

JUSTICE THEATER

LITIGATION AND THE
RESOLUTION OF YOUR DISPUTES

Justice is a
process, not an
outcome.



NOTIFICATIONS
RESEARCH
DISCOVERY
File Review
Interrogatories
Depositions
TRIAL
APPEAL 1
APPEAL 2
APPEAL 3

And it's expensive.

**Staff Time
Attorney's Fees
Expert's Fees**



ACT I, Notifications



**IT STARTS WITH SERVICE
OF A DIFFERENT KIND**



**YOU
ARE
BEING
SUED
PERSONALLY
BECAUSE
YOU ARE
PERSONALLY
LIABLE**

FOR WHAT?

FOR WHAT?
Professional Negligence

FOR WHAT?
Professional Negligence
Breach of Contract

FOR WHAT?
Professional Negligence
Breach of Contract
Breach of Warranty

FOR WHAT?
Professional Negligence
Breach of Contract
Breach of Warranty
Negligent Misrepresentation

FOR WHAT?

Professional Negligence
Breach of Contract
Breach of Warranty
Negligent Misrepresentation
Consumer-Protection Law Violation

FOR WHAT?

Professional Negligence
Breach of Contract
Breach of Warranty
Negligent Misrepresentation
Consumer-Protection Law Violation
Gross Negligence

FOR WHAT?

Professional Negligence
Breach of Contract
Breach of Warranty
Negligent Misrepresentation
Consumer-Protection Law Violation
Gross Negligence
Intentional Negligence

FOR WHAT?

Professional Negligence
Breach of Contract
Breach of Warranty
Negligent Misrepresentation
Consumer-Protection Law Violation
Gross Negligence
Intentional Negligence
Fraud

FOR HOW MUCH?

\$5 MILLION?!

WHY SO MUCH?

\$5 MILLION?!

**WHAT'S THE FIRST
THING YOU DO?**

CALL YOUR LAWYER



**AND WHAT DOES YOUR
LAWYER TELL YOU?**



**CALL YOUR
INSURANCE COMPANY**





• Am I covered for this?



- Am I covered for this?
- What's my deductible?



- Am I covered for this?
- What's my deductible?
- That much?



- Am I covered for this?
- What's my deductible?
- That much?
- What do I do next?



**CALL THE LAWYER
WE PICK FOR YOU**



BUT I LIKE MINE!



**OURS IS MORE
EXPERIENCED.**

**OURS IS MORE
EXPERIENCED.
USE HER OR YOU'RE
ON YOUR OWN!**

**THUS
BEGINS
YOUR
JOURNEY**



ACT II, Research



Who performs the research?



Who performs the research?

Typically:

- a project manager (the original if you still employ),



**Who performs the research?
AND IF NOT STILL EMPLOYED?**



Who performs the research?

Typically:

- a project manager (the original if you still employ),
- a project professional,



Who performs the research?

Typically:

- a project manager (the original if you still employ),
- a project professional,
- a clerical worker,



Who performs the research?

Typically:

- a project manager (the original if you still employ),
- a project professional,
- a clerical worker, and



Who performs the research?

Typically:

- a project manager (the original if you still employ),
- a project professional,
- a clerical worker, and
- a principal.

Who performs the research?

THE A TEAM

- a project manager (the original if you still employ),
- a project professional,
- a clerical worker, and
- a principal.

And the A Team's Billable Rate Is?



Project Manager: \$150/hr.



**Project Manager: \$150/hr.
Project Professional: \$130/hr.**



**Project Manager: \$150/hr.
Project Professional: \$130/hr.
Clerical Worker: \$75/hr.**



Project Manager: \$150/hr.
Project Professional: \$130/hr.
Clerical Worker: \$75/hr.
Principal: \$250/hr.



• Meet with the lawyer.



• Meet with the lawyer.

\$375/hr.



- Meet with the lawyer.
- Meet the associate.



- Meet with the lawyer.
- Meet the associate.



