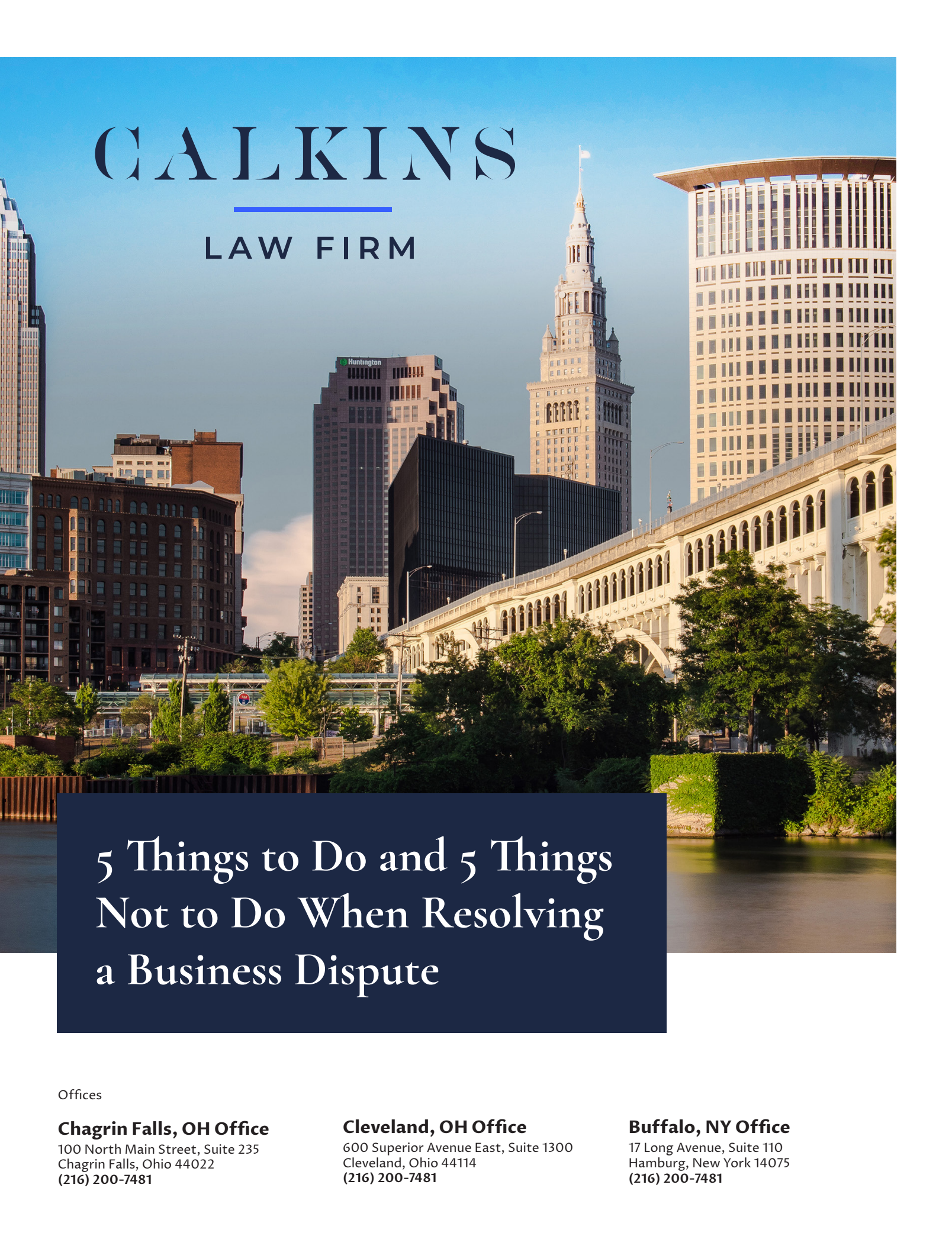


A photograph of a city skyline, likely Cleveland, Ohio, featuring several prominent skyscrapers. The Terminal Tower is a central focus, with its distinctive Art Deco architecture and spire. To its right is a modern, curved skyscraper with a grid-like facade. In the foreground, there are green trees and a body of water, possibly Lake Erie. The sky is a clear, bright blue.

