Off-loading risk

How your legal adviser can help minimize risk

GABRIELLE J. SELLEI
Member
Semanoff Ormsby Greenberg & Torchia, LLC

(215) 887-3752
gsellei@sogtlaw.com

Risk is inherent in any venture. There is risk from employees, owners, products, customers – even the weather.

In order for an organization to protect itself, it's important to have an integrated risk management program in place. Insurance is a key component of such a program, but a company's legal environment plays a huge role as well, says Gabrielle J. Sellei, an attorney at Semanoff Ormsby Greenberg & Torchia, LLC.

"An experienced business lawyer can advise on a multitude of risk reduction techniques," she says.

Smart Business spoke with Sellei about risk management, the importance of internal audits and training, and the benefits of having a culture of integrity.

How can a legal adviser help with risk management?

When executives think of risk management, they often think of insurance, which is important. But there are other ways to shift or minimize business risk.

For starters, it's important to select the appropriate type of entity and to ensure ongoing observance of the formalities of that entity. A business lawyer can help with that, by drafting bylaws and other organizational documents, and memorializing meetings of shareholders and directors consistent with those documents. A lawyer can also advise regarding the proper and consistent use of a business or trade name, and ensure that personal and business assets are not inadvertently comingled. These steps reduce the risk both to the company and to its individual executives, where executives are acting in their official business capacities.

One of the most effective ways to shift risk is with contracts. In a well-drafted agreement, risk should generally be borne by the party with the greatest ability to control the exposure. A lawyer can make sure provisions such as indemnity, insurance, and limitations of liabilities and of warranties are included and appropriate. Finally, provisions often considered 'boilerplate,' such as choice of law, dispute resolution and attorney fees, can often have significant impact on risk.

As a bonus, observing these practices may improve your insurance experience and possibly even reduce premiums.

What about internal audits and training?

This is another important technique. When a company gets to a certain size it becomes impossible for any one person to know what's going on in all areas.

Let's say a company licenses intellectual property. If there is an abrupt personnel change in the marketing department, something as simple as the duration of a grant of rights for an image used in advertising may fall through the cracks. Perhaps the license was renewed properly for a number of years and because it has become a part of the company's brand it's assumed that no additional steps need to be taken. Such situations are becoming more prevalent with increased turnover in the workforce and the more frequent use of outside contractors.

Also, laws change. Make sure that your company is in compliance with today's laws and regulations, and not those that were in effect when you started out. Auditing and training in critical compliance areas such as corporate governance, intellectual property and employment on a regular basis can reduce risk.

What are some other ways that risk can be reduced?

Create a culture of integrity. Companies that treat employees and partners fairly, use 'mistakes' as teaching tools, provide avenues for reporting problems without fear, and take responsibility for their actions may be rewarded with a reduced risk profile. It should be obvious that companies that take this advice will experience many other benefits as well. ●