to be successful.

Watch for the following two warning signs that clients frequently note.

First, attorney changes. In many firms, when a case exceeds two years of litigation the attorney may be reassigned. You should make clear at the beginning that this is to be avoided at all costs. Many lengthy cases can go through four defense attorneys, each charging four to six hours at an exorbitant hourly rate, to review the case. This practice also adversely affects an important sense of continuity.

The second warning sign is how the suit moves. The legal process is at times so cumbersome that all parties lose sight of the goal, which is the just disposal of the case. It is easy to get caught up in motions, counter-motions, discoveries, and needless filings. If you are liable in a claim, evaluate your exposure and settle. If liability is questionable, try to negotiate a mutually agreeable settlement quickly—if possible, before the claimant has retained an attorney and scheduled the case for trial. If there is no liability, defend the case firmly and promptly, pushing your counsel to get the case on the calendar as soon as possible. Reject needless motions and paperwork.

Closing Argument

Applying risk management strategies are routine with other elements of your program and should be extended to your legal cost management approach as well. Further, you must remember that your counsel is only your legal representative. The attorney is your "stand-in." You (and your carrier, if appropriate) control the flow of the case, the attorney's action, and the case's ultimate disposition.

Harry P. Mirijanian is president of Applied Risk, an independent risk management services firm established to serve the business community in reducing exposure to loss and insurance costs. He is a frequent speaker at AMA seminars.

