Business torts wk 2

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Business Torts Pearl leos University of Phoenix Buisness Law/ 531 Kelly Dickson June 10, 2010 Proposed actions a company may take to avoid tort liability and litigation are vital to organizations. Proposed actions a company may take to avoid product liability risk may be a way out of liability issues. Assessing methods for managing legal risk arising from domestic and international regulatory matters is the best way to beat business torts. an integral aspect of a business liability practice is to take ongoing proactive measures through direct collaboration to avoid lawsuits before they are filed. Seeking advice from government authorities, specialists and risk-management consultants is a technique buinsess should use. It is in every company’s business interest to allocate resources to identify risks and avoid descrepancies within the buisness (Parchomovsky, 2008).

Business Torts In order to develop methods to reduce or eliminate torts, risks need to be identified and steps need to be taken. Proposing actions for a company to avoid tort liability and litigation is a way to keep ahead of the game. A company may take actions to avoid product liability risk such as; identifying risk, risk management, analysis and risk control to avoid torts. Assessing methods for managing legal risk arising from domestic and international regulatory matters is vital. Employing risk and management principles will not always prevent a businesses from being sued or from suffering loss but financial burdens can be significantly reduced. Identifying Risk An integral aspect of a business liability practice is to take ongoing proactive measures through direct collaboration to avoid lawsuits before they are ever filed. Not all companies understand how to completely guard themselves of outside entities that have ill will and malice intent therefore it is important to completely understand how to handle these circumstances.

Such risks have an impact on a company’s existing assets, earnings, and often, reputation. In the context of tort liability arising out of noncompliance of government regulations, it is in every company’s business interest to allocate resources to identify those risks, and to implement action plans to avoid such risks. Assessing methods for managing legal risk arising from of domestic and international regulatory matters (Wilson, 2009). Regulatory risks and tort liability are nothing new to companies within the business world of todays’ society. Business members should be aware of specificgoals, business needs, economics and the impact of potential liability as well as managing risk and risks associated with thefailureto comply with a whole host of governmental regulations. In the event those risks do develop, the company needs to have system in place to properly manage and contain monetary and repetitional loss to the company. Additionally, companies will also benefit by anticipating what regulatory changes are upcoming instead to adjust the business practices accordingly, thereby minimizing the exposure to tort liability arising out of noncompliance of regulations (Wilson, 2009).

Risk Management This may be as simple as continuing to operate as usual or as complicated as restructuring or abolishing an entire department. Risk IdentificationThe first step in the risk management process is to identify all potential losses facing a municipality. Risk identification is an on going process that changes with each new situation. Risk identification, or exposure identification, requires the development of an inventory of all municipal operations, knowledge of the potential liabilities that may be imposed by either statute or common law, and knowledge of the worth of all municipal assets and sources of revenue. This step must include an evaluation of all potential events that might adversely affect the finances of a municipality. Contracts should be reviewed thoroughly, before being signed, to ensure that the municipality is obtaining the best deal possible. In some cases, risks can be transferred to the contracting party.

Potential losses of income and extra expenses that a municipality might incur are two areas often overlooked in risk identification. (Parchomovsky, 2008). Other areas where risk management principles should be applied include vehicle usage, maintenance of property and facilities, public use of facilities, use of independent contractors and consultants, personnel questions and personal injury and property injury exposure. All municipal activities should be evaluated and facilities inspected. Court decisions and legislation that affect municipalities must be reviewed. Insurance and risk management publications should be studied for the latest information on loss avoidance. Attending courses on risk management may prove beneficial.

The importance of the human element cannot be overemphasized when identifying risks. Asking employees and supervisors for their input because they are in the best position to identify risks. It is important to communicate with people in other municipalities who are involved in risk management that might have faced and solved a similar problem in the past. Obviously, a great amount of guesswork is involved in risk identification, and some potential losses may be overlooked. However, by making a conscientious effort, the most common losses can be reduced or perhaps totally avoided

(Marcus, 1986). Analysis The next step is to calculate the potential severity and frequency of losses facing the municipality in each of the identified risk areas. A review of the past experience of the municipality, as well as statistical information and probability analysis, is necessary.

