



Prevention Playbook

DEFENSIVE STRATEGIES TO HELP LITIGATION PROOF YOUR BUSINESS

No company wants to be embroiled in protracted litigation – either in pursuing a claim or defending against the allegations of others. Regardless of the outcome, it is costly, time consuming, stressful, and often unpredictable.

However, with each passing year, more and more lawsuits are being filed.

While no one can predict or prevent all litigation 100% of the time, this checklist can be a helpful tool to reduce the chances of litigation and better protect your company when a suit is filed.



Customer Service – *Be nice.*

It is often overlooked that simple courtesies can help prevent litigation. Knowing there is someone who listens and responds to issues and complaints can help to calm tempers, de-escalate a situation, and resolve many conflicts. Simple, but effective techniques to consider:

- ❑ Respond to inquiries and answer questions once they are received. For example, some companies have the “24-hour rule” in which employees (including managers and bosses) must respond to an email or phone call from a customer.
- ❑ Equip and empower your team with knowledge and authority to provide information while in the field. Having to escalate every issue to management can cause frustration for everyone, including your own employees.
- ❑ Quickly notify customers of issues, delays, or complications. While having a solution to the issue or a clear timeline for resolution is best, don’t wait for absolute certainty. Customers want to know about potential issues as they occur so they are in a better position to respond to their chain of command.
- ❑ Set and hold regular status meetings. Depending on what makes sense, regularly scheduled meetings will work to keep everyone informed and accountable. It affords the opportunity to address complications and issues that arise during the course of the project.
- ❑ Listen to your customers. Many times, people want to share ideas or frustrations and just feel heard. Lending an ear rather than turning a cold shoulder can be the first step to warding off litigation.



Contracts – *Say what you mean and mean what you say.*

For most businesses, contracts provide the framework of relationships with their customers and vendors. These documents serve as the playbook for the parties. They should be well-drafted, clear, precise, and unambiguous. Here are some suggestions:

- ❑ Have them. As an initial step, have a written agreement outlining the terms and agreements your company enters into with other vendors or companies. A well-written, precise, and clear contract will provide the parties the best opportunity to avoid litigation. When done properly, these agreements will identify scope of work, responsibility of tasks, obligations to each other, remedies in the event of non-performance or default, and appropriate venue should litigation ensue. Often, these contracts will include indemnity provisions for mutual protection, insurance requirements, and dispute resolution clauses that may assist in avoiding litigation.

- ❑ Read them. The contract is only helpful if it is fully read, understood, and agreed to by the parties. Consider hypotheticals and what-ifs while reviewing the contract and look to see if the document answers those questions. What happens if A doesn't pay B? How does the contract address supply chain issues and subsequent delays? What if another COVID-19 or similar shutdown happens? Some of the terms may be confusing or unclear. Don't be afraid to ask about what is meant.
- ❑ Renew them. If the scope of work changes, there is a rate increase or quantity decrease, an entity changes names, or other substantive changes, execute a new contract. Contracts pieced together like patchwork quilts or with numerous addendums are ripe for disputes and disagreements about which provisions are still in effect and which ones have changed. The initial contract, once clear and concise, will become murky and lead to the potential for disputes.

TIP: IT MAY HELP TO HAVE AN ATTORNEY REVIEW THE CONTRACT – PARTICULARLY FOR THE INDEMNITY PROVISIONS, DAMAGE ALLOCATION, RISK SHIFTING, OR REMEDIES – TO ENSURE THAT ALL LEGAL REQUIREMENTS ARE MET AND CLAUSES ARE ENFORCEABLE.



Protect Your Assets – *Get Insurance.*

Make sure you have the right types and amounts of insurance to protect your employees, company, and assets. Depending on your type of business, you may need additional or specific policies.

Further, review your contracts to make sure you are complying with the amounts contractually required and that parties to the contracts are listed as additional insureds, if required. A qualified broker can provide an assessment and shop competitive rates, while counsel can ensure that these policies comply with state requirements.



Train Your Employees – *Early and Often.*

In addition to their initial orientation, institute (and actually hold) mandatory, regular training meetings to discuss a range of topics. The key is that they are meaningful and relevant. When conducting the meetings:

- ❑ Encourage your employees of all levels to participate in teaching and leading these meetings. More importantly, support and embrace the free-flow of information from the attendees about policies that don't work or are frustrating their job assignments.

- ❑ Hold them regularly. A training schedule will keep employees informed of changes in policies and procedures, updates to laws and regulations, and afford an opportunity to review and refresh unchanged policies or answer questions.
- ❑ Provide clear expectations of appropriate behavior and responses to circumstances. Be sure that each employee has a signed copy of the regularly updated policy and procedure manual.
- ❑ Document the attendees, topic(s), and date of each session and maintain these documents pursuant to your company's document retention policy.



