

Your Commercial Lawsuit: What To Expect

Commercial litigation and trials can be ordeals. However, the better prepared you are for what is likely to happen [during a lawsuit](#), the better you will get through it. The following is an overview of what may happen with your commercial claim over the next several months or even years. Every claim is different and what may have happened in connection with another person or company's claim may have little, if any, application to your situation.

Your Case May Take a Long Time to Resolve: Expected Timeframe

Resolving commercial cases, and civil litigation in general, can take a long time. It's frustrating, but there is no way around it. Small cases can often get settled within one year or less but, if you are involved in even a medium-sized case, it can often take over a year to several years from the date that you or your company has been harmed and/or damaged until the day that you receive your settlement money. The judicial system is often a story of hurry up and wait. You just have to be prepared. There is generally little that I, as your lawyer, can do about it.

Steps Leading up to Filing a Lawsuit

1. Unfortunately, commercial claims often seem to move slowly. Issues such as establishing the fact pattern of your case, determining liability, and gathering the necessary documentation or evidence is time-consuming and may take longer than your personal injury or other type of lawsuit.
2. In some cases, we are able to settle commercial claims through negotiation - without having to file a lawsuit. However, this still requires significant work on our part and takes time to establish the facts in your case. After our initial client interview with you, we evaluate your claim and determine any deadlines that apply. We locate and/or contact the opposing party, giving them

notice of the claim. We gather all the evidence we can, including any contracts or agreements, written communications and correspondence, reports, records, bills, statements, transcripts, necessary affidavits, photographs, drawings, etc. that are pertinent to your case. We interview witnesses regarding the alleged facts of your case. We analyze the legal issues related to the case, including identifying appropriate causes of action and any damage limits and deadlines that may apply. We find out the collectability on any potential judgment we may win on your behalf against the defendant, determining the assets owned or controlled by the defendant and whether there are any valid liens that must be repaid by the defendant out of any settlement or judgment.

3. After gathering all the relevant information, we prepare a complete "demand packet" which we send to the opposing party to see if we can settle the case without the need of filing suit. This is a complex and comprehensive document which asserts and documents our claims and evidence. Exception to this is when the statute of limitations is about to expire and we have to file suit to protect your claim. After the opposing party responds to the demand packet, we discuss the case status with you and decide whether further settlement negotiations should be pursued or if suit should be filed in the case.
4. The steps leading up to the decision whether to file suit could take 3-6 months or longer from the time that you hire us as your attorney to represent you in your case.

A Lawsuit is Filed and Served on the Defendant

After establishing that a legitimate case exists, and that there are no procedural hurdles like an expired statute of limitations, and if the opposing party disagrees with us regarding the settlement value of your claim, then we will file a petition. The petition is the first official document in the case, laying out in very broad detail what the plaintiff claims the defendant did. After the petition is filed, it may take a month or more to locate the defendant and "serve" the petition on him or her. Serving the petition basically means physically delivering the petition to the defendant, or their registered agent, in a way that can be proved later, ensuring the defendant cannot later claim not to know about the lawsuit.

The Defendant Hires an Attorney to Answer the Lawsuit

The defendant will typically have approximately one month to file a response to the lawsuit. In commercial lawsuits where the defendant is a legal entity instead of a person or individual, the defendant must hire an attorney, and that attorney will have approximately one month from when the legal entity is served with the lawsuit before the attorney needs to acknowledge the lawsuit by filing an “answer.”

Pre-Trial Litigation

In the pre-trial process, both sides will ask each other for evidence and witness information in a phase called “discovery.” In the early stages, it may be necessary for you to complete written answers to questions sent to us by the other party. These questions are called interrogatories. You will be asked to produce certain documents that are in your possession for review by the opposing attorneys. You also may have your deposition taken, which is a process that allows the opposing attorney to ask you questions in person about the suit facts and general background. We will prepare you for your deposition and be present with you while it occurs. From time to time, both sides will also appear in court to inform the judge of how the case is proceeding, to agree or not agree to mediation or arbitration, to adjudicate disputes about the scope of discovery, and to set a trial date. You will not need to appear at these court hearings.

