Protecting the Value of Your Business
CEO Roundtable – American Bus Association
Louisville, Kentucky – January 2019
• The value of your business inherently impacts the value of personal net worth!

• Goal for today – another way or opportunity to think about your business

• Agenda for today – how corporate structure, litigation and social media impact your value

• Closing with some enterprise risk management thoughts
What Keeps You Up At Night?
Types of Risk

- Strategic/Operational/Financial
- Compliance/Regulation/Litigation
- Reputation/Political/Cyber
Piercing the Corporate Veil

• Adequately capitalized for line of business
• Follow corporate formalities – board and shareholder meeting, separate financial statements
• Co-mingling of funds
• Separate board composition/consider officers
• Arms length transactions between related parties
• Corporate and personal guarantees
American Bus Association
Protecting the Value of Your Business

January 26, 2019

Teresa V. Pahl, Esq.
• How to use choice of entities and the structure of your company to protect and preserve the value of your business
  – How does the structure of your company help or hinder a future sale or transition of the business
• How to prepare for an exit
  – What, why, when and how
Choice of Entities

- C-Corporation
- S-Corporation
- Partnership
  - General
  - Limited
- Limited Liability Company (LLC)
  - Taxed as a corporation
  - Taxed as a partnership
What Structure is Best for Companies

• With multiple lines of business
• That own real property
• That have a workforce of independent contractors
• That want to incentivize, reward and align employees
• Minimize risk from creditors
Case Study: Family-Owned and Operated Trucking Company

- Real property owned by family members and leased to trucking company and related but independent businesses
- Both employees and independent contractors
- Founding generation looking to transfer control and ownership to second generation
- Position all or part of company for possible future sale
Real Estate Entities: Pre-Reorganization

ABC Properties
(a California general partnership)

XYZ Properties I, L.P.
(a California limited partnership)

XYZ Properties II, L.P.
(a California limited partnership)

Building A
(not held by an entity)
Operating Companies: Pre-Reorganization

- Sanders Family Trust (56.05%)
  - Sanders Grandchildren (total of 6 equal Shares) (2.82%)
    - Child 2, Trustee (13.72%)
    - Child 3, Trustee (13.72%)
    - Child 1, Trustee (13.72%)

- Smith Transportation, Inc. dba Jones Trucking (a California S Corp)

- SJ Transport, Inc. dba Jones Trucking (a California S corporation)
  - Child 3, Trustee (33.3%)
  - Child 1, Trustee (33.5%)
  - Child 2, Trustee (33.3%)
Operating Companies: Post-Reorganization

- Sanders Family Trust (56.05%)
- Sanders Grandchildren (total of 6 equal Shares) (2.82%)
  - Child 2, Trustee (13.72%)
  - Child 3, Trustee (13.72%)
  - Child 1, Trustee (13.72%)

Smith Enterprises, Inc., (a California S Corp)

Smith Transportation, Inc. dba Jones Trucking (a California Q-sub)

SJ Enterprises, Inc. (a California S Corp)

Child 3, Trustee (33.3%)
Child 2, Trustee (33.3%)
Child 1, Trustee (33.3%)

SJ Transport, Inc. dba Jones Trucking (a California Q-Sub)

Blue Spot Holding Company (a California S Corp)

Child 3, Trustee (33.3%)
Child 2, Trustee (33.3%)
Child 1, Trustee (33.3%)

Blue Spot Logistics, LLC (a California LLC)

Trans Holding Company (a California S Corp)

Child 2, Trustee (33.3%)
Child 1, Trustee (33.3%)

Trans Management Services, LLC (a California LLC)

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Case Study: Craft Beer Company

- LLC owned by two unrelated individuals
- Manufacturing, restaurant, bar operations in multiple locations
- Desire to allow certain key employees to share in growth of specific lines of business but not in overall operations
- Position the company for possible sale of one or more locations or lines of business
- Isolate different lines of business from liabilities of more risky lines
- Create opportunities to bring in investor financing for one or more lines of business
Reorganization of Operating Companies

Original LLC

Owner A
42.222%

Owner B
57.778%

Brewery

Restaurant

Bar
NewCo Enterprises, Inc.
(Delaware Corporation – S-Corp.)

