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# Litigation WARNING:

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

Presented by  
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Marc Polk & Melissa Pope Brennan

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# Presenters

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*Associate General Counsel*  
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# Topics

- **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**



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# 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





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# 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



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# 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.





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# 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)



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# 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





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# 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:** [REDACTED]  
**Sent:** Monday, [REDACTED] 1:02 PM  
**To:** [REDACTED]  
**Subject:** Design Specs - Project 35xi

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

Keep me posted. Thanks.



# (UNFORTUNATELY) REAL LIFE EXAMPLES

## The Reply

**From:** [REDACTED]  
**Sent:** Friday, December [REDACTED] 10:06 AM  
**To:** [REDACTED]  
**Subject:** Design Specs - Project 35xi

This thing is a death trap! I will call you later today.

Tom



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# When to fight and when to settle

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





Q & A



# Contacts

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