This process of discovery and intermittent court appearances can take months and even years, with the trial date frequently being set back. Eventually, once the discovery process appears to have proceeded as far as it can, and as the case moves closer to trial, the parties will significantly ramp up effort as they engage in mandatory settlement conferences, make motions to determine what evidence will be allowed at trial, select a jury, etc.

Finally, the trial will begin and, for a typical commercial case, last several days to several weeks, depending upon the complexity of the case, the amount of evidence, the number of witnesses, etc. At trial, the judge or jury will determine if the defendant is liable and, if so, how much the defendant is required to

pay out in damages. After trial, either party can initiate an appeals process that can potentially last several years. After the appeals process has been exhausted, a losing defendant will be obligated to pay the damages established at trial or on appeal. However, please note that obtaining a judgment from the judge and jury does not guarantee that the defendant will be able to pay the judgment amount if there is not insurance coverage. Forcing defendants to pay judgments from their own resources and/or assets is often difficult.

Settlement is Very Likely

For these reasons, most cases settle before trial. At *any* point in the process described above, the parties can settle and end the case. What is more typical, particularly if the initial evidence establishing liability and/or damages is inconclusive, is that a settlement is reached after the discovery process has gone on for a while.

The Litigation Process Can Be Confusing

The judicial system and the litigation process are confusing. Pleadings, motions, hearings, interrogatories, discovery, document requests, continuances, adjournments, negotiations, deadlines! These common concepts and occurrences in litigation can be very confusing to the layman.

You Will Lose Some of Your Privacy

When you file any kind of lawsuit, you will lose some of your privacy. If you file a lawsuit, the defense attorney has the legal right to ask you many intrusive questions and demand that you produce many different kinds of documents about your personal, medical, financial, and employment history for many years in the past, even many items that do not appear directly relevant to your claims. You may also be required to take some time to sort through items in your possession for documents potentially responsive to requests from the other side.

At a [deposition](#), a defense attorney may often ask you detailed questions about every job that you have ever held since many, many years ago, every financial and operational detail about your company, and personal questions about you in an attempt to find inconsistencies in your answers as a way to attack your credibility. You are only required to respond to the extent of your memory, but you must do so to the extent that you can.

Defense attorneys can demand your corporate and personal tax returns for the previous five or seven years. They might demand all of your financial records that do not seem related to those at question in your lawsuit. They might subpoena previous employment records for every employee that you have ever had.

This is invasive, intrusive, and highly annoying. But the bottom line is that, for the most part, judges nationwide allow defense attorneys in commercial lawsuits to obtain much of this information. Litigants are allowed great latitude in seeking information about their adversary's legal claims and arguments, from plaintiffs as well as defendants. This is just something that you will have to be prepared for.

Be Prepared to Be Videotaped/Followed/Called by Investigators

If your case is anything but a small case, the opposing party might hire a private investigator to follow you around with a video camera. If the investigator catches you doing something that is inconsistent with your testimony, then that will hurt your case. Some investigators will even pretend to have a flat tire, and will knock on your door and ask if you can help them change their tire. If you have a potentially big case, this is just another hassle that you will have to deal with.

Testimony Can Be Confrontational – Don't Lose Your Cool

When the defense attorney confronts you face-to-face for questioning at your deposition and at trial, he/she might go after you hard if he/she thinks that you might lose your cool. Juries do not usually like angry plaintiffs, even if the plaintiff might have a legitimate reason to get angry.

If the defense attorney can get a plaintiff to lose his/her cool, the plaintiff's chances of winning the case decrease. You lose your focus when you lose your cool and often say things that you will later regret. When you are sitting across from the defense attorney at your deposition and at trial, be prepared to be confronted. Know what the weak points of your case are, and be prepared for probing, even insulting questions about them. Be able to calmly explain even the weakest parts of your case without losing your cool. The jury will appreciate your ability to stand up under pressure, and will hopefully reward you for that.

Keep Lines of Communication With Your Lawyer Open

Don't let the litigation process overwhelm you. Ask your lawyer about anything that you don't understand. Ask sooner rather than later. When you understand what's going on, you'll be better prepared to deal with it. Please make sure to inform us of any changes to your address, health or employment situation, or contact information.

