

# **Impact of Litigation on Small Business**

By

**Klemm Analysis Group  
Washington, DC**

for



under contract number SBAHQ-02-M-0514

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*The statements, findings, conclusions, and recommendations found in this study are those of the authors and do not necessarily reflect the views of the Office of Advocacy, the United States Small Business Administration, or the United States government.*

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### Purpose

Litigation costs, unlike other costs of doing business, are seldom estimated on an annual basis. This research attempts to shed light on how small business fares under the constraint of litigation and calculates annual litigation costs.

### Overall Findings

- Litigation is costly to small business owners both in time and money.
- It modifies the way they do business.
- Litigation causes emotional hardship within small firms.

### Highlights

- The impact of litigation on businesses goes well beyond the purely financial impact of legal fees and damages. Most small business owners are invested personally in their businesses; litigation causes not just financial loss, but also substantial emotional hardship, and often changes the tone of the business.
- Many of the small businesses surveyed tried to settle their case prior to trial, but with mixed results. Those surveyed explained that the main reason why settlement failed was that the opposing party refused to meet and negotiate, preferring to go to court. Small business owners indicated they would go to great lengths to stay out of court, which was their major motivation for settlement; an indication that there is a hidden cost to the threat of litigation.
- Financial impacts were mentioned by most study participants. Legal costs for actual litigation ranged from \$3,000 to \$150,000 with approximately one-third of those providing a response under \$10,000. Small business owners felt they had to "recoup" these losses by cutting operating expenses, acquiring new customers or expanding their services to existing customers. Raising prices was not an option, as it would put them at a competitive disadvantage.

- Most companies used business assets to pay the damages. However, in the case of employee complaints, insurance covered some of the damages. Owners mentioned that the payment of damages nearly put them out of business, which affected them for a long period of time as they worked to rebuild the business and recoup their losses.

- Small business owners who were surveyed became more wary of employees and customers as a result of their litigation experience.

### Scope and Methodology

This study was conducted with the help of a survey (OMB # 3245-0345). The researchers used the annual reports Judicial Business of the U.S. Courts, and Federal Court Management Statistics, as they provide useful data on district court caseloads, but do not identify the types of defendants. For example, the reports state that in U.S. District Courts in 2001 there were 302,104 cases filed, 295,308 cases terminated, and 297,265 cases pending with some cases straddling between 2000 and 2001. They also report that the median time from filing to disposition in civil cases was 8.7 months, and from filing to trial was 21.6 months. The research team made use of a micro data set on individual case filings to determine the number of lawsuits filed that involved small businesses.

The research team used the PACER (Public Access to Court Electronic Records) system to create a data set of individually filed cases to determine the number and nature of lawsuits involving small businesses. Data on cases filed in U.S. District Courts during the 12-month period, July 2002 through June 2003, was obtained from the PACER system. Members of the research team then determined whether the lawsuit appeared to involve a business as plaintiff or defendant via telephone books, individual business web sites, anywho.com, and directoriesU-SA.com. This sample of cases was also used to select

a subsample of businesses to contact for a telephone interview.

This report was peer-reviewed consistent with Advocacy's data quality guidelines. More information on this process can be obtained by contacting the Director of Economic Research at [advocacy@sba.gov](mailto:advocacy@sba.gov) or (202) 205-6533.

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## **EXECUTIVE SUMMARY**

Faced with an absolute lack of information on the indirect and direct costs of litigation on the decisions made by small business owners/executives, the Small Business Administration Office of Advocacy undertook an initial study of the issues and consequences of litigation on small businesses.

The study methodology began with sampling cases involving businesses that were filed in U.S. District Courts during the period July 2002 to June 2003. It should be noted at this point that while aware that costs also may be incurred in state courts, we limit our analysis to Federal courts. Using online business directories, researchers then attempted to identify the cases that involved at least one “small” business in order to estimate the incidence of litigation matters involving at least one small business.

Researchers talked with small business owners/executives using two formats:

- Group discussion sessions and
- Interviews with owners of small businesses that had been involved in a recent lawsuit.

Although this primary data was not anticipated to be definitive in nature, it provided actual stories to supplement the incidence rates. Such qualitative information, however, provides the colorful fabric required to make the case and lays the foundation for a future extensive study of the indirect and direct costs of litigation on small businesses.

## **GENERAL FINDINGS**

Small business owners are optimists and have been willing to make large sacrifices to avoid becoming involved in a lawsuit. In order to avoid conflict with a client, small business owners often reduce the amount of pending invoices and/or provide additional services at no cost to the particular client

## **FINDINGS FROM THE TELEPHONE INTERVIEWS WITH SMALL BUSINESSES RECENTLY INVOLVED IN A LAWSUIT**

The impact of litigation on their businesses goes well beyond the purely financial impact of legal fees and damages. Because most small business owners are invested in their small businesses, litigation causes not just financial loss, but also substantial emotional hardship, and often changes the tone of the business.

Many of the small businesses tried to settle their case prior to trial, but with mixed results. The main reason why the settlement failed was that the opposing party refused to meet and negotiate, preferring to go to court. Small business owners indicated they would go to great lengths to stay out of court, which was their major motivation for settlement; a further indication that there is also a hidden cost in seeking to avoid litigation not explored here.

Financial impacts were mentioned by most study participants. Legal costs for actual litigation ranged from \$3,000 to \$150,000 with approximately one-third of those providing a response under \$10,000. Small business owners felt they had to “recoup” these losses by cutting operating expenses, acquiring new customers or expanding their services to existing customers. Raising prices was not an option, as it would put them at a competitive disadvantage vis-à-vis their competitors.

Most companies used business assets to pay the damages. However, in the case of employee complaints, insurance covered some of the damages. Owners mentioned that the payment of damages nearly put them out of business, which affected them for a long period of time as they worked to rebuild the business and recoup their losses.

With small reserves, the amounts for litigation caused a huge burden to the small business owners.

## **FINDINGS FROM THE SMALL GROUP DISCUSSIONS**

The issues presented to the attendees of the discussion groups were very similar to those that would be involved with an actual lawsuit. The common sentiment among all participating small business owners was that the legal aspects of conducting business were a necessary chore.

Although businesses wanted to settle issues without having to pursue legal means, there was particular concern from some service-oriented companies regarding contracts being unenforceable. This was particularly a concern of sales or service providers whose employees took clients with them when they left the company and moved to another one. It was difficult to enforce non-compete clauses signed by employees without causing potential damage to the reputation of the company and without incurring expenses that may not have been worth the value of the lost customer. Companies did not pursue the breach of contract and absorbed the loss of their customers.

## **SYNTHESIZED FINDINGS FROM SMALL GROUP DISCUSSIONS AND TELEPHONE INTERVIEWS WITH SMALL BUSINESS OWNERS**

The research team classified all of the potential or actual litigation issues mentioned by the small business owners into three areas.

