

WHAT IF YOU ARE SUED?

Reality check: Odds are that at some point in time your company will be sued. How long the case will be pending, how much will your company expend in legal fees to defend itself and what will be the final outcome are very difficult to predict.

If sued, your company will be given a specified amount of time within which to respond. The papers you are served with, which include the petition/complaint and summons will detail the amount of time you have to respond. As we have previously discussed, the complaint will furthermore state those causes of action being asserted and the damages the plaintiff seeks from your company.

If you do not file an answer to the complaint, no matter how good a defense you may have, the law will assume that you did not intend to defend yourself because you had no defense and will correspondingly enter a default judgment in favor of the plaintiff and in the amount the plaintiff requests. Once a judgment has been entered against your company, it is very difficult to set it aside. Therefore, it is better to file an answer than to allow a default judgment to be taken.

Prosecuting and defending lawsuits can be very expensive. Lawsuits are furthermore very time consuming for owners, managers and employees. Meetings with attorneys, answering discovery, preparing for and taking depositions, attending mediation sessions, waiting at the courthouse and the trial itself are time consuming and expensive propositions. These activities distract from the mission statement of every company.

Lawsuits can be emotionally wrenching. Plaintiff lawyers may ask for seek to recover large amounts of actual damages and possibly even punitive damages. A large award of actual damages, even where there is insurance coverage in place to defend and resolve the lawsuit, can potentially destroy a company. An award of punitive damages can easily put a company out of business. While punitive damage cases are rare, the threat of a punitive damage award will unsettle most if not all companies—especially small to medium sized companies.

The contingency fee plays a significant role in the amount and degree of lawsuits filed against companies, including the wall, truss and component manufacturing companies. To some extent it encourages litigation for the plaintiff who is not responsible to pay for his or her lawyer and at the same time provides a great deal of incentive to the lawyer to file a lawsuit. To understand the contingency fee, let's turn to a case example.

CASE BREAK

Assume a person is injured in an automobile accident and hires a plaintiff attorney who agrees to file a lawsuit on behalf of the injured person on a contingency fee basis. What this means is the plaintiff attorney only gets paid to the extent he collects money on behalf of his client. Contingency fee percentages will range from between one-third and 50%--in our example the fee is 40%. Many plaintiff attorneys will also advance lawsuit expenses, such as filing fees, investigator fees, deposition expenses, mediation fees, court reporting fees, and expert fees—all of which are recouped out any settlement or payment of a judgment by a defendant.

In our example, a settlement is obtained in the amount of \$250,000—this may or may not require a lot of work on the part of the plaintiff attorney. In other words the fee earned is not tied to the number of hours worked. The fee payable to the plaintiff attorney will equal the sum of \$100,000. The plaintiff attorney will also recoup his expenses incurred, which in our case example total \$25,000. Thus, out of a total settlement amount of \$250,000 the injured plaintiff recovers one-half the total amount, the sum of \$125,000.

It is also important to note that the tort system in the United States is extremely inefficient. It has been reported that for each \$1.00 paid by insurance companies in settlements and judgments and in legal fees to defendant attorneys, that \$.58 goes to payment of attorneys and administrative expenses with only \$.42 actually going to the person or organization injured or harmed.

If you assume in our case example above that the sum of \$75,000 was paid by the defendant's attorneys you can see the percentage actually paid to the injured plaintiff out of moneys expended equals 38.5%.

If you have ever been sued and defended by an insurance company, you will find that insurance company claims adjusters and insurance defense lawyers also think in mathematical terms when assessing a complaint from the perspective of whether to settle or to defend through a trial. The insurance defense lawyer will, through discovery and legal research, measure a case by evaluating the percentage chance of an adverse liability decision and multiply that percentage by the reasonable estimate of losses (whether personal injury or property damage). The equation, after factoring in the costs of the defense of the case, will provide a range at which settlement may be determined appropriate. Fault (which should be the only reason you are sued) really plays only a secondary factor in the decision.

CASE BREAK

Let's go back to our case example above where we have an injured plaintiff due to a vehicle accident. A complaint is filed by the plaintiff. An answer in turn is filed by the defense attorney for the defendant hired by the defendant's automobile insurance company. The attorney hired to represent the defendant conducts some discovery, including taking the deposition of the injured driver and witnesses to the accident. It turns out the cause of the accident is in doubt and may have in fact been the responsibility of the injured driver. During this discovery process, the defense attorney also evaluates the injuries and medical expenses of the plaintiff and evaluates the total economic damages and non-economic damages may range in the \$500,000 range. The defense attorney also evaluates the defendant's chances at trial right about 50%. The claims adjuster, wanting to avoid a potential judgment amount of \$500,000 assuming the defendant is found negligent and further not wanting to spend any additional funds on the defense attorney and other expenses, assesses the case and determines an appropriate settlement amount is \$250,000 essentially multiplying the potential damage amount by the prospect of losing the case. Thus, the claims adjuster arrives at a \$250,000 settlement amount.

Generally, it is not beneficial for a company to defend itself without an attorney, even in an arbitration. Without a lawyer, there is too much potential for making technical mistakes. Within self-representation, you may lack the objectivity you need to do the job effectively. The adage, the person who represents himself has a fool for a client, is often true.

Remember, no one can predict the outcome of any lawsuit with certainty. No matter the cause, you might lose. If you lose in court and not through arbitration, you can appeal, but there is no guaranty that you will overturn an adverse decision. You may think you can afford to lose because of your insurance policy. However, what if you find out that you are not as protected by insurance as you may have thought. For example, your policy may not cover the full amount of the judgment. Your insurance policy has a limitation of dollars, and if the judgment returned against you exceeds the limits of your insurance policy, and if you do not have umbrella insurance, your company is responsible for the difference. Also, the insurance policy may not cover claims that are in particular excluded as set forth in the policy. For example, if it is determined that you intentionally committed a wrong, you may not have coverage as insurance policies do not cover deliberate acts. Once a plaintiff has won a judgment against your company, he can then levy against company assets. Even if you do not have enough cash on hand, non-cash assets can be used to satisfy a judgment. Further, your bank accounts could be frozen by the plaintiff, leaving you with insufficient funds for outstanding checks.