Owner A [trust?] 42.222%
Owner B [trust?] 57.778%

 Owners exchange respective LLC interests in Original LLC for shares in NewCo Enterprises

Create separate Operating entities for current business segments with NewCo Enterprises as managing member or Sole Shareholder

Newco IP Holding Co for licensing purposes

Contracts to provide upper and key management functions to all related companies

Brewing Co. [Delaware Corp]
Restaurant Co. [Delaware Corp]
Bar Co. [Delaware Corp]

Future source for proposed separate phantom stock or other equity interests to 3 designated employees

NewCo Property Management (owned or leased)
How to Protect Your Business from Attack

• By creditors and plaintiffs
  – Class action lawsuits
  – Alter ego doctrine
Preparing for an Exit

• The decision to sell or not to sell can be affected by:
  – Personalities of the owners
  – The generational mix of the core family
  – Divisive goals and needs of multiple owners
  – Outside influences (divorce, illness, in-laws)
  – Other
Planning – possible reasons for selling

- Retirement
- "Burn Out"
- Need for liquidity/risk reduction
- Technology obsolescence
- Portfolio End-of-life

Neutral/negative drivers
Planning – possible reasons for selling

Positive drivers

- Business is growing and profitable
- Hot industry sector
- Value of growth and promise curve
- One or more interested buyers
- IP – need capital and market research
Maximizing M&A Value

• Exits don’t just happen – they require:
  – Planning
  – Realistic expectations
  – Disciplined execution
  – Timing (company lifecycle)
Planning

- Why?
  - Control over when and how exit occurs
  - To be ready when:
    - Optimal time in company lifecycle
    - Optimal time in industry
    - Market is favorable
  - Just in case...plan for contingencies
    - e.g. management change; unsolicited offer
  - Maximizing value by minimizing pre- and post-sale risks (legal)
Planning

• When?
  – Never too early to start!
    • At initial investment consider exit potential
    • Envision future buyers
  – Takes 6-18 months to sell
  – Three key areas:
    • Business/management
    • Financial/taxes
    • Legal
Planning

• Business/management:
  – Build management team – CEO, COO, and below
  – Focus on revenue growth/credible forecasts
    • Strategy, market penetration, etc.
  – Secure IP – patents, trademarks
  – Trim costs where possible to enhance profitability (EBITDA is key – private company)
  – Diversify revenue base, especially if highly dependent on one or two key customers
  – Identify and segregate any redundant assets
Planning

- Financial/Tax:
  - Financial statements audited/reviewed by CPA firm
    - At least past three years
    - Buyers will discount value and/or due diligence will be protracted if financials are not in good order
  - EBITDA calculation
    - Adjusted for non-recurring or owner expenses
  - Tax and Estate Planning – stock vs. asset sale; trusts
  - Valuation
    - Company performance: growth and profitability (history and forecast)
    - Comparable market multiples (public and private company)
    - General market conditions
Saleability

• What makes a company Saleable?
  – Programmable/teachable products or services
  – Valuable IP or brands
  – Specialty/uniqueness in a sought-after area
  – Key customer relationships
  – Recurring, diversified revenue stream
  – Founder should be dispensable
  – Accretive – especially for public buyers
  – Mini-conglomerate – logical fit critical
Navigating the Sale

• Make your wish list
• Internal review (self due diligence)
  – Get your corporate house in order
  – Assemble your documents and your team
- Articles of incorporation
- Bylaws, Partnership or Operating Agreement
- Stock or Ownership Ledger – Capitalization Table
- Corporate Minutes
- Employment Agreements
- Material Contracts
- Lease Agreements
- Loan documents
- Client/customer lists sorted by revenue
- Tax returns and detailed financial statements
Internal Review (Self Due Diligence)