### **1. Employee complaints** – EEOC complaints, workers compensation claims, employee theft

Study participants commented that some of the complaints were due to employee negligence but that the employee filed claims and/or made demands hoping there would be a financial settlement or an increased level of responsibility/salary to close the matter.

### **2. Business-specific problems/claims**

Issues of intellectual property were mentioned by software and technology companies. Issues of customers blaming the contractor for structural problems or results the client could not initially envision were mentioned by small construction companies.

### **3. Customer satisfaction**

All small businesses are concerned with customer satisfaction. Nearly all rely on word of mouth to obtain clients. Optimists, small business owners try to avoid litigation by either reducing the invoice or providing additional services to alleviate the customer's concern even if the customer is known to be incorrect.

## CONCLUSIONS

Study participants were asked what lessons they learned from either potential or actual lawsuits. A synopsis of the responses follows which suggests small business owners lost some of their naivety as a result of actual or threatened lawsuits.

- Make sure to address all complaints, no matter how small, in a timely manner;
- Be less trusting of employees, customers and other companies;
- Exert a tighter control on the firm (and owner)'s assets and how the business is actually run on a daily basis;
- Insurance is mandatory and make sure employees are bonded;
- Realize that no one can avoid lawsuits so be as careful as possible;
- Be more careful with paperwork to ensure the business/owner is covered--document everything no matter how small a complaint or problem;
- Make sure all required EEOC posters are posted--check to make sure that they have not been removed;
- Be less trusting and have tighter control on intellectual property.

## **I. Introduction**

Faced with a lack of information on the indirect and direct costs of litigation on the decisions made by small business owners/executives, the Small Business Administration Office of Advocacy undertook an initial study of the issues and consequences of litigation on small businesses.

Data relevant to estimating the incidence rates was difficult to obtain due to the extensive amount of manual labor required to determine the size of the firms involved in the sampling of case files. Often the same name was found in various states throughout the country and the firms were involved in lawsuits in different venues than where they were located. Data on the impact of threatened litigation was only able to be obtained via direct interviews with the business owners/executives.

Although this primary data was not anticipated to be definitive in nature, it provided actual stories to supplement the incidence rates. Such qualitative information is useful and lays the foundation for a future extensive study of the indirect and direct costs of litigation on small businesses.

The information learned from this study regarding the types and scale of litigation against small businesses was also anticipated to be useful when designing educational programs for small businesses. Actual experiences of small business owners might help other small business owners avoid litigation and its consequences by assisting them in setting up improved business infrastructure and/or quality control procedures. As the results presented here are derived from contacting a few small business owners, use of the findings should be viewed as if derived from a series of case studies.

The remainder of the study is organized as follows: Section II provides a review of the existing literature and some background; Section III discusses the data; Section IV discusses the survey and its results; Section V lays out the findings from the case studies; and Section VI provides some concluding remarks.

## II. BACKGROUND AND REVIEW OF THE LITERATURE

According to the Office of Advocacy, there were 23.7 million businesses in the United States in 2003, of which 99.7 percent were small firms with fewer than 500 employees. During 2001, U.S. Census data show there were 5.7 million firms with employees and 17.0 million (75 %) without employees.<sup>1</sup>

During 2000, 2001 and 2002 there were more new firms than firm closures, although closures plus bankruptcies exceeded the number of new firms during each year.<sup>2</sup>

Small businesses are often classified as “small” according to the number of employees or annual sales. The Office of Advocacy defines a small business for research purposes as an independent business having fewer than 500 employees.<sup>3</sup> The Federal Government uses annual revenue to classify “small businesses” depending on the type of business, as defined by the North American Industry Classification System. The annual revenue limits for establishment as a small business have ranged from less than \$1 million to over \$20 million.<sup>4</sup>

However defined as “small,” these businesses perform diverse activities from individuals working at home making small quantities of individualized products or professional services to firms employing many part-time or minimum-wage employees. As of 2000, 53 percent of small businesses were based in the home.<sup>5</sup>

Not only do annual sales differ between the various types of businesses, whether considered small or large, but also the required infrastructure, human resources and accounting functions. A sole proprietor certainly has the simplest type of organization, but lacks back-up support if external diversions like litigation demand his or her energy, funds and time.

Litigation is significant for small businesses because of the lack of infrastructure required to handle such diversions from daily operations. For most small businesses, which survive on small profit margins, litigation costs can prove disastrous, if not fatal. An average civil case can cost \$50,000 to \$100,000 to litigate through trial exclusive of appeals and any judgment.<sup>6</sup> While insurance industry estimates have placed the direct cost of tort litigation in the United States at nearly \$233 billion during 2002, or 2.23 percent of Gross Domestic Product, very little is known about either the number of tort or other types of cases filed against small businesses specifically or the expenses or effects of such litigation. The

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<sup>1</sup> See <http://app1.sba.gov/faqs/faqindex.cfm?areaID=24>, Question 4: How many small businesses are there?

<sup>2</sup> See <http://app1.sba.gov/faqs/faqindex.cfm?areaID=24>, Question 5: How many small businesses open and close year?

<sup>3</sup> See <http://app1.sba.gov/faqs/faqindex.cfm?areaID=24>, Question 1: What is a small business?

<sup>4</sup> See “Small Business Size Standards Matched to SIC Codes Effective through September 30, 2000,” U.S. Small Business Administration, reference on August 21, 2002 from [www.sba.gov/regulations/siccodes/siccodes.html](http://www.sba.gov/regulations/siccodes/siccodes.html). Examples of industries and corresponding size standards: Agricultural Crop Production - \$0.5 million, Business Services – \$5.0 million, Computer Software Services – \$18.0 million, Building Construction – \$27.5 million.

<sup>5</sup> See Pratt, 2000, “Home-Based Businesses: The Hidden Economy.” Washington, DC: U.S. Small Business Administration, Office of Advocacy. See <http://app1.sba.gov/faqs/faqindex.cfm?areaID=24>, Question 2: How important are small businesses to the U.S. economy?

<sup>6</sup> See, e.g., “Avoiding Litigation: How to Stay out of the Courthouse,” The Castleman Law Firm, P.C. referenced on August 13, 2002, at [www.castlelaw.com/lit1.htm](http://www.castlelaw.com/lit1.htm)

insurance industry estimates are not reported separately for small businesses, and, even if they were, would be questionably reliable because many small businesses are uninsured or underinsured.<sup>7</sup>

Litigation expenses borne by businesses, including judgments, settlements and attorneys' fees, are generally tax deductible and, in fact, can be expensed in most cases. However, the time cost and lost production of a small business owner is not deductible. A small business owner is likely to be extensively involved in all of his or her company's litigation as investigator, witness, custodian of documents, contact person with attorneys and many other roles. The time the owner spends is time taken away from running the business and such lost time can have devastating consequences. There is no reporting requirement for such expenses and there are no reliable periodic surveys of small businesses that record such costs or even the incidence of litigation in the small business sector. The only estimates and information available are anecdotal and sporadic. It is possible that future research could use tax data from small business owners to attempt to estimate such costs.