\$200/hr.

- Meet with the lawyer.
- Meet the associate.
- Retain an expert.



\$350/hr.

- Meet with the lawyer.
- Meet the associate.
- Retain an expert.
- Prepare a chronology.



- Meet with the lawyer.
- Meet the associate.
- Retain an expert.
- Prepare a chronology.
- Have the lawyer review it.



- Meet with the lawyer.
- Meet the associate.
- Retain an expert.
- Prepare a chronology.
- Have the lawyer review it.
- Perform research.



- Meet with the lawyer.
- Meet the associate.
- Retain an expert.
- Prepare a chronology.
- Have the lawyer review it.
- Perform research.



FIND EVERY PROJECT-RELATED E-MAIL ISSUED.



**FIND EVERY PROJECT-RELATED E-MAIL ISSUED.
BY ANYONE TO ANYONE.**



FIND EVERY PROJECT-RELATED E-MAIL ISSUED. BY ANYONE TO ANYONE.



AND EVERY TEXT



- **Meet with the lawyer.**
- **Meet the associate.**
- **Retain an expert.**
- **Prepare a chronology.**
- **Have the lawyer review it.**
- **Perform more research.**
- **Prepare for discovery.**

- Meet with the lawyer.
- Meet the associate.
- Retain an expert.
- Prepare a chronology.
- Have the lawyer review it.
- Perform more research.
- Prepare for discovery.

**AND EVERYTHING YOU'RE
DOING, THEY'RE DOING**

**AND EVERYTHING YOU'RE
DOING, THEY'RE DOING**

THEIR LAWYER

**AND EVERYTHING YOU'RE
DOING, THEY'RE DOING**



THEIR ASSOCIATE

**AND EVERYTHING YOU'RE
DOING, THEY'RE DOING**



THEIR EXPERT

**How Much Have You Spent
to Date?**



A Team: \$32,500



**A Team: \$32,500
Attorney: \$7,500**



**A Team: \$32,500
Attorney: \$7,500
Associate: \$10,000**



A Team: \$32,500
Attorney: \$7,500
Associate: \$10,000
Expert: \$9,000



A Team: \$32,500
Attorney: \$7,500
Associate: \$10,000
Expert: \$9,000



AND TWO MONTHS

ACT II, Discovery



Discovery gives litigants access to nonprivileged material facts in order to expedite the process and promote pretrial settlement.

Discovery comprises three elements:

**Discovery comprises three elements:
File Review**

**Discovery comprises
three elements:
File Review
Interrogatories**

**Discovery comprises
three elements:
File Review
Interrogatories
Depositions**

ACT II, Discovery
Scene 1: File Review



The A Team, the expert, the associate, and the attorney get together to identify the types of files they want to review.



And those are the files your attorney subpoenas.



YOUR FILES ARE SUBPOENAED, TOO.

**YOUR LEGAL TEAM
REVIEWS EVERYTHING
BEFORE IT'S SENT.**



**YOUR LEGAL TEAM
REVIEWS EVERYTHING
BEFORE IT'S SENT.**



**SOME ITEMS ARE WITHHELD.
YOUR LEGAL TEAM IDENTIFIES
AND EXPLAINS EACH TO
OPPOSING COUNSEL.**



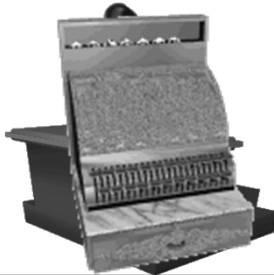
**SOME ITEMS ARE WITHHELD.
YOUR LEGAL TEAM IDENTIFIES
AND EXPLAINS EACH TO
OPPOSING COUNSEL.**



**DOING SO MAY RESULT IN A
REQUEST FOR COURT
INTERVENTION.**



**DOING SO MAY RESULT IN A
REQUEST FOR COURT
INTERVENTION.**



**Then your lawyer
receives the opposition's
files.**

Not happy.

