

ATTORNEY FEE LITIGATION

Litigation over attorney fees has reached unprecedented levels today, with no signs of abating. Given how expensive litigation disputes have become, the amounts at stake in attorney fee litigation are greater than ever before for clients, law firms, and insurance policyholders. **Bergman & Dacey, Inc.** has developed a particular, wide-ranging expertise in this field.

Bergman & Dacey, Inc. understands the importance of assembling the best, most experienced team for high-stakes attorney fee litigation. In order to prevail, clients, law firms, and policyholders need to present their cases as persuasively as possible to a judge, arbitrator, or jury. **Bergman & Dacey, Inc.** has considerable experience litigating attorney fees and uses the foremost attorney fee experts to achieve successful results. Bergman & Dacey, Inc. uses attorney fee experts who have trained dozens of retired judges in California and who help institutional clients manage tens of millions of dollars in outside counsel billings from major law firms.

HOW BERGMAN & DACEY, INC. CAN ASSIST YOU

A. **Clients, Law Firms, and Insurance Policyholders Can Benefit From Our Expertise.**

Bergman & Dacey, Inc. brings extensive knowledge, experience, and expert resources to attorney fee litigation, including where insurance coverage is involved. Our team stays on the cutting edge of attorney fee issues and can provide advice and legal representation at the trial and appellate levels in state and federal court, including in the following areas:

- . Attorney fee litigation by a client against their former law firm, where there is evidence of overbilling by the law firm.
- . Defending law firms who have been unfairly sued over their fees by a disgruntled former client.
- . Attorney fee litigation by a law firm against a former client, where the client refuses to pay for legal services reasonably performed by the law firm.
- . Public entities who have been sued for attorney fees by prevailing plaintiffs in statutory fee-shifting cases under state or federal law.

- . Large corporations and small businesses who have been sued for attorney fees by prevailing plaintiffs in statutory or contractual fee-shifting cases.
- . Policyholders in Cumis counsel fee arbitrations who are seeking to recover defense attorney fees from their insurance carrier.
- . Policyholders in insurance coverage litigation who are seeking to recover defense attorney fees from their insurance carrier.
- . Defending policyholders against attempts by insurance carriers to apportion and recoup defense attorney fees under *Buss v. Superior Court*.

B. How Bergman & Dacey, Inc. Utilizes Its Attorney Fee Expertise to Assist Clients, Law Firms, and Policyholders.

1. Preliminary 5-Step Expert Case Evaluation.

When we are asked for our assistance regarding an attorney fee dispute, we take a step-by-step approach in order to proceed in the most economical fashion. Our objective is to determine whether it makes more economic sense to litigate the attorney fees in court or arbitration, or to reach a satisfactory settlement at the outset. Here are the steps that we take:

- . evaluating all possible outcomes at trial or arbitration, including the likelihood of success from each possible course of action.
- . evaluating how a judge, arbitrator, or jury is likely to respond to our arguments, and which evidence they would find most compelling.
- . evaluating a large body of federal and state case law and ethical opinions which have adjudicated all kinds of attorney fee issues, to find the most persuasive legal authority.
- . preliminary review of the legal bills at issue, to gain a general awareness about how reasonable (or inflated) the attorney fees might appear to be to a judge, arbitrator, or jury.
- . preparing a possible negotiation strategy, if we can resolve the attorney fee dispute early on from a position of strength.

2. Development and Implementation of an Attorney Fee Litigation Game Plan.

If a client, law firm, or policyholder instructs us to proceed to litigation or arbitration, here are some of the steps that we have found to be essential for a successful outcome:

- Full-scale review/analysis of the attorney fees in dispute.
- For clients, to identify any broad patterns of overbilling in the legal bills.
- For law firms and policyholders, to identify evidence showing that the legal services performed, and the billings themselves, were necessary, cost-efficient, and reasonable.
- Prepare a litigation case budget, including consultant's/expert's fees.
- Obtain and review the law firm's entire work product in the underlying case file.
- Interview the responsible billing attorneys in the underlying case, to learn how they managed and billed the case.
- Prepare a discovery plan, including case file production and necessary depositions.
- Research applicable federal and state case law on attorney fee issues.
- Research any hourly rate awards or attorney fee awards that other courts or arbitrators have rendered to the law firm involved.
- Retain the best possible attorney fee expert to testify, or to assist at mediations and settlement negotiations.
- Present the case to the judge, arbitrator, or jury in the most straightforward, sensible manner, without over-complicating it.