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The Modern General Counsel

Commercial and Contracts

Corporate, Securities, and Governance





CHEAT SHEET

- ***The right person for the job.*** General counsel are well-placed to establish contract management solutions, as they are acquainted with all aspects of the business.
- ***Automation is your friend.*** Contract management software can generate appropriate and relevant templates to shave time off the typical protracted process of approving a new contract.
- ***Skip the mundane.*** Using contract templates can cut time spent negotiating and reviewing contracts by as much as 90 percent.
- ***Never miss a date.*** Don't miss that crucial lease renewal date with dashboards summarizing the most relevant contract dates.

Due to business, executive, and legal challenges, it's been a tense couple of months for a major US airline. The company announced in September that its CEO and two other senior executives stepped down. *The New York Times* reported that the resignations were related to a federal criminal investigation into whether the air line was trading favors with the chairman of the Port Authority of New York and New Jersey. Reports suggested that the alleged quid pro quo involved the airline agreeing to operate money-losing flights to the Port Authority Chairman's vacation-home airport in return for improvements to their hub in Newark, New Jersey.

In wake of the news, United Airline's board of directors appointed a new CEO. Sadly, barely a month into his new role, the CEO suffered a heart attack. In these difficult circumstances, the board of directors turned to the company's general counsel, Brett Hart, to serve as interim CEO. Hart's promotion from general counsel to interim CEO caught the attention of many. Beyond being an outstanding attorney, what had Hart shown the board of directors to give them the confidence to promote him to acting CEO?

The chief risk officer and key business advisor

General counsel know that the role of high-functioning legal teams has evolved. Simply managing risk, while still critically important, is not enough. General counsel and their teams are now expected to actively support their company's strategy. This trend is true across a wide array of functions. Human resources, finance, and procurement executives are all expected to demonstrate their value in supporting a company's business. Companies like United Airlines clearly see the value in having forward-looking, business-focused general counsel.

The *Harvard Business Review* identified this trend a few years ago in the article "The New Path to the C-Suite," written by a Harvard business professor and two senior leaders at the executive search firm Heidrich and Struggles. The three observed that legal teams were quickly shedding the image of being sleepy domains that simply reviewed documents, oversaw regulatory compliance, and dealt with the occasional rogue employee. Instead, the authors suggested that general counsel were becoming a company's chief risk officer. This means being a key part of business deals from the very beginning — not just providing a legal stamp of approval at the end.

Today, this transition is nearly complete. General counsel globally are increasingly thought of as business leaders with a legal perspective. As the *Harvard Business Review* article predicted, general counsel are trusted advisors to their C-suite peers and are even becoming CEOs themselves. Two recent, prominent examples of the rise of the attorney-turned-executive include Julie Sweet and Thomas Sabatino. Sweet, the former general counsel at Accenture, was recently tapped as the CEO for North America. Sabatino moved from the general counsel role at Walgreens to become a senior executive vice president and chief administrative officer — as well as general counsel — at Hertz. Sabatino now oversees legal, compliance, human resources, labor relations, communications, government affairs, community relations, real estate, facilities, and security. In Hertz’s announcement of Sabatino’s appointment, Hertz’s CEO highlighted that it wasn’t simply Sabatino’s legal acumen that was intriguing, but his history of “leading significant corporate functions.”

And this echos back to Brett Hart at United Airlines. Unsurprisingly, in United Airline’s official announcement of Hart’s promotion to interim CEO, his legal background was only one of the highlights. In addition to serving as United’s general counsel, Hart had oversight of corporate real estate, customer experience, corporate security, community affairs, contact centers, and food services. Hart was an attractive option for the board of directors because he had ably demonstrated his ability as a business leader. He not only understood risk, and how to intelligently manage it, but he also had a deep understanding of the company’s business and strategy, and how to deliver.

Billions in lost revenue

In *The Social Network*, Justin Timberlake’s character asks the fictional Mark Zuckerberg, “You know what’s cool? A billion dollars.” Normally, yes, a billion dollars, or euros, or British pounds is cool, but if that billion refers to your company’s lost revenue due to contract leakage, it’s not cool at all. A general counsel can neither effectively manage risk, nor drive revenue or cost reductions without having a firm grasp of the company’s underlying contractual commitments.