**BEING SO MAY RESULT IN A
REQUEST FOR COURT
INTERVENTION.**



THE JUDGE LISTENS



THEN DELIVERS A VERDICT THE LAWYERS MUST OBEY



Once all the opposition's documents are on hand, they're reviewed by the A Team, the expert, and the associate.



Once all the opposition's documents are on hand, they're reviewed by the A Team, the expert, and the associate. They update the chronology.



Once the documents are on hand, they're reviewed by the A Team, the expert, and the associate. They update the chronology.



Then the attorney reviews it, asks questions



**Then the attorney reviews it,
asks questions, gets answers,**



**Then the attorney reviews it,
asks questions, gets answers,
and prepares for the next step.**



**How Much Have You Spent
to Date?**



A Team: \$77,000



**A Team: \$77,000
Attorney: \$57,500**



**A Team: \$77,000
Attorney: \$57,500
Associate: \$40,000**



A Team: \$77,000
Attorney: \$57,500
Associate: \$40,000
Expert: \$23,000



A Team: \$77,000
Attorney: \$57,500
Associate: \$40,000
Expert: \$23,000



AND SIX MONTHS

ACT II, Discovery

Scene 2: Interrogatories





Interrogatories are written questions that the opposition must respond to in writing, under oath.

“Prepare some good questions,” the attorney tells the A Team, expert, and associate.



And that’s exactly what they try to do, using the chronology and all the additional research conducted to date.



The attorney reviews and modifies the questions, requests feedback, makes a few more tweaks, and sends them off to the other side.



THEY GET THERE JUST BEFORE OPPOSING COUNSEL COMPLETES AND ISSUES HIS.



OPPOSING COUNSEL REVIEWS OUR QUESTIONS.



**OPPOSING COUNSEL
IS DISPLEASED.**

HE EATS THE MESSENGER..



**"THEY'RE GOING ON A
FISHING EXPEDITION!" he
bellows.**

And off to the courthouse he
rides.

**MEANWHILE,
BACK
AT THE
RANCH**

Opposing counsel's
interrogatories have
arrived.



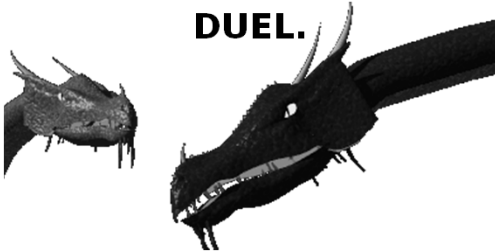
**Our attorney,
too, is upset.**



**"THEY'RE GOING ON A
FISHING EXPEDITION!" she
bellows.**

**And off to the courthouse she
rides.**

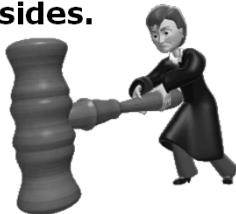
**TO MEET HER
COUNTERPART FOR THE
DUEL.**



**Your staff roots your lawyer on
because it's their new equipment
and bonuses that are at stake.**



**The judge makes her ruling
about who can ask what and
it's back to the drawing board
for both sides.**



**OPPOSING COUNSEL
REVISES HIS
INTERROGATORIES.**



**Your lawyer revises yours and
says to the A Team, the
expert, and associate...**



**"Now you all take a crack
at responding to the
questions."**



So back you go, to answer the questions as best as you possibly can.



So back you go, to answer the questions as best as you possibly can.



The lawyer reviews what you've put together



The lawyer reviews what you've put together, noting that "Yes" and "No" often mean the same thing.



The lawyer reviews what you've put together, noting that "Yes" and "No" often mean the same thing. Kinda.



Then the attorney makes changes and sends the completed document on its way.



