

1 TIME TO PAY THE PIPER

(Costs of Falling Afoul of the Law)

- Presented By:
- Roy Jay Montney, Jr., Esq.
- Montney Isles, P.L.C.
- 231-922-9600

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- What Is the Common Thread Below:

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- Forbes Reported:
- 36%-53% of small businesses are involved in at least one litigation in any given year and 90% of all businesses are engaged in litigation at any given time
(Forbes July 14, 2014, Your going to get sued , here's how not to get Screwed, Basha Rubin)
- The reality is that you are going to be involved in litigation in some form at sometime

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- Litigation Comes From Many Areas:
- Injuries
- Property Damage
- Collection Actions
- Personnel Matters
- Third Parties

5 WHERE DOES IT ALL START?

- What Is the Common Thread Below:

6 THE CONTRACT

- What Is the Common Thread Below:

7 What Makes Up a Contract:

- A Party makes an OFFER
- Another Party ACCEPTS that Offer
- There is a MEETING OF THE MINDS between the Parties as to what was OFFERED and what was ACCEPTED
- There exists MUTUAL CONSIDERATION between the Parties

- For a LEGAL purpose

8 **WHY IS THE CONTRACT SO IMPORTANT?**

- They Touch Every Part of a Business:
 -
 - Customers
 - Sub-Contractors
 - Suppliers
 - Employees

9 **WHERE DO CONTRACTS COME FROM**

- What Is the Common Thread Below:

10 **IMPORTANT TO REMEMBER:**

- Contracts are Agreements you have with:
 - Your Customers
 - Your Sub-Contractors
 - Your Suppliers
 - Your Employees
 -
- They Come in Many Forms:
 - Customer Agreements
 - Sub-Contractor Agreements
 - Insurance Policies
 - Employment Agreements
 - Employment Policies

11 **WHY DO THE CONTRACTS MATTER:**

- Contracts Define the Relationships Between
- Each of the Parties
 -
 - They Define the "PROMISE"
 -
 - What is One Party doing for Another and what does the Other get in Return

-
-

12 HOW TO WIN THE LAWSUIT?

-
- THERE IS ONLY ONE WAY TO WIN THE DREADED LAWSUIT
-
-
-
-

13 AVOID IT

- What Is the Common Thread Below:

14 WHO WINS IN ANY LITIGATION?

- THE LAWYER
- PAY NOW OR PAY MORE LATER

15 Common Agreement Pitfalls

- Wrong Party Entering into the Agreement
- “We Agree” famous last words
- Misunderstanding
- Say what you mean,
“That’s what I meant” is NO defense
- Something is better than Nothing

16 Avoiding Litigation

- Common Practices to Avoid Litigation:
 - Put it in Writing (If you care, get it in writing)
 - Read what you are agreeing to do
 - Communication
 - Address small problems/Issues when they arise
 - Know the person you are dealing with
 - Ask yourself “if you were in their position how would you react”

- Get Assistance Early

17 **MAKE SURE YOUR AGREEMENTS**

- Specifically address who is to do what
(“Generality” is your Enemy)
- Are Specific About Time (You only have so Much)
- Establish the Level of Quality and Expectations
(You set the Level)
- Provide for a Way Out
(What happens if someone needs out)
- Account for Future Variables
(Things will change, so prepare for it)

18 **CONTRACT SPECIFICS:**

- REMEMBER A CONTRACT IS AN AGREEMENT

19 **Customer Agreements**

- Agreements You Provide:
 - Industry specific tailored to meet your needs
 - Payment
 - Proper Indemnification to protect you
 - Addresses how Customer Changes are handled
 - Overages and Extras

20 **Customer Agreements**

- Agreements Provided to You:
 - Do you have the Entire Agreement?
 - Timeline
 - Scope of Work (Usual or Something New)
 - Specifications and information
 - Insurance and Bonding
 - Customer Change procedures
 - Overages and Extras
 - Approvals

21 **Sub-Contractor Agreements**

- Refer to “Your Agreements”
- Remember:
 - You are Responsible for your Sub-Contractors’ Actions
 - Establish a Chain of Command
 - Sub-Contractors are a reflection on you
 - Address Small issues when they arise or YOU will be addressing the BIG issue which results from that
 - What happens if the Sub-Contractor goes away?
 - Insurance and Bonding
 - Approvals

22 **Supplier Agreements**

- Product Warranties and Transferability
- Product Support
- Transportation Costs
- Delays
- Payment Terms

23 **EMPLOYEES**

- Employment Agreements
 - Do you need them?

24 **EMPLOYEES**

- Employees are your conduit to your Customers and Suppliers
- You are responsible for their actions while they are representing you
- When something goes wrong they most likely caused it, but they are also the ones who will correct it

25 **EMPLOYEES**

- You enter into an agreement with each one of Your Employees
- It is up to you to Define that agreement
- Know your Employees

26 **TIME TO PAY THE PIPER**

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- Company Policies are your best means of Defining your Agreement with your Employees

- To Have Them in a Drawer
Does you no Good

27 **EMPLOYEES**

- Customer Interaction
- Customer Information
- Company Information including
Trade Secretes
- Use of Company Equipment
- Internet Use
- Electronic Communications
- Issue Reporting
- Chain of Command

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29 **WHERE DOES IT ALL START?**

With the Contract

- The Best Defense to the Inevitable LITIGATION is the Agreement
- How to Avoid LITIGATION is to prepare for it before it happens

30 **HOW TO PREPARE FOR LITIGATION AND LESSEN ITS IMPACT:**

- Appropriate use of Entity Forms

- Sole Proprietorship, Partnership, Limited Liability Company and Corporations
- The Right Insurance Is Your Friend
 - Know your risks and Know your Coverage
 - Ask Questions

31 **HOW TO PREPARE FOR LITIGATION AND LESSEN ITS IMPACT:**

- Employee Handbooks
 - Not Just Part of Employee Orientation
 - An Evolving Document Changing as the Company Changes
- Written Agreements
 - Your Road Map to getting through Litigation
- Develop a Relationship with Legal Counsel
 - Building a relationship involves trust and confidence, which should not be rushed in 21 days
 - Good Advice is priceless (and saves money)

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