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**A Litigator's Guide to Preventing Litigation and  
Protecting Your Business Once You Are In It**

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## **A Litigator's Guide to Preventing Litigation and Protecting Your Business Once In It**

This paper and my accompanying remarks are the product of observations and experiences of 35 plus years as a litigator. What follows are personal reflections and recommendations; they are not attributable to the Enoch Kever PLLC law firm or to any of our clients.

These observations are often in the nature of practical tips and pointers. They will serve as reminders. I am confident that you are already considering and implementing these and other strategies and protocols to protect your business, management, and clients from litigation. Especially for attorneys, I perceive that much of what is set forth will be second nature. This paper is divided into three distinct segments: (1) ten recommended approaches to reduce the likelihood of litigation; (2) summaries of six recent Texas cases illustrating the truism: "Words matter"; and (3) an overview of the attorney-client privilege (with a focus on in-house counsel) with ethical considerations and ways to effectuate and enhance the applicability of the privilege.

In short, the central theme is: words matter; take care in choosing and using them. That dedicated mindset, combined with approaching issues and relationships ethically, with integrity, and with counsel close at hand, will be instrumental, if not invaluable, in warding off disputes and lawsuits – and advantaging your company's position if your company becomes engaged in litigation.

The paper is a compilation of ideas and experiences. It would likely fit well in the "Potpourri" category of Jeopardy. It includes drawing from various subject areas and categories. While not "renewables-centric" *per se*, I am optimistic that the paper will prove to be "renewables-beneficial" and that it will have universal application in your business and for those of you who are attorneys, in your practice.

## **I. Ten Recommendations to Prevent Litigation**

My ten recommendations to prevent litigation and to advantage a party's position if litigation ensues are:

- (1) Engage a litigator.
- (2) Engage a litigator before it is perceived to be necessary.
- (3) Put "it" in writing.
- (4) Put "it" in writing carefully.
- (5) Do not put "it" in writing.
- (6) Do not reinvent the wheel.
- (7) Reinvent the wheel.
- (8) Obtain proper insurance.
- (9) Protect your investment.
- (10) Earn and protect your reputation.

### **1. Engage a Litigator**

Litigators bring an important, unique perspective in helping clients and businesses achieve their objectives. Litigators will complement transaction, regulatory, compliance, employment, intellectual property, and other attorneys you have engaged for specific drafting matters, filings, etc. Litigators have experienced, addressed, and fought first-hand issues, provisions, communications, and disputes that have presented challenges and, unfortunately, caused great expense for clients.

As you consider and formalize your transactions and as you face potential perceived disputes, a litigator's vantage point will be invaluable in averting issues and in advantaging your position should litigation ensue.

And, as an aside, a litigator with appellate experience and pure appellate attorneys can bring additional insights and expertise to bear on ways to deter litigation.

Litigators can provide an ultra-informed perspective on ways to forestall litigation – to potentially nip it in the bud before a dispute surfaces. And, litigators will provide pre-litigation approaches that protect the company's position and clients once litigation ensues. Litigators live in the dispute arena. They know areas and issues to guard against – on the front-end.

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