For medium- to large-sized organizations, the sheer volume of buy- and sell-side contracts can bring a legal department to its knees. Gartner estimates that nearly 80 percent of all business transactions are governed by contracts. Price Waterhouse Coopers, an international professional services firm, suggests that most medium- to large-sized organizations have anywhere from 20,000 to 40,000 contracts in effect at any given time. Faulkner Information Services estimates that nearly 10 percent of all executed contracts are lost.

And no wonder they’re lost. At many organizations, these tens of thousands of contracts are documented across a wide variety of formats including Word documents, emails, PDFs, and even faxes. This cornucopia of formats is often stored on an array of hard drives, flash drives, inboxes, and the dreaded metal filing cabinets (that no one has opened in years as if the very act of opening the drawer will lead to the escape of previously contained risks). Every individual author on a contract — a sales executive, an IT executive, or even a lawyer — means a potential new version of a contract. Soon more contract versions have proliferated than covers of the song “Brown Eyed Girl.”

While contracts can originate from human resources, finance, procurement, IT, sales, and marketing, it is incumbent on general counsel to guide, organize, and centralize the contract process. In addition, these contracts need to be created, approved, executed, stored, managed, amended, and renewed. And, lastly, they need to be searchable to guarantee compliance, secure incentives, and reduce risk.

Mistakes can literally ruin a business. Take the unfortunate case of Park City Mountain Resort, in Park City, Utah, once one of the world’s top ski resorts. Park City Mountain Resort leased the land

on which it operated its famous ski slopes. In the spring of 2011, as the renewal of the resort's 20-year lease extension was looming, nobody within the company seemed concerned. Disastrously, they missed the renewal deadline by two days. The improper renewal allowed the landholders to lease the land to Vail Resorts, which increased the annual lease payments from US\$155,000 to US\$25 million (note that this also includes the rent for a second resort in Park City). Because of this error, Park City faces an uncertain, litigation-filled future.

Park City Mountain Resort is a harrowing example, but this lack of process and organization means real revenue loss for most companies. The International Association for Contract & Commercial Management believes that organizations miss out on 9 percent of revenue every year because of poor contract management. For a business with US\$1 billion in annual sales this translates to approximately US\$100 million in lost revenue. A general counsel capable of finding an additional 10 percent in revenue each year is more popular than US country singer George Strait at a Texas honky tonk.

The solution: Contract lifecycle management software

Due to the sheer volume of contracts, no lawyer, not even one as talented as Lionel Hutz, can effectively manage a company's contractual obligations all alone. General counsel need new tools in the form of enterprise-level solutions to manage and predict risk and compliance across all buy- and sell-side contracts. Only through this type of robust organization, centralization, and analysis can companies maximize the value of their contracts and protect themselves against losses.

Full disclosure: I am the general counsel of Determine, Inc., a global provider of software-as-a-service enterprise contract lifecycle management, strategic sourcing, supplier management, and procure-to-pay solutions. I like to sleep soundly at night, and I want you to as well. Instead of an Ambien (that's Stilnox outside the United States), may I suggest contract lifecycle management software? Every day, I work with general counsels that are looking for tools that will help them manage risk, and support their company's strategy.

The impact of contract lifecycle management software — or lack of it — on legal teams can be profound. In the span of a few months, I have seen legal teams go from participating in 50 percent — or less — of buy- and sell-side contracts to actively driving more than 80 percent of these same contracts. Beyond keeping track of the data and documents, legal teams and their business-side counterparts are using enterprise-wide contract lifecycle management to collaborate with suppliers and stakeholders, to close deals, and to win business.

Most contract management software has two principal functions. The first is a trackable workflow for requesting, creating, negotiating, and approving contracts. The second is that of a repository — an archive — where a company's contracts can be stored and easily searched.

One estimate by Forrester Research suggests it takes almost 3.5 weeks at a typical company for a contract to be requested, created, negotiated, and executed. However, wizards and templates with contract management lifecycle management software enable companies to automate and streamline contract creation. These templates can include pre-approved clauses and controls to ensure company-required language is not changed or removed. If a change is made to this language, an alert can immediately be sent to a manager or legal representative for approval. General counsel can be certain executed contracts are in compliance with appropriate policies and business objectives.

