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CHALLENGES IN INTERNATIONAL BUSINESS ETHICS-APPLYING PERSONAL VALUES IN THE GLOBAL ENVIRONMENT

David W. Arnesen, Seattle University
arnesen@seattleu.edu
William L. Weis, Seattle University
billweis@seattleu.edu

ABSTRACT

The expanding global environment continues to raise new ethical challenges in international business. Businesses are confronted with dilemmas overseas that challenge their employees own values. While these challenges may seem unethical to the visiting employee, in fact they may be considered ethical within the values of the host environment. This paper examines a variety of these situations and provides a tutorial on how employees maintain their personal values while working in a challenging global environment. Instructor teaching notes are provided as a supplement to the case exercises.

FOREIGN DIRECT INVESTMENT IN THE SOUTHERN US: A CASE STUDY OF THE ALABAMA AND THE AUTOMOTIVE SECTOR

Patricia C. Borstorff, Jacksonville State University
Taleah H. Collum, Jacksonville State University
Stan Newton, Jacksonville State University

CASE DESCRIPTION

The primary subject matter of this case concerns foreign direct investment (FDI) in the southern U.S., specifically automobile FDI in Alabama. Secondary issues concern the aggressive competition, using incentives and state-specific features, of southern states in recruiting foreign investment and the employment opportunities that FDI brings. This case has a difficulty level of three, is suitable for a junior level course, and can be taught in a 90 minute class with two hours of outside preparation by students. It is also applicable for use in a senior-level international management class to illustrate the reach of globalization into local corners of the world. It may further be used as a template for professors in other states in illustrating the proximity and consequences of FDI. We propose that there is international activity in the form of FDI here or abroad as well as exporting and importing in virtually all states and the case provides a template for that scenario as well. Students should relate to the importance of international business as they see its relevance to their lives.

CASE SYNOPSIS

This case is designed to illustrate the concepts of foreign direction investment, job creation, state incentives as a factor in FDI, and the unique features that a foreign investor wants from a state. The case can be used in its entirety or in part as appropriate. For example, one could investigate recruiting methods used by U.S. states in the pursuit of FDI and the results of that pursuit.

Countries are faced with numerous challenges as they compete for the same Foreign Direct Investment dollars. FDI is increasing as the world evolves into a global marketplace for industry. The U.S. government continually adjusts its policies and tax procedures in order to be a viable player in the world market. Many southern states, including Alabama, have been successful in improving their economies and providing new employment opportunities by offering the incentives required to attract FDI and industries to the area.

INTRODUCTION

In today's global marketplace, governments increasingly must compete aggressively to attract multinational companies. Companies engage in foreign direct investment (FDI) for the purpose of actively controlling property, assets, or companies located in a host country. International business competition among multinational companies frequently involves fiscal incentives. FDI patterns have changed and the level of activity, when considered to GDP, has tripled in the past 20 years.

Countries vary in the importance of issues that affect their FDI. In comparison to the U.S., Japanese investors are more influenced by factors such as infrastructure, wage inflation, elementary school enrollment, and country risk, described as economic and social uncertainty of the host

country. The United States is the largest foreign direct investor country with 1953 foreign direct investment projects since 2002 and is also hosts the world's largest inflow of FDI. During the 1990's, the U.S. experienced a sharp growth in FDI generated by the booming economy. During 2004, FDI capital investments reached $13.90 Billion U.S. dollars. The United Kingdom, Netherlands, Japan, Germany and Canada provided the largest amounts of direct investment in the U.S. and these countries also received large amounts of investment from the U.S.

Many foreign countries choose the southern section of the U.S. as a desirable location for their FDI. Despite the escalating costs of incentives packages, southern states continue to invite large industrial employers in order to continue the evolution from an agricultural economy to a manufacturing economy. In the first quarter of 2004, "Relocate America" named the top five places to live in the U.S. and they were all located in the South. The southern states tax policies have changed within recent years to impact FDI decisions. Infrastructure improvements, business incentives, and job training programs are part of the incentives offered to foreign investors as competition among states takes place.

The southern U.S. has been very aggressive in recruiting international companies. Economic development is one of the first job priorities of southern politicians. Tennessee, Alabama, Georgia, Kentucky, South Carolina and Texas have been eager to grow their manufacturing bases and have welcomed foreign automakers with numerous incentives, many industrial sites, a skilled work force and a non-union environment. Each state has adopted a unique strategy to attract FDI because they realize they are competing for the same limited investments. The following section discusses what Texas, South Carolina, Mississippi, and Alabama have been willing to offer in their pursuit of international investment.

TEXAS, FDI AND INCENTIVES

Texas Governor Rick Perry has made job creation and economic development a foundation of his administration. The Governor and the legislature established a $295 million dollar Texas Enterprise Fund to allow the state to respond quickly and aggressively to opportunities to bring jobs and employers to Texas. This enables the governor's office to tailor incentive packages to best meet the needs of local communities and businesses. The fund focuses on ways to attract new business to the state or assist with a substantial expansion of an existing business as part of a competitive recruitment situation. The Governor's and legislature's reform of the state's workers' compensation system is also an example of the state's commitment to successful partnership.

SOUTH CAROLINA, FDI AND INCENTIVES

South Carolina started its modern Foreign Direct Investment (FDI) program in 1988, which resulted in the securing of Fujifilm Medical in Greenwood and the BMW Plant in Greer (1992). Since this program started, South Carolina has continued to reap success in the development of jobs through in-sourcing or FDI. According to the Organization for International Investment, South Carolina ranks first in the nation in the share of its private sector workforce supported by U. S. subsidiaries of companies headquartered abroad.

The 1992 BMW package, thought to be the most costly state supported economic initiative ventured at the time, offered incentives totally $155 million in return for the promise of 1900 jobs for a ratio of $81,479 per employee (adjusted to 2001 dollars). These dollars came in the form of property tax abatements, labor training, income tax credits, revenue bonds, a 900 acre plant site, road and airport improvements, and a $6 million dollar local county contribution. While raising dire doubts among politicians and some economist concerning government's direct support of foreign owned private business, the economic impact has been beyond even the most aggressive projections.

MISSISSIPPI, FDI AND INCENTIVES

Mississippi was slow in realizing the worth of recruiting foreign capital. However, it launched a serious effort the late 1990's, which resulted in a major catch; Nissan came to Canton in 2000. Mississippi held special secessions of the state legislature which resulted in cutting the time frame for incentive decisions from the normal 18 months to five. The package included $295 million of direct incentives in return for a promise of 4000 jobs paying an average of $23/hour. In addition to the state's effort, Mississippi went one step further when its United States Senator sponsored special federal tax reduction legislation for the Canton area. It is ironic, in light of the state's lethargy in getting into the game, that the facility was expanded by 40 percent a full year before it was scheduled to open. As in South Carolina for BMW, many of the dollars in the incentive package were devoted to infrastructure improvements, employee training, and tax credits. Nissan Vice-President, Emil Hassan, reflected in his statement, "The partnership between local firms and Tier 1 automotive suppliers demonstrate a win-win scenario that will be good for the smaller firms, for Nissan, and for Mississippi."

ALABAMA, FDI, AND INCENTIVES

Alabama has been at the forefront in offering incentives packages and deriving a considerable benefit from the industries relocating in the state. For example, Alabama's auto industry has generated 30,180 direct jobs, creating another 53,530 indirect jobs, for a total of 83,710. These job totals translate to $1.4 billion in direct payroll and $1.62 billion for indirect payroll as of the end of 2002. It is estimated that 5 to 6.2 spin off jobs are associated for every single assembly job. Alabama possesses many natural resources that make it attractive to foreign multinational corporations. Other areas that Alabama emphasized in their quest for automotive FDI were tax incentives, anti-union sentiment, education development activities, and state training programs.

Due to Alabama's commitment to the promotion and maintenance of a competitive business climate, the state has developed one of the most aggressive tax incentive programs in the nation for new and expanding industry. Since the Alabama tax incentives have a statutory basis, industries in the state have a stable framework for long-term investment.

Competition for FDI is influenced by government policies. While offering tax incentives is often effective in attracting foreign investors, improving the quality of a country's infrastructure, to include human capital enrichment, appears to have a longer lasting impact. Alabama offers unique training programs. Alabama Industrial Development Training (AIDT) is among the most highly rated workforce-training program in the U.S.

FINANCIAL INCENTIVES AND RETURN ON INVESTMENT IN ALABAMA

Currently, more than 300 foreign-based manufacturers from more than 30 nations operate in Alabama. Of these foreign-based companies, three are major automobile manufacturers; Honda, Hyundai, and Mercedes. Another foreign-based automobile manufacturer, Isuzu, just announced that it will be expanding its operations into Alabama in the near future.

In 1993, when Mercedes announced that it would be moving the assembly of the M-Class outside of Germany, Alabama was not anywhere near the top of the list of possible locations. However, Alabama ended up being the state of choice because of its generous incentives package. Based on the incentives offered, those 1,500 jobs cost Alabama taxpayers $168,000 per job. After its $600 million expansion in 2005, Mercedes total capital investment in the plant increased to $1 billion with 4,000 employees. Although it cost a substantial amount of money to get Mercedes to locate in Alabama, it put Alabama on the automotive map which led to future investments from other foreign auto makers.

In 1999, the state was not as generous to Honda as it was to Mercedes in 1993, butHonda still received $102 million in direct incentives that included site preparation grants, preparation for the construction site, free employee training programs, industrial access programs, and the biggest thing of all: enough affordable land to accommodate its 3.25 million square foot manufacturing facility.

In 2002, Alabama gave Hyundai an incentive package worth $252.8 million to locate in Montgomery. This package included $76.7 million in tax breaks; $61.8 million in training grants; and $34 million in land purchase assistance, road and bridge development, and water and sewer improvements. Hyundai has invested $1 billion in its 2 million square foot plant and has created an additional 5,500 jobs through its 34 suppliers in Alabama.

CONCLUSIONS

Alabama has invested millions of dollars into the automotive industry. As a result, their existing automakers, Mercedes, Honda, Hyundai, and Toyota have demonstrated that they can operate efficiently and profitably in Alabama. With deals like these, its no wonder foreign automakers have stepped up production in the U.S. States continue to offer attractive incentives, hoping that these will solve some of the problems facing them at home. For example, in early 2007, Louisiana and Alabama are in a bidding war for a German steel company. It is reported that the incentive package offered by both has exceeded $1 billion.

