

Are Your Contracts a Time Bomb?

Contracts are an essential—and very dangerous—part of business life: they can be as simple as a handshake, or run into hundreds of pages (neither are recommended). They are the spark behind buying, selling, and all business transactions in between. And that spark can set off the time bomb that blows up many a business owner.

Contract law trumps tort law every day in court. For example, you may not have directly caused an accident or injury, but if the contract contains a hold harmless clause, you will be responsible to pay for what happened. As a business person, you are *expected* to understand—or get help. It's real hard—and expensive—to argue that you didn't get it.

Recently, a consulting engineer needed help evaluating his insurance coverage and a contract from a major utility. We quickly found they wanted him to be responsible for “everything” that could cause injury or property damage on the job site—even if the utility's employees were partially negligent. We identified the most egregious clauses so at least he knew where he stood, and where he needed to negotiate.

In another example, a client had no contract with its IT service provider who had access to all hardware and software. There was no Non-Disclosure Agreement (NDA) or agreement to take care of errors that might cause data loss, release of client information, downtime or other problems. It was time to do a complete review of vendor agreements and to look at appropriate risk transfers and insurance protection to clean up this dangerous gap.

There are lots of contractual minefields and clauses that can hurt you:

- Is the legal “venue” so far away you'll never be able to initiate a dispute?
- Will “Alternative Dispute Resolution” (ADR) deprive you of important protections?
- “Time is of the essence” can be a killer if you don't pay attention to the due-dates
- Insurance requirements can be onerous and are often poorly worded—which can make compliance virtually impossible!

In addition, you need to be careful about:

- Hold harmless/indemnification clauses that have broad or vague wording
- “Best efforts” promises that have special legal meaning
- Extra responsibilities pushed your way in the fine print
- Disguised “work for hire” wording that can co-opt your intellectual property

My advice is to never sign a new contract without your legal counsel and an insurance specialist reviewing for appropriateness and coverage. Have an internal process that identifies who can sign contracts and the steps to be taken before that happens.

For a more complete review and to have a handy reference guide, click here for a complimentary PDF download of [Risk Management Through Contracts and Insurance: a Primer](#), by Robert K. Buchanan, Jr. and Charles T. Wilson.