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# Beware the Self-Drafted Letter of Intent

Recent Texas case law provides an example of the dangers of the self-drafted letter of intent in business partnerships. We urge you to have any LOIs reviewed by an attorney prior to their signing to prevent similar litigation costs in your business endeavors.

In the case of *ETP v. Enterprise Products*, the companies both signed a letter of intent for a joint venture, which specified that a) the deal was non-binding b) the joint venture was subject to board approvals and c) that either party could walk away without liability prior to the execution of binding agreements. The venture was announced by both Enterprise and ETP in press releases, and efforts to solicit bids were conducted jointly. When jointly solicited customers for the project did not show significant interest, Enterprise withdrew from the project with ETP and then entered into an arrangement with the company Enbridge Inc. in a similar venture. ETP sued Enterprise for breach of fiduciary duties, claiming that the letter of intent constituted the formation of a partnership. A jury found that a partnership did exist, and ETP was awarded $319 million in damages represented the approximate value of the terminated joint venture with Enterprise.

Costly mistakes like this can be avoided by having an attorney-drafted LOI which explicitly makes clear that no partnership exists between the companies, that fiduciary duties have been waived, that the right to sue for a breach of fiduciary duties by either party has been waived, and that the right to a jury trial has been waived. These provisions should be included in the binding portion of the LOI, and that the non-binding and binding provisions are clearly labeled and recognized by both parties. Selman Munson and Lerner has attorneys who can tailor LOIs to the particulars of your next venture, and help you avoid costly mistakes.

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