

# Business of Law: Companies finding ways to motivate attorneys, limit risk and save money

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Opinion

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No love has been lost between trial lawyers and Corporate America.

Now, however, big business has discovered something about its archenemy that has placed the trial lawyers in a new light:

They know how to win.

What's more, they know how to win on a budget.

Companies that need to initiate litigation have traditionally turned to the same firms that have defended them from lawsuits in the past. These "defense" firms typically bill by the hour - \$200, \$300, \$400 or more an hour, regardless of the results. Savvy consumers of legal services across the nation are beginning to realize that this fee model encourages the expenditure of time rather than fostering a focus on results.

Trial lawyers, however, tend to take cases on a contingent-fee basis. That usually means they aren't paid unless they win. This approach aligns the lawyers' immediate economic interests with the client: Both want to win as much as they can at the least amount of cost.

A recent article in the National Law Journal discussed this trend, noting that hiring lawyers on a contingent-fee basis is attractive for companies trying to control litigation costs. The arrangement helps assure businesses that their lawyers are "not just here to bill, they're here to work." There have been a number of verdicts in business-against-business lawsuits in which a trial lawyer led the charge, including billionaire Ronald Pearlman's \$1.4 billion win against Morgan Stanley and a \$103 million victory in a patent-infringement case involving a vegetable slicer.

The contingent fee and its advantages can best be illustrated by way of an example:

ABC Corp. and XYZ Inc. were victims of a breach of contract by one of their vendors. Each company lost business to the tune of \$100,000. ABC turns to the same firm that has represented it for years and spends \$75,000 in attorneys' fees pursuing the possibility of recovery. If ABC is awarded \$170,000, it will have recouped most of its loss. If ABC loses at trial, though, its losses will swell to \$175,000 as soon as it cuts its lawyers their check.

XYZ, for its part, hires a trial lawyer and agrees to pay 40 percent of any money recovered - but nothing if there isn't. If XYZ wins a \$170,000 verdict, it will pay \$68,000 in attorneys' fees and collect \$102,000. While that's roughly the same result as ABC's,

consider: The case could have been lost. In that case, XYZ would only have had to eat its original loss, not add to it with a bill from its attorneys.

The fundamental distinction between the billable-hour and the contingent-fee arrangements is whether the client or the lawyer bear the risk of loss. For small and mid-size companies, the costs and risks of litigation often will make hiring a lawyer to right a wrong unfeasible. But this can change for businesses willing to be innovative in their approach.

Trial lawyers not only accept this risk, they embrace it. They appreciate it, if for no other reason than most have experienced the economic consequences of losing a contingent-fee case. The bottom line is this approach to providing legal representation rewards lawyers who practice their craft with the highest skill, efficiency and desire to win. While the contingent-fee arrangement may not be workable in all disputes, businesses that hire trial lawyers stand to reap substantial benefits while lowering costs and risk at the same time.

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