

What to Do in the First 30 Days After Being Sued

By Christopher W. Olmsted, Attorney

In the fiscal year 2000-2001, 118,596 civil lawsuits were filed in San Diego County. Given those statistics, odds are that many businesses will end up in court sooner or later. For those of you who have not had this misfortune, here are six crucial basics you should know about what to do—and not do—within the first thirty days of being sued.

First, gracefully accept the packet of papers (called a “summons and complaint”) from the process server. Although the natural tendency is to try to avoid the process server, such sneaky tactics inevitably lead to greater headaches later on.

Second, you ought to notify your legal counsel immediately upon receipt of the lawsuit. You only have a short period of time—thirty days—in which to file responsive papers with the court. Failure to respond within the time limit can result in the court entering a default, and eventually, a judgment, against you. Moreover, an early consultation will give your attorney sufficient time to evaluate whether a demurrer—i.e. a motion to dismiss the lawsuit—should be filed. There may not be time to prepare such a motion if you don’t get around to notifying counsel until weeks after you first receive the lawsuit.

A natural tendency is to hold off notifying counsel as long as possible in the hope of avoiding legal fees. Often this turns out to be like avoiding going to the doctor until you get *really* sick. Early treatment is better. Likewise, competent counsel can cooperate in minimizing fees, while at the same time providing technical advice that can go a long way in cutting the case short—by far the best way to curtail fees.

Third, review your insurance policies for potential coverage for the claim. Don’t conclude the claim is not covered until you and your counsel have carefully reviewed the policy language. If the claim is potentially covered, it is important to notify the insurance company immediately. Insurance companies will often refuse to pay litigation fees and costs incurred before notice of suit is given.

Fourth, be prepared to take immediate steps to investigate the claims raised in the lawsuit and to secure evidence that will support your defense. Primarily, this relates to documents and witnesses. Oftentimes, this is simply a matter of gathering all relevant documents—contracts, invoices, letters, emails, etc. Do not, under any circumstances, destroy or alter documents. Invariably, such conduct is discovered and then viewed in court as the equivalent of guilt, even where the documents in question were marginally relevant. It is equally important to identify all witnesses to the matters raised in the lawsuit. Conducting early interviews, and perhaps obtaining written statements, will

avoid the problems of fading memories or missing witnesses. Witness tampering in any form should of course be avoided. Many a defense has met disaster over trivial discrepancies in witness testimony that arose simply because the defendant thought he could be clever by “improving” his story.

Fifth, work with your attorney early on to evaluate your potential liability and formulate a litigation strategy that fits the nature of the case. Is the lawsuit frivolous or are you facing potential liability? Is the dollar amount at stake large or small? Is the evidence at hand helpful or harmful? Come up with a plan that fits the nature of the case. You won’t want to plan a vicious legal battle where the amount at stake is small. You won’t want to take a casual approach where a significant percentage of your company’s assets are at stake. Early evaluation and planning will assure that the most effective approach is used.

Finally, and perhaps most importantly, consider early resolution of the case. Often times, settlement within the first thirty days of a lawsuit is not possible due to time constraints, the amount at stake, or lack of information. Nevertheless, early exploration of settlement opportunities is the best way to control the outcome of the case and minimize legal costs.

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Practice Area:
Civil Litigation

Areas of Emphasis:
Employment Litigation and Labor Law
Insurance Defense
Insurance Bad Faith
Construction Litigation
Business Litigation

Summary:

Mr. Olmsted is an attorney practicing in the areas of employment litigation and compliance, business litigation, insurance defense, and insurance bad faith. His experience in insurance defense includes automobile, commercial, and homeowners claims, and encompasses personal injury, property damage, mold claims, and wrongful death matters. He has litigated bad faith cases including homeowners, mold, automobile, and disability insurance claims. Additionally, he has represented clients in the areas of business and commercial litigation, asbestos litigation, construction collection and construction defects.

Mr. Olmsted's employment litigation experience includes: FEHA claims regarding race, gender, age, religion, national origin, sexual orientation, disability, pregnancy and sexual harassment; California CFRA and federal FMLA; federal ADA and ADEA; False Claim and whistleblowing actions; public policy violations; ERISA; Labor Board and Unemployment Insurance claims. He has represented clients in state and federal jury and bench trials, appeals before California and federal courts of appeal, judicial and contractual arbitrations, and administrative law hearings. Mr. Olmsted is a member of: San Diego Risk and Insurance Management Society, Association of Business Trial Lawyers, California Bark Employment Law Section and San Diego County Bar Association Insurance Section.

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Seminars presented include:

- Speaker on “The Nuts & Bolts of Prevailing Wage Law” for the Engineering General Contractor’s Society, San Diego, December 2, 2003.
- Speaker regarding California Leaves of Absences, Lorman Educational Services Seminar, San Diego, CA, October 15, 2003.
- Speaker on “How to Litigate Your First Civil Trial in California,” National Business Institute, San Diego, CA, 2003.
- Firm-sponsored seminar on Employment Law: Avoiding Liability in the Hiring Process, San Diego, CA, March 27, 2003.

Pro-Bono Activities:

- San Diego Volunteer Lawyer Program, Domestic Violence Clinic
- San Diego Volunteer Lawyer Program – Disaster Relief Assistance