

# **Session 112:**

## **How to thrive and win in a risky world**

**Tuesday, June 1, 14.00-15.00**

## **Panel – Speakers:**

- **Craig Thorburn**
- **Orijit Das**
- **Axel Viaene**

# **CONTENTS**

- **Introductory Remarks**
- **Case Studies**
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- **Interactive Session**



" FIRST YOU'RE A LAW STUDENT, THEN YOU'RE A LAWYER, THEN YOU'RE A JUDGE, THEN YOU'RE A POLITICIAN, THEN YOU'RE A CRIMINAL . "

## INTRODUCTORY REMARKS:

- Risk is a part of our daily lives.
- Our clients have recently become a lot less risk averse.  
- varies by business, culture, economic cycle, personality
- Should we follow our clients' example?
- Will this change any time soon?
- Has this happened before?
- In the concrete...a few case studies...

## **CASE STUDY 1:**

- Offshore Business Services company processing sensitive data from an emerging country.
- BBC reporter carries out a “sting operation” and produces a damaging report which triggers an investigation by regulators.
- GC is part of the Risk Advisory Committee and is called in to head the group out of the present predicament.
- Discuss the measures to be adopted.
- Share the Best Practices.

## **CASE STUDY 2:**

# **Taming a Litigation Storm**

**Craig C. Thorburn**

**Blake, Cassels & Graydon LLP**

**Toronto**

## **LITIGATION STORM**

- International software business
- Euro 1 billion in annual revenue
- More than 100 active lawsuits by customers
- Over Euro 20 million in annual legal costs



## **RISK ASSESSMENT**

- Sales force making unrealistic promises regarding features and performance
- Legal costs of lawsuits allocated to the legal function, not sales
- Sales personnel not supporting defence efforts
- Sales force had no incentive to change behaviours
- Customers getting no meaningful resolution of their complaints, so resorting to lawsuits

# NEGOTIATION

- CEO and CFO agree with General Counsel's plan
- Product claim sheet developed to define scope of what sales force may promise to new and existing customers
- Sales commission structure changed so that one-third paid out over 18 month implementation period and only upon evaluation that the installation has been successful, thereby incentivizing sales force to ensure customers are happy
- 80% of costs of litigation allocated to the regional sales office that generated the sale
- No annual bonus if active lawsuit by one of sales rep's customers

## **LITIGATION STRATEGY**

- CEO visited each customer/former customer that had launched a lawsuit
- Settlement offer made in 80%+ of cases at 70-75% of claimed amount
- All but 14 lawsuits settled at a total cost of Euro 35 million
- Legal fees reduced to Euro 4 million in first year
- Within two years, all lawsuits at beginning of program resolved, only 4 new lawsuits – legal fees under Euro 1 million a year

## **SUGGESTIONS:**

- Be kind to yourself.
- Remember who you work for.
- A reputation is built over years and lost in a second.
- You are on stage 24/7.
- Adaptability is key.
  - thou shalt evolve -
- Reach out to your fellow corporate counsel thru ACC
  - it has all been done before –

# THIS IS YOU:



# **MAKE SURE THIS IS NOT YOU:**



## **INTERACTIVE SESSION:**

- How has your life changed in the past year?
- How has your business changed?
- What have you done to adapt?
- Will you do anything different following this Annual Meeting?
- Are you keeping an eye on the home front?

