

## Farm Management

# Use litigation as a last resort



## Country Counsel

By ROBERT MOORE

They may see litigation as a quick way to enforce the law against the opposing party and come to a quick resolution. This is rarely the case. It is not uncommon for litigation that results in a trial to last two to three years.

After filing a lawsuit, the other party files an answer. The answer will provide the opposing party's defenses to the lawsuit and any counter-claims that may arise. It is important to realize that once the opposing party files counter-claims, the lawsuit cannot be dismissed without the agreement of all parties. That is, the party filing the lawsuit may find themselves in a lawsuit that they cannot get out of even though they want to.

After the answer and any counter-claims are filed, the process of discovery begins. This is the most time-consuming and expensive part of litigation. All parties involved in litigation have a right to all relevant information that the other parties have in their possession. Many people are surprised that they are forced to provide the other party with what may be very personal information.

For example, a farmer sues the local farm supply company for damages resulting from the application of the incorrect herbicide to a crop. The farm supply company can and likely will ask for all crop production records, tax returns, financial information and any other relevant information it may deem it needs to defend itself. The farmer has no choice

but to provide the farm supply company with all the information requested, as long as the information is relevant to the litigation. The purpose of discovery is to get all the facts out in the open, even when those facts may be personal.

In addition, the parties will likely be deposed. This is a process where the other party, usually through their attorney, asks the other party to the lawsuit questions to try to help their case against the other party. Depositions can often last all day and are usually exhausting and very stressful. Depositions are very useful to find weaknesses in the other party's case.

### Consider the cost

It is common for someone to want to initiate a lawsuit on moral standing without regard to the cost of the litigation. It is also common for that person to quickly find that their moral standing has taken a seat when the legal fees start coming in.

Even a relatively simple litigation matter could cost \$10,000. A complex litigation matter will easily incur \$50,000 in fees, and fees over \$100,000 are common. Obviously, the potential benefits from litigation must outweigh the costs, and this must be carefully analyzed before beginning litigation.

Perhaps the most important decision in litigation is selecting an attorney. It has become more common that people

try to represent themselves in litigation to try to save costs. However, unless the matter is very simple, an attorney should be retained. Parties representing themselves will often find themselves in a judicial system that is completely foreign to them and unforgiving of their unfamiliarity and potential errors.

Considerable time and effort should be spent in selecting an attorney. The client should feel comfortable with the attorney so that they can communicate effectively, have the same goals and objectives and get along on a personal level. The client and attorney will spend significant time together.

It is often very beneficial to hire an attorney who has technical knowledge in the subject matter of the lawsuit. For example, a farmer sues a feed company for providing feed of poor quality that caused a loss of production in his dairy cows. An attorney that has a background with dairy farms, dairy nutrition and/or feedstuffs is able to grasp the issue quickly, analyze the merits of the case, identify potential expert witnesses and communicate with the client in a way that an attorney without such experience may not be able to.

It may take some time and effort in finding an attorney that has technical knowledge in a particular matter, but it is likely worth the effort.

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**N**O one ever wants to end up in litigation, but sometimes it is inevitable. Occasionally two parties cannot resolve their differences privately and must move their dispute to the judicial system.

Litigation is expensive, time consuming and stressful, but it will result in a resolution of the dispute either through settlement or judgment after a trial. While litigation has a very negative reputation, it does provide a very important purpose in society by providing a final and binding resolution to disputes.

Litigation should be the last resort to resolve a dispute. Before initiating litigation, the parties should try to work things out on their own. Private resolution is the cheapest, quickest and most amicable means of resolving a dispute. It can often be helpful to involve a neutral third party to help mediate between the parties. Any agreement reached through private resolution should be memorialized in writing and signed by all parties.

People who believe their rights have been infringed upon are often overly eager to file suit and initiate litigation.

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