This case focuses student interest by posing questions in the fields of: FDI's economic impact, enhanced employment opportunities, tax initiatives, effects of unionization, the influence of sound infrastructure, and the importance of state government's aggressive participation.

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TROUBLE AT THE TOP: A FAMILY BUSINESS CASE

Kevin Bosner, St. John Fisher College
kbosner@sjfc.edu

ABSTRACT

The term "the glass ceiling" began being used in the 1980's to describe a barrier which prevents, or at least hinders, women from achieving top leadership and management roles. Several studies have been performed on specific industries, and recent research suggests that women have made strides in this area, but have not yet achieved equality.

The financial area is one where women have been seen as making more progress than in other disciplines. This study first considers the senior managers at several large and small publicly-held companies, comparing the proportion, and the compensation, of female to male senior executives in Finance.

The study also surveys several male and female undergraduate business students, and compares the self-perception of management skills between male and female students, and between Accounting/Finance and non-Accounting/Finance majors.

TOPS: A FAMILY AFFAIR

Steve Brown, Eastern Kentucky University
Steve.brown@eku.edu
Peggy Brewer, Eastern Kentucky University
peggy.brewer@eku.edu
Kambiz Tabibzadeh, Eastern Kentucky University
kambiz.tabibzadeh@eku.edu

ABSTRACT

The primary subject matter of this case concerns personnel issues in a start –up company. Secondary subject matter includes partnership issues, family business issues, drug and alcohol issues, employee theft, and discipline. The case has difficulty level of three (junior level). The case is designed to be taught in one class hour and is expected to require three hours of preparation.

CASE SYNOPSIS

A partnership is formed between two friends. The oldest son of one of the partners is hired as the company's general manager. Problems begin soon after the restaurant is opened. Additional family members are hired without discussions between the partners. This leads to problems down the line when one of the sons begins to exhibit suspected alcohol and drug related problems. The culture that evolves during the first year of operation sends mixed signals to employees creating further personnel problems. As the problems mount, the partner who is being left in the dark begins to wonder whether he has become embroiled in a family business instead of a fifty/fifty partnership.

Dave Davig, co-owner of TOPS, received a surprise when he showed up at his latest restaurant. Instead of finding his regular manager, Tom Coffman, he found Tom's brother Bob, the company's general manager running the store. Bob explained to Dave that he had to remove Tom because of personal problems that were interfering with the performance of the store. Dave was aware that the store was not doing as well as the first two stores, but this move was completely unexpected.

Dave had gone into business with Terry Coffman, Bob and Tom's. Dave and Terry were employed by the same university and had become best friends. Tom and Terry had earlier started and operated a micro computer business only to have it close when their parent company, Victor Computers, filed for bankruptcy. Their latest venture was a small chain of drive through fast-food restaurants. This concept was just beginning to take root in the midsouth region. Dave, a Small Business Development Center director, had been approached by a client with the idea of opening a strictly drive through fast food restaurant with a low priced limited menu. Dave was initially skeptical of the concept. Within months of this contact, three start-up chains had opened drive through only restaurants in the Nashville area.

Terry's son, Bob, was working for one of the major suppliers of these types of restaurants so he had inside information on their start-up and operational costs. Terry approached Dave with the idea of opening a similar restaurant and expanding it into a chain of local stores or maybe even franchising if it did well. As part of the planning process they began to look for possible sites and potential employees. Bob had been a manager at local Golden Corral so he was assigned the task of lining up potential employees and designing the facilities. Dave and Terry began looking into possible sources of financing and potential locations.

In late February just after a major winter storm, Dave and Terry began driving around Murfreesboro looking at several sites that were available and seemed to fit their needs. Terry had been drinking, but seemed to be able to carry on a practical discussion about the merits of each site. After about three hours of observing traffic patterns and checking each site against a list of characteristics they thought the site should have, Terry remembered he was supposed to pick his son, Tom, up from work. Tom was not driving because he had wrecked his car earlier in the week, and Terry had temporarily revoked his driving privileges to teach him to be more responsible. Terry said his son would not take responsibility for the accident. Consequently, Tom thought he was unjustly being punished.

When they arrived at the plant to pick Tom up, Dave found out that Tom had been waiting almost two hours. When Tom got in the car he was very hostile and angry, especially when he found out his dad had been drinking. He was quiet all the way back to Dave's home where Terry had parked his car. Dave asked Tom to drive his dad home because he did not think Terry needed to be driving, especially since the streets were covered with ice from the winter storm. However, Tom refused to drive because he was still mad at his dad. Terry insisted on driving them home, but Dave refused because he was mad at his son.

Later that evening Dave received a call from Terry's wife asking if he had seen Terry in the past hour. Then she explained that she had received a phone call from a friend telling her that a car looking like theirs was sitting in the middle of one of Murfreesboro's busiest streets and appeared to have been in a wreck. She was not sure whether it was their car or not because no one was in it. She was very upset because she said Terry had left in the car as soon as he brought his son home even though he had no business driving. Dave called the police station and found out Terry was in a holding cell and been arrested for driving while intoxicated.

Six months after this incident TOPS opened up its first store. It was located in small shopping center across from a McDonalds two blocks from the downtown courthouse at one of the main intersections in Murfreesboro. Bob was able to keep the construction cost to minimum by designing a small, compact but efficient layout which could be constructed off site. He also hired two of his former employees at the Golden Corral as his assistant managers and began on-the job-training. Sales were disappointing at first, but word of mouth spread about the fast service, quality of food, and low cost. Within a month after opening, sales were so brisk the city police had to direct traffic during lunchtime.

As sales grew, Dave and Terry began thinking about a second store. TOPS had customers driving in from surrounding towns to buy their hamburgers. Because of the sales volume, things could get hectic at peak times. Bob increased the size of the work crews; however, the cramped space limited the number of employees that could work efficiently in a confined space. They began looking for a site for a second store. Six months later they opened a slightly larger store in a shopping center two miles from their original store.

This rapid growth, plus the natural turnover in the fast food industry, had the managers constantly recruiting, hiring and training new employees. It also meant that shift and crew chiefs were constantly changing. This instability caused Terry to start hiring more of his immediate family members. Tom and his two sisters and mother were hired as crew chiefs. This was somewhat disturbing to Dave because it was done without his prior knowledge. He began to think maybe Terry's ultimate goal was to create a family business instead of expanding into a franchise. Terry assured him that he and Bob were just trying to create some stability in the operations.

In order to further reduce turnover at TOPS, Bob attempted to create a fun working environment. As part of this, he set up teams, created competition between work crews and started referring to the employees as TOPS' extended family. This seemed to work to an extent. Most of the employees were in their early twenties or younger, and there was a lot of bantering, pranks, and kidding going on. However, the crews began taking advantage of the relaxed atmosphere, coming in late for work and having their crew cover for them, cutting corners to increase productivity, and

reducing costs at the expense of quality. It got to the point where Bob caught some of the employees showing up intoxicated and trying to sneak beer into the stores. The horseplay between the men and women caused the owners to express concern about possible sexual harassment charges. Bob soon created a manual of policies and rules to curtail some of these practices.

To further promote cost control, Bob's former company and a major vendor helped TOPS set up a centralized commissary. Bob staffed the commissary with his wife, a mentally challenged individual and a parolee. Eventually, some of the women working at the two stores complained that the parolee was harassing them, and the handicapped individual practically cut his thumb off in a meat slicer : consequently, Bob had to let both of them go. Dave questioned the practicality of the commissary because they had to pay additional rent, pay for additional equipment such as a walk in cooler/freezer and delivery truck, plus the cost of additional employees. Terry and Bob thought the additional cost would be worth it in the long run because they could prepare in volume and get a better grip on inventory control if they continued to open up new stores.

In keeping with the friendly competition that Bob had created, he soon discovered discrepancies between inventory that was being recorded for each of the two stores and each store's actual inventory. This resulted in inaccurate operating costs for the stores. An investigation into this led to the fact that each store manager was making a game of sneaking extra inventory from the commissary to make their operations appear more efficient. Bob promptly put a stop to this. However, he began to experience shortages in the cash drawers in both stores.

Upon threat of lie detector tests, he was able to uncover three of TOPS most trusted and loyal employees had set up a team system to skim large bills from the cash register. He also discovered two Tops' youngest employees were stealing money on regular basis when they were working the cash registers. When confronted and assigned to other duties, they did not see anything wrong with their behavior. Dave was very upset about this. He wanted to press charges and prosecute them, but Terry and Bob did not want to do this because the employees were local residents, and they thought such a move would create hard feelings among their customers.

In addition to preparation and inventory control, Bob used the commissary for both formal and informal meetings. The commissary eventually became a place where the managers and crew chiefs hung out before and after work. Dave became a little concerned when he had to find out about these meetings from Terry. Dave would have attended these meeting as well, but he never was informed when they were being held. In one particular incidence, Terry approached Dave after a managers' meeting offering to sell him his share of TOPS because he was sure he experienced the strong smell of marijuana at the meeting.

Terry was particularly sensitive to the use of drugs by the managers since his son Tom had gone to Daytona on spring break earlier in the year and injured himself while jumping into a pool from the second floor of the motel where he was staying. Not long after that, Tom had lost control of his car while on the way to work and hit a utility pole. The wreck resulted in a serious head injury and a lengthy stay in the hospital. Terry and his wife suspected drugs were involved and enrolled Tom in a rehabilitation program in Atlanta. Tom contacted Bob before he had completed the program and pleaded with Bob to help him get out of the recovery program. Bob drove down to Atlanta, brought Tom back to Murfreesboro, and started him back to work without his parent's knowledge. Shortly after Tom's return, Dave observed Tom swearing at his mother in front of the other employees when she questioned his judgment even though it was obvious to everyone present that he was he wrong.

