READ THE CONTRACT: I RUSHED, I SIGNED, I REGRETTED

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The businessman sat across the conference table from me. I wouldn't say my client was about to cry, but his usual confident "wizard of entrepreneurship" demeanor was gone. Completely gone. Instead, he appeared humbled and embarrassed — with a dash of panic-stricken.

He held a lawsuit in one hand and a contract in the other. I scanned the lawsuit first. "Blah-blah-blah" my client breached the contract. "Blah-blah-blah" the other side was indignant and outraged and had suffered massive damages as a result of my client's contract breach. "Blah-blah-blah" my client owed the other side .

Next, I reviewed the contract. Now I understood my client's new emotional state — especially the panic part.

"Did you read this contract?" I asked, ever so gently, as my Humpty-Dumpty client teetered in front of me.

"No," he replied.

"I'm just curious. Why didn't you read the contract?"

"The other side said it was standard. Plus, I was in a hurry."

This isn't just a true story — it is a common occurrence. Every day, all across the country, thousands of businesses put their companies in jeopardy when they rush to sign contracts. They don't read them, they don't understand them and they are not prepared for the consequences. It's the opposite of I came, I saw, I conquered: I rushed, I signed, I regretted.

Sometimes these entrepreneurial NASCAR drivers win races, and sometimes they crash. They construct buildings and then end up liable for years of correcting defects that shouldn't have been their responsibility. They rent office space and then get stuck paying for their landlord's new roof — or worse, the landlord's political contributions and holiday parties. They sign government contracts and then must pay wages that unexpectedly consume all of their profits. They sell their business, and then the buyer holds back a chunk of the sales prices based on fine print in the sales agreement. They enter into joint ventures and then must give their competitors all of their ideas and lists of their customers. They sign telecommunications agreements for 24/7 service and then have no remedies if the telecom providers breach these contracts.

Certainly, speed is important in business, now more than ever before. Likewise, relationships can be critical and the pressure to sign an agreement — to preserve that bond — can be intense. But what is a relationship if it is not a two-way street? The simple fact is that there are plenty of reasons to sign agreements quickly but rarely a good reason to dive into a bad deal.

The Myth of the Standard Contract

Let's dispense with the idea that most contracts are standard. It's a big, fat lie. Certain government contracts are, indeed, standard. Sign them, or you don't get the job. Other contract forms are widely used, such as the American Institute of Architects construction contracts. But for every AIA contract I have read, 99 out of 100 have been revised, often with hundreds of changes. The reality is that standard contracts are rare.

Instead, there are parties with the foresight and bargaining power to create and insist upon the use of their own contract form, which they deign to call "standard." These companies simply do business in one or more areas on a regular basis. They see the need for a contract written in their favor that they will have ready to provide to the other side of the deal. Further and most significantly, they have the bargaining power to insist that you use that contract, presumably with few or no changes.

But if you listen to them, you are often falling into a big trap. Buried in these contracts are all kinds of nasty surprises like a flaming paper bag launched onto your porch at Halloween. First, there is massive risk-shifting. That is, if something goes

wrong, it is your problem. Second, there are disclaimers of liability. Here, the party that wrote the contract says that if it doesn't do its job, it has little or no liability to you. There's plenty more. Even seemingly minor provisions can have significant consequences. For example, some contracts provide that only your opponents are entitled to legal fees in the event of a breach and you are not – even if you win lawsuits against them. This may sound inconsequential in the big picture. But if you earn $500,000 in revenue, and it will cost you more than that to bring the other side to trial and win a judgment for that amount, your inability to recover legal fees can dramatically affect how you handle disputes with your opponents. You may be forced to choose between turning a dollar into 50 cents, even if you win, or settling for a fraction of what you are owed.

'But We Have A Great Relationship'

Plenty of businesspeople justify signing bad contracts because they have a good relationship with the other side. Further, they reason that the parties understand the "real deal" and won't even look at the contract to address the transaction. This often works.

But relationships and memories fade. Contracts endure. In some cases, the players change. The company on the other side of the deal is sold, and you are dealing with a new cast of characters that has no understanding of the old relationship and, instead, relies entirely on the written word of the agreement between the parties. In addition, with time, even the original parties don't recall — or agree upon — the parties' earlier intent and discussions. Instead, they increasingly resort to the contract to determine the parties' obligations.

Most significantly of all, when you need that relationship to really matter is when you encounter a disaster that threatens both parties with some significant consequences and big dollars are at stake. Unfortunately, this is when people start thinking about their jobs or, worse, their company's survival — and damn the parties' relationship. That's when the parties start studying the contract like it was the Dead Sea Scrolls. I call it "praying over commas." People who shot from the hip for years and didn't give a thought to the importance of contracts are citing clauses and pounding their fist on the table about how the agreement says you are responsible for the calamity that just crashed into the parties.

What Do You Do?

Do what the big companies do. Prepare your own "standard contract." If you are regularly entering into certain types of deals, you should have your own form that lays out how things should work. That's not to say you should create a one-sided contract that favors your company. That will be counterproductive because the other side will readily reject it and seek an alternative. But a fair contract, with appropriate protections for your company, can serve as the basis for the deal, especially when you and your opponent are of relatively equal bargaining power.

However, often you are dealing with a business that has far more leverage. In that case, consider preparing an addendum or supplement — to their contract — that contains the most important protections for your business. It will serve as a countermeasure to their form agreement, as well as a checklist of the most important provisions that you need to fight for.

In addition, enhance your own leverage. There are countless ways to do so, but two of the most important are having alternatives and time. Whenever you are facing a significant transaction, your bargaining power will be vastly increased if you have alternatives. It enables you to tell a difficult adversary that you can do business without it. Moreover, you may very well turn to one of those alternatives if your negotiations prove to be too difficult. Similarly, if you start the negotiations early enough, you avoid the situation where you are forced to do business with someone or cave in on a contract provision, just because you ran out of time. The mantra of your negotiating team should be "make time your friend." Usually, the party in a rush is the one that must make concessions.

Finally, you still need to read the contract and understand it, too. One bad deal can cost you the profits from 10 good ones — or even your entire business.

ABOUT JACK GARSON

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Jack Garson's practice focuses on Real Estate, Construction and Business law. He serves as a legal advisor for numerous local, regional and national companies. In his role as legal counsel, Jack also serves as a strategic advisor and lead negotiator. Further, Jack provides guidance on the structure of complex transactions, the resolution of business disputes, the growth and sale of companies, and the management of issues such as liability and risk reduction, employment practices, and enhancing profitability.

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In the past two years, we've grown by 50% through expansions in New York City and, most recently, Charlotte, North Carolina. This growth has provided immense value to our clients and attorneys.

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