

# Monthly Newsletter

March 2019

## Upcoming Events

Mar. 12

**NEW YORK | Building Better Boards - Family Business & Beyond**  
March 12, 2019 - 5:30 PM - 7:30 PM  
Eisner Amper  
750 3rd Avenue, 16th Floor  
New York, NY 10017

Mar. 13

**CHICAGO | SRAM - Staying Privately Owned and Independently Governed**  
March 13, 2019 - 5:00 PM - 7:30 PM  
Willis Tower Watson  
233 S. Wacker Drive, Suite 1800  
Chicago, IL 60606

Mar. 27

**DETROIT | International Expansion: What Management Should Know & How a Board Can Help**  
March 27, 2019 - 5:30 PM - 8:00 PM  
The Build Institute  
2701 Bagley Street  
Detroit, MI 48216

Apr. 3

**LOS ANGELES | Is there Value in Adopting Board Governance Practices for Private Companies?**  
April 3, 2019 - 7:30 AM - 9:30 AM  
Law Offices of Polsinelli  
2049 Century Park East, Suite 2900  
Los Angeles, CA 90067

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*Henry C. Krasnow is a business lawyer who solves problems for entrepreneurial, family, and privately held businesses by developing strategies focusing on an analysis of the impact on profitability of alternative solutions for a broad range of legal problems such as minority shareholder rights, governance structures, succession planning, real estate development and, leasing, sales and purchases of businesses, civil trial and appellate litigation, and mediation. He is the author of the book "Your Lawyer: An Owner's Manual" and a partner of Sugar Felsenthal Grais & Helsinger LLP.*

## Five Ways to Get More From Lawyers

**This article points out how directors of both legal or fiduciary boards can work towards having a company's lawyers handle disputes wisely.**

### I. Insist that the Lawyers Give Real Advice

Many lawyers are reluctant to predict the likelihood or cost of any specific outcome because it is both difficult and likely to result in the client blaming the lawyer if things don't go as predicted. Instead, they act as if they were in the story of two people lost in a hot air balloon. They lower the heat causing the balloon to sink, and then shout to someone they see, "Where are we?" That person shouts back, "You're in a hot air balloon." One of the travelers says, "That guy must be lawyer - what he says is absolutely true but of no help at all."

Statistics show that over 95% of all business litigation is settled.

As a director, you can suggest that the company not pay for such things as research and a memo that discusses past cases, and then concludes something like, "We cannot say for sure that you will win." Insist that the lawyers produce something of real value.

A memo worth paying for would conclude something like, "Although there is no guarantee, you have a 65% chance of success, and a trial will require an investment of about \$100,000 in legal fees. We would expect that a

meaningful settlement offer of about \$40,000 to your claim should come after about \$15,000 of legal fees have been spent."

Also, discourage your company from paying for advice that does not help make choices between alternatives. Try to teach the company to insist on receiving honest and creative cost-benefit analysis. If there are no alternatives, there is no need to pay a lawyer a big fee to tell you that.

### II. Don't Be Fooled by Fantasy Lawyering

Be realistic about what to expect from a lawyer. The most common misconceptions arise from relying on self-confident lawyers with fancy offices and lots of young lawyers pretending to know all the answers, or a Wild West gunslinger who will stroll into the courtroom and scare everyone into doing what you want.

In most situations, knowing "the law" will not be the key to success because strategies using court procedures provide the "other side" with the ability to create a lose-lose proposition by causing you to spend money that will deny a "good settlement" (i.e., one that takes into account both the likelihood of winning and the costs).

*Continued on Page 2*

The best lawyers do not foster these fantasies but rather spell out the risks, costs and alternatives of a lawsuit so that the business owner can do her or his job - making informed decisions among alternatives, each of which have different risks and different costs.

### III. It's Not About Justice

Justice is a very ephemeral concept. Ultimately, our legal system defines justice as the process of having an independent judge or jury resolve a dispute without bias by consistently applying the same rules to everyone. As you might expect, mistakes are made. If there is one thing that justice is not, it is not a system where you always get what you think is right.

This is a hard pill for many people to swallow. After all, on television and in movies, litigation is exciting drama where "right" inevitably prevails.

In reality, litigation is a means to resolve a dispute about money - it is not designed to deliver revenge, vindication, or proving you are "right." The only rational goal for anyone involved in business litigation is making as much or losing as little as possible. The lawyer who promises that litigation will bring emotional or moral vindication (which is what most people think of as "justice") will drain more money and resources than the company should spend.

### IV. Cheerleaders Belong at Basketball Games

Your lawyers are consultants who should provide brutally honest advice.

Yet, many decision makers encourage their lawyers to be less than candid by showing disappointment or anger when their lawyer says some thing they do not want to hear. Lawyers in this situation are thus tempted to be cheerleaders and simply say what the decision maker wants to hear. You should discourage this from happening!

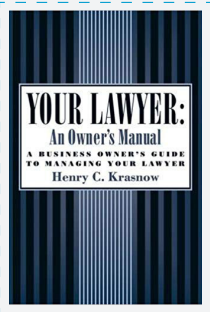
### V. Your Lawyer Should Make Sense, Not War

People almost always get angry in the course of a dispute. And when people are angry, they want revenge and tend to become irrational.

However, as angry as the decision maker might become, it is a mistake to hire lawyers to reflect this by being "tough." After all, the fight is not between the lawyers, and when it comes to eventually working out a settlement, it is an asset for the lawyers to have a trusting relationship. No matter how angry the participants get, each dispute will almost certainly (95%) be solved by a compromise.

Regardless of how other people might act, you can encourage that the lawyer hired by the company for which you serve to make sense and not war.

### Recommended Reading



*Your Lawyer: An Owner's Manual*

By: Henry C. Krasnow

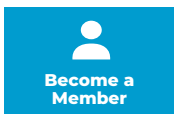
Click image for more information or to order.

*BoK Categories: Governance and Board Operation*

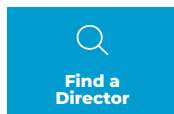
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