The commissary was also used to host a Christmas party for the TOPS employees. Dave and Terry agreed to this against their better judgment with the condition there would be no drinking. It soon became quite obvious that drinking was taking place when Bob's wife started flirting with some of the employees, talking loudly, and falling over. Bob became embarrassed when everyone laughed at her. He became furious and fired his wife on the spot. Dave and Terry vowed to never host another employee party. The next year Bob took it upon himself to host a Christmas party at

his home without the knowledge of the two owners. Bob asked two of his underage employees to spend the night because they had been drinking heavily. When Bob woke up in the morning he found the under aged employees gone and his car missing. It was later discovered by the police at the home of one of the boys.

Later in the year TOPS opened a third store in Lebanon, Tennessee. This store was in a shopping center at the crossroads of two main streets four blocks from the town square. It was also near several other fast food restaurants like the two stores in Murfreesboro. Just before they got ready to open the store both assistant managers quit, and Tom was sent to open the new store. He moved to Lebanon and started recruiting personnel. After several delays, the store was finally opened; however, in the opening months the sales at this store did not steadily increase like the others did when they first opened. The operating costs were also significantly higher than the other two stores. Dave kept going by the Lebanon store trying to see if he could find out why the performance was so different.

On one of his trips to observe the Lebanon store, Dave found Tom had been removed as store manager. Bob told Dave he had to take Tom out of the store because his mom and dad were thinking about putting Tom back in rehab because they suspected he was doing drugs again. Bob found out Tom had moved one of the female employees into his apartment and had been giving the store's supplies to the girl's family. This created a great deal of dissention among the other employees. Some of the employees claimed that Tom showed favoritism and little supervision or guidance. Bob told Dave he was glad they had moved Tom to Lebanon because he was creating problems in the Murfreesboro stores. Dave explained that he was half owner in TOPS and should have been informed of Tom's behavior. Bob acknowledged that he should have, but he was afraid his mom and dad would get mad at him. After being told this, Dave began thinking about how to get out of the partnership.

LECTRODRYER: ITS BUYOUT AND STRATEGIC DIRECTION

Steve Brown, Eastern Kentucky University
Steve.brown@eku.edu
Bill Davig, Eastern Kentucky University
Bill.davigh@eku.edu

ABSTRACT

The primary subject matter of this case concerns a leveraged buyout. Secondary subject matter includes exploring growth strategies to maintain their competitive position. The case has difficulty level of three (junior level). The case is designed to be taught in one class hour and is expected to require three hours of preparation.

CASE SYNOPSIS

Several employees of Ajax Magnethermic Corporation acquire one of its divisions, Electrodryer in a leverage buyout. Lectrodryer is the oldest and most experience manufacture of absorption dryers in the world. It is also a very small company that operates in an industry filled with large competitors. The buyout process and terms are outlined. Even though the new owners are able to negotiate very favorable terms in the buyout, they are very concerned about Lectrodryers's ability to cope with challenges taking place in the operating environment. They are convinced they will have to grow in order to ensure long-term survival of the company. The new mangers begin to explore and evaluate a number of generic strategic growth alternatives.

INTRODUCTION

John McPhearson, the company's new president and CEO, called a meeting of his partners to discuss the future of Lectrodryer. He and his partners were highly pleased that the company was performing above their best expectations. However, he knew that they were not out of the woods yet. He believed that if they could not grow the company rapidly they would face stiff competition from much larger firms in the industry. He was especially concerned about the growing competition from China.

John and his partners acquired Lectrodryer in a leveraged buyout from Ajax Magnathermic. Lectrodryer is the oldest and most experienced manufacturer of adsorption dryers in the world. It designs and manufactures desiccation and purification equipment for the removal of water vapor and trace contaminants from air, gasses and fluids. Its reach is international in scope and includes most U.S. companies in need of dehydration, purification, and dehumidification equipment.

The company is a principal supplier to chemical processing plants, pharmaceutical companies, and oil refineries. It is also a major supplier to electrical utility companies. Among their customers are such large companies as AT&T, Dupont, First Energy, General Electric, and the Tennessee Valley Authority.

COMPANY HISTORY

Lectrodryer was created in 1932 by the W. E. Moore Company as a sister plant to the Pittsburgh Lectromelt Furnace Corporation. The first unit was constructed to dry a controlled

atmosphere gas furnace at the Thomas Steel Company. In 1956, the McGraw Edison Electric Company purchased the company. In 1972 it was acquired by Ajax Magnethermic Corporation and moved to Richmond, Kentucky, as part of the Ajax plant. Ajax manufactured industrial gas furnaces, and Lectrodryer's dryers fit well with the Ajax product line. In the mid-eighties, Ajax Magnathermic was acquired by the BBA Corporation, a large holding company, and in 1998 sold Ajax, along with some other businesses, to a group of investors in a leveraged buyout. The Lectrodryer division of Ajax was included in the sale.

The new owners found out very quickly they had undercapitalized the company and were facing a serious and possibly fatal cash flow problem. They were having difficulty meeting the interest payments on the debt. The lenders brought in a management consultant firm to try to turn the company around and to increase short-term cash flows. At this time, John worked as a sales engineer in Lectrodryer's marketing department where he was responsible for a key product line. He had worked for the company for 12 years.

THE BUYOUT

Five months after the Ajax buyout John was getting ready to leave for a trade show. His immediate boss said that he would like to accompany John on the trip, along with a management consultant who was currently working for the company. Although John was curious about the motivation for the request, he agreed. As the show was winding down and they were having lunch, the management consultant asked John if he would be willing to sign a management contract with Lectrodryer. John already suspected that Ajax planned to sell Lectrodyer in order to generate needed cash for Ajax. His in-depth knowledge of the major product line and his good relations with Lectrodryer's key customers would be extremely valuable if the company was sold, and the consultant knew this. John told him that he appreciated his confidence, but he and his family liked Richmond and would like to stay in the area. Then the consultant asked if he had thought about buying Lectrodryer. John said he had seriously thought about it. They asked him to make an offer.

When John got home he went to the Web to search for business plans. He found two sites that he liked and began preparing a plan. The operational costs were easy to project but the sales forecast was problematic. He believed he could cut costs by moving into a much smaller facility and keep 25 to 30 % of Lectrodyer's current employees. Based on current customer contracts, John felt they could have the company paid for in a relatively short time. Lectrodryer sales had been fluctuating around $4 million to $6 million annually. John felt that he had firm orders with customers for the next several months, and he felt that if he took over the company these customers would honor their commitment and take delivery of these orders. Based on this knowledge he was confident that he could maintain current sales level first year and could probably increase it significantly the following year.

John presented his proposal to a couple of banks in Lexington, Kentucky. The initial response from the banks was positive. They asked him to rework the proposal and resubmit it. Ted Warren, an engineering manager at Lectrodryer would be a managing partner. In addition, five investors were included as non-voting partners. Ownership was divided 34%, 34% and 32% to the non-voting partners.

The firm would be very highly leveraged, with a loan from the Lexington bank for $1million at 9% and $1million mezzanine level financing (22% interest). John estimated that if the market held up as he expected, they would be able to repay the loan within four years.

THE NEW LECTRODRYER

John and his partners took over Lectrodryer the first week of May, 2002, and were soon well on their way to cutting the planned payback period in half. They reduced the number of employees

to 14 from approximately 50. Operating profit in the first year was $1.1 million on sales of $5.1 million. They were able to retire the mezzanine loan by the end of the first year of operation. Yet, with everything going so well, he was uneasy about the future. Although they dominated their market, it was a small niche, and there was a distinct possibility that competitors would try to penetrate it.

They did not have any long-term plans. They had been offered an opportunity and moved on it. John felt that in order to protect their market share, it would be necessary to grow the company. John's background was in sales, and he had no experience in long range planning. Nevertheless, he believed there were three major growth opportunities for the company: develop new products for existing markets, expand their dryer repair business, and expand globally. A fourth option would be to merge with another company in the industry or be acquired by one of the industry leaders, which, in turn, would provide Lectrodryer with the resources needed to grow

LECTRODRYER'S BUSINESS MODEL

Lectodryer designs and manufactures products that are very customer-specific. Their current line of equipment is built to specifications that are provided by their customers. The basic function of a Lectrodryer unit is to remove water and other trace elements from air gases and liquids. The company prides itself in its ability to design and manufacture a unit to meet nearly every need, from compressed air to the most complex elements and chemical processes. The most common product is a dryer, i.e., adsorption system that generally involves a dual-tower, fixed bed, cyclic operation. Because their products are designed according to the customer's needs, orders taken from customers all have the potential for significant product innovation and involve state of the art improvements in design. The average price range of a standard dryer is $35-38,000. Delivery time is 6 to 8 weeks.

Lectrodryer's edge over the competition derives from this continual development of technology and the high level of expertise and broad experience of their engineers and production personnel. Although competitors attempt to match Lectrodryer's products, they have difficulty in producing at the required technical level at a competitive price.

Lectrodryer has an established national distribution system, and over the years has built a national reputation for technical excellence. However, there is a potential threat from large competitors that may be able to compete head to head with Lectrodryer on the basis of a standardized product line with lower costs.

COMPETITORS

Lectrodryer's major competitors are small independent companies or divisions of larger firms specializing in specific industrial sectors and/or specific product lines. For example, Environment 1 is a small firm that specializes in instrumentation in the utilities industry. Another competitor, Pneumatic Products, was recently acquired by SPX, a $100 million corporation. They make a wide range of products, primarily for the utilities industry. There are numerous competitors that produce standard stock equipment such as desiccators and air dryers. These are produced in volume and sold off-the-shelf, rather than made-to-order items for customers. These firms are not major threats to Lectrodryer's business.

STRATEGIC OPTIONS FOR LECTRODRYER

Although Lectrodryer's initial success has been very satisfying, John believes that if they are going to continue to be successful they are going to have to grow substantially, and not remain tied to a single market niche. He knows that other larger firms are interested in penetrating his

market. It is only a matter of time, and he feels that he must grow in size and expand his markets in order to be able to protect himself from challenges by rival firms.

The question is "how to grow?" given their current resource limitations. Expansion of production capacity to meet increased demand would not present a major problem. Simply removing a wall at one end of the building can easily expand the plant. In addition, Lectrodryer prides itself in having some of the most modern equipment and engineering staff in the industry. Because many of the people who were released during the buyout are still living in the area, it should also be relatively easy to expand their production capacity by adding a second shift.

