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Litigation WARNING:

What In-House Counsel Need to Know When Their Company is Being Sued!

Presented by Lisa Oliver White, Brandon Arber, Marc Polk & Melissa Pope Brennan

> SHOOK HARDY & BACON

in court.



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- Assessing litigation risk and exposure from incidents, recalls, governmental investigations, or negative media coverage
- Balancing the interests of a legal department, the C-Suite, and Board of Directors
- How to select and best utilize outside litigation counsel
- Dealing with beleaguered corporate representatives and unfavorable corporate documents
- Assessing when to fight and when to settle

Assessing Risk of Litigation

Examples: incidents, recalls, governmental investigations, negative media coverage

- Outside counsel litigation risk assessment
- Have team and plan in place
- Predict the future
- Sources (internal and external) to identify trends in industry
- How to assess litigation risk when you start at new company
- Strategies for conducting, documenting internal investigations

Navigating "the Tension" between business interests and legal strategy

- Often with high profile legal matters, there are business interests that can compete with legal strategy
- Involve Board, Public Relations in legal strategy
- Have Media Relations Strategy in place
- How to handle conflicts between client desires and legal strategy, ethical obligations

The Ins and Outs of Insured Claims

- Thinking ahead establish appropriate coverage in advance of claims.
 - Work with risk management.
 - Think about what coverages make sense and provide value.
- Choosing counsel and directing the defense of insured claims does the insurer always call the shots? What are your options?
- Identifying and utilizing insurance coverage counsel.

Best practices for managing outside counsel relationship

- Types of outside counsel (insurance defense, corporate, coverage)
- Selecting outside firm-relationships are key
- When to hire outside counsel
- Communication-be clear in what you expect
- Determine how involved you want to be (attend depositions, significant court hearings)

Dealing with corporate representatives and corporate documents in litigation

Corporate Deponents

- Corporate representative depositions can be most important aspect of litigation
- Selection of appropriate witnesses is crucial
- Preparation is key
- Managing overworked employees and litigation demands

Corporate Documents

- Identify key personnel
- Litigation holds
- Custodian searches
- Utilizing and preparing for disclosure of corporate documents
- Confidentiality Orders
- Addressing "bad company documents"
- Avoiding in the first place-training employees
- Know the documents

(UNFORTUNATELY) REAL LIFE EXAMPLES

Initial E-mail

From: Sent: To:

Monday, 1:02 PM

Subject:

Design Specs - Project 35xi

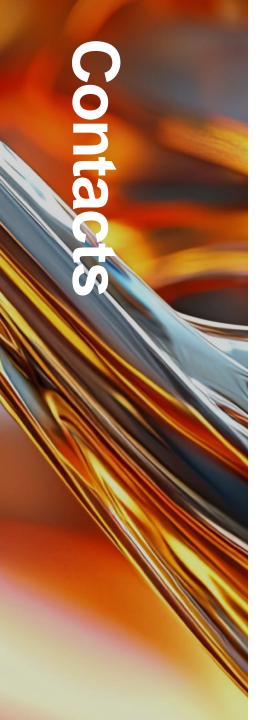
How are the tests coming? Are we getting close to submittal for production.

Keep me posted. Thanks.

When to fight and when to settle

- Discuss strategic goals of litigation
- Importance of jury studies
- What is a "win"
- Alternatives (high low)





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