

Lawsuits – Don't Take Them Personally



By: Michael R. Freed, Esq.

No doubt this is an ironic observation from a lawyer: more and more people and companies are suing each other, and the lawsuits are getting more and more personal.

It's easy to blame lawyers, the legal system and the glorification of lawsuits in the media, but it takes people to bring lawsuits. And, people are increasingly willing to jump into the lawsuit arena, often before

trying less aggressive means to settle disputes. Changes in the real estate market leading to disappointed expectations and loan defaults (just to name a couple of impacts), also are leading to an increased amount of litigation in the development and construction industry. The result of all this: if you are not already embroiled in litigation, you are likely to be.

To add insult to injury, lawsuits seem to be getting more and more personal. Although this is understandable in lawsuits involving custody, divorce, personal injuries and crimes, business disputes traditionally have been, to an extent, above that fray. But, these days, personal attacks are becoming more a regular part of business litigation. The reasons are many – fierce competition for business; easier access to "mud-slinging" ammunition through the information age; the expectation that lawyers must always act like pit-bulls; and the eagerness of lawyers to fulfill that expectation.

While aggressiveness in litigation is appropriate in many circumstances, below are several suggestions for how to keep litigation from getting overly personal.

1. **Take Ego Out of the Equation.** Easier said than done, but making strategic decisions about resolving disputes with ego rather than wisdom is wasteful, draining and expensive. Clearly principle and setting an example must be factored into cost/benefit analyses, but strategy is sacrificed when the driving force is "saving face" or taking your adversary down a notch. As a general rule, you should resolve legal disputes based on what is in your best interest – not what is in the worst interest of the other side.
2. **Be Organized.** All else equal, the party that approaches litigation in the most organized manner has the best chance of winning. At the first sign of potential litigation (and sooner if possible), save and organize all relevant documentation (including electronic documents, like emails). Preparing a chronology of material events also is helpful and can reduce the time that your attorneys must spend getting up to speed. This, of course, should result in lower attorneys' fees.
3. **Make Business, Not Emotional Decisions.** When you have been taken advantage of or when someone is lying about you, it's hard not to get emotional. But, try not to let emotion drive the resolution of your business

problems. If you are prone to emotion, your adversary in a dispute may try to exploit you with emotion. If you have a burning desire to lambaste your adversary, put it in a letter that you don't send. It's amazing how much better you will feel, and without sacrificing the upper hand that you get in avoiding emotional outbursts.

4. **Don't Throw Good Money After Bad.** Absent some compelling principle that is at stake, try not to get caught up spending more time, energy and money in a fight than you stand to gain (or are trying not to lose). Even if you have a legal right to make the other side reimburse what you spend, this is only of value if the other side has resources with which to pay.

5. **Choose Legal Counsel Who Will Make Things Better, Not Worse.** Choose an attorney who is aggressive and thorough but capable of being cost-efficient and practical. Leverage comes from the ability to plot and pursue an effective litigation strategy that is appropriate given the stakes. "Scorched Earth" is not the best tactic for every case. Also, in being a good steward of your resources, your attorney should not get caught up defending his or her ego or making unnecessary personal attacks on opposing counsel.

Conclusion

There is an old expression: If you roll around in the mud with pigs, everybody gets dirty. Litigants would be wise to heed this suggestion. Approach litigation like other aspects of your business – keep your ego in check; be organized; avoid emotion; don't throw good money after bad; and choose legal counsel capable of balancing aggressiveness with practicality. **E**

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