Legal teams want to make sure they are allocating the right resources at the right time. Another major

benefit of automation for a legal team is that a lawyer no longer needs to review every word of every new contract. Lawyers can instead focus on contract deviations that the software has identified. Anecdotal estimates suggest that time spent on negotiating and reviewing contracts by a legal team can drop by as much as 90 percent as a result of automation and trackable workflow. Shorter cycle times for contracts means improved efficiency and an acceleration of revenue.

Enterprise-wide contract lifecycle management software also gives legal teams and senior management insight into a company's executed contracts. Dashboards can provide overviews of when contracts are up for renewal, when incentives kick in, or when discounts should be applied. This information insight allows general counsel to proactively partner with their business counterparts to identify revenue generating and cost containment opportunities.

General counsel are the ideal executives to preside over contract management solutions. General counsel work across almost every facet of the business, so they are in the best position to deal with the holistic contracting needs of the organization. And, general counsel tend to have the skills and authority to bring a diverse group of leaders together and serve as an impartial arbiter. A business-focused general counsel that understands the company's strategy and that effectively partners with senior management to drive that strategy is a powerful member of the executive team. And, perhaps one day, a CEO.

Beyond risk: How Determine CLM turns contracts into strategic business drivers

If the general counsel's or CLO's office is increasingly the path to the CEO position, it's no wonder. Few roles in a large organization can combine a 30,000-foot view with down-in-the-weeds details as the GC. Contract Lifecycle Management (CLM) is one of the best ways for anyone in legal — or across all organizational departments — to achieve that same 360 degree, real-time perspective.

Sure, CLM is about compliance, consistency, and access — making sure contracts adhere to corporate guidelines and language, as well as meet applicable regulatory requirements. As the accompanying article makes abundantly clear, knowing where all your contracts are, what's in them, and what your obligations are can make or break an organization. But more than that, at its essence CLM transforms contracts into leverageable assets and competitive advantages. Contract management can help turn potential revenue leaks into revenue generators, driving business through complete visibility, which in turn means total confidence in decision making.

For general counsel, it's critical for organizations to harness and analyze all of their contracts. A clear view of the contract portfolio directly enhances an organization's ability to manage risk, cut additional costs and penalties, and drive expanded revenue opportunities — all potentially adding up to millions of dollars.

Obviously, for anyone who still thinks CLM is merely a repository, think again. In effect, CLM takes contracts out of "filed away" stasis and puts them on the balance sheet. Far more than just mitigating risk, these invaluable assets contain a ton of data that, accessed effectively, can be used to formulate strategic business planning. In the case of the Park City Mountain Resort example, that 20-year-old lease contract was a living document that could have had a very different outcome if the organization had been using a CLM, such as that offered by Determine Inc.

GCs at leading companies rely on CLM for situational awareness. When you've got thousands or tens of thousands of contracts in play at any given time, with more being created every day, no one

can be expected to monitor them all. That's what a configurable, scalable, and robust CLM does. Much more than just a repository or tactical contract creation tool, it gives you dynamic enterprise-wide visibility and control over all of your contracts.

Of course, when it comes to simplifying processes and speeding workflow, a CLM makes things easier from the get-go. As the article points out, when you've got control over the entire contract lifecycle — from request and authoring all the way to renewal — you know exactly what's in each contract and why. With Determine CLM, customized forms keep contracts simple, approved templates and clause libraries empower stakeholders to collaborate, approval paths show who has seen and signed what version, and tracking keeps everyone on the same page. It replaces process inefficiencies and roadblocks (and potential risk) with accessibility and complete transparency, resulting in compliance and confidence.

