

Engage Cost-Effective Legal Counsel

By Bryce H. Bennett, Jr., RBE Partner

Dispute resolution and litigation have become a cost of doing business in the United States of America. For uninsured losses, the cost of litigation goes directly to the business owners' bottom line. For insured losses, litigation costs and indemnity payments impact future insurance premium payments. Insurance premium expenses are impacted by claims and litigation. Therefore, no successful business owner can ignore legal risk assessment, early dispute resolution, or the cost of litigation.

Sophisticated consumers of legal services should be able to manage and control to a large extent the cost and quality of the services they receive. Given that control, how should it be exercised to obtain effective, high-quality legal services that recognize and avoid risk exposure and eliminate or minimize adverse verdicts, settlement payments, attorney's fees, costs, and expenses?

First, it is necessary to be proactive in risk management. Anticipate and recognize the early signs of trouble and proactively seek competent legal advice from an experienced and trusted attorney. A risk assessment audit can identify potential exposures and assist in acquiring appropriate insurance coverages for anticipated losses.

Depending on your business, it is wise to have a working understanding of contract law, employment practices liability, wage and hour laws, non-compete agreements, comparative fault, product liability, professional liability, liquor liability, premises liability, enterprise liability, insurance coverage issues, conflicts of interest, Americans with Disabilities Act, creditors rights, liens, and Worker's Compensation. An enterprising business owner should find no shortage of law firms willing to present in-house seminars or training sessions covering the basic Indiana laws and principals applicable to their industry.

Second, when a dispute or potential problem arises, early investigation in anticipation of litigation can develop confidential and privileged information necessary to evaluate and resolve most disputes and issues before litigation develops. This is true even when the opposing party is represented by aggressive plaintiff's counsel.

Nevertheless, a certain percentage of disputes and claims cannot and will not be resolved short of litigation. In these cases, experienced litigation counsel is necessary. Because attorneys and law firms are not interchangeable commodities, it is necessary to use care in selecting experienced and dedicated legal counsel that will efficiently and effectively resolve the litigation promptly and professionally so your business is well-represented and pleased with the outcome.

Hourly rates are not the sole criteria for selecting cost-effective litigation counsel. "The best lawyers are expensive," USF&G's general counsel, John A. MacColl, says, "but the second-best lawyers are very expensive." Many companies now realize that quality representation, even at a higher hourly rate, will not only reduce settlement and indemnity payments, it can save attorney's fees as well.

Regardless of what rate a lawyer or firm charges, a client should demand and expect certain things from litigation counsel:

- Immediate written acknowledgment of the assignment, with an outline of additional investigation information that can be obtained by the client and provided in a confidential and privileged manner to legal counsel;
- Prompt and concise written correspondence summarizing operative facts of the case and applicable law along with counsel's recommendations for further handling. These recommendations should be based on a considered evaluation of liability and damages exposure, including the probability of prevailing on pre-trial motions or at trial, the verdict range if the case is tried and lost, and an estimate of the cost of litigation; and
- Sufficient experience, analysis, and confidence to advise of work that is *not* required to achieve a favorable resolution of the matter.

Indeed, there are cases with catastrophic exposure or where the business' product, service, or reputation is at issue, which demand the most thorough and vigorous defense. In these cases, defense counsel must have the intellect and discipline, skill and cunning, wits and insight, energy, creativity, and stamina to best any opponent. However, legal counsel must recognize these cases early and distinguish them from more routine matters so that unnecessary costs and expenses of litigation are avoided.

Litigation over money damages is rarely a matter of life and death. Nevertheless, like doctors concerned about medical malpractice, some lawyers may be inclined to run every test, research every issue, and take every step in the litigation process before making a decision or advising their client on how to proceed. However, the experienced, successful, and properly motivated counsel can accurately identify what work does not need to be done and can advise the client to save resources.

When business owners are provided with the critical information and advice they should expect and demand from their counsel, they are then prepared to exercise their own good business judgment on how to proceed to minimize their costs and exposure. This early and accurate determination of whether additional information or work is needed and whether a matter should be litigated or settled is the key to minimizing a business owner's risk and the expense of legal problems and dispute resolution.



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ABOUT THE AUTHOR

Bryce Bennett is a business and trial lawyer who has practiced in Indianapolis since 1978. He represents businesses, including insurance companies, product manufacturers, construction contractors, design and engineering firms, real estate and development companies, hospitals, nursing homes, and transportation companies; professionals, including doctors, lawyers, insurance and real estate agents; non-profits and professional and fraternal associations, political subdivisions and municipalities including the City of Indianapolis and State agencies. He has successfully handled thousands of matters to closing through business negotiations as well as successfully litigating disputes to a favorable conclusion through pleadings, dispositive motions, negotiated settlements, mediations, arbitrations and numerous bench and jury trials in state and federal courts.

Bryce is an experienced director of business entities, and has served in leadership positions on numerous corporate and not-for-profit boards for the last 30 years. He represents and counsels business and not-for-profit entities as well as their members, directors and shareholders on various issues, including governance, fiduciary duties and disclosure requirements, contractual matters, intellectual property registration and protection, litigation and risk management, recognizing and minimizing liability exposure, employment issues, non-compete, non-piracy and confidentiality agreements, regulatory and governmental relations, real estate and environmental issues, acquisitions, creditors rights, member and shareholder rights and exit strategies.

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