Document, Document, Document – *If it isn't in writing, it didn't happen.*

It cannot be stressed enough; documents are critical in the litigation process - in either proving your case or defending against the allegations of others. Juries like to see documents as evidence. A single sheet of paper is infinitely more powerful than oral testimony stating conversations occurred or that meetings were held. This applies to all aspects of the business – employment records, disciplinary actions, incident reports, statements, actions taken, contracts, agreements, side deals, etc. To put your company in the best position:

- ❑ Develop and implement an organized and thorough system of maintaining transactions, communications, and relevant documents. It is helpful that more than one person knows where these documents are maintained and understands the associated system.
- ❑ Keep well-documented employee files. Beyond federal and state required documents, these employee files should include disciplinary actions, accolades, acknowledgement of training documents received, incident reports, adverse and positive employment decisions, and any other correspondence with your employees.
- ❑ Make the records as close in time as possible. Details and memories fade with time, so get as much information as soon as possible, including phone numbers and addresses of witnesses. Remember, most cases have a two-four year statute of limitations after the date of incident. Detailed and complete records at the time of the occurrence will help when issues arise and witnesses are needed years after the fact.
- ❑ Set a schedule to review company documents, such as policies and procedures, and do it. Updating company documents is a critical component of successful businesses. Further, outdated, and worse – conflicting – policies are low hanging fruit in litigation, even if wholly unrelated to the issue in litigation.



Communication is Key!

Most litigation is the result of miscommunication, or no communication at all. Mixed messages are litigation fodder. Whether in emails, phone calls, in person, or in writing, be as precise and clear as possible. Consider the following related to communication:

- Be honest and have integrity in your communications and dealings. Half-truths and outright lies drive a significant amount of litigation.
- Invite questions about the conversation to ensure your message is received.
- Pick up the phone. A three-minute phone conversation can often resolve issues and eliminate the need for back-and-forth emails. Most times, it is difficult for someone to be rude when there is an actual human on the other end of the phone as opposed to typing an angry message.
- Avoid text messages for professional communications if possible. Many employees treat text messaging as an informal means of communication and can lose their professionalism in these communications. They tend to be short and can be unclear and may not fully state everything that needs to be communicated. Text messages are generally discoverable and can lead to difficult explanations during depositions

TIP: COURTS ARE NOW HAVING TO CONSIDER THE USE OF EMOJIS AND THEIR IMPLICATIONS ON EXISTING AND POTENTIAL AMENDMENTS. FOR EXAMPLE: DOES A THUMBS-UP EMOJI CONSTITUTE ACCEPTANCE OF PROPOSED CHANGES TO THE DELIVERY TIME, PRICE, OR SCHEDULE PREVIOUSLY AGREED TO, OR IS IT JUST AN ACKNOWLEDGEMENT THAT THE MESSAGE WAS RECEIVED? IT IS BETTER TO AVOID TEXT MESSAGING FOR PROFESSIONAL COMMUNICATIONS, PARTICULARLY UPDATING CONTRACTS, AGREEMENTS, AND TERMS.



Stay Diligent, My Friends.

An ounce of prevention is worth a pound of cure. Consistently review your business operations for potential risks and take action. Spot checks, quality controls, secret shoppers, etc. afford the opportunity to identify potential weaknesses in training and policies. A few more suggestions:

- Encourage employees to report issues and brainstorm solutions. Particularly if you have multiple locations, employees on the ground will often be able to identify real-time issues and offer solutions.
- Regularly examine all aspects of the business for improvement and training opportunities.
- Keep yourself and your employees up to speed on new laws, regulations, and industry trends. Share with your employees and update any policies as needed.

OLIVA GIBBS OVERVIEW

HOW WE ADD VALUE:



We know energy. Many of our attorneys are Board Certified in oil, gas, and mineral law. Our team also includes lawyers who have worked as Landmen, in-house legal and compliance attorneys, energy executives, and counsel at state regulatory agencies. We provide experienced, efficient, and tailored legal counsel paired with deep industry knowledge to help clients resolve challenges and take advantage of opportunities.



We value constant communication with our clients to ensure a mutual understanding of the task at hand, keeping clients' overall business goals front and center.



From an operational perspective, we understand the cost and impact that legal matters can have on maintaining schedules. Our team has particular strength managing tight timelines and demands for litigation, title, and transactional matters. We also frequently coordinate with land brokers, surface and mineral owners, and developers nationwide.

A NIMBLE LEGAL TEAM

Our attorneys are licensed to practice law in 13 states and routinely advise clients with assets in multiple producing regions.

This multijurisdictional experience equips us with a broad and nuanced view of the dynamic oil, gas, and mineral landscape nationwide.

Additionally, many of our team members are former landmen or in-house energy company executives, which provides our clients with unique perspective from all sides of a deal or lawsuit.

CONTACT US

WE LOOK FORWARD TO HEARING FROM YOU.