**Just as opposing
counsel's answers arrive.**



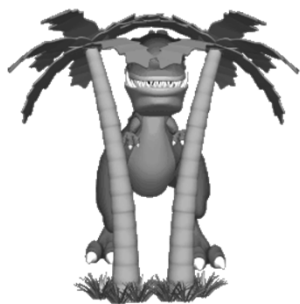
**"These answers aren't
responsive. We're going
to fight this in court."
And awaaaay she goes.**

**"These answers aren't
responsive. We're going
to fight this in court."
And awaaaay she goes.
With your money close
behind.**

**AND ON THE OTHER
SIDE OF TOWN...**



DISPLEASED.



**And off to the courthouse he
and his associate go.**

**AND YET AGAIN THE TWO
ADVOCATES MAKE THEIR
POINTS BEFORE THE JUDGE.**



**While your staff continues
to root your lawyer on.**



Some more so than others.



And yet again, the judge makes her ruling and it's back to the drawing board for both sides, to provide better answers.



So the A Team, the expert, the associate, and the attorney convene one more time, to provide more forthcoming answers...



While the other side does much the same.



While the other side does much the same.



While the other side does much the same. But different.



Ultimately, both sides get it done.



**How Much Have You Spent
to Date?**



A Team: \$140,000



**A Team: \$140,000
Attorney: \$120,000**



A Team: \$140,000
Attorney: \$120,000
Associate: \$92,000



A Team: \$140,000
Attorney: \$120,000
Associate: \$92,000
Expert: \$85,000



A Team: \$140,000
Attorney: \$120,000
Associate: \$92,000
Expert: \$85,000



AND 14 MONTHS

ACT II, Discovery

Scene 3: Depositions



Depositions comprise oral testimony, given out of court, under oath, before a court reporter, sometimes out of town.

Depositions are often casual and relaxed.

DON'T BE FOOLED.

**Be careful about
what you say.**



**Opposing counsel will seem like a
good, concerned person.**



But if what you say during your deposition differs from what you say at trial...



ARE YOU LYING NOW OR WERE YOU LYING THEN?



"Prepare some questions I can ask their witnesses," the attorney tells the A Team, expert, and associate.



"And while you're at it, figure out the kind of questions they'll be asking us."



And that's exactly what they do. It takes a long time.



The attorney reviews what you've put together, makes changes, and says, "Develop answers for what they'll be asking us."



And you do.

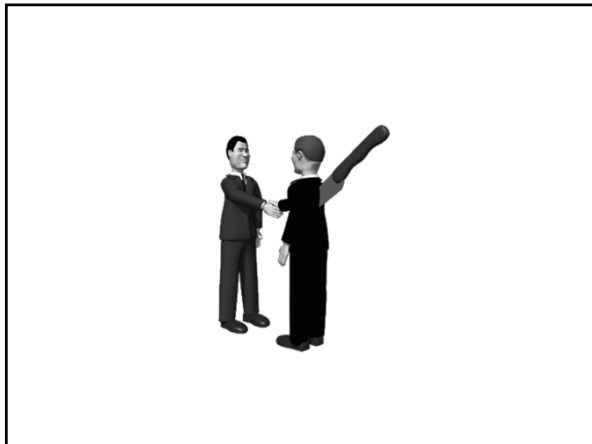


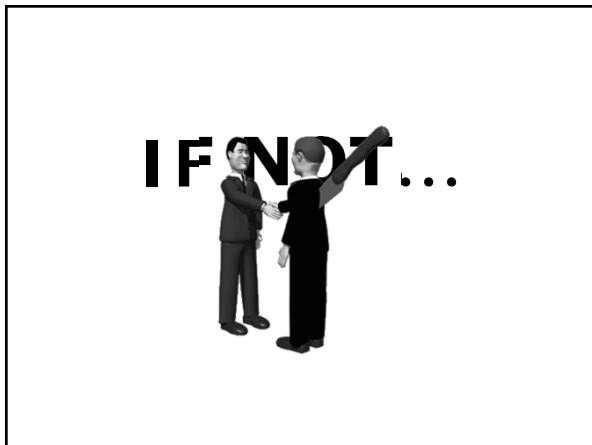
**Again the attorney reviews,
makes changes, and says,
"Time for rehearsals."**



