TIME TO PAY THE PIPER
(Costs of Falling Afoul of the Law)

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What Is the Common Thread Below:

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

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

WHERE DOES IT ALL START?

What Is the Common Thread Below:

THE CONTRACT

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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
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”
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**
(**Costs of Falling Afool of the Law**)  
- 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 Advise is priceless (and saves money)

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