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Client Playbook

The Board's Guide to Commercial Litigation

A practical reference for boards facing a significant commercial dispute

Mercer & Stone LLP — Commercial Litigation — Client Playbook

What This Guide Covers

A short, practical reference for boards facing — or anticipating — a significant commercial dispute.

This guide is written for board members and general counsel, not litigators. It sets out the questions a board should be asking at each stage of a commercial dispute, without assuming legal training. It is not a substitute for advice on your specific circumstances.

When to Call Counsel

The most common mistake we see is boards waiting until a claim is formally issued before seeking advice. By that point, evidence may already be harder to preserve, and settlement positioning options have narrowed.

> **RULE OF THUMB**
>
> If a dispute could plausibly result in litigation and involves more than a routine commercial disagreement, involve counsel before your first substantive response to the other side — not after.

The Business Decision Before the Legal One

Before assessing legal merits, a board should be clear on what a successful outcome actually looks like: full vindication, a fast resolution, preserved confidentiality, or a continued commercial relationship with the counterparty. These objectives sometimes conflict, and the litigation strategy should be built around the ones that matter most to your business, not around winning the argument for its own sake.

Key Questions for the Board

- What would a realistic best-case and worst-case outcome look like, in commercial terms rather than legal terms?
- How much management time will this consume over the next 12–24 months, and who is best placed to carry that?
- What is the reputational exposure if the dispute becomes public, and how likely is that?
- Is there a credible path to a negotiated outcome, and at what stage should that be explored?

What to Expect in the First 30 Days

Expect an early, honest assessment of the claim's merits — including its weaknesses — rather than uniform confidence. Expect a preservation exercise for relevant documents and communications. Expect a candid conversation about timeline, cost, and the realistic range of outcomes, updated as the picture develops.

A Final Word

The board's job is not to manage the litigation — that's what counsel is for. It's to be clear, early, about what the business actually needs from the outcome, and to revisit that view as the matter develops. Disputes rarely go exactly as expected; boards that stay engaged with the objective, rather than the process, tend to navigate that better.