The impact of a particular risk on a municipality is difficult to determine. The use of statistics and probability analysis involves guesswork. To determine where a municipality should concentrate its risk management efforts, the risk analysis should be performed carefully. Some risks may involve such a small amount or probability of loss that the municipality will decide to simply absorb any losses which occur. The potential loss may be so large and difficult to avoid that insurance might be the only recourse (Marcus, 1986). Risk Control Once the risk areas are identified and analyzed, the next step is to eliminate, reduce or transfer the risk. Steps toward risk control are taken prior to suffering a loss, with the primary goal being loss prevention.

However, when a loss cannot be prevented, risk control principles may help reduce the financial liability suffered by a municipality. Elimination of a risk is the most desirable goal. If a municipality discovers a way to eliminate a risk, there is no need to worry about its future effect or to insure against it but risks cannot always be eliminated. For instance, abolishing the police force will eliminate all loss exposure in that area, but in most cases, that action is not desirable. After an analysis, a municipality may decide to stop performing some activities or to transfer the risk to a private operator. If a risk cannot be eliminated, the next choice is to attempt to reduce the risk. Risk reduction primarily involves safety.

Some common techniques for reducing risks include adoption of policies for, and proper training of, personnel, particularly for the police and fire protection services, and proper inspection and maintenance of equipment and facilities. Segregation of equipment may also help avoid the loss of all equipment at one time during a disaster such as a fire at a storage site (Gray, 2003). Steps Reducing Risk If the risk cannot be eliminated or reduced, two last options are available. First, if the risk is not large, a municipality may decide that the best option is to retain the risk and fund it itself. The municipality must be aware of its financial condition, its cash flow and the availability of additional funds before deciding to assume a risk. Retaining the risk is the appropriate action in many cases. Studies have shown that municipalities retain far fewer risks than they are financially able to.

By deciding to retain a risk rather than purchasing insurance, a municipality may savemoneyin the long run. Again, this decision can only be made after the financial condition of the municipality has been analyzed in detail (1964). Second, a municipality may be able to transfer the risk to another party. This does not always mean obtaining insurance. The most common form of risk transference is probably the ''hold-harmless agreement," in which a supplier or contractor agrees in the contract to assume risks for which the municipality would normally be responsible. Of course, the added cost to the supplier or contractor of obtaining insurance or otherwise guarding against loss may be passed on to the municipality. In such case, a municipality must calculate costs to determine if transferring the risk in this manner is the best option.

In some instances, insurance remains the ultimate solution to a risk management problem. A municipality may want to retain some of the risk of an activity and transfer (1997). Identifying Risk Program Developing a Risk Management Program on a practical level, is the first step in developing a municipal risk management plan to define the scope of the program. This definition should be in writing and should set out the objectives or reasons for establishing the program. Second, it is important to delineate the responsibilities of all persons involved in the risk management function. All persons engaged in identifying and analyzing the risk and implementing the risk management program should be included. Cooperation is one of the keys to successful risk management.

Third, a municipality must develop a formal risk retention policy. Once the retention limits are established after a thorough survey of the financial strength of the community, the working policy should be drawn up as a formal policy (Del, n. d). A municipality or board may want to form a safety committee which will be responsible for the conduct of a mandatory safety program for employees. This committee should recommend safety policies to be carried out by administrative personnel and should review all accidents and claims against the municipality. Most of fee accidents and claims are usually found to result from the performance of a relatively few activities. Concentrated efforts can be devoted to the correction of procedures in these areas, thereby minimizing possible losses.

The second principal duty of the committee should be that of inspection of municipal procedures and installations, concentrating the search on possible defects which might cause injury and liability. Finally, the committee should confer with insurance carriers and their representatives for the cost of insurance coverage in areas where liability dangers are greatest (Del, n. d). Professional input and guidance become necessary and a professional consultant is best suited to help a municipality determine what steps should be taken to protect against torts. ConclusionRegulatory risks and tort liability are nothing new to companies within the business world of todays’ society. monitoring the riskenvironmentin a structured way is vital. Looking at legal activity elsewhere and seeing how that might impact the business is a technique to use to avoid torts.

There is a lack of awareness among employees about why their companies get sued. It's not just the board'sresponsibilitybut must be spread throughout the corporation. Other priorities compete for a worker's time, so there needs to be mechanisms put in place to identify, monitor and address risks. Put in place a strong in house legal team with clear lines of responsibility andaccountability. There are a number of cases that have escalated into litigation because of the failure of companies dealing with customers when they register a complaint. Capturing issues at the outset and dealing with them, thereby avoids an escalation of problems and is the best way in tackling situations that pertain to protecting businesses agains torts.