SERVICE AND REPAIR OPTION

Over time, Lectrodryer's service business has become a profit center for the firm. Contaminants found in their customers' operations damage the dryers, thus creating a constant need for repairs or replacement parts. Although there are many small companies throughout the country competing with Lectrdryer for this business, Lectrodryer has a distinct advantage in this segment because of their knowledge of the product, the skills of their employees, modern facilities, and their long-term relations with their customers.

They are considering developing long-term service contacts with customers, but such a move will require extensive marketing and promotion. Even so, this option would be less costly to implement than expansion of the existing product line and developing international markets. Currently, the service and repair business makes up about 10-15% of sales, including sales of spare parts.

EXPAND SALES IN CURRENT MARKETS

Lectrodryer currently has relatively limited advertising and promotional activities. Their promotional efforts have been limited to primarily to advertising in trade magazines related to the electric power industry, at industry specific trade shows, and through their web site. Lectrodryer places ads in trade magazines about three or four times a year, and they participate in trade shows three or four times per year. Their annual expenditure on promotion and advertising runs about $80,000. They are highly reliant on manufacturer representatives to market their products. Overall, they feel that these marketing channels have not been very effective. Some of the sales representatives have been much more productive than others.

NEW PRODUCT DEVELOPMENT

As mentioned previously, their products are designed according to constantly changing needs of their customers. Because of this, Lectrodryer personnel have no shortage of ideas for significant product innovation that involve state of the art improvements in design. Lectrodryer has a new 12,500 square foot facility. The plant has the capability of complete in-house engineering and fabrication. It can produce standard as well as custom design units

INTERNATIONAL MARKETS

There appears to be substantial growth opportunities in international markets. Although there is limited opportunity for growth in the domestic electric utility market due increased competition, this is not the case in international. Countries where the company sees potential include Germany, Japan, South Africa, Mexico and Australia. Utilities and refineries in these countries are upgrading their operations and expanding. Many have obsolete equipment that must be replaced. In addition, some U.S. electric power companies are making significant investments in foreign nations, often

in collaboration with foreign partners. This growth is projected to continue at an increasing rate because the energy demand in foreign countries is expanding faster than it is in the U.S. Currently, about 30% of Lectrodryer's business is international. This could rise to 60% or more in a few years if this option were chosen.

MERGER OR ACQUISTION

A merger with another company in the industry or a related industry might be a way to acquire the necessary resources to achive the desired growth. Lectrodryer has considered taking a hard look at companies that would be a good fit with their current product lines and market strategy. At this point, they have concerns how a merger or acquisition might negatively affect their long-run performance.

JOB CHANGE AND LEADERSHIP DEVELOPMENT THE CASE OF THE PRODUCT SPECIALISTS

John T. Byrd, Bellarmine University
jbyrd@bellarmine.edu

ABSTRACT

This case describes a training and development process that prepares technically oriented production workers for leadership roles. Specially, the role of the technical specialist focuses on specific task with logical work requirements and detailed procedures. These procedures must be followed with little room for variation. Transitioning from this role to facilitating employees who have been co-workers requires a different set of skills, and acquiring these skills requires further development of the individual. Recognizing that the role requirements are different and that how the leader perceives the new role is also critical for success.

In this example in the automotive industry, a model for change is described. It consists of developing production workers into leadership roles in a project where the new job requires attitudinal and behavioral changes to be able to adapt to the leadership role. Without these adjustments, success will not occur and "cognitive dissonance" will create unnecessary problems in the workplace.

ACME ELECTRONICS

Carol Docan, California State University, Northridge
carol.docan@csun.edu
Richard Gunther, California State University Northridge
richard.gunther@csun.edu
Leonard Rymsza, California State University Northridge
leonard.rymsza@csun.edu

CASE ABSTRACT

Students are presented with a factual setting that they can identify with quickly. A consumer's computer hard drive "crashes" presenting immediate concerns. Can the computer be repaired? Can the hard drive be replaced? Will the repairs be covered under warranty? Can the data on the "crashed" hard drive be retrieved? If so, at what cost?

The consumer takes his computer to the repair department of the retailer where he originally purchased the computer. He is pleased to learn that the "crashed" hard drive (defective drive) can be easily replaced with a new hard drive. He learns, however, that the repair department is not equipped to retrieve data from the defective drive. The consumer is assured that the defective drive will be returned to him and he is given the name and telephone number of an individual who specializes in the retrieval of data from crashed hard drives.

After being notified that the repairs have been completed, the consumer picks up his computer. At the same time, the consumer is given what he believes to be the defective drive from his computer. Defective drive in hand, the consumer takes it to the data retrieval specialist. The specialist works on the defective drive and notifies the consumer that he was able to retrieve about 90% of the data from the defective drive. The consumer is excited. He pays the specialist for his services and returns home to view the retrieved data. The excitement of retrieval quickly turns to disappointment when the consumer discovers that the data retrieved from the defective drive is not his data.

The consumer is able to trace the problem to a mix-up at the computer repair department. Apparently the hard drive that was given to the consumer when he picked-up his repaired computer was not the defective drive from his computer. The repair department had given consumer the wrong hard drive. By the time the consumer discovered the mix-up it was impossible to trace the whereabouts of the consumer's defective drive. The whereabouts of the defective drive being unknown, the consumer is resigned to the fact that the data on the defective drive is now lost.

The case can be divided into three major parts. The first part requires students to analyze a possible negligence claim against Acme with respect to its failure to return the appropriate defective drive to the consumer. Students are required to address the following negligence concepts – negligence per se; actual (cause in fact) causation; damages; and defenses to negligence (i.e., contributory vs. comparative negligence).

The second part of the case requires students to utilize their understanding of several statistical issues. They are required to recognize a proportion, calculate the appropriate sample size for estimating it, and calculate a confidence interval for the estimate. Students will also be asked to apply the concept of expected value as it relates to a statistical variable in the damage estimate.

The last part of the case enables the students to propose strategies regarding settlement and ethical issues raised by Acme's refusal to assume responsibility for its actions.

The case has a difficulty of level three, appropriate for junior level courses. The case is designed to be taught in three class hours, including a class presentation by student teams. The case

is expected to require a minimum of three hours of outside preparation by student teams that present a report.

It is interesting to note that the principal facts in this case are based upon a real life experience of one of the authors.

PROTECTING PATIENTS OR ILLEGAL DISCRIMINATION? THE CASE OF MORGANTOWN HOSPITAL

John T. Finley, Columbus State University
Finley_john@colstate.edu
Sherry Robinson, Penn State University
skr12@psu.edu

CASE DESCRIPTION

This case involves the issue of treating people with disabilities fairly and in accordance with the Americans with Disabilities Act (ADA), while also protecting the public. This is an especially significant issue considering the importance of providing satisfactory health care in the current litigious society. It is a level 3 case study designed for use in management or human resource management courses. As a short case, it is meant to illustrate the tenuous situation health care providers can face as they attempt to provide high quality care to patients while complying with laws and being fair to people covered under the ADA.

CASE SYNOPSIS

This case focuses on Morgantown Hospital and Dr. Randall Flemming, an orthopedic surgeon. During a knee-replacement surgery, Dr. Randall suffered a psychiatric episode. After undergoing therapy, Dr. Randall wished to continue performing surgery at Morgantown Hospital, which was not his employer. The hospital insisted that during the first six months, Dr. Randall be supervised by a certified orthopedic surgeon. Due to his inability to find a qualified surgeon willing to supervise him, Dr. Randall filed a claim that Morgantown Hospital was not providing "reasonable accommodation" as mandated under the ADA. The purpose of this case is to shed light on the provisions of the ADA and examine how these issues can become matters of life and death.

INTRODUCTION

Dr. Jon Lazinski sat across the table from the hospital's attorney, Brian Dulina. "Do you think he really has a case?"

"I'm going to move for summary judgment. This case shouldn't go anywhere. If we had allowed Dr. Flemming to operate solo on patients and he had another episode, there could have been a death. The safety of our patients has to be our number one priority," Dulina replied.

"Exactly," concurred Dr. Lazinski. "Requiring a second surgeon for a six month time period *was* reasonable accommodation." Discussing the matter made Dr. Laz, as he was known, think back on the moment he heard of Dr. Flemmings hypomanic episode.

CRISIS IN THE O.R.

Physicians practice medicine *at* Morgantown Hospital, but they are not employees. Instead, doctors request the privilege to work within the hospital. The Credentials Board determines whether a given physician, in this case orthopedic surgeon Randall Flemming, is granted his or her petition. In his application, Dr. Flemming gave no indication that he had ever suffered psychiatric issues. As

a matter of general policy, he was evaluated by staff psychiatrist Dr. Jacob Barnes, before gaining his hospital privileges.

Dr. Flemming was performing his first unsupervised total knee replacement at Morgantown. Suddenly, he began acting erratically. He could not remember the names of surgical instruments and could not complete the operation. Operating room staff reported that he was "bouncing off the walls." Fortunately, another orthopedic surgeon was available to scrub in and complete the surgery.

It was later determined that Dr. Flemming was experiencing a hypomanic episode, which is a less severe version of a manic episode. Although Dr. Flemming admitted to suffering the hypomanic episode, he also contended that he was just rather jovial that day, and was indeed thinking clearly. Regardless, he voluntarily relinquished his hospital privileges temporarily for health reasons.

After several meetings with Dr. Barnes, Dr. Flemming asked to have his privileges reinstated. Dr. Barnes submitted to the Credentials Board a letter stating that he was not able to determine whether Dr. Flemming had had a psychiatric problem and therefore could not psychiatrically clear him. He noticed that Dr. Flemming was very introspective and socially naïve, but not to the extent that it could be considered a disorder or disease. Based on Dr. Barnes' letter that did not unequivocally clear Dr. Flemming, the Credentials Board denied the request.

Dr. Flemming turned to Dr. Carol Glass. She met with him three times over the next six months, eventually writing a letter similar to Dr. Barnes' that did not unequivocally clear Dr. Flemming, but did not diagnose a disorder. She concluded her statement by suggesting that Dr. Flemming would make better progress with a male psychiatrist.