### III. DATA

The data and reports available on the volume and type of cases filed in federal and state courts are insufficient to identify either small businesses or litigation costs. Data from U.S. District Courts (such as the federal trial courts), are reported to the Administrative Office of the U.S. Courts. However, the data collected from the uniform case tracking forms used in district courts, are not sufficient to identify the type of defendant. The annual reports *Judicial Business of the U.S. Courts*, and *Federal Court Management Statistics* provide useful data on district court caseloads, but do not identify the types of defendants.<sup>8</sup> For example, the reports state that in U.S. District Courts in 2001 there were 302,104 cases filed, 295,308 cases terminated, and 297,265 cases pending with some cases straddling between 2000 and 2001. They also report that the median time from filing to disposition in civil cases was 8.7 months, and from filing to trial was 21.6 months.<sup>9</sup>

The U.S. Bureau of Justice Statistics (BJS) conducts periodic data collection from case files of state courts representing the 75 largest metropolitan areas in the country. However, beginning with its 1996 survey, the BJS collected data only for tort, contract and real estate cases that went to trial. The 1992 BJS survey included all tort, real estate and contract cases. For the samples cases, court staff coded the information in the case files to capture variables of interest such as type of case, type of plaintiff, type of defendant, case disposition, length of time to disposition, and verdict, if tried to a verdict. While this 1992 study provided valuable information about the nature of litigation in state courts, it is not especially helpful to the task at hand because it does not identify the defendant by size. For example, the BJS report estimated that of the 764,008 cases terminating in 1992 in the 75 largest counties:

- An estimated 366,336 were contract cases, approximately 56 percent of which were filed against businesses;<sup>10</sup> and

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<sup>7</sup> See Tillinghast-Towers Perrin, "U.S. Tort Costs: 2003 Update--Trends and Findings on the Costs of the U.S. Tort System," February 2003; Council of Economic Advisors, "Who Pays for Tort Liability Claims? An Economic Analysis of the U.S. Liability System," April 2002.

<sup>8</sup> [www.uscourts.gov/judbususc/judbus.html](http://www.uscourts.gov/judbususc/judbus.html) and [www.uscourts.gov/fcmstat/index.html](http://www.uscourts.gov/fcmstat/index.html), and then click on the appropriate annual reports or data tables

<sup>9</sup> The fact that the vast majority of civil cases never get to trial, due to settlement or dismissal, explains the shorter times from filing to disposition than from filing to trial.

<sup>10</sup> Carol J. DeFrances *et al.*, "Civil Justice Survey of State Courts, 1992: Contract Cases in Large Counties." (Bureau of Justice Statistics, February 1996) at 2 (Table 1) and 8 (unnumbered table).

- An estimated 378,314 were tort cases, approximately 40 percent of which were filed against businesses.<sup>11</sup>
- The remaining 19,358 were real estate cases, without an estimate of the number filed against businesses.

The first step toward a better understanding of the burden litigation places on the small business sector is estimating the number and nature of cases filed against small businesses in federal and state courts. To that end, the research team made use of a micro data set on individual case filings to determine the number of lawsuits filed that involved small businesses.

The research team used the PACER (Public Access to Court Electronic Records)<sup>12</sup> system to create a data set of individually filed cases to determine the number and nature of lawsuits involving small businesses. Data on cases filed in U.S. District Courts during the 12-month period, July 2002 through June 2003, was obtained from the PACER system. Members of the research team then determined whether the lawsuit appeared to involve a business as plaintiff or defendant via telephone books, individual business web sites, anywho.com, and directoriesUSA.com. This sample of cases was also used to select a sub-sample of businesses to contact for a telephone interview.

## **INCIDENCE OF LAWSUITS INVOLVING SMALL BUSINESSES**

To estimate the incidence of lawsuits involving small businesses, the research team used PACER to draw a sample of civil cases filed in U.S. District Courts for use in identifying cases filed against small businesses. Appendix I is a document that describes the options considered and the final recommended approach to the use of the PACER system to estimate the frequency of lawsuits against small businesses, including sampling issues. The recommended approach was implemented during the execution of the project.

The basic design choice was to sample a small number of cases and utilize the full amount of information per case available through both the U.S. Party/Case Index, and each U.S. District Court's PACER system, or to draw a larger sample and rely primarily on the more limited basic case information in the U.S. Party/Case Index. Primarily for cost reasons, the research team selected the second approach: draw a larger sample and rely primarily on the basic information from the U.S. Party/Case Index.

A small subset of information from each newly filed case is transferred to the U.S. Party/Case Index each night and kept on the system for some time after cases are disposed of by the courts. The system serves as a locator index for PACER. Only six district courts do not participate in the national index, and these constitute a very small fraction of all cases.<sup>13</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> Docket and case information on cases filed in U.S. District Courts is available electronically through PACER (Public Access to Court Electronic Records). PACER is part of an effort by the U.S. Federal Court system to provide the public easy access to court information. The PACER systems are in place through internet access in all U.S. District Courts. Currently approximately 82 of the 94 U.S. District Courts have high-speed internet access to PACER; the remaining have dial-up access. A current list is available at <http://pacer.psc.uscourts.gov/cgi-bin/links.pl>

<sup>13</sup> The non-participating district courts include Alaska, Arkansas Western, Guam, Idaho, Indiana Southern and Northern Mariana Islands. See <http://pacer.psc.uscourts.gov/cgi-bin/miss-court.pl>. Although New Mexico is not on the list, the state does not have a PACER web site.

From the U.S. Party/Case Index, the research team drew a national sample of cases filed between July 2002 and June 2003 using one randomly selected business day per month. The resulting sample of 11,404 cases represents approximately 4.5 percent of the 245,000 – 260,000 civil cases annually among the 88 U.S. District Courts that participate in the national index.<sup>14</sup>

Table 1 describes these cases by the nature of the lawsuit.

**Table 1**  
**Nature of Lawsuits**  
**Cases Sampled from the PACER System**  
**July 2002 - June 2003**

<i>Nature of Suit</i>	<i>Number of Cases</i>	<i>Percentage of Cases</i>
<b>Contract</b>	1,441	12.6%
<b>Real Property</b>	416	3.7%
<b>Torts</b>	1,764	15.5%
<b>Civil Rights</b>	1,793	15.7%
<b>Labor</b>	848	7.4%
<b>Bankruptcy</b>	172	1.5%
<b>Property Rights</b>	372	3.3%
<b>Other*</b>	4,598	40.3%
<b>Total Cases</b>	11,404	100.0%

\* Includes prisoner petitions, forfeiture/penalty, Federal tax, social security, and other non-classified cases.