**Again the attorney reviews,
makes changes, and says,
"Time for rehearsals."**









A Team: \$190,000



**A Team: \$190,000
Attorney: \$170,000**



**A Team: \$190,000
Attorney: \$170,000
Associate: \$120,000**



A Team: \$190,000
Attorney: \$170,000
Associate: \$120,000
Expert: \$125,000



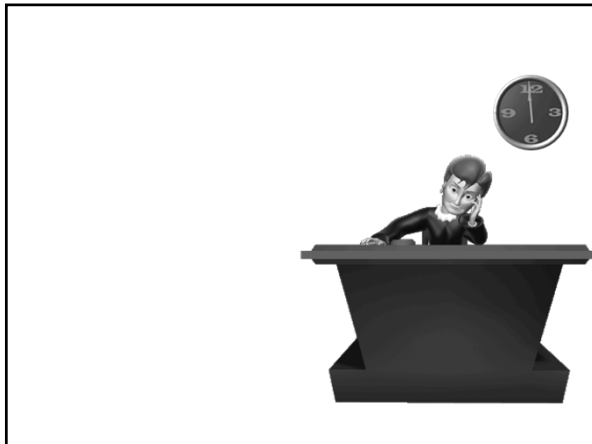
A Team: \$190,000
Attorney: \$170,000
Associate: \$120,000
Expert: \$125,000

