

# Stories from the Inside and War Stories from the Outside: Navigating Internal and External Legal Issues

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# A little bit about Pat and Kevin

- Kevin: 10+ years in private practice as a litigator and 4 years as an in-house counsel.
- Pat: All litigation all the time. If it is broken, Pat can fix it. Prior to his legal career, Pat was a high school history teacher.
- Fun fact: Pat introduced Kevin to his wife.

# Two important “Rules”

- Bad News Bears Rule: Bad news must travel fast. Super-fast. Create a culture that rewards honesty.
- Grandma Rule: Would your grandmother like the email or text you are drafting right now? If not, delete it. Now.

# Splinter v. Shredder

- Evaluate Your Document Retention Policy
- Being a pack rat is bad, but so is shredding everything – find a balance and **use litigation holds!!!!**



# Contract Intake & Approval

- **Don't go broke saving money.** A common mistake is to chase a solution that has a great price, but sometimes the vendor just isn't up to the task.
- **Termination.** Always think about the exit strategy. This is critically important and if termination is difficult or expensive, it leads to litigation.

# Contract Intake & Approval

- Is this a new relationship or is there an existing contract in place?
- Identify the business need.
- Identify the true cost -- are there any hidden fees are escalators that can creep?
- What is the term of the contract? Are you on the hook to pay even if you cancel the contract?
- Does the contract create an exclusive relationship?
- Indemnity – who pays for what when something goes wrong?
- Limitation of liability?

# Indemnity Clauses

- Be on the lookout for clauses like “gross negligence.”
- The clause \*should\* contain the phrase “third-party claims.”
- Will they protect you from an infringement lawsuit?

# Limitation of Liability

- If it all goes wrong, what are your remedies?
- Particularly in the SaaS world, damages are often capped at the amount you have paid the provider.
- How critically important is what you are procuring? If mission critical, be on the lookout for damages caps.



# Forum Selection Clauses & ADR



# Sales guys sell. That's their job.

- If a vendor tells you, “well that’s just our standards language but we never do that”... or “no one has ever had problem with this provision”
- They may not be lying... but the terms of the contract will carry the day all day every day.
- If the terms are never enforced, then they should be willing to delete them.

# Remember Rule 1 – bad news must travel fast

- You've done everything right, but you received a lawsuit or legal demand.
- Remember The Bad News Bears Rule, and now you need to lawyer up.

# WWEWD?



# Lawyer Up

- If your lawyer tells you to pay attention, you need to pay attention.
- You need to understand that even though you may think the suit is frivolous, sometimes the contracts are hastily written and vague
- And yes, it will be expensive but if you do not treat it with seriousness, it is going to get a lot more expensive.

# Remember, remember the 5<sup>th</sup> of ~~November~~ Rules

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# Mistakes were made.

- Bad contracts lead to bad results.
- Put a bow on it.
  - Always, always, always put a capstone on the end of a relationship in writing, which spells out the parties' understanding.
  - A mutual understanding that is not reduced to writing is like a tree falling in the woods.

Any questions? We are free right now,  
so you better ask!