How You Can Help Your Commercial Case

We want to provide you with the very best legal representation and we ask that you give careful consideration to these recommendations:

1. Please do not discuss the details of your case with anyone because this may compromise attorney-client confidentiality. Other people could interpret things you say in many different ways. Tell anyone who tries to get information from you that you have been advised by your lawyer not to talk about the claim. A representative from the other party may contact you in an attempt to

discuss the details of the claim with you. You should tell that individual to contact me and then you should contact our office. MOST IMPORTANTLY, DO NOT POST ANYTHING ONLINE REGARDING YOUR CASE.

2. Please maintain a file folder where you can keep all information you receive concerning your claim. This information should include any personal written notes, photographs, financial bills and records, business documents, witness statements, etc., including materials that you receive after hiring me as your attorney. Please promptly forward me any new materials that you receive regarding your case.
3. One of the first things you should do is write down everything you can about your claim, including details of how you and/or your company has been harmed and their effect on your business operation or your daily life. These notes can be very useful two or six or ten months later, when we put together all the important facts into a final demand for compensation. Having notes to remind you of the details of what happened, and what you went through, is both easier and more reliable than counting on your memory. Get into the habit of taking notes on anything you think might possibly affect your claim and carry it through the entire claims process. Whenever you remember something you had not thought of before -- while you're in the shower, just before you fall asleep, as you're biting into a pastry -- write it down and put it with your other notes.
 - a. **Economic or Other Losses:** You may be entitled to compensation for economic social, educational, or other losses, as well as lost business opportunities, past or future. But you will need good documentation. Begin making notes about anything you have lost because of the harm inflicted on you: work hours, job opportunities, meetings, classes, events, or anything else which would have benefited you or which made you money but for the harm.

- b. **Conversations:** Make written notes of the date, time, people involved, and content of every conversation you have about your claim. In-person or telephone conversations worth noting may include those with any witness or anyone from the opposing party. **As a general rule, please do not provide any written or recorded statements to anyone without my prior approval or speaking with me beforehand.**
4. If appropriate, take photographs which would illustrate the extent of the harm and/or damage. This could prove to be valuable evidence and indicates how well prepared you are to get the settlement you deserve.
5. Protect physical evidence and document the extent of the damages inflicted upon you and/or your company. Who was at fault is sometimes shown by a piece of "physical" evidence -- something you can see or touch, as opposed to a description of what happened. Physical evidence and adequate documentation can help prove the extent of the damage.
6. Locate witnesses. A witness to your claim can be immensely valuable to you in making your case to the opposing party. Witnesses may be able to describe things that confirm what you believe happened, backing up your story. Also, they may provide you with information you were not aware of but which shows how the other person was at fault. Alternately, a witness may have heard a statement made by another person indicating that someone other than you was at fault. However, time is of the essence. If witnesses are not contacted and their information confirmed fairly soon after the accident, what they have to say may be lost. People's memories fade quickly, and soon their recollections may become so fuzzy that they are no longer useful. Also, a witness might no longer be around if you wait too long; people move frequently.

7. Please retain and keep all business and financial records, statements, any contracts or agreements, written communications and correspondence, reports, bills, transcripts, necessary affidavits, photographs, drawings, investigations, reports, etc. that are pertinent to your case.
8. Be proactive in obtaining compensation for your property loss and/or damages. If any personal property and/or real estate was damaged, you'll likely be entitled to reimbursement for repairs or compensation for the fair market value of the property that was lost.

Thank you again for selecting Kitchens Law Firm, PC to represent you in your case. This process may be trying and confusing at times and will take longer than expected, but your patience is appreciated and your diligence in documenting your case will go a long ways towards maximizing the value of your claim.

As a final note, we are happy to schedule periodic appointments to discuss the status and progress of your case, and we strive to return every telephone call within 2 business days. However, please remember that our office handles many other cases as well and may not be able to return your calls immediately, visit with you if you stop by our office unannounced without a scheduled appointment, or recall every detail about your case when you contact us. If you have not heard from us for a while, that does not mean we are not working on your case. Indeed, we strive to work on and resolve your case with minimal time imposition on our clients.