Having taken Dr. Glass' advice, Dr. Flemming began meeting weekly with Dr. Jospeph Manatti, who was recommended by Dr. Glass. After six months, Dr. Glass, in consultation with Dr. Manatti, submitted a letter stating that she believe Dr. Flemming was stable and should now be able to work. She concluded her statement with a strong recommendation that Dr. Flemming return to work without restrictions.

At the next meeting of the Credentials Board, the board members decided to request additional information from Drs. Glass and Manatti. A month later, they had failed to gain further elaboration. They determined the letter was a "recommendation," but not full psychiatric clearance. Therefore, they granted Dr. Flemming operating privileges providing he was accompanied by a board-certified orthopedic surgeon during all surgical procedures for six months and that he received satisfactory monthly evaluations from the supervising surgeon. Although one of the general surgeons on the Board volunteered to act as the supervisor, the rest of the board determined that it was necessary for the supervisor to be an orthopedic surgeon, due to the nature of Dr. Flemming's practice.

Six months later, having failed to find an orthopedic surgeon willing to take on the responsibility of supervising him, Dr. Flemming delivered a letter to Morgantown Hospital declaring that those stipulations were not justified and impossible to comply with. The Credentials Board admitted that they had never before required such supervision when returning from a leave of absence, even for drug or alcohol abuse, heart disease or neurological problems. However, no surgeon in recent memory had acted in such a way that directly called into question the surgeon's mental stability or ability to complete a surgery alone.

The following month, Dr. Flemming was committed to a psychiatric facility for two weeks. Two months later, Dr. Flemming applied for and was granted hospital privileges in another state, providing he was monitored by another orthopedic surgeon during all procedures. As far as Dr. Lazinski knew, Dr. Flemming was still practicing there.

THE CASE ON DR. LAZINSKI'S DESK

The next year, Dr. Flemming filed a complaint against Morgantown Hospital alleging it had violated the American with Disabilities Act for not providing reasonable accommodation for a person with a known disability. In order to successfully make a claim under the ADA (in this case, Title III), Dr. Flemming must show that he has a disability, which is defined in that legislation as "a physical or mental impairment that substantially limits one or more of the major life activities of the individual." He must also show that Morgantown Hospital operates a place of public accommodation, discriminated against him on the basis of his disability, and thus was thereby denied goods/services. Morgantown Hospital is a place of public accommodation, concedes that it denied "full and equal enjoyment of services" when it suspended Dr. Flemming's hospital privileges, and agrees that Dr. Flemming suffers from a disability. The essence of this case lies in the issue of whether Morgantown Hospital discriminated against Dr. Flemming because of his mental disability.

"He can't win this case," Dulina said with a sigh. "He wasn't discriminated against on the basis of his disability. His condition presented a *direct threat* to our patients." "And we did provide a method by which he could be reasonably accommodated. He only had to be supervised with positive results for six months, to make sure our patients would be safe during surgery," agreed Dr. Laz. "His contention that we should have provided a supervising surgeon is completely bogus. Morgantown Hospital doesn't hire surgeons in that capacity. He knows that. He was working as a surgeon under that agreement when it all blew up."

"Exactly. That's why I'll file for summary judgment, the case will be dismissed, and we can close the file on this," Dulina concluded.

GEOGRAPHIC INDICATIONS AND BEER: THE BUDWEISER CASE

Lynn M. Forsythe, California State University Fresno
lynn_forsythe@csufresno.edu
Deborah J. Kemp, California State University Fresno
deborahk@csufresno.edu

CASE DESCRIPTION

The primary subject matter of the case is the recognition and protection of geographic indications. Secondary issues examined include U.S. and international trademark law and international treaties. The case provides a platform for discussing and comparing domestic and international trademark law. The dispute illustrates the various nations' conflicting positions concerning protection for geographic indications. The case is appropriate for juniors, seniors, and graduate students. If the case is used as a vehicle for class discussion, it can be taught in one class hour and is expected to require two hours of outside preparation by students. It can also by used for class debates, particularly on the legal and cultural issues, which effectively pit old world countries against new world countries. Depending on the structure, this will also require one class hour and two hours of outside preparation. If it used as a mock negotiation between Anheuser-Busch and Budejovicky Budvar, it would take two to three class hours and four hours of outside preparation by students.

CASE SYNOPSIS

This case is about the long standing dispute between two beer producers, Anheuser-Busch and Budejovicky Budvar. This dispute began in 1906. It is an international dispute because Anheuser-Busch is a U.S. company and Budejovicky Budvar is a company owned and operated by the Czech Republic. Both beer producers contend that they have the exclusive right to use the Budweiser and Bud trademarks in their own countries and internationally. This dispute has escalated as both breweries increase their exports into the international market place. Anheuser-Busch manufactures and exports Budweiser and Bud in over 90 countries.

Budejovicky Budvar claims that the name Budweiser is a geographic indication that a beer originates in the Budweis region of the Czech Republic. Geographic indications may be protected in a manner similar to trademark. Many countries recognize protection when the quality, reputation, and characteristics of the product are attributable to the region.

The parties have engaged in 40 lawsuits and 40 administrative worldwide. Much of the litigation centers on the conflicting positions of trademark and geographic indication law.

FACTUAL BACKGROUND

Anheuser-Busch – "The King of Beers"

Anheuser-Busch is an American brewery founded in 1852 by Eberhard Anheuser and his son-in-law Adolphus Busch. They were German immigrants. Originally it was called George Schneider's Bavarian Brewery (Anheuser-Busch web site, The Evolution of Anheuser-Busch web page). Bavaria is an area in southern Germany internationally recognized for its fine beer making tradition. A third member of the company, Carl Conrad, developed the Budweiser brand beer from

a recipe he obtained in Bohemia, an area in southeastern Germany and now part of the Czech Republic. It is called Bohemia, very near Bavaria, also in southeastern Germany. He named the beer Budweiser intending to remind people of the old country with its fine beer-producing heritage (Zylberg, 2002/2003). In 1876, Anheuser-Busch began producing Budweiser, America's first national beer brand. It registered the brand two years later, 19 years before Budejovicky Budvar opened.

Anheuser-Busch claims that it took the name Budweiser because its German founders used the name from their homeland (*Hungarian Tribunal*, 2002). A century later the company's loyalty to and nostalgia for that region of the globe would cause problems with new intellectual property laws developed to protect producers of food and spirits who have named their products after the geographic place from where the products derive.

The Anheuser-Busch web site is located at http://www.anheuser-busch.com/. As is typical of publicly traded companies in the U.S., the web site contains detailed financial data. The official web site for Budweiser beer is http://www.budweiser.com/. The second site is restricted to viewers who are over 21. It is primarily a promotional piece.

Anheuser-Busch is the world's largest brewer. In 2006, it was ranked 146 in the Fortune 500 Largest U.S. Corporations. Anheuser-Busch also ranked 3rd in its industry (Beverages) (*Fortune 500 2006).* Anheuser-Busch brews beer in 10 countries and sells its beer in over 80 additional countries ("Anheuser-Busch Cos. Reports Improved Sales," 2005). Anheuser-Busch's flagship beer, Budweiser, is widely known.

Anheuser-Busch posted a strong fourth quarter for 2006: its net income was $190.7 million (*Anheuser-Busch 4th-qtr Profit Up*, 2007). This equals 25 cents per share. This compares to $145.6 million or 19 cents per share for the fourth quarter of 2005. Anheuser-Busch has reported that its target is to increase profits by 7 to 10 percent per year.

Budejovicky Budvar –"The Beer of Kings"

Budejovicky Budvar is a state-owned Czech beer producer. Czech privileged brewers, who owned the local brewing rights, and Czech businessmen, established the brewery in 1895 (Budejovicky Budvar web site, History page). This occurred in the town of České Budějovice, which was called Budweis by the German-speaking people living in the area at the time. Sometimes the town has been under Czech control and other times it has been under German control.

While Budejovicky Budvar is a newer company, it upholds an historic tradition of beer production in České Budějovice that dates back to the 13th century (Budejovicky Budvar web site, History page). The Czechs say "Budweiser" refers to "Budweis," the name of the city. They argue that this name commonly referred to beer brewed in the area hundreds of years before Anheuser-Busch started brewing Budweiser. Sometimes they contend that the use of the name began in the Middle Ages *(Hungarian Tribunal Finds for Anheuser-Busch).*

The brewery began conquering "markets on all continents from the 1920s. In line with this expansion, it registered the trademarks 'Český budějovický granát' (Czech Budějovice Garnet), 'Budweiser bier' and 'Budbräu' (Budbrew). 'Budvar' followed in 1930 … The brewery actually renamed itself Budvar … in 1936" (Budejovicky Budvar web site, History page). (Museum Online has historic beer labels from Budvar.)

The brewery was managed by the Nazis during World War II, and was nationalized soon after the war. Budejovicky Budvar was to be privatized after the fall of communism in Czechoslovakia in 1989. So far, this has not occurred. A spokesman for the Czech Ministry of Agriculture has said that privatization "is not on the agenda." Some attribute this to a fear that Anheuser-Busch would acquire the brewery.

The Budejovicky Budvar web site is located at http://www.budvar.cz/. It is available in three languages, including English. Since April, 2005, the web site has been renamed. It is now called Budweiser Budvar.

Beer is a major export of the Czech Republic. Budvar makes up one-fourth of the beer exported from the Czech Republic. “Some of its largest markets are in Germany, Great Britain, Slovak Republic, Austria, Italy, Russia, France, Spain, Hungary and Poland.” Budvar has created business entities in other countries to facilitate sales. One example is Budweiser Budvar UK in Great Britain. (Budweiser Budvar web site, Distribution Abroad page). Budvar exports its beer to more than 50 countries “Some of its largest markets are in Germany, Great Britain, Slovak Republic, Austria, Italy, Russia, France, Spain, Hungary and Poland.” Budvar has created business entities in other countries to facilitate sales. One example is Budweiser Budvar UK in Great Britain. (Budweiser Budvar web site, Distribution Abroad page). In 2002, Budvar had a profit of $10.3 million. Anticipated profits for 2003 are $13.3 million (Janicek, 2004). Its annual output has increased to 1,213,000 hectoliters (Budejovicky Budvar web site, History page). In the U.S., Budvar must sell its beer under the name of Czechvar (Cancelada, 2003; Budweiser Budvar web site, Distribution Abroad page).

