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What To Do if Your Business Has Been Sued

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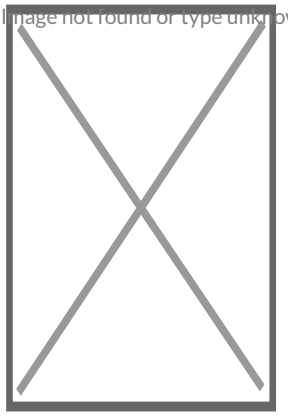

By Carlton E. Joyce, Bouhan Falligant LLP

Special to Business in Savannah

Most small business owners are fully immersed in the day-to-day challenges of running their company, staying busy with managing employees, sales, marketing, billing, and operations, among others. A lawsuit — whether it's for a slip and fall, wage garnishment or commercial dispute — is unexpected and unwelcome, but there are smart decisions you can make to resolve a lawsuit.

First, contact your insurance company or your attorney and make sure they are aware of the lawsuit and have received any necessary paperwork. Confirm paperwork was received and if you do not hear back, follow up. Do not assume anything!

A response must be filed to a lawsuit or you will enter into default. A default judgment is conclusive and binding and, once entered, claims in the lawsuit cannot later be denied or fought. Deadlines, which vary depending on the circumstances of the lawsuit, are generally 30 days for State Court filings and 21 days for those filed in Federal Court.

It is imperative you preserve, protect and maintain all records — both paper and electronic. If your company has a destruction policy, which automatically discards records after a certain length of time, you should suspend the policy.

The time to address this policy is the moment you think a lawsuit may be filed. Don't wait for a complaint to be served if you have an accident or potential claim.

As a business owner facing a lawsuit, you have an obligation to maintain and not alter or destroy records that may be subject to discovery requests. These include: all digital or analog electronic files, including even “deleted” files and file fragments; all databases; all Internet and Web-browser-generated history files, caches, and “cookies”; log or logs of network use by employees or otherwise, whether kept in paper or electronic form; fixed drives on stand-alone personal computers and network workstations; and evidence created subsequent to notification of a lawsuit.

Failure to maintain these records can result in a spoliation charge, the destruction or failure to preserve evidence necessary to contemplated or pending litigation. Proof of spoliation may result in the court striking your defenses, a charge of discovery abuse, and the jury's assumption that the evidence favored your opponent.

In addition, be sure to disclose all the facts to your attorney and follow instructions. Lawyers need to know both the good and the bad, and not being transparent will only hinder your attorney's ability to handle your case. Do what your legal representation suggests, including not communicating about the lawsuit with third parties. Such communications could be considered discoverable and damaging.

Finally, don't panic. Just because you've been sued does not mean your are liable. Judges and lawyers work diligently to ensure everyone's interests are protected and, in my experience, jurors take their obligation seriously. Have faith in the judicial system; it is tailored to preserve a party's right to be fully heard and effectively present his defense.

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