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Law Firms Allegedly Overcharging for Online Legal Research

By [Erik Sherman](#) | May 14th, 2009 @ 12:57 pm

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Although we look at plenty of tech-related issues on BNET, we don't typically write about the legal industry at large. However, there's an issue brewing in the form of a class action suit that will likely cause some good-sized waves, if not a tsunami, over whether big corporate law firms are overcharging their clients for electronic legal research. Given how often high tech companies must retail law firms, I thought this might be particularly trenchant for them, though probably of interest in virtually any other industry as well.

The class action was filed earlier this month in California Superior Court, lead plaintiff being **J. Virgil Waggoner**, against international law firm **Chadbourne & Parke LLP**. The charge is that the firm overbilled for legal research. According to the complaint, Waggoner was billed about \$20,191.64 for online legal research, but that the firm's billing practices for computerized legal research were "deceptive" because Chadbourne did not reveal that it billed out more for research expenses than it spent. According to one interview with Waggoner's lawyer, **Patricia Meyer**, the actual amount should have been closer to \$5,000.

This was not the first time Waggoner had a legal run-in with Chadbourne. In 2007, he sued **Caruso, Bracewell & Giuliani** — the law firm that employs former New York City mayor and presidential candidate **Rudy Giuliani** — as well as two former law firm employers of partner **Kenneth Caruso**, one of which was Chadbourne, for having allegedly "schemed and conspired to steal \$10 million".

Included in the current complain is a letter purportedly from Chadbourne, partner Kenneth Carouso, who wrote that the legal work in question would be on retainer, and that Waggoner would "pay our expenses monthly." In that letter is no mention that the firm would mark up any of the research costs, which would apparently be the argument that the suit makes. According to the interview with Meyer, a good dozen other law firms also overbill for research, and there are other law suits in the works, which is why this one is positioned as a class action.

At the center of the dispute is how much law firms are allowed to charge for expenses. I emailed **Roy Simon**, the Howard Lichtenstein Distinguished Professor of Legal Ethics at **Hofstra University School of Law**, who replied as follows:

Bottom line: Lawyers can mark up expenses beyond cost plus overhead if the client agrees after full disclosure. A client might agree if the product (Lexis, or a court reporter) is one that the client really isn't in a position to buy directly.

Online legal research services **LexisNexis** and **Westlaw** are pricey and used to bill at high rates per minute. But many firms have long since moved to flat billing, often charging the client the high per-minute rates. You can see an example of some of the costs here. Here are some highlights:

Sample Westlaw Per Minute Rates

Database	rate
All Federal and State Cases	\$20.98
U.S. District Courts Cases	\$17.48
Individual State Statutes Annotated	\$10.50

If you check the link, there are other forms of fees, also pricey. But with flat rate pricing, suddenly the costs rapidly drop because the subscriptions can be amortized across all the clients of a firm. That means online research has the potential to become a major profit center, but only if clients don't insist on cutting the rates, and as I've learned in covering the legal industry for other outlets, controlling outside counsel expenses is a major area of interest for most corporations.

I asked Chadbourne to make someone available for an interview. Instead, the firm sent a statement attributed to partner Thomas Hall:

We adamantly deny this claim of Mr. Waggoner, with whom we ended our relationship over four years ago. It is telling that Mr. Waggoner — a Texan who had retained our New York, not California, office — filed suit in California only after his New York malpractice lawsuit against Chadbourne was dismissed and only after we sued him in New York for unpaid fees.

Adamant or not, it would seem to my non-lawyerly eye that absent some technicality, the firm would either have to show that either the charges to Waggoner represented Chadbourne's actual costs, or document that it had informed Waggoner that he would pay marked-up prices.

However, as this case begins to get more press, I can imagine many a general counsel's office going back through their records and seeing whether they should be signing on to any class action.

Legal research image via Flickr user joebeone, CC 2.0.

Tags: *Law Firm, Class Action, Litigation, Business Operations, Erik Sherman*

Erik Sherman is a freelance journalist whose work has appeared in Newsweek, the New York Times Magazine, Technology Review, the Financial Times, Chief Executive, and other publications.

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