The Economics of a Civil Lawsuit

An Article by
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A civil lawsuit is so expensive these days that it is not typically affordable unless the attorney is willing to contract with the client on the basis of contingency. However, because lawyers rarely accept defense cases on a contingency basis, the defendant of a civil lawsuit usually has little choice than to defend the action on an hourly fee basis.

That raises questions: Why are lawyers so expensive? How can the law be for all of the people if it is only affordable to the wealthy? Why do "good" law firms charge so much money? What is a "good" law firm? How important are lawyers who are specialists; why can't any lawyer handle any matter?

$50,000 Cases: While it may be difficult to say with certainty how much an average lawsuit costs, typical lawsuits have, from the author's experience, been known to cost up to about $50,000 in legal fees and costs. For example, $25,000 can easily be estimated as a reasonable cost to defend against a civil lawsuit prior to trial preparation. The attorney's fees for trial preparation and the trial itself, could also run up to $25,000. Can the average defendant, or an average plaintiff for that matter, afford legal representation?

Hourly Charges: Defense lawyers typically charge their clients by the hour and the average going rate is between $200 -$350 per hour, depending on the lawyer, the law firm, the nature of the case. Every action taken by a lawyer is a billable transaction. All phone calls are billable, including client calls and emails seeking to be reassured.
Legal Process: Preparing and filing the answer to the complaint are usually the first official steps in the legal process. A good lawyer might reasonably spend up to 15 hours taking all the steps necessary to prepare and file an answer; thus, depending on the lawyer's hourly rate, that initial task may cost up to $5,000. The filing of an answer to a complaint reduces a lot of pressure on both the lawyer and the client and ensures that defendant's default is avoided. The process called discovery is next, during which interrogatories (written questions) and depositions (face-to-face attorney questioning of witnesses recorded by a stenographer) are held by both sides.

The Purpose of "Discovery": The public would do well to understand that the legal process was changed decades ago to allow both sides the right and opportunity to find out all of the relevant facts on which the other side is relying. The other aim of discovery is to allow for the lawyers to eliminate legal theories that are not supported by the facts prior to the trial – so as to eliminate Perry Mason-type surprises at trial and save the precious time of very overcrowded courts.

To many clients, whose idea of lawyering is courtroom work, the largely invisible discovery period does not seem like it should gobble up as much money as it does. To the attorneys, however, the discovery period is where the winning case is shaped and where the foundation is laid for a successful outcome. Essentially, the unglamorous, hard

grind, but necessary work, is completed during the discovery period. Depending on the complexity of a given lawsuit, the number of witnesses and volume of documents involved, $15,000 can easily be consumed during discovery.

Summary Judgment Motion: At some point during the discovery period, the defense lawyer may, if s/he believes that appropriate facts and circumstances exist, ask the court to rule that the plaintiff has no case. This procedure is called a motion for Summary Judgment. Under the philosophy that everyone is entitled to his or her day in court, judges are reluctant to rule for defendants in this procedure unless the there is absolutely no case for the plaintiff. If the defendant prevails, the case is over – without a trial. $5,000 - $10,000 can easily be consumed in a Summary Judgment motion.

By this time, $25,000 - $30,000 could easily have been billed – and, often, the defendant client will feel it is worth the price if things end there. Things do not, however, usually end there; and the client will likely become inclined to believe that the unsuccessful procedure was unnecessary and a wasteful use of his or her money. Noteworthy is the fact that lawyers cannot predict the outcome of a given lawsuit. This inability to predict outcome should not - and often does not - deter the good lawyer from presenting arguably correct motions.

Settlement Negotiations: As the facts are collected and the strength of the plaintiff's case and defendant's defense are respectively re-evaluated, attempts will usually be made to find a dollar amount (if appropriate) at which the whole matter can be dropped so that people can go back to making money. Sometimes, a settlement can be effected. However, depending on the passion involved, the matter may sometimes fail to settle. And, $5,000 can be consumed in settlement negotiations, which often involve mediation or settlement conferences before a neutral mediator or judge.

Trial Preparation: Prior to the courtroom theatrics, a whole lot of largely invisible work will be billed to the client as the lawyer organizes the facts for a logical presentation at trial. During this stage, a lawyer also spends a great deal of time interviewing and preparing the witnesses who will be called to testify at the trial. As much time can be consumed in the preparation for the trial as will be spent at trial. $8,000 can be easily consumed during trial preparation.

Trial: Taking a lawyer out of his or her office for the entire work (billing) day will cause a client to be charged for the entire time – including the time during which both lawyer and client are at court waiting to be assigned a courtroom. For example, eight hours times $200 per hour will cause a defendant to be charged $1,600 for each day of trial. Imagine a five-day trial for a "simple" matter that revolves around the trier of fact (judge or a jury) believing or disbelieving one set of facts or another. $8,000 is easily consumed. Double the days to ten (10) days, and $16,000 is easily consumed.

In the end, you win or you lose. Then the appeals start.

"Good" Law Firm If so much money must be spent in defense, why not spend it on a "good" law firm? What, exactly, is a "good" law firm? Aside from a proven, actually effective law firm, a "good" law firm is a matter of marketing. The degree to which a firm looks successful, coupled with some notable victories that are broadcast widely, will determine the "buzz" about a law firm. The larger the firm, the more successful it looks, but also the more it will cost to support its overhead. At the other end of the "good" lawyer spectrum lie the solo attorneys, who routinely score significant victories and build names for themselves. But, because involvement in their cases leaves no time for other clients, solo attorneys cannot always be available to take new cases when a client has a need. That leaves in the middle category of "good" those law firms who are large enough to handle multiple clients and who also do careful and thorough, if not inspired, legal work. It is these law firms that form the backbone of the legal profession.

Since the law can be read by anyone, larger firms have an advantage that makes them look "good", which lies in their ability to throw large numbers of lawyers into the reading of the law to find the legal support or the exceptions that greatly influences the winning of the case. Reading speeds being relatively equal, the more eyes scouring the subject, the more likely a larger number of eyes on the subject will prevail – if the facts are not already tilted one way or the other. Smaller firms try to be efficient to compensate for their lack of multiple eyes to match the "big boys." In doing so, they save their clients thousands of dollars.

Clients see the difference in their bills: the more "eyes" working on a case, the larger the bills. Things usually work themselves out. People use law firms of a size approximately equivalent to their abilities to pay; those who can pay the "big firms" (clients e.g., Fortune 500 corporations) pay the "big firms"; and those who can play the game, but not at the highest levels of legal budget, use smaller firms. Those who cannot pay seek contingency arrangements or, somewhat unwisely, represent themselves.

What's a Brotha or Sista to Do? Business is not like a job. It is a money game. If a person is serious in business, that person will spend precious money on efficient legal defense (or offense – if needed). Litigation is expensive and unavoidably necessary in a lot of cases; therefore, a realistic litigation budget should be set aside or the funding should be identified early on. Regardless of the merit of a client's position, lawyers have no obligation to financially sacrifice themselves for their client's legal matter. To the lawyer, it is, after all, work.

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