

WHAT ARE THE REAL COSTS OF LITIGATION

There is an old joke in legal circles: "If the town only has one lawyer, he starves to death. If there are two lawyers, they both get rich." There is a lot of truth to that joke.

Litigation in the United States has taken on a massive cost despite the attempts by the government and the bar association to reduce the actual costs to the litigants. So what are the costs of litigation?

Assume you have been involved in business with another company and you have come to a parting of the ways. Regardless of the question of whether you are right or wrong, it is the principle of the case. You are right and your opponent is wrong.

You call up your friendly legal counsel and give him the facts and ask the question, "What will it cost to sue the bastard?" The answer every attorney will give is, that it "depends". Depends on what? Well, the type of suit, the strength of the case; the type of defendant; amount of evidence, etc. The answer most attorneys give is "I can't say for sure, but for "X" dollars we can get started".

So what does "X" equal.

1. Attorney Fees = Hourly rate for litigation attorneys range from \$150.00 per hour to \$750.00 per hour depending upon the firm.

It also depends upon the number of attorneys in the firm working on the case and the level of their experience and billing rate. You have to also consider how the firm determines "a billable hour". They may charge real time, by the minutes; increments of 10 minutes/15 minutes or 1/2 hour. That means if the attorney picks up the file, you will be billed a minimum of the increment.

Other firms use "Zen" billing. This means the attorney bills what he thinks the service is worth. An attorney who is an expert in a particular field may bill for several hours for something that actually took much less time because of his years of experience. He does in a few minutes what another attorney would take many hours.

For the purpose of this article, assume the attorney is billing \$350 per hour and his associate is billing \$250 per hour, his paralegal or investigator is billing \$150 per hour.

2. Court Costs & Fees - Every court, whether state or federal, will charge for filing your complaint. It may be a flat fee or one based on the number of plaintiffs or defendants. Most courts have "Small Claims" Courts where you can file without an attorney, but these are limited to small amounts. In California, filing fees may be more than \$400 per case. Other states and Federal Courts charge different fees. However, most courts will also charge each time a document is filed with the court, such as motions or related documents. The Defendant will also have to pay a filing fee when he files an "answer to the complaint."

3. How Long Will it Take? - The answer is much longer than you think that it will. The time depends upon a number of factors which include, how busy the court calendar is; how aggressive your attorney is; how much delay the defendant's attorney puts in the way. At one point the calendars in California's courts were so congested that a "5-Year Rule" was instituted that forced the Court to bring the matter to trial within 5 years of the time it was filed. Now, that period has been reduced to about 1 to 2 years in most courts. The longer the case takes to be resolved, the more you will pay your attorney.

4. What to Expect before Trial - Fortunately, very few cases actually go to trial. Most cases are resolved at some point in the discovery or pretrial stage. In fact most contracts today require that the parties mediate or arbitrate any dispute so as to minimize the cost of litigation. Most contracts require the losing party to compensate the winner for the costs of the litigation, including attorney fees and costs. This is true only IF THE CONTRACT PROVIDES FOR PAYMENT OF ATTORNEY FEES. Otherwise, you will not be compensated for the amount you pay your attorney.

5. Discovery & Pretrial - Before the matter will go to trial or arbitration, your attorney will use his training and the authority of the court to subpoena records and documents, take depositions of the other party and witnesses, and prepare the case. A deposition is the process by which you, the other party or a witness, is required to appear and answer questions under oath before a court reporter. The costs of the deposition depends on the length, the number of attorneys, and the current court reporter rate.

A rule of thumb is the court reporter will charge \$3.00 to \$8.00 per page. So, in a 6-hour deposition the cost would be estimated at 75 pages per hour at a cost of \$1300 to \$3600 dollars. Assuming your attorney does the deposition himself, his fee would be \$2100 plus three or four hours in preparation, bringing your costs to roughly \$3100 in attorney fees. Estimate your costs for the deposition at \$4500 to \$8,000 dollars. Multiply this times the number of depositions and you have a rough estimate.

6. What Does a Trial Cost? - Assuming a short 3-day trial with a jury: First, you have to pay a deposit to cover the costs of the jury. This will range from a few hundred dollars each day and up. Your attorney will charge for his preparation time which may be from 1 or 2 hours to 40 or 50 hours depending on the case. So your costs could be, before the opening day of trial, up to \$14,000 dollars. The attorney will also charge either an hourly rate or daily rate for trial. Depending on the firm, the daily rate may range from \$2,000 to \$10,000 per day. You will also be responsible for associate attorney fees and paralegal fees during the trial which are very common. Witness fees, expert witness fees and related evidentiary matters will also add costs to the bill. Depending on the type of an expert witness, his fee may range into thousands of dollars. Estimate \$4,000 to \$10,000 per day for each day of trial.

7. What Do You Win? - Assuming now after the trial, the jury or judge finds completely in your favor and awards you everything you asked for. It may be a money judgment or property or whatever you thought you deserved. Having a judgment does not mean you automatically collect. The defendant may appeal the verdict to an appellate court alleging that the trial court made a legal error.

The appeal will cost additional money for your attorney, court transcripts and fees. The appeal may take several years to be heard. If the appellate court finds that there was an error, it will return the case to the trial court for another trial or to correct the judgment.

Assume that the judgment is affirmed and you have a judgment on record and you now must collect it. If the defendant does not voluntarily pay, you will execute against the property of the defendant, which the local sheriff will seize and sell with certain exceptions. The defendant can do a number of things to prevent the collection. He may claim a homestead exemption in his real property or he may file for bankruptcy protection in the Federal Bankruptcy Court which will stop your collection automatically. If he files for bankruptcy protection, you may find yourself grouped along with other general creditors and you will collect only a portion of what is owed to you.

The final results is that you may be worse off by winning. So before starting litigation, you need to do the following:

1. Examine the true merits of the case and determine what really is at stake and what defenses the other party may really have. Talk to a third party and get their opinion. Pay an attorney to analyze the facts of the case and send a written opinion for you.
2. Based on the opinion, decide if it really makes sense to file suit. Have an investigator do a financial background investigation of the defendant. If the defendant is a corporation, make sure that it has sufficient assets to pay a judgment. If the shareholders in the corporation have not guaranteed the claim you have, only the corporation will be responsible and it may be judgment proof.
3. If it is a family dispute, ask yourself if it is really worth creating a rift in your family that will justify the emotional energy you will waste in the litigation. Reach out to a friend or other family member to mediate the issue and see if can be resolved.
4. If you decide to sue, make a spreadsheet of the potential costs including your time, attorney fees, discovery costs and trial costs and then double the time and the costs. If the bottom line costs are satisfactory, then go forward. Having analyzed the case, you can rest comfortably knowing that you have made a reasonable and justifiable decision.

Best of luck on your decision.