- Consider a GAAP compliant audit
- Lien review and litigation searches
- Prepare CIM and documents to provide to potential buyers
- Prepare and practice management presentation
- Practice Q&A – sample questions
- Prepare management team for what they may be asked to handle/split loyalties
- Decide on the sale process
Figure Out the “Hair” on the Business and Trim it Back (or Develop a Strategy)

- Under performing team (especially if buyer is PE)
- Unrecorded liabilities
- Inflated salaries and benefits (discontinue so can increase EBITDA)
- Dependencies on a person
- Tax minimization games
- Customer, product or service concentration (rule of thumb – no customer greater than 10%)
- Do you need to incentivize management?
Who is the Buyer?

- Financial
- Strategic
- Employee
- ESOP
- Family
Transaction Structure and Tax Considerations

• Sale of stock
  – Tax treatment – capital gains; IRC §338(h)
  – All stockholders; dissenter’s rights
  – TP consents but possible “deemed assignment”
  – Liabilities assumed vs. debt free

• Sale of Assets
  – Tax treatment – double tax to seller; step-up for buyer
    • S Corp possible built-in gains
  – TP consents
Transaction Structure and Tax Considerations

• Merger
  – Target survives or not
  – Forward triangular merger
  – Reverse triangular merger
  – Tax-free reorganization
  – Majority vs. stock sale
  – Target remains intact and so do contracts and businesses
Letter of Intent

• Binding vs. non-binding
• MOU or Term Sheet or LOI
• Principal Terms
Reacting to Buyer’s Diligence

- Establish a process for providing due diligence materials (e.g., data room)
- Disclose all – no surprises (builds trust)
- Confidentiality of process and materials
  - Antitrust scrutiny
  - Leaks are harmful
  - “Secret sauce” (timing and method of disclosure)
- Develop a consistent storyline for customers, suppliers and others
  - Designate a spokesperson
Definitive Purchase and Sale Agreement or Merger Agreement

• Description of Transaction
• Purchase Price and Payment Terms
• Representations and Warranties of Selling Parties
• Representations and Warranties of Buyer
• Seller’s Pre-Closing Obligations
• Buyer’s Pre-Closing Obligations
• Conditions Precedent to Buyer’s Performance
Closing and Post-Closing

- Selling Parties’ Obligation at Closing
- Buyer’s Obligations at Closing
- Seller’s Post-Closing Obligations
- Buyer’s Post Closing Obligations
- Publicity
- Costs and Expenses
Closing and Post-Closing

- Remedies
- Termination (vs. Purchase Price Adjustment)
- Nature and Survival of Warranties and Obligations
- Asset Sales – Additional Considerations
- Not Exhaustive
TEACHING THE OLD DOG NEW TRICKS -

HOW TO PROTECT YOUR BUSINESS IN TODAY’S LEGAL CLIMATE.
TEACHING THE OLD DOG NEW TRICKS

• Stephen Geduldig – Harrisburg, PA

Pion | Nerone, Girman, Winslow & Smith, P.C.
WHERE ARE PLAINTIFFS FOCUSING THEIR EFFORTS?

• ITCS – It’s The Company Stupid

• Plaintiff’s bar will seek to focus on the company and not the driver or the accident
COMPANY FOCUS

• What did the company do to prevent the crash?

• Was the wreck “preventable” by something the company could have or should have done?

