

PROFESSIONAL REGRET?



I have a confession to make. I went to a top law school and received a first-rate education. I have worked as a litigator for the better part of the last decade and a half. I have litigated matters in state and federal courts around the country. I have successfully argued motions against former United States Supreme Court clerks and won. Yet, it is to my deepest regret, and frankly, personal shame, that I have yet to actually sue anyone's pants off.

WRITTEN BY SCOTT J. FARRELL, ESQ.

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Candidly, successfully suing the pants off an opposing party is a difficult feat, accomplished only by a select cadre of attorneys. Put another way, it's kind of like successfully obtaining the yellow jersey at the Tour de France despite riding your daughter's Disney Princess tricycle; sure, it's possible, but whose daughter is going to let them borrow her tricycle on a long international jaunt? Not many, I can promise you that.

This feat (suing pants off, not riding your daughter's Disney Princess tricycle in the Tour de France) can earn you the adulation of your clients and the enmity of your adversaries. Except when the adversaries whose pants you have sued off are perjurers. In that case, they are just grateful that you saved their life, or at the very least, you prevented what could have been very serious injuries. You know— on account of the lying.

Ironically, much like the baseball player who is often walked and has less opportunity to hit a grand slam home run, one factor that may be inhibiting my “sue your pants off” statistics is that I regularly advise clients not to sue. Why? Any number of reasons. While I cannot predict the future (see *supra*, n.1) I can, with complete confidence, state that litigation is always three things: uncertain, expensive, and uncertain. Indeed, given that the resolution of such disputes necessarily depends on factors out of my control— e.g., the actions and reactions of opposing parties, counsel, and when applicable, the Court, jury, arbitrator or mediator; and the merits and evidence in a given case— “uncertain” may be an understatement! Such uncertainty makes it impossi-

ble to predict the length and cost of a particular matter any more than, to borrow another baseball analogy, I could predict the length of an MLB game before the first pitch is thrown. A case could settle before inception or after years of litigation, with wildly disparate attendant costs; there is simply no way of knowing whether a particular case might “go into extra innings.”

In light of the foregoing, it is my experience that many disputes can be resolved amicably, without having to involve the court system. Creative problem solving, heading off disputes before they result in litigation, and analysis of the economic realities of litigation, are skills in my legal toolbox, which often result in a happier client, and one with more money in his pocket— even if that means less money in mine. That being said, there are many cases that do merit judicial intervention, and I don't shy away from a fight.

This is my first article in what will be a series of my regular observations about law and life. Have a question? Shoot me an email at the address listed below, and I'll do my best to weigh in on the topic in a future article. **fyi**

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