

**Using Your Corporate or Personal Lawyer for Business Disputes.** All lawyers are qualified to handle business disputes, right? Wrong. A business litigator is someone experienced in prosecuting and defending civil lawsuits for businesses, managers and owners. The first lawyer every business needs is a corporate and transactional lawyer to create and register the business entity, draft operating agreements, issue shares, etc. Do not hire this lawyer—or the one who drafted your will—if you've been sued or if you have a dispute that may turn into a lawsuit. Ask a trusted advisor to recommend a lawyer whose practice is 100 % devoted to business litigation. Just as in medicine, the days of the generalist lawyer are over.

**Hiring A Lawyer Without Trial Experience.** More than 90 % of business lawsuits are resolved through mediation or negotiation. Only a small number go to trial and verdict. As a result, most lawyers—even high-priced ones—have little or no experience representing clients in front of a judge and jury. Most cases should settle, but some need to be tried. These cases include "bet the company" cases—if you lose, you're out of business. Don't invest time and money in your legal defense only to find out that your lawyer lacks the skills and experience needed to represent you effectively at trial.

## ABOUT NEWDORF LEGAL

Newdorf Legal is the go-to small firm for big problems. When business executives and public officials face complex legal challenges, they turn to David Newdorf for advice and representation. The firm's lawyers have more than four decades of experience in the private and public sectors handling high-profile litigation and business advice.

Newdorf Legal provides business and public entity clients expert advice and representation. For more information about Newdorf Legal, visit us at: [NewdorfLegal.com](http://NewdorfLegal.com) or contact David Newdorf to schedule a complimentary 30-minute consultation.



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# The Top 10 Business Litigation Mistakes

(and how you can avoid them)



**Not Taking A Lawsuit Seriously.** You know you did nothing wrong, so why should you spend money on lawyers? Because if you don't spend now, you will spend more later. It takes time and money in the early stages of a lawsuit to gather documents, interview witnesses, and develop a winning strategy. Without this foundation, you will lack leverage to bring the lawsuit to an early and favorable resolution. A frivolous lawsuit inflicts pain in the form of defense costs. But the pain will be much worse if you ignore it because you are confident that you are right. When it comes to business litigation, the familiar adage is true: the best defense is a good offense.

**Keeping The "Bad Facts" From Your Lawyer/Not Keeping Your Lawyer in the Loop.** Reveal all the information, even if it may not be in your favor. Cooperate fully. Inform him or her about all the facts of your case as accurately and honestly as you can, and report any new developments right away. By doing this, you allow the lawyer to develop strategies to counter "bad facts." You don't want your lawyer caught unaware in court.

**"I'd Rather Pay My Lawyer Than The Liar/Thief/Good-for-nothing on the other side."** This mistake also goes by the name "It's not the money, it's the principle." Such positions work fine for Microsoft, Warren Buffet, and their army of lawyers on retainer. But even these business giants know that it's sometimes better to pay an undeserving opponent than to get mired in costly litigation. For business owners, litigation is personal. But don't let your emotions create an inflexible attitude towards resolving a lawsuit. Discuss mediation, arbitration and settlement early with your lawyer.

**Being Too Eager to Settle.** Though less common than Mistake No. 5, it can also be a mistake to be too eager to settle. Maybe you feel you did something wrong and the other side is in the right. That doesn't mean you can't benefit from a vigorous defense. Sometimes a "win" means paying less than you otherwise might when you've done something wrong.

**Not Preparing With Your Lawyer For Your Deposition.** Depositions (the testimony of witnesses under oath recorded by a court stenographer) affect the outcome of every business lawsuit. If your lawyer doesn't meet with you before your deposition, how will you be prepared for the tough questions? Your deposition preparation session should help you identify and understand your case themes, the strong/weak points of your case and how to address issues that might arise during the deposition. You may practice answering questions and prepare for a video deposition. Don't scrimp on deposition preparation.

**Failing to Document Your Case.** The temptation for any business is to avoid unnecessary expense and effort. However, business litigation requires extra diligence in maintaining records. Make sure to maintain important documents, including electronic mail, so that you have a record of all communication with the adverse party in your case. A business litigator will advise you on document and evidence preservation, including electronic records.

**Not Telling a Credible and Simple Story.** In order to persuade the judge and jury, you must convey the facts in a clear and credible manner. One key to success is distilling these facts into a few simple themes. If your case involves technical or difficult issues, a business litigator will help you translate them into understandable terms. If there are gaps in your evidence, explain those as well. A good business litigator can present your story in a way that makes the trier of fact want to believe you and rule in your favor.

**Letting Your Emotions Get the Best of You.** If a claim is asserted against your business, you likely will be angry. A good business litigator will help you stay shrewd and unemotional. Since you must be able to consider your options with a clear head, strong emotions are your worst enemy. Be objective, cooperate with your attorney, understand the costs of litigating versus paying the claim, and develop your strategy accordingly.