THE LEGAL DISPUTE

Budejovicky Budvar claims that the name Budweiser is a geographic indication that a beer originates in the Budweis region of the Czech Republic. Geographic indications may be protected in a manner similar to trademark. Many countries recognize protection when the quality, reputation, and characteristics of the product (beer) are attributable to the region. Beer is made of at least 94 percent water. The water in Budvar comes from České Budějovice. Budvar is made from Moravian malt from the Olmouc region. The recipe also uses Prerov and Zatec hops (Zylberg, 2002/2003). Arguably the Budweis water, malt, and hops give Budvar the exclusive right to designate its beer Budweiser.

Trademark, similar to geographic indication, gives the owner of the mark or name an exclusive right to use the trademark to market a product. If another marketer uses the same trademark and if the use causes consumers likelihood of confusion, the owner of the trademark can prevent the other's use of it. Anheuser-Busch claims it has a trademark in the term Budweiser. The trademark dispute between the two breweries began in 1906 (Janicek, 2004). In 1939, the breweries entered into an agreement giving Anheuser-Busch exclusive rights to the name Budweiser in all American territories north of Panama (Janicek, 2004).

Beer has become a common export item, and the agreement was insufficient to protect Anheuser-Busch in overseas markets. Conflict was inevitable as both breweries expanded their exports. The breweries attempted to negotiate a resolution in the mid-1990s. When the negotiation failed, Anheuser-Busch initiated legal action. There have been various court cases between Anheuser-Busch and the Czech beer producer Budejovicky Budvar. The U.S. and the Czech Republic interpret the laws differently: They also argue that different laws apply to the dispute. Budvar is registering its trademark and prosecuting Anheuser-Busch in various countries. The U.S. stands steadfastly beside its trademark doctrine and the generally recognized likelihood of confusion test.

The older European countries give much deference to the geographic indication of a product. Many do not require that consumers actually be confused to enable a producer to prohibit others from using a geographic indication in their names. Some permit the invalidation of previously registered and recognized trademarks if the European court finds the term is indeed a geographic indication (For example, Portugal’s Supreme Court of Justice refused Anheuser-Busch’s trademark registration of Budweiser, but allowed registration of Bud. See Zylberg, 2002/2003.)

These two beer producers have taken their dispute to courts in 24 countries around the world (Janicek, 2004). Anheuser-Busch won exclusive rights to use the name Bud in Argentina, Australia, Brazil, Denmark, Finland, Hungary, Italy, and New Zealand (*Report: Budvar Challenges A-B's Bud Trademark*, 2004). In Britain, it shares the right to use Bud with Budvar.

SUMMARY OF U.S. TRADEMARK LAW

Trademark protects the exclusive right to use an identifying mark that consumers come to associate with a product. Budweiser is a trademark for a very popular beer produced by Anheuser-Busch, a business located in the U.S. In the U.S., a trademark can be recognized in two ways. First, statutory trademark is protected under federal law upon registration of a unique and fanciful mark or word. Second, common law trademark automatically protects a mark or word associated with a product in the minds of consumers. Its existence is a factual determination. International law recognizes the right to register trademarks. It might permit, but does not embrace, the common law trademark. It explicitly recognizes registration for trademark protection.

The U.S. stance on trademark is consistent with traditional protection afforded by most developed nations' laws, except for one major difference. The U.S. is use based, while most of the world is registration based. The U.S. recognizes both common law and statutory trademark protection. Most countries require registration in order to find protection for a name or mark. While registration is preferable it is not required by the U.S., which recognizes use of the mark and reputation of the producer as significant in determining trademark protection.

SUMMARY OF INTERNATIONAL TRADEMARK LAW

The international law on geographic indications is included in treaties and conventions addressing trademarks. The international agreements include the Paris Convention, Trade Related Aspects of Intellectual Property (TRIPs), the Madrid Agreement, the Madrid Protocol, and the Lisbon Agreement. These agreements provide guidelines for trademark protection and for geographic indication protection. Some are widely adopted and others are less recognized. Summaries can be made available for student use. (See Burgunder, 2007, for a summary of the significant points of the international agreements).

DISCUSSION QUESTIONS

Are U.S. consumers willing to pay more to be assured that the origin of products is "guaranteed?" Why or why not? What about the consumers in other countries? Why?

Do you think members of the public are confused between the two beers? Do they order or buy one when they really want the other?

Why do you think the negotiation between Anheuser-Busch and Budejovicky Budvar failed?

What are the differences between private and state ownership of companies?

Is the dispute influenced by the fact that Budejovicky Budvar is owned by the Czech government and Anheuser-Busch is privately owned? How?

Who benefits from the string of court cases? Does either company benefit? Is the answer dependent on who "wins" the lawsuit?

What are the economic impacts of the dispute and the decisions on Anheuser-Busch and Budejovicky Budvar? What are their impacts on the economies of the U.S. and the Czech Republic?

Who benefits from the publicity surrounding the dispute? Why?

What public policies are fostered by the E.U. approach? What policies are fostered by the U.S. approach?

Which of these two approaches do you favor and why?

This dispute illustrates a clash of values. What values are inherent in the E.U. approach and the U.S. approach? How are these values represented in each culture?

PUT A LEADER ON THAT HORSE (ASSOCIATION)

LaVon Green, Purdue University Calumet
lavon@calumet.purdue.edu
Susan E. Conners, Purdue University Calumet
Sherry Green, Purdue University Calumet
Michael Mick, Purdue University Calumet

CASE DESCRIPTION

The subject matter of this case involves the strategic direction of a not-for-profit equine breed association. Additional issues are organization structure, leadership, and financial stability. The case is designed for one class session and will require about two hours outside preparation.

CASE SYNOPSIS

The Arabian Horse Association is responsible for the breed registry, membership, marketing and promotion, and member programs for Arabian and Half-Arabian horses in the United States. The growth of the organization resulted in poor financial planning and no long term strategic plan to guide the organization.

INTRODUCTION

There is a world-wide equine industry involving many breeds of horses. Horses serve primarily as show horses, hobby interest, breeding stock, and in some instances, working horses. In this global market, purebred horses generate a great deal of income and are responsible for a large part of the market's economy in some geographic areas. The various breed associations in each country control the pedigree and show records of these horses. The Arabian Horse Association in the United States has suffered setbacks in its attempts to create a competitive market place for these horses.

US EQUINE INDUSTRY

Horses have been a part of civilization for centuries as one of the primary sources of transportation and work animals. In the 1800s and 1900s during the industrial revolution, much of their purpose was transferred to machines. In the 21st century there are still horses working on ranches, serving as police mounts, and performing similar functions. The majority of horses today are used for sporting events, breed association shows, and as pets.

There is currently an emphasis on sport horses used in international horse show events such as racing, jumping, dressage, endurance, and reining. The business of breeding such horses can be lucrative and has many tax incentives. There is a global market for these types of horses having pedigrees and show records which often command high prices. There are Horse Councils at both national and state levels that lobby the government on behalf of the equine industry. These councils track economic data related to the equine industry. In some states, such as Kentucky, the equine industry has a major impact on the state's economy. The KEEP white paper reports, "The horse industry has an estimated $4 billion impact on the state's economy each year" and that "The 2010 World Games will be the largest sporting event in Kentucky history and the largest equine event ever held in the United States with an estimated economic impact of more than a $150 million and attendance estimated at over 400,000."

The United States Equestrian Federation has responsibility for overseeing horse shows and maintaining international standards at large competitions. They have been successful in the past five years in bringing major international competitions to the United States that generate millions of dollars in revenue for the locations that host these events. In 2010 for the first time, the United States will host the World Equestrian Championships in Kentucky.

The people in the equine industry look to their breed associations to assist them in this highly competitive industry. The Arabian horse is considered the oldest purebred horse of record in the world and many breeds trace part of their ancestry to these horses. The Arabian horse industry is a major player in this global market.

ARABIAN HORSE INDUSTRY

After the importation of Arabian horses to the United States in the late 1800s and early 1900s, the Arabian Horse Registry was formed to authenticate pedigrees and register purebred Arabian horses. A second organization, the International Arabian Horse Association, was formed later to register Half-Arabian horses and provide a marketing and member services organization. These organizations duplicated efforts and did not run efficiently as separate entities. In the late 1990s there was discussion regarding merger of the two organizations to form a more efficient method for coordinating all matters concerning Arabian and Half-Arabian horses. The resulting organization was the new Arabian Horse Association. The merger did not go smoothly and the result was a loss in market share for the Arabian horses. The growing pains of merging two different organizations seemed to create a lack in both leadership and strategic planning.

ARABIAN HORSE ASSOCIATION

The Arabian Horse Association (AHA) is headquartered in Colorado. Its primary mission remains as guardian of pedigree records and the authority to register purebred and Half-Arabian horses. The secondary mission is to provide membership records, promote the Arabian horse through advertising, horse shows, and other programs. Additionally the AHA puts on the three national shows held every year. They maintain a web site at www.arabianhorses.org.

After the merger, the AHA faced declining registration numbers as fewer horses were being bred each year and declining membership. This resulted in a loss of revenue and resulting financial problems. The existing leadership did not engage in adequate long term strategic planning. The Breeders Sweepstakes incentive program, for example, was paying out more than it was receiving in revenues. There were pending lawsuits regarding the policies on registration of horses. The association was facing serious problems and an increasing unhappy membership.

In 2004, the membership sent a clear message that change was necessary by voting to change the leadership. The new officers immediately accepted the challenge of creating a long term strategic plan and implementing standard business practices, which included a serious look at the staff of the association. This resulted in a restructuring and the creation of new positions to address critical issues. A new Breeders Sweepstakes Commission was seated and dramatic changes to the program occurred to stop the financial losses.

Marketing research was done and brought new information to the association, which had incorrectly identified its client base. The new information on the actual client base resulted in a shift of programs to serve these clients. Professionals in the areas of information systems, marketing and finance now direct these departments.

