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TIPS FOR DEALING WITH LITIGATION: KNOWING WHEN AND WHEN NOT TO SUE

By Jeremy S. Johnson

I WAS LISTENING TO A POPULAR TALK RADIO SHOW and the host, a practicing attorney, was attempting to provide his audience with “marginal legal advice.” One caller contacted the show to inquire about a dispute she had with a women's clothing retailer. She explained that the retailer had failed to provide her with a refund of approximately \$32 for an item she ordered and returned through the retailer's mail order catalog. She asked the host whether she had a case. Noting that the caller had probably waited over an hour to receive his advice, the host indicated that it was probably not worth any more of the caller's time to pursue the matter as the potential recovery of \$32 was so small that the benefit of filing a small claims action would be outweighed by the hassles associated with doing so.

After listening to this conversation, I realized that I have had numerous similar conversations with my own clients, albeit on a much larger scale. While the caller seemed to have a valid and winnable case against the retailer, the time and energy required to pursue litigation to recover \$32 did not warrant any further effort. Her situation is illustrative of the cost-benefit analysis every potential plaintiff must perform prior to deciding to seek legal redress of a wrong, or even defending against a suit. Before getting entangled in a protracted and stressful lawsuit, you have to be honest with yourself, as well as your lawyer, and evaluate the situation to make sure your claim is worth the inevitable financial and personal disruption a lawsuit will bring.

Most lawyers bill their clients by the hour for time spent working on a lawsuit. The more complex the case is, the more time your attorney will spend working on it, and the higher your bill will be. If you find yourself at the point where you are consulting a lawyer regarding possible representation in a dispute, be sure to ask for a budget, estimating the fees you may expect to incur throughout the stages of that representation.

While it's difficult for an attorney to predict exactly how contentious a given matter will be during an initial client meeting—and thus how high the legal fees will go—they should be able to provide you with a ballpark figure of fees you are likely

to incur, at least through the initial stages of the litigation. This should help you perform the cost-benefit analysis needed to determine if it would be wise to move forward. This same analysis can and should be done when there is a potential lawsuit against you. If there is some merit to the claim against you, consider resolving the matter early on, even if the result seems unjust. Occasionally, there are efficiencies in resolving the matter early on and prior to an actual lawsuit.

Do not be fooled by the idea that your attorney will be doing all of the work. There is considerable work to be done by the client in most cases. Usually, formal questions (called “discovery”) are sent to the parties by one another. Although the attorney assists, the response must be provided by the client. There is substantial time associated with the collection of documents, meeting with counsel, and providing deposition testimony in the case. Consider these when discussing the case with your attorney.

Due to the cost and time associated with even the smallest of legal disputes, efforts to resolve a potential lawsuit before any complaint is filed should be explored and pursued to the fullest extent. Even when a complaint has been filed, over 90 percent of civil cases are resolved before trial.

The earlier you can reach an informal resolution of your dispute, the more you will be able to spare yourself the substantial time and expense associated with litigation. A good attorney will be able to assist you with recommendations on how to best effectuate a pre-litigation resolution of your case. However, some matters are not prone to early resolution, and going through the litigation process becomes a necessary step. Be sure to weigh the costs and benefits associated with filing your lawsuit, or you may discover the satisfaction of winning your case is overshadowed by the time, energy and money expended to get there. **GT**

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