



WHAT TO DO WHEN YOU'VE BEEN SUED

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Whenever possible, you want to avoid a lawsuit. However, if someone does try to sue you, knowing what to expect and how to react can help your case. It may be handed to you by a process server—or it may arrive by certified mail. However it gets to you, the summons notifying you that someone is suing you is bound to raise your blood pressure. Of course, being sued is never pleasant, but it's usually more of a nuisance than a catastrophe. By knowing the rules, you can greatly improve your chances of winning.

FIRST STEPS

Check the summons to see how long you have to respond. Normally, you'll have 21 days to file an answer. This is a key deadline. If you miss it, the plaintiff can have a judgment entered against you by default, so plan ahead. If you're about to leave on a three-week vacation or business trip, call the plaintiff's lawyer to ask for an extension. They will usually grant such a request, but be sure to get confirmation in writing.

A written document, or complaint, usually will accompany the summons. This document will tell you about the case—whether it is a business contract, an injury that someone suffered on your property or, perhaps, a supposedly unjustified termination. Whatever the case may be, make sure you understand the complaint and what the plaintiff is trying to gain.

To defend a case that's more than a minor claim in small claims court, you'll probably need to hire a lawyer. Review the complaint with insurance coverage in mind. Your insurance may cover car and truck accidents, slip-and-fall claims, product liability, defamation, loss of a customer's property, and errors and omissions, for example. If your insurance policy covers the claim, the insurance company will hire the lawyer and pay the bill.

Similarly, someone else may have agreed to protect you from some lawsuits. For example, your landlord may have agreed to maintain the entryway to your building. Therefore, you will not be responsible for paying any judgments if a person sustains an injury from falling on a slippery floor near the entrance. The landlord would be responsible for handling the lawsuit. To

determine if you have such protection, check leases and other contracts for words such as "indemnify" and "save harmless."

EARLY RESOLUTION

Sometimes you can resolve a case even before you file an answer. If you and the plaintiff are not far apart on the dollars involved, or if the case is minor and defending it will be a big hassle, try to negotiate a settlement. If that doesn't work, you can suggest that the dispute be mediated or arbitrated. In mediation, a neutral third party (the mediator) works with you and the plaintiff to try to achieve a voluntary settlement. In arbitration, a third party (the arbitrator) has the power to make a binding decision.

In many business contracts, the parties agree in advance to submit any dispute to mediation or arbitration. If your lawsuit doesn't trigger such a contract clause, you and the plaintiff can still agree to handle the dispute through mediation or arbitration even though the plaintiff already filed the lawsuit. Mediation and arbitration usually are quicker and cheaper than lawsuits, and the proceedings are private.

STRATEGIC MOVES

What if you're unable to settle the case or to resolve it through mediation or arbitration? You and your lawyer will have to dig in and develop a defense strategy. See if you can score a knockout in the first round. Legal reasons may justify having the judge throw out the case. For example, maybe the plaintiff filed the case after the statute of limitations ran out, or maybe the law requires a written contract and one was signed. Or, perhaps the plaintiff is proceeding on a novel legal theory that the courts in your state do not accept. Such factors can bring an early dismissal of the lawsuit.

If you can't get the case dismissed, consider filing a counterclaim. For example, maybe the plaintiff owes you money, but you had decided not to start a lawsuit to collect it. Now that you are in court, it may make sense to sue the plaintiff back. Sometimes a counterclaim will cancel out the plaintiff's claim, and sometimes the defendant makes money on the exchange of claims.

NO SURPRISES

In all but the smallest cases, each side has the right of pretrial discovery, a process in which you each learn the details of the other side's position. You do not want any surprises at trial.

To learn about the plaintiff's evidence, you have the following options:

- Send written questions that the plaintiff must answer in writing and under oath.
- Require the plaintiff to orally answer questions asked by your lawyer (a process called taking a deposition).
- Force the plaintiff to give you copies of any letters, contracts or other evidence related to the lawsuit.
- Gain access to the plaintiff's business place to inspect and photograph any equipment or property condition that's involved in the lawsuit. If the plaintiff is claiming your business

caused a physical injury, you can require a physical examination by a doctor of your choice.

In short you can delve into every nook and cranny of the plaintiff's case—although the amount you spend to do this should be proportionate to what is at stake. Obviously, it makes no sense to spend \$20,000 on pretrial discovery if your maximum exposure is \$10,000.

LAST CHANCE TO SETTLE

To unclog court dockets, judges in many states attempt to resolve lawsuits without a trial. In one state, for example, judges routinely have cases reviewed by a panel of three experienced lawyers. The plaintiff and defendant each take 10 to 15 minutes to present their position to the panel, which then recommends a settlement amount. A party who rejects the panel's recommendation and then does poorly at trial may have to pay for the other side's lawyer. The risk of having to pay additional costs can be a powerful incentive to settling a lawsuit. Other states use similar methods to head off trials. One way or another, more than 90 percent of lawsuits are settled without a trial.