The research team then attempted to supplement the data for states that did not participate in the U.S. Party/Case Index (AK, ID, and NM). Unfortunately, since these states also do not have PACER web sites, a random search on filing date directly from these states' databases was not possible.

The sample of 11,404 cases included a small number of records for several states: Arkansas, Maine, Montana, North Dakota, Wyoming, Rhode Island, Delaware, District of Columbia, Nebraska, New Hampshire, Vermont and West Virginia. To get more records for those states an additional sample for the same annual period (July 2002 to June 2003) based on one different business day per month was drawn.

The collection of additional records from these 12 states for this period (one day per month from July 2002 to June 2003) resulted in 698 additional U.S. Party Case/Index case records from a total of 15,349 civil cases filed in the entire U.S. on the selected days. The additional sample of 698 constitutes approximately 4.5 percent of all civil cases filed in the particular states on the selected days over the 12-month period. (This is the same sampling rate of the original 11,404 cases.)

With the supplemental sample the total number of cases sampled was 12,102 cases (11,404 + 698). The case name information in the U.S. Party/Case Index was next used to identify whether the case appeared

<sup>14</sup> As mentioned earlier, a total of 302,104 cases were filed among all U.S. District Courts during 2001. The research team estimates that approximately 280,000 were from the 88 U.S. District Courts participating in PACER.

to involve a business. Manual review of the parties in the cases by members of the research team reduced the total of 12,102 cases to 1,791 cases potentially involving a business.

Table 2 provides the same information as Table 1 for these 1,791 cases apparently involving at least one business. As a result of the sampling rate of approximately 4.5 percent of all filed civil cases for both the initial and supplemental samples, the estimate of 1,791 “business cases” among the 12,102 cases selected from PACER (14.8%) suggests that approximately 45,000 civil cases annually involve a business (14.8% of 302,104 total annual cases).

**Table 2**  
**Nature of Lawsuits**  
**Cases Sampled from the PACER System**

**Eliminating Cases Apparently Not Involving Businesses**  
**July 2002 - June 2003**

<i>Nature of Suit</i>	<i>Number of Cases</i>	<i>Percentage of Cases</i>
<b>Contract</b>	502	28.0%
<b>Real Property</b>	48	2.7%
<b>Torts</b>	335	18.7%
<b>Civil Rights</b>	281	15.7%
<b>Labor</b>	211	11.8%
<b>Bankruptcy</b>	32	1.8%
<b>Property Rights</b>	150	8.4%
<b>Other*</b>	232	13.0%
<b>Total Cases</b>	1,791	100.0%

\* Includes prisoner petitions, forfeiture/penalty, Federal tax, social security, and other non-classified cases.

The 1,791 cases involved a total of 2,517 unique firms (1.4 firms per case, on average). Table 3 provides the same information as Table 2 for these 2,517 firms involved in the 1,791 cases apparently involving at least one business. Comparing Tables 2 and 3 shows that the nature of the lawsuits is similar whether the lawsuit involves one or more businesses, with contract matters the most prevalent nature of the lawsuits (approximately 30%). Comparing Tables 1 and 2, it is clear that the nature of business lawsuits differs from all lawsuits (Table 1 shows 40.3% of the lawsuits classified as “other” and Table 2 shows 13.0%).

**Table 3**  
**Nature of Lawsuits**  
**2,517 Firms Associated with 1,791 Cases of Table 2**  
**Cases Sampled from the PACER System**  
**July 2002 - June 2003**

<i>Nature of Suit</i>	<i>Number of Cases</i>	<i>Percentage of Firms</i>
<b>Contract</b>	790	31.4%
<b>Real Property</b>	56	2.2%
<b>Torts</b>	420	16.7%
<b>Civil Rights</b>	332	13.2%
<b>Labor</b>	278	11.0%
<b>Bankruptcy</b>	47	1.9%
<b>Property Rights</b>	272	10.8%
<b>Other*</b>	322	12.8%
<b>Total Firms (1,791 Cases)</b>	2,517	100.0%

\* Includes prisoner petitions, forfeiture/penalty, Federal tax, social security, and other non-classified cases.

Researchers then needed to determine whether the 2,517 firms were small businesses. DirectoriesUSA.com was contracted to append the firm size, annual revenue, address, and phone number to the file created from the PACER system for the 2,517 firms. After many discussions with the directoriesUSA.com programmers as to how to select from among the “up to 15” available firms/locations that matched many of the 2,517 firm names, researchers determined it would be best to purchase the on-line look-up capability from directoriesUSA.com and look up firms on an individual basis.

The research team sampled 139 firms from among the 2,517 firms described in Table 4 to look up individually using directoriesUSA.com.<sup>15</sup> They also looked up the 139 firms using Internet-based telephone directories (for example, anywho.com) to determine if a telephone number was associated with the firm. A total of 22 of the 139 sampled firm names (15.8%) were not located in directoriesUSA.com and anywho.com, which suggests that these firms were no longer in business as of June 2004 (within two years of the lawsuit). This “litigation survival rate,” 15.8 percent, is lower than the more general survival rates in other Advocacy research: that one-third of new employers survive at least two years, and about 75 percent of those surviving the first two years do survive the next two years (75% of 33% is approximately 25%).<sup>16</sup> Additional web research suggested that one or two of these firms might have been a large firm.

The remaining 117 firm names generated a total of 222 firms/firm locations (directoriesUSA.com provides up to three locations/name permutations per firm name lookup).

<sup>15</sup> The sample of 139 firms included all firms from states with at most three firms and only a sample of three firms from states with more than three firms among the 2,517.

<sup>16</sup> See <http://app1.sba.gov/faqs/gaqindex/cfm?areaID=24>, Question 8: What is the survival rate for new firms?

**Table 4**  
**Type of Establishment from Sample**  
**Cases Sampled from PACER System**  
**July 2002-June 2003**

Establishment	Firms/Firm Locations	Percentage of Firms
Small firm (less than 50 employees <sup>17</sup> )	117	52.7%
Chain/branch office	44	19.8
Large firm (50 + employees)	53	23.9
Unknown size details	8	3.6
Total firms/firm locations	222	100.0%

Slightly over half (52.7%) of the firms/firm locations were businesses with fewer than 50 employees (117 of 214).

The nature of the lawsuit did not seem to vary by whether the firm was out of business after the lawsuit or the size of the firm.

Each of the sampled 1,791 business cases involved a total of 2,517 firms (1.4 firms per case, on average). Thus, somewhere approximately 63,000 businesses (small and large) are estimated to be involved in civil cases in any one year (1.4 times 45,000 cases).

