



## Litigation—What Is the Goal?

By Monte Vines

This is the first of a series of short articles on **litigation**—handling legal disputes. Some people and companies see the prospect of litigation as a nightmare—an expensive, unproductive, waste of time and resources involving an adversary intent on taking unfair advantage of a situation, and a court system they don't have confidence in to reach the correct result. Unfortunately, there are well-publicized examples of nightmare litigation that fuel such fears. But litigation does not have to be a nightmare.

### What Is Your Goal?

Let's begin with the end in mind. If you have a dispute with another person or company involving legal rights and obligations, what is your goal? Many people would immediately say their goal is to win! Winning in litigation is having your view of the parties' rights and obligations accepted as the correct view and enforced by a court, usually with the court entering a judgment in your favor after a trial.

Although winning a legal dispute in that way is sometimes the only reasonable goal, in most situations it is not the right goal. For most people and companies who find themselves in a legal dispute the goal should be to get the dispute resolved in an acceptable way. An unresolved legal dispute can be a big burden on a person's well-being and a serious obstacle to conducting a business profitably.

Legal disputes often involve parties in a relationship, like a customer and supplier, business partners, a lender and borrower, or relatives. What would the effect on such a relationship be if your dispute was resolved only after going through the entire court process and getting a judgment in your favor adopting your view of the parties' rights and obligations? That is usually a recipe for the end of that relationship, or for lasting damage to it. And consider the effect on the relationship if the judgment is not in your favor? It would probably be the same, so you would have lost the relationship and the case.

### Few Cases Go To Trial

Court statistics show that over 95% of civil cases get resolved without a trial. Sometimes the defendant fails to get involved and defend the case, and a default judgment is entered against him. Many debt collection cases go this route. In some cases there is a legal defect, such as a statute of limitations that has expired or the law simply does not support the claim. In those cases the court can terminate the lawsuit without the need for a trial, such as by a summary judgment. Most other cases are eventually resolved by a settlement.

Resolution by settlement can have several big advantages compared to going to trial. Because all parties must agree to a settlement, they are able to control any resolution that is reached. They can make sure any settlement is workable for them and accomplishes what they consider to be an acceptable result.

They can come up with creative proposals that are simply not available to a jury or a judge. And they can reach a settlement at any stage of the dispute—whether late in the process like just before trial, early in the case, or even before a lawsuit is filed. Because settlements avoid going through trial, and can sometimes avoid court procedures entirely, they can be much less expensive than going to trial.

In a trial the parties lose all control of the outcome and it is completely in the hands of a jury or judge. Even when the jurors or the judge do their best, they will never know as much about your situation, your company, or the circumstances as you do. And regardless of how good a case you think you have, the outcome you want is never a sure thing.

### An Acceptable Resolution

So, for most people and most companies, in most disputes, the right goal for litigation is to find an acceptable resolution, and to find it as quickly as possible with the least expense possible. Reaching that goal is much easier said than done! Sometimes the only way to an acceptable resolution is through a trial. But the goal is much easier to achieve when you have set that goal at the outset and you and your lawyer are in agreement on that goal. In later articles I will discuss what you and your lawyer can do to achieve that goal, and will provide some options for acceptable resolutions. And I will present "the anatomy of a lawsuit" to facilitate an understanding of the litigation process.

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