

By Adam S. Warshaw

# The Right Business Decision

**Accepting a settlement offer can be difficult to swallow when you are the client**

“It is the right business decision.” I have said these words so many times over the last 12 years that they have become part of a smooth-flowing sales pitch designed to convince my clients to accept sensible settlement offers. Yet this time, the words sound different. This time, I am the client hearing them.

It is a fee dispute case with an ex-client. It begins the same way all cases begin, with tough talk and hard demands followed by a knock at the door. As I look at the summons and complaint and politely sign the process server’s receipt, I feel a visceral, seething, boiling anger welling up. I am overwhelmed as I read the peculiar blend of technical terms, facts, half-truths, fabrications, and conclusions that the complaint comprises. Although I have had to report defendants to the police more than once for threatening me, I never really understood how anyone could be moved to violence by the mere existence of a lawsuit—until now. I rage at my empty office, throwing the papers on the ground and spewing curses. Denial goes hand in hand with anger. I look at the papers over and over to see that they are real. It cannot be happening to me.

My anger recedes and is replaced with my first real pangs of concern when I tell my wife later that day about the lawsuit and she asks if we have to worry about losing our little house with the one bathroom. I wish I could reassure her, but I am a litigator. I know about the risks inherent in litigation, about bad rulings and jury nullification, botched instructions and personalities taking precedence over facts. I know that as a lawyer defendant I will lose the popularity contest. The jurors probably will excuse my client’s shrill accusations and baseless demands; conversely, they will almost certainly punish the clipped harshness of my denials and rejections.

As my professional training and experience kick in, as the first waves of emotion recede, I ask my colleagues for help. My closest professional confidant advises me to settle, even if it means rebating the entire fee. He reminds me that every moment I spend fighting the case is a moment lost with my family or taken from my practice, and that all the energy expended on this battle will take its toll on my soul. All my colleagues tell me that settling is the right business decision.

While I may have a fool for a client, he has a smart lawyer. I call the plaintiff’s attorney to open a dialogue. He is polite, courteous, almost apologetic. I carefully match his unctuousness, yet I am so

angry that my hands are shaking. We agree on a pleading extension while he seeks a settlement demand from his client.

While waiting for the demand, emotions again wash over me like waves, hitting me at the oddest moments. Looking at my four-year-old daughter peacefully sleeping at night, I am enraged that her college fund might be seized to pay off a judgment. I go to sleep in fear and awake in turmoil, continually analyzing what assets of mine are sheltered from creditors. The lawsuit is a constant, paralyzing weight on my shoulders that keeps me from paying down my car loan or upgrading my office computers. It is excruciating to feel so powerless. To confront and control my emotions, I daydream about making the case a financial, procedural, and discovery hell for the ex-client if it cannot be settled. I grind out voluminous discovery and prepare my motions while I wait.

## The Settlement

Two weeks after I am served, I receive an offer to settle for a rebate of slightly less than half the fees I was paid. I have to accept the offer. It calculatigly leaves me just enough of my fee to make the risks and costs of trial truly unattractive. Yet I am wracked with doubts, especially when everyone I know who is not involved in the practice of law questions whether I settled too readily. Even as I respond that it could have been worse, it only makes me realize that I have agreed to write a big check to a person I loathe.

My emotional ride does not end with the dismissal. Although I accept the result, there is no acceptance. The lawyer in me knows that it is profoundly stupid and self-destructive to blindly allow rational decision-making processes to be held hostage to the angry child inside. I made the right business decision. Even so, I feel betrayed, ashamed for capitulating. I now understand why so many clients on both sides cry bitterly when they make the right business decisions. When I urge settlement I move from champion to diplomat, betraying the client’s emotional investment in the attorney-client relationship. Eventually, my clients who settle their cases feel acceptance. Many even thank me or ask me to take on additional work. Eventually I will reach acceptance, too, and forgive myself for making the right business decision. ■



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