• Without a system in place, the plaintiff’s bar will argue the company permitted the accident/safety violation
The Reptile Theory

• The Reptile Theory is a plaintiff-side approach to trial advocacy – an emotional form of trying the company.
• Show the “jury how the dangers presented by a defendant extend beyond the facts of a case and affect the surrounding community so the entire case boils down to community safety versus danger."
  ➢ “The 'Reptile' concept is based on the indiscriminate victim” – it could be you.
  ➢ A Reptile argument urges the jury to find that the “proper measure of damages is the maximum ‘harm losses’ that a defendant could have suffered.”
The Reptile Theory

- During trial the plaintiff’s attorney creates an immediate danger (to them) in the minds of jurors.
- By personalizing the threat posed by the defendant’s conduct to the jurors, the plaintiff creates an immediate danger that threatens the safety of the “community.”
- By the communal threat, the plaintiff asks the jurors to make their decision based on maximum potential harm.
The Reptile Theory

Safety Rule + Danger = Reptile

- **Safety Rule**
  - Representation that the “defendant *chose* to violate a safety rule”

- **Danger**
  - Representation that the “the jurors’ . . . own survival is threatened”

- **Reptile**
  - When the safety rule violation and the danger are combined, the Reptile (strategy) is necessary to dispose of the threat – strike back at the safety danger – **bottom up thinking**.
The Reptile Theory

• **Dissected Safety Rule**
  - Plaintiff finds (or creates) and defines a safety rule
  - Plaintiff establishes that the defendant willfully violated the safety rule
  - Plaintiff establishes that the defendant is unwilling to take responsibility for his actions
WHERE PLAINTIFFS ARE FOCUSING THEIR EFFORTS

• MANUALS/HANDBOOKS/POLICIES
• TECHNOLOGY
• DOCUMENTS/PRESERVATION
COMPANY FOCUS

• Having a safety system or controls in place is important, and a manual is such evidence – a **shield**
• But, most often, Plaintiff attorneys use the writings as a **sword**
• Mistakes happen and accidents occur, but using documents against the company proves “preventability.”
Admitting Fault or Not at the Accident Scene?
Accident Reporting and Disciplinary Policies

• Update periodically
• Follow them
• Beware of:
  ➢ 3 Strikes
  ➢ “absolutes”
Plaintiffs' focus – New Technology
Examples for discussion on-board cameras with in-cab monitoring and coaching
- Outward facing only v both
- electronic on-board records
- collision avoidance systems/collision braking mitigation systems
- lane departure warning systems
- stability control
- fatigue recognition and alert systems
- cell block technology
- Predictive analytics
ONBOARD CAMERAS – ONE, BOTH, OR NEITHER?

- Privacy concerns
- What do you do with the data?
- Monitoring
- Training/discipline
- Early case evaluation/settlement/defense
TECHNOLOGY – PROS

❖ Improved safety
❖ Search for the truth
❖ Response to reptile/punitive damages
TECHNOLOGY – **CONS**

- **OPTIONS AND ADD-ONS** – ARE YOU AVOIDING THE TRUTH
- **GENERATE A LOT OF INFORMATION AND DATA** – MONITORING AND PROCESSING – EXPENSIVE AND CUMBERSOME
- **THIRD PARTY POSSESS DATA** – USED AS EXPERT AGAINST YOU?
- **CHALLENGE LOCATING AND SECURING DATA**
- **EXPLAIN WHY AVAILABLE DATA NOT VETTED**
PRESERVATION OF DOCUMENTS

• THE BATTLE CONTINUES:
  • Litigating anything but the facts
  • Utilization of a preservation letter as a sword
CREATIVE APPROACHES TO RESOLVING A CATASTROPHIC LOSS

Important Considerations To Help Minimize – Or Eliminate – A Forthcoming Claim

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January 26, 2019
American Bus Association – CEO Roundtable
Louisville, KY
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Case Study

• Fortune 250 Company
  • During course/scope of use, driver falls asleep and crosses center – head on collision

• 50 year old driver – Primary Plaintiff
  • Convenience store clerk
  • Mother of emancipated 25 year old pregnant daughter (passenger - plaintiff)
  • Second marriage to “soul mate”

• Life flight to level 1 trauma center
  • 15 days in ICU
  • 15 days in-patient rehabilitation
  • Discharge to long-term ventilator dependent nursing home setting
Case Study (cont.)

