

Resolving disputes

Litigation is just one of a number of tools

It is often said that we live in a very litigious society. Every year, companies spend billions of dollars on resolving disputes through the litigation process. Although the size of the expenditure may make lawyers happy, it seldom makes business owners and executives happy. Because disputes can arise from any aspect of a business operation, it is important that senior executives be cognizant of the alternatives to litigation as a means of resolving disputes.

“A number of forces contribute to the continued growth in litigation,” says Kelly O’Keefe, a lawyer experienced in both litigation and alternative forms of dispute resolution. “Some businesses seem to underestimate the importance of maintaining good relationships with all constituencies. Furthermore, some would suggest that our society has developed a victim mentality that seemingly contributes to a feeling of a need to extract ‘justice’ for wrongs that have been committed against us. And some would suggest that the fast-paced world has many operating more aggressively and more hostilely.”

To understand alternative ways to resolve disputes, *Smart Business* interviewed O’Keefe.

What can a business do to minimize the time and costs of litigation?

It all starts with the values of a company. Companies that place an emphasis on dealing fairly with all constituencies — suppliers, customers, employees, investors, owners — will have less disputes to begin with. Enlightened companies create real strategic differences that lead to competitive advantages. Such companies compete on these differences as opposed to looking to take advantage of any of their constituencies. When one truly values each constituency, the likelihood of disputes is reduced. And where disputes do arise, the feelings of good flowing from such a value



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system can make for a forum for quickly and efficiently resolving the dispute.

Sounds like nirvana. Is that all realistic?

Absolutely, but I am also a realist that notwithstanding the best of corporate values, serious disputes will arise. Every business has people at the core of the business and whenever people interact with another person, there are chances for wrongs to occur. Employees are mistreated or perceive that they are, services are less than promised, products fail and so on.

The key to containing litigation costs is to couple proper corporate values with a resolution mindset. By resolution mindset, I mean having a philosophy of focusing on dispute resolution as the goal when disputes arise and being open to considering the full panoply of alternatives to resolving a given dispute. For every dispute, one should consider the pros and cons of litigation, mediation, arbitration or even something as simple as an apology.

What stands in the way of having a resolution mindset?

First and foremost is emotion. Much of litigation starts out because of emotion. People feel wronged and are determined to exact revenge. Words of genuine apology seem to come hard to many people.

Regretfully, lawyers can sometimes contribute to the emotion that stands in the way of effective dispute resolution. As human beings, lawyers are not immune to having their own emotions and needs impact on the means by which a given dispute will be resolved. As an example, some lawyers relish the opportunity to battle it out in court. My own bias and our firm’s philosophy is that clients are best served when the focus stays on what will be in the client’s best interest.

What final words of advice on this subject would you give to a business executive?

No matter what your line of business, you can add to your competitive advantage by proactively controlling your expense in resolving disputes. To do so, one must first focus on reducing the incidences of constituencies feeling they have been wronged. And where wrongs have occurred or are being claimed, one needs to consider the full range of dispute resolution options ... without emotion.

Select your constituencies carefully, treat them fairly and be prepared to make right when you have erred. Doing so will enable you to stay focused on building and reaping the rewards of sustainable competitive advantage.

KELLY O’KEEFE is a dispute resolution attorney who is equally comfortable in alternative dispute resolution processes as she is in battling it out in court. Read more about how Kelly and her colleagues at Berger Singerman are helping business owners resolve disputes online at www.bergersingerman.com.