

Virginia

Regulatory Hot Tip 2009 –5

Professional Insurance Agents Association of Virginia and DC, Inc.

Details of the Deal

In our last Hot Tip, we cautioned you to make sure that you really understand with whom you are really doing business. The sequel to that Hot Tip is this one: Once you know who you are dealing with, be sure what the terms of the deal are.

Everyone likes the adrenaline rush of putting together a profitable deal. We all banter about doing (or trying to do) “win-win” deals, but no one likes to write the nuts and bolts of the agreement. No adrenaline there. Instead, we turn to our scribes, the lawyers. But everyone also likes to keep legal fees down. As a result, I often meet with clients who have spent a lot of time trying to draft a contract document on their own, bringing it to me only for a “review.” In my experience, this is almost never a cost-effective approach, so let me suggest an alternative that can save you time and money.

The starting point is to understand that your lawyer is not clairvoyant. Lawyers can only take the information provided by YOU, the client, and put it down on paper. I often find that when business people try to draft legal agreements, they spend a lot of time on the “boilerplate” provisions of the document, probably piecing the document together from parts of other (hopefully successful) transactions they have done. They tend NOT, however, to devote an equal effort to describing the actual terms of the transaction. The result is that I often find myself working hard to understand the terms of the deal and get them down on paper.

Indeed, getting the client to come clean and tell me what the deal really is, is often the most time consuming (and therefore expensive) part of my representation. It is also the most critical and important part. The real value of my involvement in each deal is really right there: understanding and talking through the deal with the client. The actual drafting of the contract document is usually relatively straightforward, and actually does not take a lot of time. It is

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trying to figure out the TERMS of the deal that take all the time and run the legal bill up. But in the final analysis, getting the terms of the deal right is your job - not the lawyer's.

Many folks mistakenly believe that the boiler plate language in contracts is the most important aspect, and its importance should not be belittled, but your deal will either succeed or fail on the unique deal points that you have agreed upon with your deal partner - not on the boilerplate. That is to say, you simply have to make sure that you think through the deal, understand what is expected of both sides, what happens if you succeed in the deal and what happens if either party fails to perform. I remind my clients that the best time to talk about difficult issues, such as deal failure, is when the parties are "courting one another" and creating the deal. When everyone is caught up in the prospect of making a lot of money, that is when you should discuss the difficult points of the relationship. Think of it as putting together your pre-nuptial agreement.

So, when you've got a deal, and if you want to keep your legal costs as low as possible, BEFORE you call your lawyer, sit down and put the terms of the transaction on one side on a single sheet of paper. All of them! Use "bullet points." Don't worry about using any legal terms. Just write down the deal points. Then call your lawyer, and schedule a meeting. I promise that the deal point list will make the process of getting a "final" contract document go much faster, easier, and at far less cost.

And finally, if you find that you are having trouble reducing the deal points to one side of a single sheet of paper, don't worry, you are not alone. In that event, you can also tell your lawyer not to draft the agreement, but to help you sort through the terms of the transaction. Lawyers have seen lots of deals and can bring a unique perspective. They can help you address unconsidered points with your counterparty and make sure that all aspects of the deal are considered (and negotiated) prior to signing a document.

In closing, if you can't put those deal point terms on one piece of paper, you don't know your deal well enough. If you can, you will lower your legal costs, and help make sure that your deal is a success.