

What to Do When You Have Been Sued

One of the unfortunate costs of doing business is that disputes lead to lawsuits. If you have not been involved in a lawsuit in the past, you inevitably will in your lifetime. Knowing what to do when you are sued can help assure ultimate victory in the case and reduce the stress and expenses that come with litigation. Here are some steps you should consider taking.

1. Do Not Procrastinate in Seeking Legal Advice.

Surprisingly often, clients will put off contacting their attorney until weeks after they have received the summons and complaint. The law requires that you file a written response to a complaint within a specified time, usually between 20 and 30 days. If you fail to file a response on time, you may be prohibited from defending yourself altogether. More likely, however, you may have to pay additional fees and costs to cure the delay. The best practice when you receive notice of a lawsuit is to note the date and time you received the complaint and immediately contact your attorney.

2. Gather all of your insurance policies. The claims raised in the complaint may be covered by insurance policies you have purchased. In this regard, you should review the terms of any business policies, homeowners' policies, or even automobile policies which you maintain. You may also want to consider whether the claims could be covered by any insurance purchased by third parties for your benefit (i.e., employers, landlords, or tenants). If there is a chance that the claims are covered, the insurance company may be required to pay for the attorney fees and costs of defending the action. We at the Chan Law Group will ask for copies of your policies as a matter of course. Other attorneys, however, may neglect to do so to your detriment. In addition, your insurance agent may mistakenly tell you that there is no insurance coverage. Therefore, it is crucial that you provide your attorney with copies of the policies as soon as possible. If there is coverage, your attorney can notify your insurance company.

3. Do not destroy documents. Once a lawsuit is filed, it is important to preserve all of relevant documents and information, including documents stored on your computers. This holds true for both "good" documents supporting your case and "bad" documents weakening your case. Any destruction of documents will likely be discovered. Therefore, the best policy is to preserve all relevant documents. Any customary document destruction practices should be temporarily halted. After you have consulted with your attorney to determine which documents will be relevant to the case, and which can be safely destroyed, you can resume your normal document destruction practices.

4. Establish a Litigation Team Within Your Business.

A lawsuit can take up much of the time and energy of those within your company. Unless you take steps to

choose a discrete team which will deal with the attorneys and the inevitable requests for information from the other side, valuable resources can be wasted. The team should have a point person whose principal duty is act as a conduit for information and requests flowing between your business and your attorney. It is important to choose someone who can devote significant time and who can be trusted with confidential information. Avoid including any marginal or disgruntled employees on the team who may be terminated, demoted or otherwise reprimanded during the course of the lawsuit.

5. Establish a Secure Litigation File. Lawsuits are document-intensive endeavors. Within a few weeks, you may find yourself overwhelmed with court filings, correspondence, notes and the like. By organizing the documents early on into a separate file cabinet or, in large cases, a "war room," you can better control the paper avalanche to come.

It is particularly important to segregate the communications with your attorney from other documents you have related to the lawsuit. Those communications are privileged and the opposition has no right to see them. By separately maintaining the privileged documents, you can avoid inadvertent disclosure. Also, be careful about disposing of privileged documents. We usually advise our clients to shred all privileged documents once they are through with them.

6. Be Cautious in Approaching Your Opponent. Some clients will immediately contact the person suing them after being served with the complaint. It is natural to assume that level-headed people can resolve their disputes without the need for a lawsuit. It is also natural to want to vent your anger at being sued unfairly. Beware, however, that statements that you make can and will be used against you. It is therefore important that you be very cautious in your contacts with the opposition. It is better to discuss what you wish to say and how you wish to say it beforehand with your attorney.

7. Limit Discussion of the Merits of the Case to Communications with Your Attorney. While communications with your attorney are privileged, communications among a business's officers or partners are not necessarily. Your discussion and evaluations of the strengths and weaknesses of your case can be discovered by the opposition. It is important that you limit discussion of the merits of the lawsuit to those conversations with your attorney (or those conversations that you have in anticipation of discussions with your attorney).

8. Exercise caution in discussing the matter with others. News that you have been sued can travel quickly both inside and outside your business unless you limit the persons who are informed of the matter. Very little good can come from discussing the lawsuit outside of your business control group. Distribute information on a need-to-know basis only. Assume that statements made to your employees will be communicated to your customers. Also assume that statements to your customers will be communicated to your opponent. Be particularly cautious

about discussing the case with the media.

By following these important steps, you can greatly ease the burden on you and your business. In so doing, you can also go a long way toward assisting your attorney in defending your rights and obtaining the best possible outcome. :)