• Injuries including face, trunk, pelvic & lower extremity fractures
  • Spinal cord intact

• Multiple surgeries including ORIF to address facial, pelvic & lower extremity fractures

• Confirmed TBI via closed head blunt force trauma with extensive long-term sequelae – gait, speech, vision, incontinence

• 100% liability, $1.5M in past meds at 12 month mark, and 24/7 lifetime care reasonably anticipated

• Life expectancy – 8-12 years (confirmed by statistical/medical analysis)

Now What?
What Steps Do You Take To Resolve The Catastrophic Loss?

• Who are your decision makers?
• When is first contact?
• No strings attached money?

How do you define success with this approach?
Client/Carrier Claim Identification

• Carrier/Client Relationship
• Clear Liability
• Unique Sensitivity to Claim – Medical, Financial, Human
• Fight the 3D Urge
  • Deny, Delay, Defend
  • Problem Solving Approach
• Are You Waiving the White Flag?
  • Is it a sign of weakness?
  • How do you build a trust relationship?
Define Your Team

• Local/Regional/National
• Who is your team leader?
• Are they ready now?
• SIR/Primary/Excess – Who Drives The Bus?
• Negotiation Counsel vs. Trial Counsel

“Either in-house counsel or outside counsel specializing in what is sometimes called the Negotiation Counsel Model - pursues early reasonable settlement through a firm but genuinely compassionate approach to resolution.”

– Jim Golden, Esq.: Rethinking ‘Deny, Delay, Defend’
First Meeting

- How early do you make contact?
  - Post-incident cooling off period
  - Secure approval of the family
- Where do you go?
  - Hospital? Rehabilitation Center? Funeral?
- Who do you send?
- Do you offer an apology?
$ No Strings Attached $

• How do you decide?
  • Take responsibility without prompting unwarranted or unreasonable demands
• How much do you bring?
  • Medical Bills
  • Funeral Costs
  • Family Travel Expenses
• Do you create a paper trail?
• How do you style payee?
The “Unusual Suspects” Core Team To Make Decisions

- Settlement Facilitator
- Critical Care Nurse Coordinator
- Life Care Planner
- Financial Advisor
- Trusts/Estates Lawyer

Inject them into the plaintiff’s side of the “v.”

Trying to buy the case cheap? NO
Ultimate goal to do the right thing? YES
Using Social Media Investigations to Defend Claims

TAMARA B. GOOREVITZ, ESQ.
Do People Lie on the Internet?

“Don’t believe everything you read on the Internet just because there’s a picture with a quote next to it.”

—Abraham Lincoln
Liabilities
Harassment
 Discrimination
Wrongful discharge
Negligent
Leaks of proprietary information

Hiring/retention/supervision
Non-compete issues
Defamation
Cyber-bullying
Publicity/reputation concerns
What is Social Media?
Why Are People So Addicted To

- We, as humans, like to do what is in our best interest.
- Social networking allows people to freely express themselves to the world.
- Some people love to publicize how wonderful they are and outline the positive aspects of their lives.
- The combination of flaunting oneself and receiving positive feedback creates an ongoing cycle of self-satisfaction.
- 80% of social media posts are about the poster.
- Talking about ourselves activates the regions of the brain associated with the sense of satisfaction - like food or money.
Smartphones & Tablets

- There are now more internet connections made with smartphones & tablets than wired connections.
- With this technology, people are uploading more information than ever.
- In 2014, it is believed we took between 800-billion to 1-trillion photos.
- Every minute more photos are taken than in the entire 19th century.
Which Social Media Platforms are Most Popular?