The research team believes that 50 (36%) of the 139 firm names looked up manually to determine whether they were a small business were, in fact, small businesses with less than 50 employees:

- 20 of the 22 firms out of business within 1-2 years of the filed civil case  
plus
- 18 small firms matched within the same state as the case filing  
plus
- 12 small firms matched within another state as the case filing.

The 139 firm names generated 244 firms/firm locations since multiple small firms may be in different locations and branch locations of large firms have the same or very close business names. A total of 117 of the 222 (53%) firm/firm locations found on directoriesUSA.com and anywho.com (22 were not found) had fewer than 50 employees.

The research team believes it is problematic to estimate reliably the percent of firms involved in filed civil cases that have fewer than 50 employees from this initial study. The evidence obtained during the execution of this study (described above) suggests that the estimate falls within a range of 36 to 53 percent. This would then generate an estimate of approximately 30,000 small firms (between 36 and 53 percent of 63,000 businesses) being involved each year in litigation.

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<sup>17</sup> For the purposes of the present study, we adopt a small business definition of less than 50 employees. By doing so, we are focusing on businesses least likely to have dedicated legal resources.

#### IV. SURVEY AND RESULTS

To understand the impact of litigation on small businesses, the research team conducted telephone interviews with owners of small businesses that had been involved in a recent case filed in federal or a state court. Further below in Section V, we will address the findings from the discussion groups (case studies).

Researchers synthesized the information obtained in these two approaches to learn about the indirect costs of actual and threatened litigation from the perspective of the small business owner/executive, and the direct costs of disputes that settle or go to trial.

Members of the research team conducted the telephone interviews with small business owners that were identified as having been involved in a recent lawsuit from PACER. A copy of the interview instrument, which was approved by the Office of Management and Budget, is provided in Appendix II.

In order to create a frame of potentially small businesses to interview, team members visually screened the 1,791 cases of Table 2 to approximately 1,000 by eliminating names of known large businesses and more than five names per state or the District of Columbia. They then searched for contact information using online directory assistance services (on-line telephone books). The research team made a total of 295 calls in an attempt to contact 211 businesses from the list.

A total of 40 of the 211 businesses “contacted” (19%) were likely out of business since the phone call resulted in a message that the phone had been disconnected or that the respondent said that the desired firm was no longer in business. Respondents from 66 firms (31%) felt the information they would obtain would not be relevant since they represented a “large” firm.

Respondents from only 18 firms refused to participate, but respondents from 27 other firms may have been passive non-respondents since they asked us to call back later and never felt our calls were made at the “correct time.”

A total of 60 firms provided some information about the firm and/or the recent lawsuit the firm had been involved with. The firms were involved in diverse types of services, retail trade and construction.<sup>18</sup>

Table 5 provides a summary of the characteristics of the firms whose owner or executive participated in the study.

**Table 5**  
**Characteristics of the Businesses Participating in Small Discussion Groups or Telephone Interviews (Based on the Instrument in Appendix II)**

**Question 2.                    Is the business incorporated?**

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<sup>18</sup> Response to Question 1 of the survey instrument in Appendix II, What type of product or service does <<Company>> provide?

Most (100% of the telephone respondents and 80% of the discussion group attendees) represented incorporated businesses.

**Question 3. In what year was the business founded?**

Year founded	Small group Discussion Attendees	Telephone Interview Respondents
1930's - 1960's	0%	29%
1960's	0%	7%
1970's	20%	20%
1980's	35%	22%
1990's	40%	22%
2000's	5%	0%

**Questions 4. Did you found the business yourself, and if not, when and how did you become an owner?**

Most of the businesses were founded by the current owner: two-thirds (67%) of the telephone respondents and 95% of the small group attendees. All remaining firms were either started by the current owner's parents (all discussion group attendees and 87% of telephone respondents) or purchased after having worked in the business (13% of telephone interviews).

**Question 7. Do you have any partners?**

The businesses contacted via telephone were evenly divided (yes 51% /no 49%) on whether the business involved partners. Those with partners involved between 1 to 4 partners

**Question 15. At the time this issue arose (date of discussion group), what was the size of the company in terms of Number of Employees?**

Number Of Employees	Small group Discussion Attendees	Telephone Interview Respondents
Less than 10	40%	22%
11-49	60%	44%
50-250	0%	34%

**Question 15. At the time this issue arose, what was the size of the company in terms of Gross Revenue (telephone respondents only)**

Under \$1 million	8% (17% of businesses responding)
\$1-2 million	8% (17% of businesses responding)
\$2-5 million	13% (25% of businesses responding)
More than \$5 million	22% (42% of businesses responding)
Refused to answer	49%

**Question 8.**

**Does our business have an in-house counsel?**

**Question 16.**

**At the time this issue arose, did you have an attorney on staff?**

**Question 17.**

**If no to Question 16, at the time this issue arose, did you have a relationship with an attorney?**

None of the businesses represented at the group discussions had in-house counsel, although one did previously have in-house counsel. None of the businesses contacted via telephone had in-house counsel at the time of their recent litigation or presently, but most (78%) had an existing relationship with an attorney.

**Question 9.**

**Public records indicate that you were recently involved in the <<Case Name>> litigation.** (telephone interviews only)

The businesses interviewed via the telephone were equally divided between being the plaintiff (49%) and being the defendant (51%) in the discussed recent lawsuit.

## FINDINGS

The impact of litigation on their businesses goes well beyond the purely financial impact of legal fees and damages. Because most small business owners are invested in their small businesses, litigation causes not just financial loss, but also substantial emotional hardship, and often changes the tone of the business.

These initial, and following findings, result from responses to Questions 10 – Question 29 of the Telephone Survey Instrument included in Appendix II. Many respondents augmented their responses to the prepared questions with free-flowing comments that were summarized by the interviewers.

Many of the small businesses tried to settle their case prior to trial, but with mixed results. The main reason why the settlement failed was that the opposing party refused to meet and negotiate, preferring to go to court. Small business owners indicated they would go to great lengths to stay out of court, which was their major motivation for settlement.<sup>19</sup>

Financial impacts were mentioned by most study participants. Legal costs for actual litigation ranged from \$3,000 to \$150,000 with approximately one-third of those providing a response under \$10,000.<sup>20</sup> (One small business incurred no legal costs since the business owner settled the matter himself.) Small business owners felt they had to "recoup" these losses by cutting operating expenses, acquiring new customers or expanding their services to existing customers.