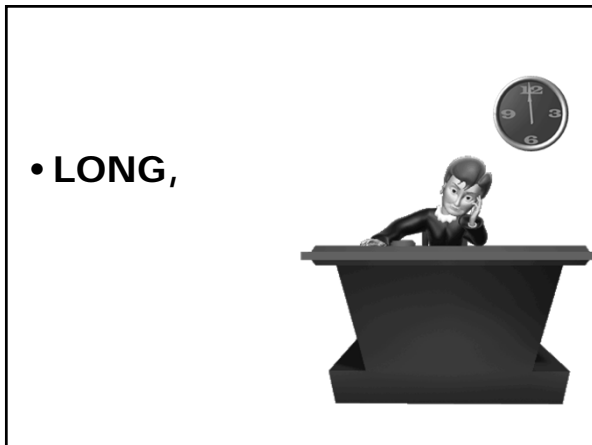


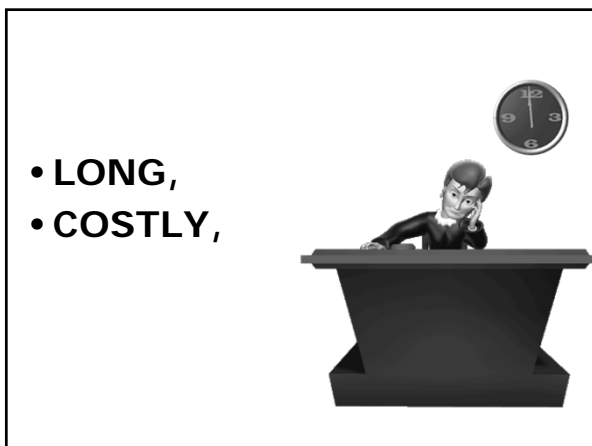
AND TWO YEARS

ACT III, Trial









- LONG,
- COSTLY,
- FRUSTRATING



- LONG,
- COSTLY,
- FRUSTRATING
- UNCERTAIN



**AND IF YOU DON'T
LIKE THE OUTCOME?**

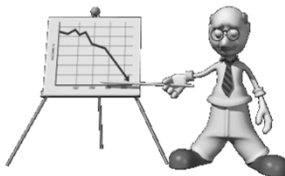


ACT IV, Initial Appeal





**AND IF YOU DON'T
LIKE THE OUTCOME?**

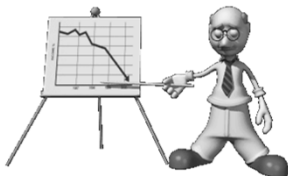


ACT V, Second Appeal



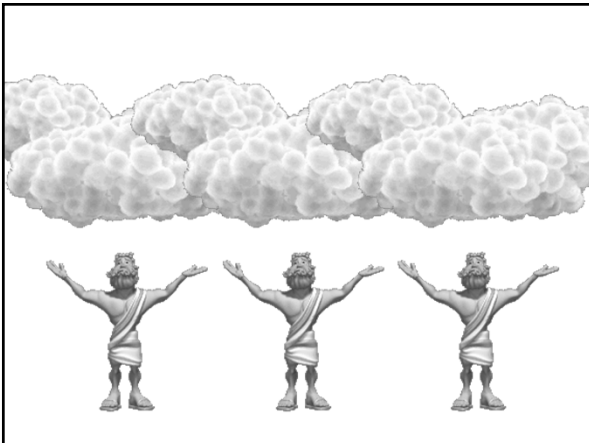


**AND IF YOU DON'T
LIKE THE OUTCOME?**



ACT VI, Third Appeal





**AND IF YOU DON'T
LIKE THE OUTCOME?**



FINALLY, IT'S OVER.

FINALLY, IT'S OVER.

Assuming it's settled just
before trial...

A Team: \$190,000



A Team: \$190,000
Attorney: \$170,000



A Team: \$190,000
Attorney: \$170,000
Associate: \$120,000



A Team: \$190,000
Attorney: \$170,000
Associate: \$120,000
Expert: \$125,000



A Team: \$190,000
Attorney: \$170,000
Associate: \$120,000
Expert: \$125,000



AND 25 MONTHS

A Team: \$190,000
This money – lost billable time – is unrecoverable.

A Team: \$190,000
Attorney: \$170,000

A Team: \$190,000
Attorney: \$170,000
Associate: \$120,000

A Team: \$190,000
Attorney: \$170,000
Associate: \$120,000
Expert: \$125,000

A Team: \$190,000
Attorney: \$170,000
Associate: \$120,000
Expert: \$125,000
The \$415,000 in fees will be paid
by the insurer, less the deductible.



**DON'T
FORGET THE
SETTLEMENT**

**A Team: \$190,000
Attorney: \$170,000
Associate: \$120,000
Expert: \$125,000
Settlement: \$250,000**

**A Team: \$190,000
Attorney: \$170,000
Associate: \$120,000
Expert: \$125,000
Settlement: \$250,000
The \$665,000 in fees and
settlement will be paid by the
insurer, less the deductible.**



**DON'T
FORGET THE
SHATTERED
STAFF
MORALE**



**DON'T
FORGET THE
LOSS OF
PRODUCTIVITY**



**DON'T
FORGET THE
LOSS OF
REPUTATION**



**DON'T
FORGET THE
LOSS OF
A CLIENT NOW
AND FOR THE
FUTURE**



**DON'T
FORGET THE
HIGHER
INSURANCE
PREMIUMS**



**DON'T
FORGET THE
HIGHER
INSURANCE
PREMIUMS**

WHO WINS?

WHO WINS?



THE LAWYERS

WHO WINS?



THE EXPERTS



Questions?

**Just e-mail
john@bachner.com**

Also Scheduled

**April 3, 2013: Gaining Referrals: Their Worth;
Gaining More of Them
(John Bachner)**

**April 17, 2013: Limitation of Liability
(John Bachner)**

Also Scheduled

**ASFE/GBA
SPRING (ANNUAL)
CONFERENCE**
April 25-27, 2013
Charleston, South Carolina

Also Scheduled

**REGISTRATION FOR
FUNDAMENTALS OF
PROFESSIONAL
PRACTICE
CLASS 23**

Call Now!

THANK YOU!