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## Litigation Trap #1 – War Weariness

After 19 years in the lawsuit business, too many cases to count, and every kind of client, the boy psychologist in me thinks he's figured out the number one trap to litigants.

It took me a long time to figure it out, but I've got it pegged.

It's a malady caused by continuous conflict with no end in sight called "War Weariness."

It's the stuff of World War I, Vietnam and everyday litigation.

If you're going to litigate in today's environment, you need to anticipate it, understand it and plan for it. If you have to litigate, this little lesson can save you a fortune.

Unfortunately, most think they're immune.

Somewhere along the line, we glamorized the litigation process as a warring process between people like mean lawyers, undeserving money-grubbing plaintiffs and wicked defendants.

Even simple disputes become accusations of lying, cheating and stealing. To be sued is generally considered an insult to our integrity, an allegation against our good morals or an effort to extort money.

In varying degrees, the plaintiff wants justice from the evil defendant and the defendant can't believe the conniving plaintiff can make such stupid claims.

All this results in the familiar phrases we lawyers repeatedly hear:

■ "I won't pay him a nickel, no matter what it costs."

■ "It's a matter of principle."

■ "I want the meanest lawyer I can find."

■ "Can you believe what he's accused me of?"

■ "I won't be extorted."

■ "I want you to hurt that \$#@%."

Their origin is usually found in pride, anger, naivete and even stupidity. Clients with thick pocketbooks who speak these words are adored by many in my profes-

sion.

All of us, lawyers and clients alike, can get so pumped up over these feelings that we literally go to war over the dispute.

As a result, tempers flair, accusations rage, paper flies back and forth, threats are the norm, and we do the great fight.

In part, the process encourages the problem. In an effort to reach truth, we lawyers created the adversarial system by which two sides argue against the other and one side wins while the other side loses.

Tools of litigation, (motions, depositions, etc.) intended for information exchange and trial preparation, unfortunately become the tools of battle to wear down, frustrate or attack the other side.

The rules and procedures for litigation are, for students of the dispute resolution process, a truly beautiful plan for attaining substantial justice.

But, because the dockets of the courts are so backlogged, the warring process becomes an endless process of senseless conflict without resolution.

Deposition after deposition is followed by motion after motion, which is followed by more of the same.

The warring process goes on far too long while the client fumes over false allegations, details, delays and perceived tricks by the other side.

Not to be outdone, the client responds with more of the same. All the while, the lawyer may be sending bill after bill to the client.

Most clients spend their energy like they're running a hundred-yard dash, when in truth they're in a marathon.



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After a while, the trauma takes its toll and those magic words I know so well are spoken:

■ "Just get it over with."

■ "How much more is this gonna cost?"

■ "I am sick of this. Just get me out."

The transition in attitude from the beginning of the lawsuit is caused by only one thing: War Weariness.

When it occurs, there is really only one thing left to do, figure out an exit strategy.

For plaintiffs, this usually means settling for much less than the case is worth at trial. For defendants, it means paying more than the case is worth at trial.

I tell clients that the words, "just get it over," will be the second most expensive they have ever spoken (other than "I do").

What, then, is to be done?

Honestly, there is not one cure-all to the problem. Even so, there are some tips.

The most important one is the hardest: Lighten up, it's only money.

The second is equally hard: Realize that this is only a dispute resolution process, not a fight.

The third is equally hard: Don't take it personally.

Truthfully, if you have a good lawyer, she's already following these little rules for herself, but can't let you know it. The reason is that the client is usually demanding the meanest lawyer around, and she's already learned that client misconceptions of the process can't be cured quickly.

Thus, a client who thinks his lawyer is being too nice will soon be shopping for another lawyer. Business people call it satisfying a customer's demands.

If you have a good lawyer, ask questions, listen carefully, discuss alternatives and believe what she says is a reasonable outcome to your problem.

Don't think the way you want it to be is the way it is.

Most lawyers can analyze a problem and give reasonable estimates of the risks and costs involved in a dispute if they have past experience with a problem. If you don't get the answer you like, the problem may not be in the answer.

Second opinions never hurt, but beware the lawyer who promises a bloodletting through litigation because he may be less interested in giving good advice and more interested in selling you his services.

Once you've gotten good advice on the true risks of winning and losing and have gotten over the anger of the truth, simply plan how much time, energy and money you should put into the matter.

Some cases truly do require a fight.

Some don't.

Know the difference and plan the distance. **MBR**

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