



# Look good *and* 'save' money

Ten strategies for in-house counsel to obtain excellent results in an efficient manner.

By C. Paul Carver and Charles (C.J.) Schoenwetter

Excellent results and a solid work product are a necessity in representing corporate clients — but these are just the tip of the iceberg.

Corporate clients demand and deserve excellent results and a solid work product at an efficient cost. The benefits of winning disappear when the cost of the “win” is more than the expense of pursuing alternative dispute resolutions.

An in-house legal department is, in many respects, no different than any other department in a corporation. It is assigned a budget, and it is expected to operate within that budget.

This poses unique challenges — particularly in companies facing claims by third parties that require litigation. Defending litigation claims can decimate a budget and rarely, if ever, adds to a company's bottom line.

Accordingly, hiring efficient lawyers is important.

The following list presents 10 proven strategies for increasing a corporate client's odds of obtaining excellent results in an efficient manner. Implementing these strategies with the assistance of outside litigation counsel will help in-house counsel shine.

**Engage in pre-litigation dispute resolution.** Asking someone to engage in a free and mutual exchange of ideas, information and documents is an effective and efficient manner of understanding a case before incurring significant litigation expenses. Swapping information before litigation saves thousands of dollars, allows companies to be better informed at a cheaper price, and provides all parties to a dispute an opportunity to manifest their own destiny.

**Develop a 90-day early case evaluation program.** Experience teaches that more than 90 percent of important documents and information can

be gathered in the first 90 days of litigation. By implementing a program for the early evaluation of each case, companies can save money by settling cases before significant costs are incurred. Early evaluations not only save time and resources, they also minimize future litigation and the need to produce confidential and proprietary materials during discovery.

**Choose trial candidates early.** How many times have you heard of cases “settling on the courthouse steps?” How many litigation dollars are spent on cases that can and should settle earlier? In coordination with pre-litigation dispute resolution and early case evaluations, it is critical to assign an importance level to each case. If a case is viewed as a trial candidate early on, resources should be devoted to it. Alternatively, nontrial candidates should be slated for settlement. Either way, decisions should be communicated as early as possible to the “business side” of a company. This allows everyone to understand how and why resources are being spent.

**Establish a budget.** Outside counsel should be required to establish a budget by case, by month, by year and by task. If it is not in the budget, then it just does not get done — or paid for by the client — without prior approval. A budget provides a simple road map to the tasks outside counsel must perform, along with the client's corresponding obligations to pay. Although a budget is not a wholesale answer to all of the issues that prevent cases from being handled efficiently, budgets effectively prevent surprise invoices.

**Require regular communications. Information is power.** Communication breeds accountability. Regular communication of information prevents nasty surprises and provides in-house counsel with the power they need to manage their internal clients. Telephone updates at least monthly are strongly encouraged. Quarterly status reports and updated budgets are also highly advisable so long as these reports are not cumbersome in their length. These forms of regular communication ensure that only efficient and preapproved defense strategies are implemented, and allow all levels of management to stay fully informed and plan business expenses.

**Decide whether a duffing strategy is appropriate.** Knowing when to let others lead the fight so that your

company does not maintain a high visibility that breeds an expectation of a larger settlement is critical. While this strategy involves some risk, implementing a duffing strategy can save thousands of dollars over the course of a case. Duffing allows clients to take a monitoring role while others perform, and pay for, the heavy lifting. By batting cleanup in a deposition and attending via telephone rather than incurring airfare and other travel expenses, your company's litigation profile remains low

and corresponding settlement expectations may also remain low. A duffing strategy is not for all cases, but in matters where multiple defendants are being sued, it can be used effectively.

**Develop and maintain relationships with opposing and co-counsel.**

Impersonal communications and vexatious motion practice do little to bring adversaries together and often result

in attorneys saying things they never would say to each other's face. Instead of retaining counsel who builds adversity, hire a collegial lawyer who builds relationships of trust and respect among opposing counsel. By picking up a telephone or sharing lunch during a deposition, the lines of communication stay open. By maintaining a cordial course of communication, your attorney can pump opposing counsel, or even co-counsel, for information. And in so doing, you will be informed of difficult issues long before you otherwise would. This will help you to prepare in advance, settle if necessary, or develop the proper response so that you will never be ambushed.

**Hire busy lawyers.** There is an old saying that “If you want something done, then give it to someone busy to do.” This is particularly apt when

retaining legal counsel. A busy lawyer is busy for a reason — others have used, evaluated and determined that the lawyer provides good results. That speaks volumes. Additionally, a busy lawyer is too busy to bring excessive motions and engage in other litigation tactics that unnecessarily drive up costs.

**Select the right mediator.** Mediation can provide an effective exit strategy, but it is often an expensive proposition if an ineffective mediator is used or the door to liability is not tightly shut. Agree to use mediators that are experienced, well known and possess a demonstrated record of success. Settling a case just one month earlier likely saves any additional amount spent on an effective mediator. Moreover, unsuccessful mediation can actually be more harmful than not having mediated at all because the mediation may result in a disclosure of trial strategy and perceived weaknesses in an opponent's case. If you are going to commit to mediation, then commit all the way — hire the best mediator you can find.

**Settle on the right terms.** Even good mediators occasionally try to rush a settlement, leaving certain terms open. With rare exceptions, settlements should be “global,” with substantial indemnification provisions to guard against contingent liabilities and unresolved claims involving other parties. Mediation submissions should contain a checklist of difficult issues that need to be resolved and critical settlement terms that must be incorporated into any agreement. If a mediation submission is prepared in this manner, then it can and will be used as a checklist by the mediator along with litigation counsel to assure that no loose strings are left to cause problems at a later date.

The above discussion is just the beginning to a much larger dialogue. When good legal counsel are retained by corporations, great results necessarily follow. The relationship between general counsel and outside litigation counsel is a symbiotic one based upon a shared understanding of the company's goals, regular communications and realistic evaluations of the cases at issue.

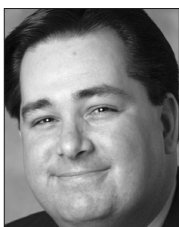
Hiring efficient outside litigation counsel to assist in accomplishing the company's goals results in a true “win” for your corporate client. ☐

## 10 tips for in-house counsel

1. Engage in pre-litigation dispute resolution
2. Develop a 90-day early case evaluation program
3. Choose trial candidates early
4. Establish a budget
5. Require regular communications
6. Decide whether a duffing strategy is appropriate
7. Develop and maintain relationships with opposing and co-counsel
8. Hire busy lawyers
9. Select the right mediator
10. Settle on the right terms



C. Paul Carver



C.J. Schoenwetter

