

## USING YOUR BUSINESS ATTORNEY TO NEGOTIATE FAVORABLE TERMS

One of the biggest tasks we face as business attorneys is educating our clients regarding the most advantageous use of our bundle of skills. As a byproduct of our culture, many businessmen and women have come to believe that lawyers are offensive weapons, to be pulled out of the holster much like a gunslinger would do in the Old West, or perhaps like an FBI agent would pull a concealed weapon out of his jacket. While lawyers can, in fact, be effective weapons or tools when you have to use their services in a lawsuit environment, it is a mistake to relegate them solely to that pigeonhole. Properly used, business attorneys can become effective negotiators of things ranging from business terms, to agreements, to strategic alliances with other businesses. How helpful they can be is directly linked to how familiar they are with your business; which, in turn, is a function of how proactively you utilize their skills as your "general counsel." "General counsel" is a term that, until relatively recently, has been reserved for use with large or publicly traded companies. Having general counsel on site and on the payroll has traditionally provided such firms with obvious advantages, such as: (1) developing a company culture that encourages rather than discourages the regular, proactive use of legal advice; (2) utilizing general counsel as an integral component of the executive staff, right alongside the company accountant, chief financial officer, treasurer, secretary and the like; (3) the freedom of being able to consult with general counsel on company and second or third party documentation, company policies, industry regulatory requirements and potential lawsuits without fear of prohibitive cost.

In recent years, my law firm has pioneered the use of outsourced, or fractional, general counsel. Doing so has enabled its clients who use that service to pull their lawyer into the company's inner advisory circle. The client's regular use of the fractional general counsel as if he were part of the company's in house team familiarizes him with the company's day-to-day way of functioning, business style, and overall needs in a way that simply isn't feasible for law firms hired on an "as needed" basis. One of many capabilities fractional general counsel brings to the table is the ability to effectively negotiate with suppliers, customers, upline or downline contractors, government agencies or, in rare cases, adversaries. Effective negotiation involves thorough knowledge by fractional counsel of what the company is capable of delivering and of

giving up, due to his regular contact with the company executive. His involvement communicates to the party being negotiated with that the fractional attorney has bargaining power, because of both his knowledge and his ability to take appropriate legal action in certain circumstances---perhaps even more than actual general counsel who has no outside law practice.

In conclusion, effective negotiation of favorable terms for the company in a variety of settings can be very helpful in managing and circumscribing inside and outside risks to the company's welfare. This is true whether fractional general counsel or inside general counsel is employed; however, because the overwhelming majority of smaller companies cannot afford to make a permanent commitment to inside general counsel, the use of fractional general counsel should be strongly considered for this purpose.