

## **Litigating on Principle**

By: Howell O'Rear

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Earlier this week, I spoke with an out-of-state lawyer about a familiar client refrain: "I'm going to fight (or defend) this case on principle." Most of us know what usually happens next. The first invoice for litigation arrives, and suddenly the moral crusade takes a backseat to cold, hard math. Financial motivations almost always outweigh principle once real costs (and time) set in. But not always.

In our conversation, my colleague told me about a long-time client who did business the old-fashioned way, with handshakes, trust, and straight talk. It worked well for him for sixty years. When a handshake deal went bad, which was rare, it turned into a classic he said/she said dispute in court. He could have settled quietly and probably far less than the claim value, but he chose to fight to the end because, for him, backing down would undermine both his word and his reputation. That choice was not just a legal strategy; it was a business strategy. The result was that he became known in his industry as someone whose handshake was as strong as a signed contract and who would not fold under pressure, which would be easy to do since it is always tough to define the terms of a handshake deal in litigation.

I have had a couple of clients like that as well. One litigated (as a defendant) a relatively small dispute because they wanted to send a clear message: if you try to take advantage of our business, it will cost you more than it is worth. Over time, that stance saved them money because potential claimants thought twice before filing suit.

The reality is that litigation is expensive, and everyone in the game knows that. Even a simple two-year case that goes to trial can cost \$100,000 or more in attorney fees and costs, and attorney fees are rarely awarded in contract/business disputes unless the parties have an agreement that provides for the recovery of attorney fees. If I tell a client, it will cost \$100,000 in fees (and two years of time) to fight a \$15,000 dispute, most will settle or compromise, as a pyrrhic victory is not worth it if you are trying to operate a business. To see a case like that through, the client must have the conviction and the financial resources to stay the course, along with a clear business reason for doing so. They cannot be the kind of client who spends the fight wondering why the bills are so high or asking why the lawyer cannot just "fix it."

When it is done strategically, litigating on principle can be like taking a big loss in one chess match to control the board for the rest of the game. A business facing multiple small but recurring claims, and who is right on the law and facts, might decide to take one all the way to judgment to deter others and set a precedent. In the short term it is costly and stressful, but in the long term it can reduce legal expenses and strengthen a company's position.

Now, litigating or defending a case on principle does not mean you will never settle. It means you are prepared to make the best business decision, even if that decision costs more in attorney fees than the claim is worth.

One of the 48 Laws of Power says to “conceal your intentions.” That maxim does not apply here. When you litigate or defend on principle, you make your position clear. You tell the opposing party your client will not budge, especially if you are on the defense. And I only make that statement when I know it is true; it is never a bluff. That confidence comes from knowing the client’s business inside and out, understanding what truly matters to them, and seeing them pay prior invoices without hesitation about the legal work required to pursue/defend a lawsuit.

So when you hear, “I’m litigating on principle” from a client or an opposing party, I’d say it is most likely a bluff, and for good reason. Time, money, and energy are finite. But in the right hands, with the right facts and the right mindset, it can be a powerful business move. It’s like building a lighthouse. The construction is expensive and the payoff isn’t immediate, but over time, ships steer clear and you avoid wreck after wreck.

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