Most companies used business assets to pay the damages. However, in the case of employee complaints, insurance covered some of the damages. Owners mentioned that the payment of damages nearly put them out of business, which affected them for a long period of time as they worked to rebuild the business and recoup their losses.<sup>21</sup>

Respondents indicated that lawyers were necessary, but expensive and not very engaging. The hourly rates for attorneys ranged from \$150 - \$350 per hour (ranges were provided by many respondents since multiple individuals worked on the matters).<sup>22</sup> Business owners learned that when dealing with lawyers it was cost-effective to reduce legal costs by utilizing the firm's staff rather than pay the legal staff to do case-related research or administrative tasks. (Many business owners complained about attorney costs for copying.) Owners learned that the attorneys need more assistance than they appear to need because they are not as integrally involved in the case. Owners learned not to turn the case over to the lawyer and let them run with the case because the attorneys are not as knowledgeable as the owner of the business on critical aspects of the case.<sup>23</sup>

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<sup>19</sup> Information is from responses to Question 11. Did you and the other party try to settle this case before filing with the court? If yes, what were the reasons why the settlement was not successful?

<sup>20</sup> Information is from responses to Question 19. How much do you estimate you paid in legal costs?

<sup>21</sup> Information results from responses to the following questions: Question 21. Did you or your partners have to spend your time working on the case without being paid? Question 22. Did other employees spend time working on the case? Question 23. Were there economic impacts? Question 23a. If yes, what were they? Question 24. Were there other direct impacts of this suit on your business? 24a. If yes, what were they? Question 26. Did you notice any indirect effects of this litigation (loss of customers, damaged reputation, etc.? Question 26a. If yes, what were the effects?

<sup>22</sup> Information is from responses to Question 20. What was your attorney's hourly rate?

<sup>23</sup> The information results from responses to the following questions: Question 21. Did you or your partners have to spend your time working on the case without being paid? Question 22. Did other employees spend time working on the case? Question 23. Were there economic impacts? Question 23a. If yes, what were they? Question 24. Were there other direct impacts of this suit on your business? 24a. If yes, what were they? Question 26. Did you notice any indirect effects of this litigation (loss of customers, damaged reputation, etc.? Question 26a. If yes, what were the effects?

With small reserves, the amounts for litigation caused a huge burden to the small business owners. Examples follow.

- A restaurant owner had to take a loan on her house to pay a settlement for an employment issue in which she had done nothing wrong. She complained that the lawsuit cost the claimants nothing because it was taken on by the EEOC and that there is no action taken against claimants if they make false complaints.
- A construction company is now effectively out of business because it has lost its reputation and bonding in a case where they had built a roof according to an architect's design and because of that design the roof leaked. Even if the roof had been replaced, the design would still have caused it to leak so the construction company could do nothing.
- One owner indicated that, while it might have been possible for him to get more money through longer discussions or court proceedings, he decided to accept a 50/50 settlement with the other party to "get it over with."

## V. CASE STUDIES

The issues presented to the attendees of the discussion groups were very similar to those that would be involved with an actual lawsuit. The common sentiment among all participating small business owners was that the legal aspects of conducting business were a necessary chore.

Although businesses wanted to settle issues without having to pursue legal means, there was particular concern from some service-oriented companies regarding contracts being unenforceable. This was particularly a concern of sales or service providers whose employees took clients with them when they left the company and moved to another one. It was difficult to enforce non-compete clauses signed by employees without causing potential damage to the reputation of the company and without incurring expenses that may not have been worth the value of the lost customer. Companies did not pursue the breach of contract and absorbed the loss of their customers.

The research team classified all of the potential or actual litigation issues mentioned by the small business owners into three areas.

### **1. Employee complaints** – EEOC complaints, workers compensation claims, employee theft

Study participants commented that some of the complaints were due to employee negligence but that the employee filed claims and/or made demands hoping there would be a financial settlement or an increased level of responsibility/salary to close the matter.

### **2. Business-specific problems/claims**

Issues of intellectual property were mentioned by software and technology companies. Issues of customers blaming the contractor for structural problems or results the client could not initially envision were mentioned by small construction companies.

### **3. Customer satisfaction**

Small businesses are concerned with customer satisfaction. Nearly all rely on word of mouth to obtain clients. Optimists, small business owners try to avoid litigation by either reducing the invoice or providing additional services to alleviate the customer's concern even if the customer is known to be incorrect.

## **VI. CONCLUSIONS**

Using the PACER system, the research team was able to create a data set of lawsuits involving businesses, and then manually determine whether the case involved a small business. During the 12 month period from July 2002 through June 2003 a total of 12,102 civil cases were sampled, of which 1,791 cases (14.8% of cases) involved 2,517 firms (1.4 firms per case, on average).

Thus, since approximately 300,000 cases are filed in U.S. District Courts annually, approximately 45,000 cases (14.8% of cases) involve a business and approximately 65,000 businesses (1.4 firms per 45,000 cases involving a business) are involved in these cases.

The research team believes it is problematic to estimate reliably the percent of firms involved in filed civil cases that have fewer than 50 employees from this initial study. The evidence obtained during the execution of this study (described above) suggests that the estimate falls within a range of from 36 to 53 percent. This would then generate an estimate of approximately 30,000 small firms (between 36 and 53 percent of 65,000 businesses) being involved each year in litigation.

Potential or actual litigation affects small businesses in four ways.

### **1. Financial costs**

Financial costs include costs of attorneys, settlement/damage costs, and cost of employee or owner time devoted to the matter.

### **2. Emotional costs**

Potential or actual cases put an emotional strain on the owners which causes a strain on the job with workers and customers.

### **3. Loss of business to competitors**

Publicity (article in the paper, word of mouth) about the problems or specific litigation, inattention of the owner, confusion in the marketplace as to the status of the company and a loss of reputation with current and potential customers generates concern among ongoing and potential clients.

A few small businesses lost their bonding as a result of the actual litigation, which made them unable to fulfill their contracts and secure new contracts.

### **4. Changes to firm structure**

Small business owners become more wary of employees and customers as a result of believed inappropriate allegations. The owners realize they must find better ways to handle complaints, many of which are time consuming and demand increased documentation (formal employee handbook, human resources personnel, improved contracts, increased types and amounts of insurance). Responses to these issues require either actual costs paid to outside consultants or in-house staff, or time of the owner, which puts additional pressure on the owner to solicit new customers and provide services to current customers.

Study participants were asked what lessons they learned from either potential or actual lawsuits. A synopsis of the responses follows which suggests small business owners lost some of their naivety as a result of actual or threatened lawsuits.

- Make sure to address all complaints, no matter how small, in a timely manner;
- Be less trusting of employees, customers and other companies;
- Exert a tighter control on the firm (and owner)'s assets and how the business is actually run on a daily basis;
- Insurance is mandatory and make sure employees are bonded;
- Realize that no one can avoid lawsuits so be as careful as possible;
- Be more careful with paperwork to ensure the business/owner is covered--document everything no matter how small a complaint or problem;
- Make sure all required EEOC posters are posted--check to make sure that they have not been removed;
- Be less trusting and have tighter control on intellectual property.

