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Optimizing the Legal Spend: A Better Approach for GCs

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By Seth Darmstadter

Despite the impact of COVID-19 on the U.S. economy, corporates nationwide continue to rack up some rather hefty legal bills. In fact, it's estimated that in 2021, large domestic companies will have spent more than $23 billion on litigation alone, up from $22.8 billion in 2020—this according to Statista, a leading provider of market and consumer data.

As legal fees rise, GCs across the country are being asked to reduce costs. Yet this is a real challenge, especially with first-year associate salaries now exceeding $200,000 at many of the nation's largest law firms (an amount that only increases as associates ascend to more senior status), not to mention the anticipated uptick in both litigation and corporate transactions coming out of the pandemic.

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The Status Quo

Much more often than not, legal services are viewed by corporate leadership and boards of directors as a cost center; as otherwise stated, a necessary and involuntary evil needed for risk mitigation, be it related to litigation, contract formation or business transactions. And in far too many cases, the bad rap is well-deserved. This is particularly true when companies retain attorneys who lack an understanding of the client's industry and the client's specific business functions. In these instances (read: when the wrong lawyers are hired), there's no knowledge base to leverage. Instead, corporates are paying lawyers to learn on the job.

Recasting the Legal Spend

It doesn't have to be this way. While it may sound counterintuitive, rather than seeking to cut corners by hiring less costly legal representation, a more strategic methodology for GCs involves paying for the most efficient legal service providers—those who possess industry and subject matter expertise and who can provide next-level work product. This, of course, requires due diligence on the clients' part to ensure that the law firms and lawyers being retained actually have the depth of knowledge and industry chops they tout.

The benefits of engaging counsel with legal and industry know-how are many. Attorneys that fit the bill are able to easily identify not just legal concerns, but broader business issues as well. In fact, the right team will solve problems with an eye toward the achievement of business goals, in which case dollars spent on legal actually benefit bottom-line corporate objectives.

Ideally, industry focused legal advisors become strategic partners who possess much greater efficiencies in finding solutions to near-term problems and, at the same time, can take creative and corrective actions to plan for a future that avoids unnecessary hurdles and challenges. Not only that, legal professionals who are known players within any given industry segment are able to broaden their clients' business and operational relationships, help raise funds, contribute to scalability, and handle matters in a manner consistent with a company's culture.

At the end of the day, it's all about ROI, and investing in the right counsel can (and should) result in long-term value. Which begs the question: where should GCs be looking for industry segment experts? Good referral sources include trade associations and other trusted professional and industry advisors. GCs might also seek out lawyers who demonstrate their expertise by contributing relevant content to industry publications.

Leveraging Legal Counsel as an Asset

It's simply not enough for a company to have its outside counsel approach cases and transactions myopically. To turn the legal spend into a positive expenditure, it's better to leverage the attorney's industry and practice area expertise to the fullest. Toward that end, within a lawyer's first 90 days on any given matter, he or she should be asked to present an in-depth case or transaction strategy memo that appropriately sets expectations at the outset and provides a roadmap identifying immediate legal concerns, broader industry issues, and a comprehensive plan of attack. Thereafter, to optimize ROI, the attorney should be leaned on to flag areas of opportunity within the client's industry segment and offer up (1) business solutions whenever possible (this is over and above the litigation or deal that's subject to his or her representation and includes future litigation avoidance), (2) insightful market analysis and (3) consultant and vendor introductions.

Of course, to get the most out of legal counsel, GCs must remember to make clear their goals, culture, competitors and end game. These should be the minimal barriers to entry when choosing an attorney and law firm.

By Way of Example

How does all of this work in practice? Imagine a company (say, one in the digital media space) facing a lawsuit initiated by investors alleging fraud. A big-name law firm is retained to provide a defense, and millions of dollars are paid in fees as young and mid-level associates bill hour after hour on the case over a series of months. Ultimately, the partner-in-charge recommends concessions.

Unhappy with this advice and counsel, the client brings in another law firm to take over the defense—a firm staffed with lawyers having actual digital media industry experience. These attorneys know how the client's business works and how it earns money, and they have a feel for the company's culture, strengths and challenges.

Immediately upon digging into the lawsuit, the new and improved lawyers draft a case strategy memorandum that ascertains the most impactful defenses and a practical path forward. In so doing, they strive to put the client in a better position than it was prior to their retention, all the while including the company in the process of developing strategies and problem solving.

It's by virtue of this next-level work product—made possible by the attorneys' practice area expertise and knowledge of the client's business and segment—that the litigation is successfully and favorably resolved and the opportunity for a nine-figure recapitalization is identified, presented and exploited. Then, as an added bonus and as a byproduct of the lawyers' industry relationships, the client is invited to join the leading digital media trade association.

The foregoing scenario is not only a true story, but also the difference between legal services as a cost center and industry-centric representation that was leveraged as an asset and fully optimized. GCs, take note.

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