

Creative Ways to Avoid Litigation

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When disputes arise, parties very often go straight to filing a lawsuit. Sometimes, that tactic can be effective. However, it may not be so effective for those individuals or small businesses seeking to minimize costs. Costs can quickly pile up in litigation, and many of those costs can't be avoided. There are creative—and effective—ways to avoid litigation, however.

Many lawsuits center on contracts being breached and money being owed. When a party to a contract considering filing such a lawsuit, it is important to put in perspective how far away that party may be from getting repaid after winning the lawsuit. It may be months or, more likely, years of work by attorneys before getting paid back anything, assuming the breaching party will still be in operation by then.

An often-overlooked option is to approach the party who breached and start a conversation about resolving it without a lawsuit. Lawsuits are public records; avoiding being named in a lawsuit may be valuable and add leverage to negotiate an agreement. This may be enough for some individuals and small businesses to bring them to the bargaining table.

Many people opt to hire an attorney to send a letter to the breaching party to see if that starts a dialogue for resolving the dispute. Often, an informal email can have the same effect and elicit a more amiable response from the breaching party—which may be a segue into cooperating to resolve the dispute or even entering into a new agreement to resolve that dispute.

If the other party is open to entering into a new agreement, that agreement becomes critically important. It's an opportunity to add more favorable terms than were in the underlying contract. Those new terms may include that the other party starts making monthly payments, has to pay attorneys' fees and costs of any lawsuit that comes from the contract, and agrees to a particular court or arbitration forum—all of which may be favorable to the other party.

Additionally, this juncture might be the time for the non-breaching party to demand that someone associated with the breaching party sign a personal and unconditional guaranty. That type of guaranty helps reassure the non-breaching party that can be repaid—whether from the breaching party itself or the guarantor.

Pursuing these options to avoid litigation may be helpful for individuals or small businesses who don't want to wait to start being repaid or even would like to give a second chance to the breaching party while strengthening their own hand. It is a cost-effective tactic, and in some situations, it may be just as effective as filing a lawsuit, but without all the associated expenses from taking that more drastic step.