After two years of major changes in the organization, the numbers of horses registered and members is starting to increase. The lawsuits have been settled and new contracts for the national shows have been implemented. The association is actively promoting Arabian horses in many

venues and recognizes the role Arabian horses can play in the marketplace. The AHA is solvent again and forecasting profitability.

DISCUSSION QUESTIONS

1. What one aspect of strategic planning was the most beneficial to this organization and its restructuring? Explain how it helped them.
2. Evaluate the potential benefits and pitfalls of this rapid restructure.
3. What suggestions would you make to the Arabian Horse Association for future strategic planning?

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SHOULD THE DAIMLERCHRYSLER MERGER BE RESCINDED?

Robert D. Gulbro, Athens State University
robert.gulbro@athens.edu
Linda B. Shonesy, Athens State University
linda.shonesy@athens.edu
Gary Valcana, Athens State University
gary.valcana@athens.edu

CASE DESCRIPTION

This case is intended for use in undergraduate business policy and strategy course or other management courses. The primary subject matter of this case concerns the dilemma that faces a company in the business of making and selling automobiles. This case allows the student to carefully evaluate the situation that occurred and decide whether the merger was appropriate or inappropriate. The case is designed for one hour of class time and is expected to require two to four hours of outside preparation.

CASE SYNOPSIS

The merger of Daimler-Benz and Chrysler represents a global mix of automotive manufacturing and engineering. Both are large and long lasting firms, and the merger was considered the largest trans-Atlantic merger ever. Daimler contributes its engineering know how and Chrysler brings its ability to produce desirable vehicles with the Dodge and Chrysler lines to the mix (Finkelstein, 2002).

The merger was announced on May 7, 1998. Although it was to be a merger of equals, it has been regarded as more of a buyout for Daimler-Benz. Chrysler maintains its headquarters in Auburn Hills, Michigan, but the CEO is Jurgen Schrempp with headquarters in Germany.

BACKGROUND

Prior to the merger, Chrysler has had many ups and downs. It survived four near bankruptcies to final achieve some measure of success in the United States. In the late 1960's it decided to compete on an even keel with Ford and GM making large cars with big engines. These gas guzzling vehicles rolled off the assembly lines in 1973, just in time for the oil embargo. Chrysler struggled in the 1970's and had to get a billion dollar loan guarantee from the U.S. Government.

In the 80's and 90's however, Chrysler started to adapt to changing consumer tastes with the Dodge Ram, the Jeep Grand Cherokee, the LH Sedan Series, the Town and Country van, and other specialty vehicles like the PT Cruiser. This made Chrysler very competitive with Ford and General Motors. In recent years both have had to cut back, close plants, and lay off thousands of workers (Finkelstein, 2002).

WHY THE MERGER

CEO Schrempp said that this merger provided growth and strength for both firms. Others said that Daimler-Benz wanted the Jeep brand and taking over Chrysler made that happen. In

addition, Daimler-Benz found an efficient partner with low design costs and an extensive network of dealerships. This allowed Daimler to increase its U.S. activities, giving it combined revenues of 130 billion dollars and 7 billion in profits in 1997 (European Industrial Relations, 1998).

THE CHRYSLER HERITAGE

The German press questioned the value of the merger. The perception in Germany was that Chrysler was inferior, that it was a blue-collar brand, and that its wages were too high in comparison to the German workers. Some Daimler-Benz executives said that would not ever drive a Chrysler. One Mercedes division manager said his mother's Plymouth did not last three years (Finkelstein, 2002). Chrysler executives responded by saying that the Jeep Grand Cherokee earning a higher satisfaction rating than the M-Class Mercedes.

Chrysler and Mercedes had two opposing philosophies on automobile manufacturing. Mercedes engineers pushed for uncompromising quality with few design changes, while Chrysler changed designs yearly and attempted to satisfy the new and unique desires of the American public. Trend changes in the U.S. are frequent, while in Germany tend to be slow and small. Some Chrysler designs, such as the PT Cruiser and others, were a radical departure from the staid cars being built by GM.

DISCUSSION

The merger had been met with many difficulties. There has been a culture clash between the two firms because of the basic differences in philosophy. Daimler has had more power in the relationship, thus attempting to impose its thinking on Chrysler. Pricing of automobiles in Germany is based upon high quality and lasting value. In the U.S. prices are lower and encourage buyers to change vehicles frequently. The full sized pickup trucks, SUV's, and vans sold by Chrysler are of little interest to Daimler-Benz.

The Daimler/Chrysler merger has made the world's fifth largest automobile manufacturer, but it must find a way to merge more than the names. It must bring together opposing philosophies, differing cultures, and must integrate vastly different products geared for different markets.

QUESTIONS FOR CLASS DISCUSSION

1. What has the Daimler-Benz Company gained from the merger?
2 Has Chrysler gained anything? Should it have merged with another firm?
3. Should the two firms separate? What internal problems are caused by mergers?
4. If this merger was a mistake, can it be rectified?
5. Does this situation relate to similar problems experienced by other businesses during recent mergers?

Talks between Chrysler and GM are now ongoing. By trading the Chrysler stock to GM Daimler would be able to exit gracefully from a merger that is not working. It would then have stock in GM, which is the largest automobile manufacturer and perhaps a better investment than the one made in Chrysler.

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EMPLOYMENT AT WILL: THE EMPLOYEE HANDBOOK EXCEPTION

John Hoft, Columbus State University
Hoft_John@colstate.edu
Neal F. Thomson, Columbus State University
Thomson_Neal@Colstate.edu

CASE DESCRIPTION

The primary subject matter of this case is the employment at will doctrine and how it may be modified by an employee handbook. This case has a difficulty level of three intended for an upper division undergraduate course. This case is designed to be taught in one class hour, and is expected to require two to three hours of outside preparation by students.

CASE SYNOPSIS

This case begins by discussion of the employment at will doctrine, which governs most employment relationships in the U.S. The "at will" rule provides that where an employment relationship is of an indefinite duration either party may terminate the relationship at any time for any reason or for no reason at all. This usually bright line doctrine, however, is subject to three general exceptions: (1) the public policy exception; (2) the employee handbook contract exception; and (3) an implied covenant of "good faith and fair dealing" exception. This case will focus on the employment handbook contract exception. The case presents several vignettes in involving employment discharge and discipline and the effect of an employee handbook, if any, upon the right of the employer to terminate an employee "at will". The student is asked to examine the details of each situation, and determine whether employment at will applies or whether the handbook will be deemed to modify the "at will" nature of the relationship.

INTRODUCTION

In general, employment relationships are governed by a doctrine called employment at will. Essentially, this means that an indefinite employment relationship with no specified duration may be ended by either party at any time for good reason, bad reason, or no reason at all unless prohibited by law or public policy (Monaco v. American General Assurance Company, 2004).

The rationale for the rule is that it permits either the employee or employer to terminate the employment relationship for any reason without liability to the other (Mizell v. Sara Lee Corporation, 2005). Thus an at-will employee may resign at any time and an employer may discharge an employee at any time. Neither act is a breach of contract (Jimenez v. Colorado Interstate Gas Company, 1988).

EXCEPTIONS

In defining when the employment at will doctrine will apply, the first, and most obvious exception, is the presence of a formal employment contract that specifies a definite term of employment or definite discharge procedures. This may be either in the form of a two party contract between the employer and employee (Niznik, 2007a), or a collective bargaining agreement between a union and the employer (Niznik, 2007b). In either case, the "at will" rule is modified per the

contract terms. Moreover, a contract is not always necessary for limitations to employment at will. Law and public policy often limit the ability of an employer to terminate employees, for example, terminations that violate equal employment laws.

A more vexing, and less clear exception, is the implied contract. This usually manifests itself through an employee handbook, or company policy manual. Over the past two decades many courts have modified the traditional "at will" employment rule when an employer's handbook or policy manual contains language that provides that discharge will occur for cause or only after certain conditions have been met (Meier v. Family Dollar Services, Inc., 2006). Under such circumstances the employee handbook does not change the fundamental nature of the "at will" doctrine but requires that the employer follow the handbook's disciplinary and discharge procedures or face litigation for damages (Deutsch v. Chesapeake Center, 1998).

DISCLAIMERS

The good news for employers, however, is that there is a way to avoid an implied contract when issuing a policy manual or employee handbook. An employer may offer a disclaimer, specifically stating that the handbook or policy manual is not a contract. A typical disclaimer may state: "This manual is not a contract. Nothing in this manual constitutes an expressed or implied contract of employment or warranty of any benefits. Your continued employment with _____ is based upon mutual consent. The employment relationship is voluntary and either the employee or the Company may terminate it at any time. It is our hope to have a mutually beneficial and rewarding relationship with you" (Mizell v. Sara Lee Corporation, 2005).

Courts have ruled that a clear and forthright disclaimer, in general, will prevent the handbook's terms from being an enforceable contract and will afford an employer a complete defense to a suit for breach of contract based on a handbook (Workman v. United Parcel Service, Inc., 2000). Nevertheless, the presence of a disclaimer in the company handbook will not always prevent the handbook from modifying the "at will" employment doctrine or prevent the handbook from being deemed an enforceable contract. The courts have required that disclaimers meet certain requirements in order to be effective.

INEFFECTIVE DISCLAIMERS.

Disclaimers have failed to achieve the desired result in cases where the disclaimers were ambiguous; or, where the disclaimers were not apparent and were essentially "hidden"; or, where the disclaimers were not reasonably conspicuous; or where the disclaimers were not communicated to the employee.

Ambiguity.

Ambiguity arises when the employer uses a multitude of documents to communicate company policy. In such cases, the courts have held that while the handbook did contain a disclaimer the employer created ambiguity by providing employees with other policy documents without a disclaimer. In short, disclaimers must be clear and unambiguous in order to negate the contractual effect of an employee handbook (Johnson v. Nasca, 1990).

Placement.

Faulty placement can occur and defeat the intent of the disclaimer when the disclaimer is not placed in a prominent place in the handbook and could easily be overlooked by a reasonable employee (Perman v. Arcventures, Inc., 1990). The courts have found a disclaimer to be ineffective

when it was not distinctly set out separate and apart from the handbook text and is effectively hidden (Long v. Tazewell/Pekin Consolidated Communications Center, 1991).