## Appendix I

### OPTIONS FOR THE USE OF THE PACER SYSTEM TO ESTIMATE THE INCIDENCE OF LAWSUITS INVOLVING SMALL BUSINESSES

The research team considered several options for using the PACER (Public Access to Court Electronic Records) system to draw a sample of civil cases filed in U.S. District Courts for use in identifying cases filed involving small businesses. Largely for cost reasons, the research team decided to draw a relatively larger sample of cases using the basic information from the U.S. Party/Case Index rather than a smaller sample of cases utilizing the full amount of information per case available through both the U.S. Party/Case Index, and each U.S. District Court's PACER system.

A national sample drawn from the U.S. Party/Case Index for cases filed on a randomly-selected one or two days per month over a twelve-month period provided 1,791 cases potentially involving a small business for further inquiry.

#### INTRODUCTION

Obtaining reliable estimates of the number of cases filed against small businesses in federal and state courts requires creative use of case and docket information from the federal and state court systems. The numbers simply could not be drawn from existing tabulations or reports. The research team proposed methodologies to estimate the number and type of cases filed against small businesses in both federal and state courts.

This paper discusses options considered for the use of the PACER system to identify a sample of cases filed in U.S. District Courts. This sample would then serve as the basis of our contacts with small businesses to arrange telephone discussions about their litigation experiences, and also provide an estimate of the frequency and types of cases filed against small businesses in federal trial courts

Docket and case information on cases filed in U.S. District Courts is available electronically through PACER (Public Access to Court Electronic Records).<sup>24</sup> PACER is part of an effort by the U.S. Federal Court system to provide the public easy access to court information. The PACER systems are in place through internet access in all U.S., District Courts. Currently approximately 82 of the 94 U.S. District Courts have high-speed internet access to PACER; the remaining have dial-up access.<sup>25</sup>

The PACER System offers electronic access to case dockets to retrieve information such as:

- A listing of all parties and participants including judges and attorneys
- A compilation of case related information such as cause of action, nature of suit, and dollar demand
- A chronology of dates of case events entered in the case record
- Judgments or case status
- Types of documents filed for certain cases

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<sup>24</sup> See *Public Access to Court Electronic Records User Manual* (updated October 2000) (available online at <http://pacer.psc.uscourts.gov/pacermanaul.pdf>)

<sup>25</sup> A current list is available at <http://pacer.psc.uscourts.gov/cgi-bin/links.pl>

By conducting a court-by-court search, PACER can be used to obtain case and docket information for all cases filed in particular district courts within a specified time interval.

However, there is an even more powerful way to access basic case and docket information across courts without searching each court's PACER database. That is to use the U.S. Party/Case Index, a national index for U.S. District Courts. A small subset of information from each newly filed case is transferred to the index each night and kept on the system for some time after cases are disposed of by the courts. The system serves as a locator index for PACER. Only six district courts do not participate in the national index, and these constitute a very small fraction of all cases.<sup>26</sup>

The data elements available through the U.S. Party/Case Index are limited to:

- Case Name (first plaintiff and first defendant, including abbreviations),
- Court,
- Filing Date,
- Nature of Suit, and
- Closed Date (if closed).

After the initial Party/Case Index search results have been revealed, the user has an option to obtain a list of parties that has each party's full names (however, the list does not identify whether the parties are plaintiffs or defendants).

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<sup>26</sup> The non-participating district courts include Alaska, Arkansas Western, Guam, Idaho, Indiana Southern and Northern Mariana Islands. See <http://pacer.psc.uscourts.gov/cgi-bin/miss-court.pl>

## OPTIONS FOR USING U.S. PARTY/CASE INDEX AND PACER DISTRICT COURT INFORMATION

There are a number of options for using PACER District Court and U.S. Party/Case Index data for designing a sample of information to be drawn from federal courts. Several issues are:

- Data content and the identification of small businesses,
- Sample size and distribution, and
- Sampling frequency.

Given the fixed total project budget, the research team was faced with a fundamental choice between obtaining a large sample of cases with limited information or obtaining a smaller sample of cases with more detailed information. As the sample information is deepened, the project would incur additional processing and labor costs. The U.S. Case/Party Index contains information that could be used to screen out (and possibly screen in) cases based on Case Name or Party Names. The Index could be accessed and its records processed at lower cost (\$0.07 per 54 cases) than the District Court PACER system (about \$0.20 per case). Therefore it made sense to use records from the U.S. Party Case Index to perform an initial screen of cases. The Index could be accessed by a search based on the range of the filing date plus one or more case type codes (a range is permitted).

The Index information could be used to screen out cases with defendants, which based on case name, are likely not small businesses. For the remaining cases, the research team could, if necessary, selectively supplement the files with additional information from the District Courts' PACER systems. A national screening sample of civil cases from the Party/Case Index could be quite large.

The annual reports *Judicial Business of the U.S. Courts*, and *Federal Court Management Statistics* stated that there were 302,104 civil cases filed in U.S. District Courts during 2001.<sup>27</sup> This works out to just over 1,000 cases for each day the courts are open (i.e., excluding weekends and federal holidays). The research team confirmed this total by drawing a national sample of all civil cases filed in PACER-participating U.S. District courts on November 15, 2002 --there were 1,059 such cases on November 15, 2002. The simplest sample is a national sample drawn for randomly selected filing dates and the cost of sampling is quite low (\$0.07 per page with output formatted as 54 cases per page).

### *Identification of Small Business Defendants from the Party/Case Index*

One possibility is to use the Party/Case Index information without supplementation to identify small businesses. This would rely principally on the Case Name information for the first-named defendant and the identity of the court to identify the business. There are several limitations with this restricted information approach, but with a very limited budget, this is quite reasonable. First, this would miss sole proprietors who are sued in their own names. Second, it would miss all defendants other than the first named-defendant. Third, it would require deciphering abbreviations in the defendant's name. Before adopting this approach, however, it was worth considering whether other options could improve the identification of small businesses by using more information either from the Index or from PACER.

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<sup>27</sup> [www.uscourts.gov/judbususc/judbus.html](http://www.uscourts.gov/judbususc/judbus.html) and [www.uscourts.gov/fcmstat/index.html](http://www.uscourts.gov/fcmstat/index.html), and then click on the appropriate annual reports or data tables

### ***Use of Supplemental Full Names Record***

In addition to providing Case Name, the Party/Case Index also provides the user an option of clicking on the Case Name and moving to a record listing the full name of each party (in alphabetical order) but without identifying the named parties as defendant or plaintiff. With some ambiguity (if parties have the same last name), this supplemental record would allow obtaining a full name for the first-named defendant, and a full name for the other parties. However without knowing whether the other named parties are plaintiffs or defendants, the information on parties (other than first-named defendant) is not of much use. To take the additional step of downloading or printing the full party name is quite costly (\$0.07 per case) and time-intensive.

