

Identification of legal risks and contraction negotiation



|| Span Systems | Memo To: Kevin Grant From: Deardra Woods CC: Harold Smith Date: 3/8/2010 Re: Identification of legal risks and contraction negotiation write essay my best friend In todays litigious business environment, it is imperative that upper management and boards of directors make ethical decisions geared toward mitigating legal risk.

People handle contracts everyday whenever there is an exchange of promises. ? In the business world it has a bit more depth to it than the simple idea of slipping a few coins in a vending machine. Business leaders should have enough understanding of the law to make decisions that are legal or they should hire competent counsel. The opportunity to serve as the project manager over one of our biggest deals has been a privilege. And because of the dedication that has gone into this project, there must be an understanding of how we can prevent the possibility of breeching contracts with Citizen-Schwarz AG or in business opportunities later granted to Span Systems.

??? The contract details what the parties are required to do for complete performance??? (Jennings, 2006). In the future, if Citizen-Schwarz AG continues to change their original contract requirements there needs to be sign offs from both Span Systems and Citizen-Schwarz AG directors. Prior to Span Systems director signing off Citizen-Schwarz AGs request, a panel of senior programmers here at Span Systems needs to approve the request, so programming changes can be adequately evaluated. Span System programmers should be assured that timetables and schedules can still be met within the agreed upon contract.

If Citizen-Schwarz AGs request requires more time to meet the deliverables of the project then Span Systems and Citizen-Schwarz AG need to exercise the Requirement Change clause within the contract. This clause is meant to formalize a change and suppose to notify and bring in upper management from both sides to handle a change request by following the Information Technology Project Methodology Standard this wasn't done in the past. This clause is not written to handle out of the ordinary requests. This clause needs to be able to handle difficult requests and effectively document a procedure that can hold both sides accountable for changes made to the original contract. This clause also needs to be streamlined, so that both parties can act quickly upon agreed changes to the contract.

It would be best to amend a clause to the current contract that is specially written to handle requirement changes throughout the project. This clause should document the process to effectively make difficult change request. This process should also require sign offs from project directors from both companies.

In addition, each change request needs to be a legal contract that carefully documents how the scope of the project changes with each request. Each request absolutely needs to document how the timetables and schedules will be affected through the continuation of the project. In retrospect, Span Systems and Citizen-Schwarz AG negotiations over the low quality of deliverables along with being behind schedule was purely an interest-based negotiation. This negotiation was interest-based or win-win, because in the end both Span Systems and Citizen-Schwarz AG compromised by continuing to work together and moving forward towards our goals.

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Span Systems will continue to finish our one-year \$6 million contract with Citizen-Schwarz AG with high quality, so our organization can get the bigger e-CRM project that is scheduled for later down the road. At the same time, Citizen-Schwarz AG want to get a high quality, on time big- ticket Java-based transaction processing software. If both Span Systems and Citizen-Schwarz had taken a positional bargaining strategy instead of an interest-based strategy these negotiations would have produced a much different result. It would be likely that Span Systems and Citizen-Schwarz would be contesting this dispute either in court or through arbitration.

If Citizen-Schwarz had gone with a positional bargaining strategy, they would have held their position on wanting Span Systems to transfer all unfinished code and wanted to sever the contract between the two companies. This strategy would have forced our company to legally come after Citizen-Schwarz AG, because of breach of contract. Citizen-Schwarz would clearly be in breach of the Intellectual Property Rights clause of the contract.

Although not a favorable move, Span Systems would most likely have used this clause as a part of their negotiations in order to make Citizen-Schwarz AG change their position or pay up in full. This clause could backfire on us, but Citizen-Schwarz AG is forcing Span Systems to make bold moves since they are taking a bold stance. Clauses like Internal Escalation Procedure for Disputes would not have much validity during negotiations since Citizen-Schwarz AG is using a positional bargaining strategy, and they are not leaving much room to rectify the underlying problem. The Requirements Change clause would defiantly come into play if this dispute ever came to litigation since there were defiantly changes made during the project. This <https://assignbuster.com/identification-of-legal-risks-and-contraction-negotiation/>

would be a tough clause to litigate, because it will come down to the quality of the deliverables. The most important clause that will make or break Spans Systems relationship with Citizen-Schwarz AG will be the Intellectual Property Rights clause.

This clause will either make Citizen-Schwarz AG reconsider rekindling their working relationship with Span Systems or pay up and go there separate ways. It is possible that Spans Systems and Citizen-Schwarz AG could have come to a compromise, even though; they took a positional bargaining strategy stance. In this situation, Spans Systems and Citizen-Schwarz agreed upon a win-win solution easier, because both companies wanted to achieve their interests as quickly as possible. Positional bargaining strategy in this situation would have delayed and undermined both companies goals.

A positional bargaining strategy also carries a bigger legal threat since delays cost companies money, which forces companies to take legal action in order to try to recuperate such losses. In the future, Span Systems should have more on going communication with customers through out projects, so expectations are constantly maintained. It would be beneficial for Span Systems to invite project managers from our customers to participate in a quality control capacity. Allowing a project manager from the customer to be a witness to Span Systems operations could serve as an asset if a dispute ever arises regarding the quality of deliverables. Having a project manager on board from the customer should also put more confidence in the customer, because there will be less barriers between Span Systems and the customer. Overall, Span Systems did the right things to resolve the issues

with Citizen-Schwarz AG. During this incident, interested-based negotiations proved to be a better angle for both parties.

This incident taught my team to be more proactive in communicating with the customer. This incident also taught Span Systems to hold their customer to the provisions of their contract. Through out this incident, it was made clear that Span Systems needs to be selective and careful when deciding what clauses to bring up in dispute negotiations. References University of Phoenix. (2008) Contract Creation and Management Simulation.

Retrieved March 7, 2010 from University of Phoenix. Jennings, M. M. (2006). Business: its legal, ethical, and global environment, 7e.

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