Goal For Today:

- Give you the analytical tools to help your company decide if a lawsuit should be pursued?
Litigation:

- Expensive, Stressful, Intrusive, Time Consuming, No Guarantee of Outcome

First Area of Inquiry

Do you have a strong case?
- Depends on Facts and Circumstances
- Details matter
Elements to Prove Breach of Contact

- Valid Agreement
- Performance on your part
- Breach by other party
- Damages

Element 1: Valid Agreement

- Do you have a written Agreement supported by consideration?
- Do you have all documents that comprise the Agreement?
- Is correct customer name used in contract?
- Is the Agreement signed?
- Is the contract clear and unambiguous on the provisions relevant to the dispute?
- Contract Formation: very important
- Do this correctly – better chance of recovery
**Element 2: Performance**

- Did you fully perform?
- Any conditions precedent that must occur before performance by other party required?
- Will other party assert any defenses to your performance?

**Breach by Customer**

- In what way did your customer not perform?
- How easy or difficult will proving breach be?
- Does contract verbage support your position?
Element 4: Damages

- What economic loss have you suffered?
- Was the loss caused by the breach?
- Is it speculative?
- Does contract limit what damages you can recover?
- Do you have admissible evidence to support claimed damages?

Second Area of Inquiry: Where and When can you sue?

- Lots of options to consider:
  - Mediation
  - Arbitration
  - Small Claims Court
  - State Court
  - Federal Court
Look at your contract – what does it require?

- Does it address venue?
- Does it require mediation and/or arbitration?
- Are all claims subject to arbitration?
- Does it require direct negotiation before lawsuit filed?

Is small claims court an option?

- $10,000 or less in Oregon
- Attorneys do not have to appear
- Less costly and time consuming
Third Area of Inquiry: Can you collect if you win?

- Winning lawsuit – receive piece of paper that you are owed $.
- How do you turn that paper into $$$?

Collection Options

- All cost money
- Hire lawyer vs. collection company
- Garnishment
- Writ of Execution
- Seek pre-judgment lien?
- Judgment Debtor Exam
- Arrest warrant
What is financial strength or weakness of your customer?

- Small LLC vs. large corporation
- Run a public asset search?
- Did you obtain financial information when you agreed to provide credit?
- Has customer paid with a check in the past?

Personal Guarantee

- Do you have one?
- Investigate finances of any guarantor
Questions?

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