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Being Involved In A Lawsuit—Applications

Worksheet: Defendant's Settlement

Most civil litigation is resolved by some agreement to settle the dispute, and in most civil litigation, the remedy is payment of money representing the value of the claim. As a lawsuit proceeds, the parties learn the strengths and weaknesses of each other's case and develop an idea of how much the case is really worth. This worksheet is designed to help you work with your lawyer toward a settlement.

NOTE

As you go through this worksheet you must not form any firm expectations about how much you might have to pay to settle the case. Your lawyer will have other information, opinions, and advice about your case for you to consider.

Also keep in mind that in settling the case, you are relieved of the time, expense, uncertainty, and stress of trial. That is worth something, too.

1. Why did the plaintiff sue you?

2. Is there any merit to the plaintiff's claim?

_____ Yes _____ No

3. Did you assert any claims against the plaintiff for your own losses or damage?

_____ Yes _____ No

4. Do you have liability insurance covering the plaintiff's claim?

_____ Yes _____ No

5. If you answered "yes" to Question 4, what are the policy limits?

Primary policy	\$ _____
Other policy	\$ _____
Umbrella policy	\$ _____
Second umbrella policy	\$ _____
TOTAL	\$ _____

6. What kinds of monetary losses is the plaintiff claiming? Check each one that applies; then note with a second check mark each one that your primary insurance policy covers.

_____	_____ Wages for time lost from work	\$ _____
_____	_____ Travel or lodging expenses	\$ _____
_____	_____ Value of item covered in contract	\$ _____
_____	_____ Cost to repair damage to land or buildings	\$ _____
_____	_____ Damage to personal property, such as equipment, vehicles, furniture, other things that may be bought and sold	\$ _____
_____	_____ Lost profits	\$ _____
_____	_____ Future profits (some states don't allow this item)	\$ _____
_____	_____ Paying someone else to complete contract work	\$ _____
_____	_____ The replacement cost of equipment or a product	\$ _____
_____	_____ Amount of loan plaintiff claims you owe	\$ _____
_____	_____ Costs to repossess or foreclose on loan collateral	\$ _____
_____	_____ Damages or settlement in another lawsuit	\$ _____
_____	_____ Lawyer's fees and costs in another lawsuit	\$ _____
_____	_____ OTHER (Please explain)	\$ _____

TOTAL \$ _____

7. If your case involves a contract, does the contract have a clause requiring payment of interest? (A promissory note is a contract.)

Yes _____ No _____

8. If you answered "Yes" to question 7, what rate of interest is set forth in the contract?

_____ % per year

9. If no rate is specified, enter the number 8 on the line in question 8.

10. How much time has elapsed since the alleged breach of contract?

_____ years _____ months

If you filled in the blank for "months," divide that number by 12 (unless you entered a zero) and enter the result in the space below. This number represents the number of months as a fraction of a year. Use only the first three numbers after the decimals. If the fourth number is five or more, add one to the third number.

0. _____

Add this fraction to the number of years: _____
(Use this number in the calculation below)

11. Complete the following calculation:

a. Amount of plaintiff's claim (from Question 6) \$ _____

b. Amount of interest per year:

(i) Multiply interest rate (question 8) by 0.01

_____ x 0.01 = _____

(ii) Multiply the result in (i) above by the
amount on line (a)

\$ _____ per year

c. Multiply result from line (b)(ii) above
by the number of years calculated in
Question 10.

\$ _____

12. If your case arises from a breach of contract, did the contract have a clause requiring payment of lawyer's fees?

_____ Yes _____ No

13. If you asserted counterclaims against the plaintiff, what are they and what are they worth?

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL	\$ _____

14. If the case involves something other than a breach of contract, do you think the plaintiff is partially at fault for what happened?

_____ Yes _____ No

15. If you answered "Yes" to question 14, to what extent do you believe the plaintiff was at fault? Don't exaggerate, be realistic. The percentages will be use in the next question.

_____ Mostly at fault (75%)
_____ About equally at fault (49%)
_____ Less at fault than I am (25%)
_____ Just a little bit at fault (10%)

16. Now adjust the plaintiff's claim by the amount to which you believe the plaintiff is at fault and by the amount of your own claim against the plaintiff.

(a) Amount of plaintiff's claim (Question 6) \$ _____

(b) Plaintiff's share of total fault (if applicable)

(i) Multiply the percentage corresponding to your answer in Question 15 by 0.01.

_____ x 0.01 = _____

- (ii) Multiply the amount from line (b)(i) by the amount on line (a) \$ _____
- (c) Subtract line (b)(ii) from line (a) \$ _____
- (d) Amount of your claim (Question 13) \$ _____
- (e) Subtract line (d) from line (c) \$ _____

17. Now make the same adjustments, but start by subtracting out the amount of your claim against the plaintiff.

- (a) Amount of plaintiff's claim (Question 6) \$ _____
- (b) Amount of your claim (Question 13) \$ _____
- (c) Subtract line (b) from line (a) \$ _____
- (d) Plaintiff's share of total fault (if applicable)

- (i) Multiply the percentage corresponding to your answer in Question 15 by 0.01.

_____ x 0.01 = _____

- (ii) Multiply the amount from line (d)(i) by the amount on line (a) \$ _____
 - (e) Subtract line (d)(ii) from line (c) \$ _____
18. What is the smaller of the two results? \$ _____

NOTE: Your state's law for computing damages may require you to make these two adjustments in the opposite order, which may well change the result. In the settlement analysis, however, you can use the lower amount and negotiate up from there if necessary.

This is the toward the **low-end**. Don't get hung up on it.

19. Add in the amount of interest fees you calculated in Question 11. If there is no contract requiring you to pay the plaintiff's lawyer's fees, skip this question.

- Amount from Question 18 \$ _____
- Amount from Question 11 \$ _____

TOTAL \$ _____

20. Is the amount you calculated in Question 18 (or Question 19) satisfactory?

_____ Yes _____ No

21. Try to place a value on the risk of going to trial and losing. Consider:

- √ trial expenses (ask your lawyer what range they'd be in)
- √ the value of time you would lose if you had to attend trial (e.g., lost wages, child-care expense if you are a stay-at-home parent, and the like)
- √ the emotional cost of being center-stage at trial and the uncertainty of the result (this can be difficult to express as a monetary value, but try)
- √ the cost of stress during trial (also difficult to value)
- √ **Suggestion:** for the emotional cost and stress of trial, use 10% of the amount in Question 19(A) or 19(B).

22. What dollar amount do you place on the risk of trial?

\$ _____

23. Add the amount in Question 22 from your amount from Question 18 or 19 to reflect these savings.

Amount set forth in Question 18 or 19 \$ _____

Amount set forth in Question 22 \$ _____

TOTAL \$ _____

24. Is this amount satisfactory?

_____ Yes _____ No