CALKINS

LAW FIRM

5 Things to Do and 5 Things Not to Do When Resolving a Business Dispute

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To Do:

1. Excavate All of the Relevant Facts

Knowledge is power and preparation is essential. We always want to get our arms around any and all facts when we are asking to assist a client with resolving a business dispute. Excavating ALL of the relevant facts can be an exhaustive process but the time and treasure spent on the excavation is well worth it as it enables us to fully understand all aspects of the dispute and the parties to it and how best to approach/address and resolve it. Too often the facts emerge little by little, one by one, as the matter proceeds, when ideally they would have all been excavated and assembled and reviewed/analyzed up front. And it isn't uncommon for clients to deliberately conceal facts which they find embarrassing or which they think might cut against them. At the end of the day, all of these facts emerge and we therefore advocate full and complete disclosure of any and all relevant facts up front.

2. Research Any Relevant Issues of Law

Every dispute involves legal issues that are essentially an overlay over the relevant facts, and, to the extent we are not already well versed in all of these legal issues, we will research any open issues up front. By doing so we know, up front, how the facts and the law should interface, and how the law should be applied to the facts, throughout.

3. Be Assertive and Aggressive

We proceed with every dispute knowing full well that, worst case, we may need to file a complaint in court and then proceed with the matter through trial. So in that sense we are, with every dispute, preparing to win/prevail at the eventual trial. In contacting the adversary pre-trial to seek a resolution/settlement, and advocating for our client, we are assertive and aggressive. For, at the end of the day, we are able to engineer the best and quickest resolutions when we are bold. And confident. And prepared to prevail at trial should that prove necessary.

4. Know What Your Business Realistically Needs In Order to Walk Away And Live to See Another Day, And Make Achieving That Your Goal.

With every dispute, we work hard to understand exactly what our client is entitled to and what our client actually needs in order to proceed with the operation of the business. Let's say our client is entitled to \$200,000, but could realistically use a much lower dollar amount, \$60,000, if paid quickly, to proceed with the operation of the business. In this situation, with the client's consent, we would work hard to attempt to engineer a settlement for \$60,000 or more, rather than attempt to win a \$200,000 judgment at trial which would entail lengthy delays and vast expense which would themselves threaten and undermine the ongoing business. We work hard to achieve a resolution consistent with our client's practical/realistic objectives and business needs.

5. Settle As Soon As You Can Get What You Need and Preferably Short of Court

Court proceedings are slow, expensive and can be very unpredictable. So while we are prepared to go to court and will from time to time go to court on behalf of our clients, we understand fully the benefits to be derived from a relatively quick and inexpensive yet reasonable settlement short of court.

Not to Do:

1. Don't Charge Ahead Without Thorough Preparation

Proceeding when unprepared, going off half cocked if it were, is never a good idea. Sure, it might work from time to time but in most situations an unprepared advocate will be seen for what he or she is and not taken seriously from there on out. And it is very hard to negotiate with someone who you do not take seriously.

2. Don't Just File in Court and Damn the Torpedoes

I don't think this approach is uncommon. And it can work. But given the delays and the expense and the unpredictability of the courts, we recommend against heading to court unnecessarily and, in nine cases out of ten, or perhaps more, we are able to engineer a resolution of the dispute that avoids all of the negatives associated with court litigation.

3. Don't Assume You Will "Win" (or That Anyone Really "Wins")

Does anyone really "win" in court, when you take into consideration the delays, the expense, the stress, and the unpredictability of the process? I am aware of at least one plaintiff who "won" in court, against a defendant who was represented by incompetent counsel, and I am sure there are others; we read about others and hear stories about them. Our experience with courts gives us reason to doubt, even with the strongest claims and facts and law, that our clients will invariably "win" and that invariably the entire ordeal will have been worth it.

4. Don't Back Off/Settle Without a Thorough and Definitive Agreement

At the end of the day when a resolution or settlement is reached, it is important that the resolution/settlement be carefully and thoroughly reduced to writing before the claims are withdrawn or the claim/ complaint/ lawsuit is dismissed. So let's be sure that things are buttoned down, and that any required payments have been made, before calling off the dogs.

5. Don't Forget the Counterclaim

I make this point over and over because it is so relevant. In pursuing a claim, don't overlook the possibility that the defendant might have a counterclaim to assert. We handled a matter recently, not for the claimant but for the defendant, where a claimant proceeded to arbitration and in the process was hit with a counterclaim that would likely have never been pursued but for the claimant filing the arbitration. Think of dispute resolution and litigation and arbitration as being like chess, always anticipate the possible next steps that the adversary might take.

