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Litigation Management in a Tough Economy

How to save money and win your case at the same time

The recent recession and its aftermath has caused many American businesses to radically change the way they purchase legal services and hire law firms. Virtually every large corporation and business has drastically cut legal expenses and litigation costs. For most companies, this meant a radical re-examination of the financial relationships they have with outside counsel.

By far the most significant of these changes is a huge increase in the use of boutique litigation law firms. Businesses are realizing that boutique litigation firms are more efficient, more experienced and can provide great litigation results in a very cost-effective manner.

THE MANY BENEFITS OF USING BOUTIQUE LITIGATION LAW FIRMS

1. Boutique litigation firms charge significantly lower hourly rates.

The most immediate economic benefit of using boutique litigation firms is that the hourly rates are significantly lower. Many mid-sized boutique litigation firms provide excellent, high quality litigation services at a discount of upwards to 50% from larger firms.

One irony is that many attorneys who work at mid-sized boutique litigation firms formerly worked at law firms that charge higher hourly rates. Some lawyers will even lateral to a smaller firm, take their client base with them and cut their hourly rate by upwards of 50% while providing the identical legal services.

While hourly rates are not the sole determining factor of the value of legal services, they are a critical benchmark to corporations. This is especially true in today's economic climate, where corporate managers are looking critically at each and every expenditure of legal expenses.

2. Boutique litigation firms are more efficient.

One of the hallmarks of the boutique litigation firm is the extensive experience of its attorneys. For example, my law firm, Callahan & Blaine, has 28 highly experienced trial lawyers and senior litigators. Our most junior attorney has eight years experience, and the large majority of our attorneys have 15 to 25 years of experience in successfully handling complex litigation matters.

An attorney who has been practicing law for 25 years, has conducted 15 or 20 trials, taken hundreds of depositions and handled hundreds of complex litigation matters is much more efficient in handling complex responsibilities such as depositions, law and motion, court appearances and trial.

The reality is that for virtually every junior lawyer at any firm, the first several years of practice are basically continuing education and training. While American corporations have subsidized this training process for decades, today's economic realities have caused companies and clients to take a serious critical eye at this process and, for the large majority, to put an end to this practice.

Boutique litigation firms who use only highly experienced attorneys provide much more efficient, and therefore less expensive, legal services. For example, if an attorney with 15 years of experience prepares a demurrer, motion to strike, motion for judgment on the pleadings or other responsive pleading, the amount of time that attorney spends on that motion will be directly proportional to his or her experience and the number of times that they have filed such motions in the past.

In addition, the more experienced attorneys at boutique litigation firms will not require the kind of direct supervision and revisions to the work product that a junior associate will. Thus, not only is the client paying far fewer hours for the more experienced attorney to produce the same work product, but the client is also saving significant amounts of money by eliminating the need for extensive supervision by senior attorneys.

3. Boutique litigation firms obtain better results.

Another significant benefit in using boutique litigation firms is that the results highly experienced trial attorneys and litigators obtain are directly in proportion to their level of experience and expertise. Thus, an attorney with 25 years experience handling complex business litigation will write better briefs, make better arguments, take better depositions and in general handle litigation matters with much more expertise than a junior attorney. For clients, the experience and expertise of boutique litigation lawyers translates directly into litigation results, sometimes in the millions of dollars.

4. Boutique litigation firms have real trial lawyers.

One of the key questions to ask when hiring a litigator is whether that lawyer or law firm has a track record of conducting actual trials in front of a jury? A litigator who has never conducted a trial cannot be an effective advocate in the pre-trial and discovery phases, much less the actual handling of a trial. Ultimately, every lawsuit that is litigated must have as its ultimate goal how the facts and legal issues will be decided before a jury and judge. If the litigator is not an experienced trial attorney, the entire discovery, law and motion, deposition and pre-trial phase will not be handled in an optimal manner.

Moreover, the opponent on the other side will feel no intimidation or pressure to settle with a legal adversary that has no track record of trials. Settlement is a powerful weapon in the arsenal of the real trial lawyer. It is one of the true ironies of litigation that the best

settlements come from the lawyer who is an expert at trials and has prepared his case for trial.

