You Lost At Trial, So What?

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Your lawyer thought that the other side's settlement offer was insulting and you liked it even less. You already had tens of thousands of dollars invested in legal fees and you felt comfortable with your chances at trial. You decided to have "your day" in court and tell your story to the judge rather than settle. To your surprise, however, the ultimate finder of fact didn't see things your way. The judge mailed you a tentative decision explaining why he decided the case in favor of the other side. You're amazed. You're dumbfounded. You're more than a bit angry. What do you do now?

What many business people do not understand is that even after receiving the judge's intended decision, they still have many alternatives available to them. It is not a simple question of, "Do I appeal, or do I pay?" As explained below, there is a lot of middle ground between those options, and many cases end up somewhere between them. Having experienced counsel will definitely help, but even novice civil litigators should be able to explain and explore the following post-trial issues:

You Might Not Have Really Lost, At Least Not Yet.

One of the hardest concepts for many litigants to grasp is the distinction between an announced ruling, a statement of decision, and a judgment. While it may not be a pleasant experience to have a court issue any of these things against you, only the judgment allows the other side to collect. Just because a judge issues a tentative decision adverse to your position, it is not necessarily time to call it quits. A tentative decision is precisely that -- tentative. It can be changed, and it can often be changed even without filing an appeal.

California law allows aggrieved parties to file post-trial motions challenging the factual and legal bases for any decision rendered by the trial court. Despite whatever decision the jury or trial judge initially announced, litigants may seek a new trial, modification of the announced decision, or even the entry of a new/different judgment if they can make a sufficient showing. In some situations, it may even be possible to have requests for such relief heard by a judge other than the one who presided over your trial. If nothing else, filing a well-prepared motion for new trial or motion to set aside a jury verdict can send a clear message to the other side that you have not yet given up on the case. Often times, this factor alone can push the litigation in the direction you wish to take it.

Staying Enforcement Of The Judgment.

The primary concern of most people who lose a trial is what the other side is going to do to collect on the judgment. Will my wages be garnished? Will the county marshals seize my assets? Will my bank accounts be frozen? The nightmarish options seem endless. While all of those things are certainly possible, they need not happen instantaneously. Even if the losing party cannot afford to post a bond, California law allows trial courts

to stay the enforcement of any judgment for up to 190 days under the right circumstances. Many trial court's issue this type of relief as a matter of course as this type of "time out" in the litigation often drives settlement. Often all you have to do is ask.

Dissolution/Bankruptcy And The Threat Thereof.

The fact that you owe the money does not necessarily mean that you have to pay it. A judgment against a corporation is only as valuable as the assets of that corporation. If the company dissolves, there generally is not much for a judgment creditor to collect. Moreover, when a corporation dissolves, liability for corporate debts generally affixes only to those people/entities that take over the corporate assets. If you are truly willing to "walk away" from the company, you can, to a very large extent, walk away from the judgment as well.

Beyond that, bankruptcy is often an option for both corporate and individual judgment debtors. While certain types of debts are generally deemed to be nondischargeable, there are even debts obtained through fraud can sometimes be discharged under the modern bankruptcy code. Moreover, filing for bankruptcy will, at the very least, invoke the automatic stay which, as a matter of law, bars even informal attempts to collect on any amounts owed under the judgment at issue. Whether you file a bankruptcy case under Chapter 7, 11, or 13, your decision to do so will likely have a significant chilling effect on the other side's attempts to collect the amounts owed to them. Even the most inexperienced litigants understand this fact, so the threat of bankruptcy can often prove very helpful to any effort to avoid an adverse judgment.

Appeals And The Threat Thereof.

The trial court is not the final arbiter of how any given case is resolved. Under California law you have at least one appeal as a matter of right (you can tell your story to the California Court of Appeal regardless of whether that tribunal wants to hear it) and at least one discretionary appeal (the California Supreme Court decides which its appeals it wishes to hear). The same is generally true for federal cases, though you may have additional appeals available to you.

In state court, litigants generally have 65-185 days after the entry of judgment against them in which to file an appeal. After that, it often takes several months for the parties to assemble the record for the appeal, file and respond to whatever appellate motions they deem to be appropriate, and complete the appellate briefing process. Assuming that at least one of the parties requests oral argument, there is then a significant delay in the litigation. In Orange County, it generally takes more than two years before oral argument can be scheduled. After that, there is often an additional delay as the parties wait for the Court of Appeal to issue its final decision. The upshot of all this is that after receiving notice of entry of a trial court judgment, it is not uncommon for litigants to spend more than three years at the Court of Appeal before an appellate decision is issued. Depending on your situation, this can be a very important tactical consideration.

Settlement Is Always An Option.

As anyone whose ever tried to collect on a bad debt can tell you, being owed money is not the same thing as having someone hand you the money you are owed. Further, and as explained above, a savvy litigant can place many obstacles and delays between the prevailing party and the money they seek to collect. These facts, combined with the very real costs of protracted litigation, often motivate parties to resolve their differences without resorting to further court intervention. While the parties may have been unmanageably far apart with their settlement numbers before trial, the fact that one party has lost the case and the other party still faces all

the potential issues discussed above, can actually bring the parties closer together after the trial is complete.

As explained above, the fact that a given trial court judge may rule against you does not necessarily mean that you've "lost" the case. Aggrieved litigants may file post-trial motions, stay enforcement of adverse judgments, threaten dissolution or bankruptcy, prosecute an appeal, or settle matters even after the trial court decides the case against them. With a well-conceived post-trial strategy, savvy litigants can use the tactics described above (or at least the threat of them) to achieve a settlement that might not have been available to them before the trial commenced. The trial court does not always have the last word on who wins or loses any dispute.

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Practice Areas

Bankruptcy and Restructuring