Social networking sites used this year

- Facebook: 94%
- Instagram: 46%
- Snapchat: 40%
- Twitter: 32%
- LinkedIn: 18%
- Pinterest: 10%
- Google+: 10%
How Often Americans Use Social Media Sites

Among the users of each social media site, the % who use that site with the following frequencies:

- **Facebook**: 76% daily, 15% weekly, 7% less often
- **Instagram**: 51% daily, 26% weekly, 22% less often
- **Twitter**: 42% daily, 24% weekly, 33% less often
- **Pinterest**: 25% daily, 31% weekly, 43% less often
- **LinkedIn**: 18% daily, 31% weekly, 51% less often
Claims Investigations

- Privacy Issues
- Benefits?
- How/When do you do it?
- Cost?
Getting It: Informal Methods
You and/or a Third Party Vendor
Types of Internet Presence Evidence

- Text (Wall posts, blogs, tweets)
- Photos
- Video
- Metadata
- Geotag information
- EXIF information
- Downloadable documents (e.g. word & PDF)
Internet Presence Investigations

The explosion of online “social media” and related internet sites can create valuable information if you know where and how to look for it. Internet Presence Investigations can:

- Help establish validity or grounds for deniability of a claim.
- Obtain information regarding the claimant or employee’s activities.
- Determine the insured, claimants and employees credibility. Provide additional evidence for litigation.
- Locate witnesses.
- Provide leads for further investigation of the claimant, employee or the insured.
- Provide the basis for discovery of protected content.
- **Internet presence information is admissible in court or arbitration.**
- As invaluable as Internet Presence is to a claims investigation, it can also be a double-edged sword if not used properly.
Geotagging

1. **Geotagging** is the process of adding geographical identification to various media such as photographs & video.

2. This data usually consists of both, latitude and longitude coordinates, although they can also include altitude, bearing, distance, accuracy data, and location names. It is commonly used for photographs in EXIF information.

3. GPS enabled smartphones and digital cameras to geotag photos and videos taken with those devices.
Emerging Trend: Location-Based Searching
Using Traffic Sites as a Resource

Raleigh Traffic @TotalTrafficRDU · 28 Aug 2015
DURHAM: wreck blocking 3 center lanes 40 eb @ Page-backup from hwy 147 will get worse
Remember: Social Media is Not Static
Social Media in Claims Investigation
Karla  Pinky is driving :))

47 minutes ago via Facebook Mobile  Comment  Like  Share

Karla  Awesome, just got in a car accident..

30 minutes ago via Facebook for iPhone  Comment  Like
CASE FILE

**Subject:** T. Bigshot

**Injury:** Low Back

**DOL:** July 2013

**Internet Presence Located:**
- Facebook
- Instagram
- MySpace
- Business Website
- Directories
Subject: T. Smith

Injury: Neck, Low Back, Shoulder, Headaches & Balance

DOL: April 2013

Internet Presence Located:
- Personal Website
- YouTube
- Google+
- Hi5
- Sportbike Forum
Bike 410 Has 4 LandSpeed Records

SCTA LandSpeed Record Holder @ 175.553 MPH 650cc M-BG
SCTA LandSpeed Record Holder @ 169.891 MPH 650cc M-BF
AMA LandSpeed Record Holder @ 172.980 MPH 650cc M-BF
AMA LandSpeed Record Holder @ 173.038 MPH 650cc M-BG

Our best speed was speedweek @ 182.156
Thank you: Nick, Travis, Joel, Edison and the Gorgi's

What an awesome experience and privilege to race with you gentleman!!

ADDITIONAL PICTURES:
**CASE FILE**

**Subject:** H. Flyboard

**Injury:** Back & Left Knee

**DOL:** October 2015

**Internet Presence Located:**
- Facebook
- Instagram
  - Geographical information included in post metadata showed the post was made from a marina that offered flyboard rides.
Emerging Trend: Crowd Funding

On Monday 1/26 at 2am I was in a horrible car accident, another car tried to pass me and side swiped my car, sending me spinning out in the ice and snow I hit a guard rail which sent my car in the air I hit a tree and came crashing down on my roof, I am incredibly lucky to have walked away minimally injured. I keep being told im lucky to be alive. However the other driver did not stop nor did they contact the police. It took 45 min to flag down help and the driver was long gone. Since he was not found my insurance is not covering any cost. We are trying very hard to find the car but with no luck so far. With insurance not paying for my cars daily storage or the tow I am stuck. I have to pay the fees fully before they will release my car. I went back to work 2 days after the accident and I am trying to take care of my health and my bills. But this was unexpected and it is also sadly something I could not afford. I am so happy for the out pouring of love and support from everyone, and I’m very thankful for those helping anyway they can. Thank you.
Ethics is Everything!

