

Controlling the Cost of NY Claims



By William T. McCaffery

Why are New York claims so expensive? Of course, everything in New York is expensive: the cost of living is high, salaries are high, rent is expensive, travel is expensive, etc. These factors, among others, can result in New York attorneys having a higher hourly billing rate, but a higher hourly rate is only a minor factor in the expense associated with New York claims.

Arguably, the biggest contributor to the costs associated with New York claims is the length of time it can take to get a case resolved in the New York courts.

According to the U.S. Department of Justice Office of Justice Programs' November 2013 [Special Report on State Court Organization](#), in 2011 (the latest year for which national statistical data is available), the New York State Supreme Court employed only 263 Supreme Court Justices. (There are also 126 County Court judges in New York, who primarily handle criminal matters). Compare

this number to the number of judges in the primary courts of general jurisdiction in other large states:

- California Superior Court: 1,588
- Florida Circuit Court: 599
- Illinois Circuit Court: 917
- New Jersey Superior Court: 368
- Ohio Court of Common Pleas: 384
- Pennsylvania Court of Common Pleas: 449
- Texas District Court: 456

Furthermore, according to the New York State Unified Court System's [Annual Report of the Chief Administrator of the Courts](#) for calendar year 2012 (the latest statistical year available), 174,424 new civil cases were commenced in 2012 in the New York State Supreme Court alone. (This number does not include *ex parte* applications or uncontested matrimonial actions which added another 279,422 matters to the court's docket.)

Clearly, the dockets of New York judges are far more burdened than the dockets of judges in other states. This volume can result in each case not receiving the attention it might deserve, long delays in motion practice, hours spent in court for every court appearance, and months on the trial calendar awaiting a trial date. Time is money and the world of litigation is no exception; the longer it takes for a case to resolve through litigation, the greater the ultimate cost of the claim will be. In New York, where courts are crowded and the enforcement of deadlines is lax, cases can linger for undue amounts of time, which necessarily results in the high cost of New York claims.

Since the time it takes to navigate a case through the New York courts is a significant factor in the high

cost associated with New York claims, the best means of cost effectively handling a claim in New York is to ensure it is brought to a resolution in the most timely and efficient manner. An early and accurate evaluation of the case is the best way to achieve a swift resolution of the case. If a strong evaluation of the issues of liability and damages can be made at an early stage of the case, an early resolution of those cases can usually follow. There is no reason to litigate a case through the New York court system for two, three, four, or more years only to reach the same conclusion that could have been reached six months into the case. This addition of otherwise unnecessary time and expenses to a case does not diminish the ultimate indemnity expense of the case in any way, but it does inevitably increase the litigation expense of the case.

Of course, not every case can be so quickly evaluated; sometimes discovery is necessary to determine the full extent of a plaintiff's claimed damages; sometimes certain investigation is necessary in order to make a full evaluation of liability issues in the case. The best way to ensure that these cases are resolved in the most timely and efficient way possible is to ensure that each such case has a stated litigation strategy. A litigation strategy should set the course and direction for the case: identify those things that need to get done (and why) in order to put the case in a position for resolution. Absent a defined litigation strategy, cases can meander without direction and linger through years of litigation, adding immeasurable costs of defense to the case, only to ultimately be resolved in a manner that could have been achieved years and untold thousands of dollars earlier.

Every defense lawyer should be mindful of the bottom-line and that a swift and appropriate resolution of the case is a priority, but all too often cases linger for much longer than is otherwise necessary. In order to assess how efficiently cases are being handled, an increasing number of law firms and claims departments are turning to what has become known as "law firm metrics." Simply

stated, law firm metrics are the statistics used to measure the effectiveness of a law firm. Some of the most important metrics used to evaluate efficiency in this regard are:

- Length of time from file open to close (cycle time);
- Average defense cost per matter;
- Average indemnity cost per matter;
- Ratio of defense cost to settlement cost;
- Phase of resolution;
- Average cost per pending case;
- Inventory (total amount of file closures);
- Predictability (budget, result).

An attorney mindful of these bottom line numbers is more likely to make an early evaluation of the case, adhere to a set litigation strategy, and resolve a case in the most timely and efficient manner possible. A claims department mindful of these statistics can compare the effectiveness of their chosen counsel and make litigation decisions accordingly. Tracking these types of law firm metrics can go a long way in reducing litigation costs (legal spend), even in a litigation costly state like New York.



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