The research team recommendation was to use the full names file only very selectively to clarify narrow issues such as an abbreviation in the name of the first-named defendant.

### ***Use of PACER Court Information***

Use of data from the courts' PACER systems would entail even more labor time and expense. The PACER information is contained on several pages (each page would cost \$0.07 to download or print). The cost of having staff manually record the information and append it to the record would be even more expensive than using the full-name record on the Index file.

For cost reasons, the research team recommended using PACER court information only sparingly to identify businesses, or to obtain follow-up contact information (such as attorney phone numbers).

### ***Recommended Approach***

The research team recommended drawing a national sample of cases from the U.S. Party/Case file and to rely primarily on the information on the first-named defendant in the Case Name to identify small businesses. (The sample size and distribution are discussed below.) The research team would then separate out all cases with individual defendant names to get a sample of all cases in which the first-named defendant had a business name, which would likely cut the sample at least in half. Members of the research team would then eye-ball the case names and separate out cases with well-known "large" businesses (e.g., General Motors, Microsoft, etc.). The research team would devise a method of using information on businesses by size to reduce the sample down to one with a small business. This might require sub-sampling the data for this subsequent processing to keep within the fixed total budget.

This approach would generate an initial sample of all civil cases filed in a 12-month period, which could be reported by case type and court. The research team could then narrow the file to cases in which the first-named defendant had a business name. This screened sample could also be reported by case type and court. This screened sample would not be a bad estimate of cases filed against businesses in general. These baseline estimates of cases filed against businesses would provide an upper bound of cases filed against small businesses by case type and court (with a lower bound of zero). As the definition of business were narrowed to approach a "small business" (whether done for the full sample or a sub-sample), the estimated range of frequency of filings against small businesses would narrow. This approach should be flexible enough to keep the project results relevant and also keep the fixed project costs within budget.

## **SAMPLING FREQUENCY**

A remaining issue was whether the sample should be drawn all at once (e.g., draw a sample of cases filed over the last 12-month period, or in January draw a sample of cases filed during the prior calendar year), or in a more contemporaneous manner (e.g., during each month August 2002 through July, 2003, draw a sample of cases filed during each prior month). The research team recommends the more contemporaneous sampling approach for several reasons. First cases may eventually be removed from PACER after they are closed; thus if searches were performed on an annual basis some cases that were filed early in the year and were dismissed or otherwise terminated quickly might be lost. Second, moving forward on a monthly basis would allow the team to work with a smaller file and refine the file manipulation and analysis techniques. Third, conducting monthly runs would give more current data covering the period from July 2002 to June 2003.

## **IDENTIFYING A BUSINESS AS A SMALL BUSINESS**

The research team considered a variety of methods to determine whether a business identified as having been involved in a litigation matter was a small business.

### ***Computerized Commercially-Available Business Listing***

Researchers identified directoriesUSA.com as a commercially-available source of nationwide businesses with information that would allow determining whether the business were a small business (size and revenue values). The computerized files would be merged with the U.S. Party/Case file information to determine the cases against small businesses.

### ***On-line Lookups of Yellow Pages and Commercially-Available Databases***

On-line free databases (e.g., anywho.com) could be accessed on a one-by-one basis to determine the actual address and telephone number of each firm identified in the U.S. Party/Case file database. Any firm without a current telephone number would be considered out of business since the litigation was filed. Alternatively, directoriesUSA.com provides a one-by-one lookup of firms with both yellow page information as well as information on the staff size and revenue of the firm. Such one-by-one procedures would be cost-prohibitive for all cases obtained from the U.S. Party/Case file; a sample of cases across the U.S. could be obtained initially, and then the look-up performed on the sample of firms involved in the cases identified from the U.S. Party/Case file.

### ***Recommended Approach***

One-by-one lookups were the “recommendation of last resort” on a sample of firms identified from the U.S. Party/Case files, and would be used only if the databases could not be obtained or used to merge with the firms from the U.S. Party/Case files.



- 6. Are there any aspects of your business that you would consider unusual?
- 7. Do you have any partners? Yes No
  - 7a. If yes, how many?
- 8. Does your business have an in-house counsel? Yes No

**Questions Regarding the Recent Lawsuit**

- 9. Public records from «Court» indicate that you were recently involved in the «Case\_Name» litigation.
  - Is this case still active? Yes No
  - 9a. Please describe the issues involved in the lawsuit.
- 10. What was the amount of the damages claimed in the case rounded to the nearest 100 dollars?
  - Is this amount based on
    - 10a. A demand made in the court papers? Yes No
    - 10b. A demand from settlement discussions? Yes No
- 11. Did you and the other party try to settle this case before filing with the court? Yes No
  - 11a. If yes, What were the reasons why the settlement was not successful?
- 12. Was mediation or arbitration attempted? Yes No
  - If yes,
    - 12a. Mediation \_\_\_\_\_ or Arbitration \_\_\_\_\_
    - 12b. Was it court ordered? Yes No
    - 12c. If arbitration, was it binding? Yes No
    - 12d. Who oversaw your mediation/arbitration?



- 20. What was your attorney's hourly rate?
- 21. Did you or your partners have to spend your time working on the case without being paid? (For example, preparing for depositions, meetings, settlement negotiations, etc.)                      Yes                      No
  - 21a. If so, approximately how many hours?
  - 21b. How did it impact the running of the business?
- 22. Did other employees spend time working on the case?                      Yes                      No
  - 22a. If so, did you pay them for this time?                      Yes                      No
  - 22b. If yes, was this work part of their
    - Regular Pay                      Overtime                      Other
  - 22c. Roughly how many of these hours were spent?
    - 1. Regular Pay
    - 2. Overtime
    - 3. Other
  - 22d. What was the approximate cost of this time?
- 23. Were there economic impacts?                      Yes                      No
  - 23a. If yes, what were they?
- 24. Were there other direct impacts of this suit on your business?
  - Yes                      No
  - 24a. If yes, what were they?

If the case is still active, skip to the end.

- 25. If there was a settlement or judgment against «Company», from what source did you get the funds to pay that amount?
  - Insurance                      Loans                      Business Assets
  - Personal Assets                      Other

26. Did you notice any indirect effects of this litigation (loss of customers, Damaged reputation, etc.)?

Yes No

26a. If yes, what were the effects?

27. What insights did you gain from this experience about how to avoid lawsuits?

28. Through this experience, what insights did you have about dealing with attorneys?

29. Have you changed anything in the way you do business in response to this litigation? Yes No

29a. If so, what have you changed?

29b. What effects have you noticed?

Thank you for your time.