1. Facebook’s Statement of Rights and Responsibilities prohibit providing any false personal information, create an account for anyone other than yourself without permission.

2. Same for Instagram, LinkedIn, Pinterest, etc.

3. Only publicly viewable posts & content is secured.

4. No friending!
Post Accident Preservation

- Involved Drivers on Cell Phone or Texting
  - Preservation of evidence
  - Liability arguments
- Preservation Letters regarding Claimant’s Cell Phone
- Witness posts or photos
- Driver photos and videos post-accident
- Internet searches for information
  - Facebook posts
  - Twitter
  - Family members
  - Media
Social Media Best Practices

Dance like no one is watching; email like it may one day be read aloud in a deposition.
Avoiding It: Keeping It Out of Opponents’ Hands

- Remember: It’s a Two-Way Street
Your Driver

Truck Driver’s Facebook Posts Used Against Him in Lawsuit

Posted September 26, 2014 by Sadie
Social Media Policies

- Policies should clearly articulate the legitimate business interests sought to be protected or achieved through the policy
- Restrictions should be narrowly tailored to serve those legitimate interests
- Define/describe social media policies
Social Media Policies

➢ Subjects not to be discussed:
   ➢ Employer confidential or proprietary information
   ➢ Confidential or proprietary information of vendors, suppliers and/or customers
   ➢ Explicit sexual references
   ➢ Reference to illegal drugs
   ➢ Obscenity or profanity
   ➢ Disparagement of any race, religion, gender, sexual orientation, disability or national origin

➢ When drafting and implementing social media guidelines, employers should keep two things in mind: employees’ rights to discuss the terms and conditions of their employment and employees’ electronic privacy rights.
What is Enterprise Risk Management? ("ERM")

A strategic analysis of risk throughout an organization that cuts across business units and departments and considers end to end processes.
TRADITIONAL (Silo) vs. ERM (Holistic)

Examples of Silo Structure:

- Audit committee on financial risks
- Legal department on regulatory compliance
- IT department on technology risk

Silo Structure May Miss:

- High level cross functional risks
- Industry wide risks
- Political/Regulatory risks
- Reputational or brand risks
TRENDS PUSHING “ERM”

- Greater Transparency Generally
- Financial Disclosure
- Rating Agencies
- Globalization
- Security and Technology
- Disaster Preparedness
- Increased Regulatory Scrutiny
Basic Elements of ERM Plan

To set up an ERM program, a company needs to:

• Identify the risks faced at all levels of the company
• Likelihood of occurrence
• Quantify potential impact
• Interrelationship to each other
• Define risk appetite or tolerance
• Develop a framework for managing the risks, with a view to conforming behavior and decision making within the stated risk appetite
Determining Risk Tolerance/Appetite

The following factors should be considered when setting risk appetite:

- Shareholder expectations
- Desired credit rating
- Willingness to accept earnings volatility
- Financial capacity to withstand loss
- Willingness to expand product/service range and geographical coverage
- Potential for growth through acquisitions
- Risks considered absolutely unacceptable
Benefits of ERM

Enterprise risk management offers a number of benefits:

- Aligns risk appetite and corporate strategy
- Links growth, risk, and returns
- Improves risk responses
- Reduces operational surprises and losses
- Manages enterprise-wide risks
- Recognizes and acts upon opportunities
- Deploys resources effectively
STRATEGIC NEEDS

OWNERSHIP BUY-IN WITH RESOURCES

+ 

SOPHISTICATED INSURANCE COVERAGE

+ 

CRISIS MANAGEMENT PROGRAM
Presenters

A special thanks to USLAW.org for providing this network of talent

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