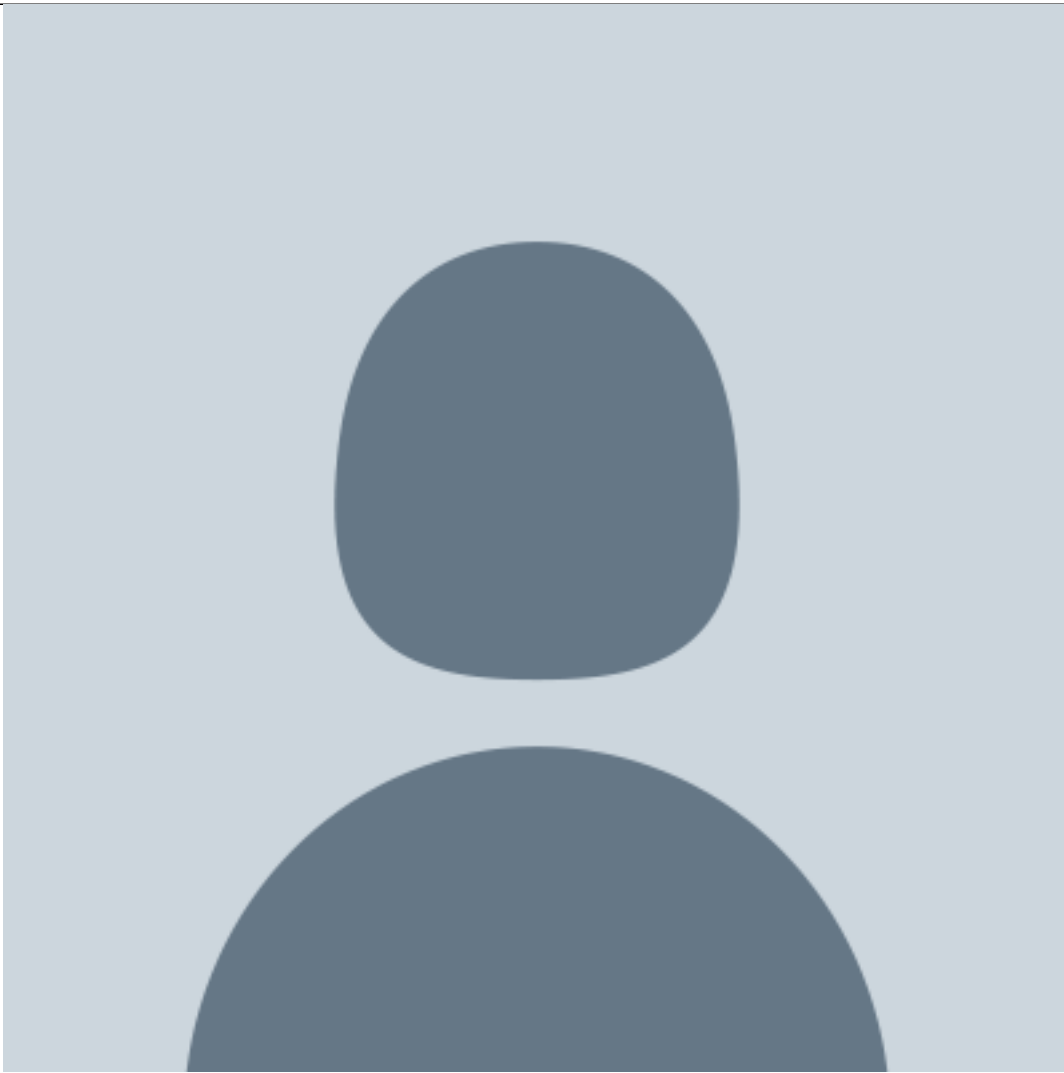
According to Gartner, a leading IT research company, increasing contractual complexity (especially with increased globalization) and audit scrutiny is going to drive a 40 percent or more increase in CLM solution adoption by the end of 2017. According to Determine Inc., whether it's improvement in revenue, cycle time reduction, increased compliance and/or another reason, if your organization is considering implementing or upgrading a CLM, here are features to look for:

- A cloud-based solution makes implementation fast and upgrades seamless
- Scalability that allows for simple expansion regardless of how big or decentralized a company grows
- Full configurability and customization (off-the-shelf solutions reach limitations quickly)
- Notifications and alerts – you want to know way ahead of time any renewals or obligations
- Searchable and easy-to-use cloud repository with variable metadata search capability
- Contract “wizard” or tutorials to get everyone familiar and up and running quickly
- Custom approval paths – parallel or serial as needed
- E-signature integration

If you're reading this, you're a legal professional — so you already know to do your due diligence when choosing a CLM provider. There are a lot of choices, many features, and a range of formats. Start by talking to peers at other organizations that have successfully implemented a CLM solution.

Will a CLM be your quickest path to a CEO title? Well, put it this way: not having a CLM could be your biggest roadblock.

[Art Fisher](#)



General Counsel

Determine

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