Boutique litigation firms frequently have extensive trial experience. For example, the managing partner of Callahan & Blaine is Daniel J. Callahan, one of the most respected trial attorneys in the country. By way of example, the National Law Journal named Mr. Callahan one of the Top Ten Trial Attorneys in the United States. Likewise, Mr. Callahan has obtained the largest jury verdict in the history of Orange County, a \$934 million jury verdict on behalf of a large corporation after three months of trial in a complex business litigation case.

5. Boutique litigation firms bring both plaintiff and defense perspectives.

One of the significant advantages of mid-sized boutique litigation firms is that such firms frequently have extensive experience from both plaintiff and defense perspectives. The benefit of hiring attorneys who handle both plaintiff and defense cases is that the law firm and its lawyers gain invaluable experience and perspective into the plaintiff's point of view when litigating a plaintiff case. The lawyer and the law firm can then put this extensive experience of understanding the plaintiff's side to considerable benefit when acting as defense counsel.

By way of example, my firm, Callahan & Blaine, acts as defense counsel in the majority of the hundreds of complex litigation matters that we handle every year. However, Callahan & Blaine also has extensive experience from the plaintiff side. For example, while acting as plaintiff's counsel, Callahan & Blaine obtained the highest plaintiff's jury verdict in the history of Orange County, a \$934 million jury verdict that was procured on behalf of corporate client Beckman Coulter after a three month trial in a complex business litigation matter. Whenever Callahan & Blaine defends corporations in complex litigation matters, the firm is able to utilize its extensive experience from the plaintiff's perspective in many different and positive ways.

6. Boutique litigation firms are entrepreneurial in fee arrangements.

One of the biggest advantages that boutique litigation firms have is that they can be extremely entrepreneurial and creative in their billing arrangements. That kind of flexibility can be extremely important to general counsel who are trying to bring the legal department under budget for the year.

The most obvious example of the flexibility of boutique litigation firms is their ability to provide discounted hourly rates to corporations. Thus, a boutique litigation firm can tailor its representation efforts to a particular company with much more flexibility than a larger law firm.

Another significant example of flexibility and creativity by boutique litigation firms is the use of alternative billing arrangements. These include flat-fee contracts, rates per litigation or project, billing caps, volume discounts, length of contract discounts, blended arrangements and other creative and novel approaches to legal billing. Boutique litigation firms can be extremely creative and entrepreneurial in fashioning billing agreements with corporations and businesses.

Likewise, boutique litigation firms may be able to take complex business litigation matters on a contingency or hybrid contingency/hourly rate arrangement. For example, a boutique litigation firm can either take a matter on a straight 40% contingency (perhaps with the corporate client being responsible for paying all costs as the litigation progresses), or can take the case on a hybrid basis, with a lower contingency, such as 25%, and an agreement that the client will pay a blended hourly rate for all attorneys, such as \$250 per hour.

7. Smaller is better for boutique litigation law firms.

Another benefit of boutique litigation firms is the size of the firm itself. From the perspective of litigation results and cost savings, using a 30 attorney boutique litigation firm in complex litigation matters can be extremely effective and efficient.

For example, having your entire litigation team and firm in one location significantly enhances communication, efficiency and litigation prowess. Instead of trying to coordinate communication and litigation activities among lawyers in multiple offices, a boutique firm can efficiently and effectively render legal services from one location, with all litigators able to effectively communicate and coordinate from one centralized office and one with true leader of the litigation team.

Ultimately, the most important factor is not the size of the law firm but rather the experience of the attorneys. While a larger firm may have many attorneys in its litigation department, the significant majority of those litigators may be junior lawyers with less than five years of legal experience. It is always preferable to have a highly experienced, 20-year litigator as opposed to a junior associate. The senior litigator will have more experience, will have more knowledge, will do the work more efficiently, more effectively, and will ultimately produce a better result than a lawyer who is a few years out of law school.

CONCLUSION

At the end of the day, the two most important factors in choosing the right lawyer are quality and results. All these factors, and the reasons behind them, explain why so many American businesses have chosen boutique litigation firms in recent years.

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