

# Managing U.S. Litigation Risks & Costs

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## 1. INTRODUCTION

1.1 Traffic accident litigation survey: 3.42% are litigated in New York v. 0.15% in Tokyo, 30 times difference.

1.2 Lawyers - 135,737 lawyers in CA.

1.3 Complex legal system - Federal System: Federal, state, local laws - French & Spanish influence.

1.4 Lack of clear norms and values: Multi-ethnic.

## 2. THE LAW - IT'S A SERVICE BUSINESS

2.1 Multi- billion dollar business - only hospitals, doctors, the film industry, and the computer industry earned more.

2.2 Service business - low revenue, high margin.

2.3 Knowledge intensive - constant change, new law everyday, needs constant updating.

2.4 Creative process - lawyers are writers, orators, actors, and strategist, but requires strong discipline.

## 3. COST SAVING - VALUE

3.1 Right lawyer - experienced lawyers that update constantly.

3.2 Technology - network, email, forms & boiler plates.

3.3 Proper staffing - experienced high cost lawyer with less experienced low cost personnel.

3.4 Communications cost - expensive - organize and think through before talking or providing documents.

3.5 Time - ultimately what a lawyer is selling.

3.6 Results - short term (close deal) v. bureaucracy + long term (dispute & litigation).

3.7 Fee structure - time & cost, flat fee, contingency fees, partial contingency, additional bonus, hybrid.

## 4. U.S. LITIGATION - GREATEST AMERICAN PAST TIME.

4.1 High risk: uncertainty in law and performance + high legal cost + huge awards

4.2 Winner does not get legal fees as a general rule, but increasingly likely, esp. in IP cases.

4.3 Discovery long drawn out - a harassment device & high cost.

4.4 Allows recovery for pain & suffering, consequential and punitive damages.

4.5 Disadvantage for Asian Americans - communication skills - oral & acting, stereotype.

4.6 STRATEGY:

- Decide whether to settle and if so, settle immediately.
- Decide how to litigate early on.
- Pick a good team and stick with it.
- Prevention

## 5. AVOID PERSONAL LIABILITY - BE SMART

5.1 Shareholders' liability

- Alter Ego:
- Under- capitalization.
- Segregate personal from corporate affairs, or one company with another.
- Observe corporate formalities.

5.2 Intentional Acts - supervisor, decision maker, directly committing the act.

- employment
- IP
- fraud
- defamation

## 6. PREVENTIVE LAW - ONLY WAY TO SALVATION

6.1 Be knowledgeable of legal consequences.

6.2 Always keep an eye on litigation from day ONE.

6.3 Have a lawyer you trust and touch base regularly.

6.4 Use legal forms to build in protection when buying, selling, hiring, firing, etc.

6.5 Built in recovery for legal fees and arbitration.

6.6 Avoid personal liability

6.7 Legal audits.

## **7. EMPLOYEE LITIGATION - LIVING WITH WOLVES**

7.1 Very high risk - \$1million common + legal fees (even if you win)

7.2 Contingency fee

7.3 Personal liability

7.4 Morale of staff

7.5 Dirty linens

7.6 Counter- claims & government actions - whistle blowing

7.7 Screen, screen, screen

7.8 Employee agreement - at will, arbitration, IP ownership, trade secrets.