

10 Top Tips to Avoid Litigation

Litigation should be avoided at all costs, since once you are embroiled within formal court proceedings you can only extract yourself if your opponent agrees, and such agreement would usually involve payment of your opponent's legal costs. This is often a costly price to pay given you will have your own legal bill to pay too.

I would encourage any party to a dispute to consider the following tips to avoid a claim, whether as a "defendant" or "claimant".

1. Never admit liability - once liability has been admitted it is difficult to retract such an admission and the focus then simply moves to the question of how much you will be liable to pay, whether by way of costs or damages to the other party.
2. Notes – make sure you maintain full contemporaneous notes of all meetings and telephone calls. You should also ensure all written correspondence is preserved, including emails and faxes. This paper trail will be invaluable evidence in preparing defences or claims and demonstrating the chronology of events.
3. Double check everything - you should ensure that you have checked and reviewed all documents, goods and all materials which have led to the dispute. You should ensure that you have not made any assumptions as to why the dispute has arisen. You should undertake a full investigation. You need a clear understanding of your position at the outset and an appreciation of the strengths or otherwise of the other side's case.
4. Lawyers - you should find a pragmatic commercial litigator who understands both the matter in dispute and who can properly advise at an early stage. You do not want a lawyer who is simply going to follow a process, as the art of being a good litigator is being able to think outside the box in order to negotiate and reach an early settlement prior to significant legal costs on both sides. If a litigation matter goes to trial then, in our view, there have been some significant failings in the whole litigation process. Formulate a resolution strategy with your lawyer.
5. Expert reports – to the extent you are not able to analyse the matter in dispute, you should engage an independent expert so that you get an appropriate expert report from someone who is qualified to comment and whose view a court would value, whether on a forensic basis or otherwise.
6. Stay rational - make sure that the dispute does not become a personal grudge against another party as otherwise you may find yourself becoming entrenched in a position which you may find difficult to extract yourself from. A small dispute can often escalate into litigation due to the emotions and personal and business relationships of the parties. You need to maintain a clear mind to ensure you achieve the most cost effective commercial resolution of the dispute.
7. Compromise – take proper advice from your lawyers. Get an understanding of the costs risk involved in your case and be prepared to compromise, as holding out on principle, no matter how strong your case may be, is not always guaranteed to give you success in court. More importantly a protracted dispute could be commercially harmful to your business.

8. Distraction – don't forget to the extent that you are engaged in litigation, this will be a distraction for you from your business and it will prevent you from devoting your full attention to your business. Litigation takes up valuable time in meetings with lawyers and internal meetings. That time would inevitably be better spent in developing other aspects of your business.
9. Golden Rule – There is no guarantee that you will win any litigation matter as this will depend on the judge on the day and the court that you are in. If you have good evidence, a strong defence or claim backed up by an expert report with a strong commercially focused lawyer, then the chances of compromising the claim before it gets to court and not facing a big cost risk will be very much in your favour. You retain control whilst negotiating outside the court, whereas at trial the court has complete discretion. At the end of the day, both sides of a dispute can't be right so there has to be scope for compromise.
10. Hawkins Hatton – Having formulated the above rules we are best placed to implement the same. We adopt a refreshing approach to dispute resolution with your best interests being served throughout the entire process.

If you wish to discuss any of these aspects in any further detail, please contact **Harminder Sandhu** at **Hawkins Hatton LLP**