

## RISKY BUSINESS: IDENTIFYING AND SOLVING FOR RISK WITH THE ASSISTANCE OF OUTSIDE LITIGATION COUNSEL

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The job of a corporate decision-maker is far from easy. Whether you work for a fledgling startup or a Fortune 500 company, each day can present new and daunting obstacles that make it difficult to successfully navigate—let alone thrive in—our ever-evolving political, technological, regulatory, and economic ecosystems. Because every business is unique, there is not and should never be a one-size-fits-all way to identify and solve for risk. This alert aims to highlight various ways in which experienced outside litigation counsel—which many business leaders think of only when a lawsuit is imminent—can actually help quantify, qualify, and mitigate risks *well before disputes ever arise*.

### **Secure Your Rights**

Litigators can provide early guidance regarding whether and how to secure valuable assets well before a dispute ensues over such assets. For example, by obtaining federal registration of certain types of intellectual property, you may be able to successfully preempt a lengthy and costly dispute over ownership and/or validity of that IP. Indeed, outside litigators often see these types of lawsuits regularly, and they should be able to tell you exactly what steps your business can and should take in order to best limit future risk.

### **Train Your Employees**

You may be surprised to hear that some of this country's most expensive and expansive lawsuits could have been avoided had the corporate defendant's employees been provided with clear guidance regarding what is and is not permissible workplace practice. To ensure that your business does not find itself in a similarly undesirable (but avoidable) predicament, consider connecting your outside litigators with your employees directly. Litigators can provide guidance and counseling to *entire business teams* on a wide variety of legal matters and can educate everyone in the company on best practices for compliance with applicable laws, rules, regulations, and standards. Topics for corporate team training include but are not limited to acceptable hiring practices, worker classification approaches (e.g., independent contractor/employee; exempt/nonexempt), addressing and avoiding workplace discrimination and misconduct, ensuring against breaches of restrictive covenants and misappropriation of trade secrets, preventing intellectual property infringement, and maintaining and updating appropriate corporate records. Employee training, of course, can be customized to cover the legal issues most pertinent to your specific business.

### **Vet Your Commercial Contracts**

Litigators can often be proactively involved at every stage of the commercial contracting process, particularly in complex or unusual situations. Why? Because contracts form the spine of every commercial enterprise, and seasoned litigators can often spot potential pitfalls within sophisticated contractual provisions which may, on their faces, seem totally innocuous or even advantageous. Commercial

agreements give rise to many of the disputes litigators encounter on a daily basis. Because these lawyers have seen exactly how contract fights play out in the real world, they can assume both an offensive and a defensive posture throughout the life cycle of your business's most vital contracts.

### **When Litigation May Be On the Horizon**

Finally, the reality is that for some companies, litigation is just a "cost of doing business." But even so, it rarely makes sense to wait until a lawsuit is *unavoidable* before getting outside litigation teams involved. Rather, litigators can provide assistance spanning from a pre-litigation "gut check" regarding claims and defenses to a formal, thoroughly researched cost-benefit analysis prior to filing or responding to a lawsuit. Indeed, litigators are best situated to assess your likelihood of success before a judge or jury and to advise on whether to settle or to fight. They are also well poised to assess your actual or potential opponent's strengths and weaknesses, including the depth of their pockets as well as their prior litigation strategies and track records. This information can be quite valuable in guiding your company's decision regarding if, when, and/or how to approach an impending dispute.

An experienced litigator should be well versed in wielding both sword and shield on behalf of his or her clients. Litigators can be activated early and often—from contract inception to completion—for guidance regarding securing IP rights; for training employees to ensure compliance with laws, rules, and regulations; and, of course, for all stages of pre-litigation planning and actual litigation. Seasoned litigators can not only field courtroom battles, but they can also help you quantify, qualify, and mitigate risks well before disputes ever arise.

RCCB's litigation team would be pleased to work with you to implement or improve your approach to litigation management by assisting you to prepare litigation risk assessments for pending or future claims brought by or against you. [Contact us](#).

### **About RCCB's Litigation Practice**

RCCB litigators are sophisticated, practical and thoughtful, using litigation as a means to achieve a client's business objective. We carefully tailor approach and strategy to translate litigation tactics into successful outcomes for their clients. Our litigators have been ranked and recognized by Chambers USA, the Legal Intelligencer, Super Lawyers, Best Lawyers in America, Martindale Hubbell and World Trademark Review, among others. We are the go-to choice for many businesses and individuals in the region when they find themselves defending or initiating litigation. Our litigators have been extensively trained as general commercial, as well as specialized, litigators at premier litigation firms, and they routinely go head-to-head opposite the largest firms in America.



## Guidance Throughout the Full Life Cycle

We guide our clients through the full life cycle of prosecuting and defending commercial disputes in state and federal courts and private arbitration in matters such as breach of contract, partnership disputes, breach of shareholder and fiduciary duties, unfair trade practices and intellectual property/unfair competition, and matters of real estate and technology disputes. RCCB clients include well-known public companies, established private entities, and start-ups and investors in business and financial services, healthcare and life sciences, manufacturing, distribution, technology, software, consumer goods, telecommunication, food and beverage and transportation.

## About RCCB

RCCB empowers your ambition. We are attorneys who think and act like entrepreneurs and business people. We combine sophisticated, cost-effective legal counseling with the type of sound practical judgment that comes from hands-on business experience. We encourage entrepreneurial approaches and creative thinking, while maintaining the utmost in integrity and responsiveness. RCCB understands and delivers the advice that companies, business executives and investors, as well as individuals and their families, need to realize their hopes and goals. From offices in the Greater Philadelphia area and New York, RCCB serves clients throughout the Mid-Atlantic region and beyond. Additional information about Royer Cooper Cohen Braunfeld is available at [www.rccbllaw.com](http://www.rccbllaw.com).

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