Conspicuity.

Lack of conspicuity occurs when the disclaimer is of insufficient size or appearance that an ordinary reasonable employee would not see and note its contents. Where a handbook disclaimer was not set off in any way, was placed under a general subheading, was not capitalized and was of the same type size as another provision on the same page it was held to be not adequately conspicuous (McDonald v. Mobil Coal Producing, Inc., 1991).

Notice.

Failure to show that the disclaimer was communicated to the employee may be fatal to its enforcement. An employer must bring its handbook disclaimer to the personal attention of its employees (Morriss v. Coleman Company, Inc., 1987).

CASES TO EXAMINE

You have recently been hired into an HR department at a major corporation. In order to teach you about employment at will, your company has given you five cases, each describing a situation involving an employee being terminated under what the company in each case deemed to be employment at will. Examine the following five cases, and answer the questions that follow for each case.

Case 1 - The Pharmaceutical Manager.

In November, 1989, Mr. Norton, an indefinite term employee, was discharged by his employer. Before his termination, Norton had been general manager of a Minneapolis pharmaceutical services company. In Minnesota, employment for an indefinite term is considered "at will" and terminable by either party for no reason. During the course of Norton's employment, Caremark supplied Norton with a document entitled Disciplinary Action Guidelines and explained the Guidelines to him. The company stated that the Guidelines' termination procedure and policy "must be adhered to strictly" when an employee "deviates below an acceptable level of performance". The Guidelines proceeded to provide for progressive discipline with a process that was to involve four steps: (1) a verbal warning; (2) a written warning; (3) a final corrective performance upgrade program; and (4) termination. Mr. Norton's vice-president said Norton was fired for poor performance but he did not bother to follow the Guidelines beforehand. The vice-president felt justified in firing Norton because Norton was an "at will" employee.

Case 2 – Peek-A-Boo

Patricia was employed as a telecommunications dispatcher and was a permanent employee. Her company furnished her with an employee handbook entitled "Rules and Regulations Manual" that stated its contents were "designed to clarify your rights and duties". The handbook provided that termination "cannot occur without proper notice and investigation" and advised that permanent employees "are never dismissed without prior written admonitions and/or an investigation that has been properly documented". Contained in the section describing the duties of a telecommunications dispatcher in the same type, font, style and size as the job description text were the words: "the employer may discharge the employee at any time". Patricia received two letters from her employer

on one day in September. The first letter set forth five complaints about her job performance. The second letter terminated her employment effective immediately. The employer felt justified in the discharge because Patricia was an "at will" employee and the manual contained a disclaimer which applied to Patricia's situation.

Case 3 – The Mortgage Company

Mark Wojcik was an employee at Commonwealth Mortgage Corporation. Mr. Wojcik was terminated by Commonwealth, for "poor performance and poor attitude" Commonwealth Mortgage does have an employee handbook, a policy manual, as well as a set of "disciplinary guidelines" that are at issue in this case. The employee handbook states the following: "The language of this handbook is not intended to create a contract between the company and any of its employees. Furthermore, the policy manual states "In no event will the hiring of an employee be considered as creating a contractual relationship between the employee and the company. Their relationship is defined as 'employment at will' where either party, with appropriate notice, may dissolve the relationship. However, the company also has a "disciplinary guideline," in a document called HR 510, that states: "Appropriate measures for correcting performance problems are coaching, memoranda outlining specific steps for improvement and probation. Termination for performance issues occurs only after the employee has been given the opportunity and support necessary for improvement. The company alleges that the statements in the employee handbook and policy manual make clear that the conditions of employment are "at will". Mr. Wojcik alleges that HR 510 creates an implied contract, which requires remediation prior to termination.

Case 4 – Monkey Business

Bonnie Eckhart and Bridget Mueller were employed without a contract by the Yerkes Regional Primate Center in Atlanta, Georgia. They complained to their superiors about transfer procedures that the company used in shipping of Macaque monkeys to research institutions. They indicated that there was a significant health risk to the public if the monkeys infected with the deadly Herpes B virus happened to escape into public places. The employees were subsequently terminated. They complained that the discharge was unfair and against public policy because they were attempting to perform a public safety measure. The company did not have a policy or handbook that dealt with whistleblowing. Georgia does not have a whistleblower statute.

QUESTIONS

Answer the following questions, for each of the above cases:

1) Was this a pure employment-at-will situation, or did one of the exemptions apply? If an exemption was applicable, which one?
2) Did the employee handbook, or other document exist, that included language that could have been deemed to create an implied contract?
3) If the answer to question 2 is yes, did the employer also include a disclaimer? Was the disclaimer adequate, or was it ineffective?
4) What would you have done differently, if anything, if you were the manager in charge at each of these companies?

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GOOGLE IN CHINA: ETHICS OF SELF-CENSORSHIP

Timothy C. Johnston, The University of Tennessee at Martin
johnston@utm.edu

CASE DESCRIPTION

The primary subject matter of this case concerns the issue of adapting to international laws and values when they conflict with domestic values and the corporate mission. Secondary issues examined include theories of business ethics. Students should have a basic knowledge of general business issues, but the technical requirements are low and thus the case has a difficulty level of three (junior level). The case is designed to be taught in two sessions of 50 to 75 minutes. The class discussion may be staged in a debate format. Preparation time varies from one hour, to two to four hours for students who are assuming a lead role in the debate.

CASE SYNOPSIS

This case focuses on aftermath of a decision by executives at Google, Inc. to censor Internet search results in China. Google agreed to block the results of certain keyword searches in return for permission from the People's Republic of China government to locate servers in China. The decision prompted much criticism of Google's support of a Communist government with a record of human rights abuses. Many saw Google's acquiescence to China's terms as ironic given one of Google's stated corporate values: "Do no evil."

This case should prompt students to consider the tradeoffs involved in appeasing multiple stakeholders, including stockholders, domestic customers and government, international customers and governments, and non-government organizations. Students should assume the role of Google co-founder Sergi Brin as he has just admitted that the decision to appease the Chinese government may have been a mistake. The case presents arguments for and against the decision.

DECISION

Brin and his Google colleagues had wrestled with the decision to launch the censored Google.cn website for a year before implementing it, and now he essentially admitted that it was a mistake. Asked whether he regretted the decision, Brin admitted: "On a business level, that decision to censor... was a net negative" (Martinson, 2007). Now what? Should Google continue to provide censored Internet searches from servers located in China? Or should Google refuse to censor searches and shut down the China servers, if told to by the Chinese government?

QUESTIONS

1. Is it ethical for Google to censor Internet search results in China?

2. What should Google do regarding censorship in China?

CAPE CHEMICAL: CASH MANAGEMENT

David Kunz, Southeast Missouri State University
dkunz@semo.edu
Benjamin L. Dow III, Southeast Missouri State University
bdow@semo.edu

CASE DESCRIPTION

The primary subject matter of this case concerns the development and use of a cash budget as a key component in a cash management system. The case also allows an examination of the difference between accounting profit (based on accrual accounting) versus cash flow. The case requires students to have an introductory knowledge of accounting, finance and general business issues, thus the case has a difficulty level of three (junior level) or higher. The case is designed to be taught in one class session of approximately 1.25 hours and is expected to require 3-4 hours of preparation time from the students.

CASE SYNOPSIS

Cape Chemical is a regional distributor of liquid and dry chemicals. Growth has been steady since its beginning, but cash to pay employees and vendors in a timely manner has frequently been a problem. While the company ended its last year with a healthy cash balance, there were many occasions during the year that it was necessary to delay vendor payments or obtain short-term bank loans in order to keep the company operating. On one occasion when a major vendor threatened to stop shipments until all outstanding balances were current and the bank credit was fully used, company credit cards were used to obtain $20,000 to pay (satisfy) the vendor. In an effort to resolve the cash problems, the company has developed a projected income statement, balance sheet and cash flow statement for the next year of operation. Cape Chemical's bank officer suggested the company prepare a monthly cash budget as another cash management tool and as an additional test of the adequacy of the current $200,000 line of credit.

CAPE CHEMICAL BACKGROUND

Cape Chemical is a relatively new, regional distributor of liquid and dry chemicals, headquartered in Cape Girardeau, Missouri. The company, founded by Ann Stewart, has been serving southeast Missouri, southern Illinois, northeast Arkansas, western Kentucky and northwest Tennessee for three years and has developed a reputation as a reliable supplier of industrial chemicals. Stewart's previous business experience provided her with a solid understanding of the chemical industry and the distribution process. As a general manager for a chemical manufacturer Stewart had Profit & Loss (P&L) responsibility, but until beginning Cape Chemical she had limited exposure to company accounting and finance decisions.

To improve management of the accounting and finance area, Stewart hired Kathy Ford, an accountant who had worked with the accounting firm that conducted Cape's first audit. Ford was hired near end of the second year of operation.

CHEMICAL DISTRIBUTION

A chemical distributor is a wholesaler. Operations may vary but a typical distributor purchases chemicals in large quantities (bulk - rail or truckloads) from a number of manufacturers.

Bulk chemicals are stored in "tank farms", a number of tanks located in an area surrounded by dikes. Tanks can receive and ship materials from all modes of transportation. Packaged chemicals are stored in a warehouse. Other distributor activities include blending, repackaging, and shipping in smaller quantities (less than truckload, tote tanks, 55-gallon drums, and other smaller package sizes) to meet the needs of a variety of industrial users. In addition to the tank farm and warehouse, a distributor needs access to specialized delivery equipment (specialized truck transports, and tank rail cars) to meet the handling requirements of different chemicals. A distributor adds value by supplying its customers with the chemicals they need, in the quantities they desire, when they need them. This requires maintaining a sizable inventory and operating efficiently. Distributors usually operate on very small profit margins.

THE SITUATION

While the company ended its last year with a healthy cash balance, there were many occasions during the year that it was necessary to delay vendor payments or obtain short-term bank loans in order to keep the company operating. On one occasion when a major vendor threatened to stop shipments until all outstanding balances where current and the bank credit was fully used, Ann Stewart used her company credit cards to obtain $20,000 to pay (satisfy) the vendor.

During the first three years of operations, the company operated with a sales forecast and a few operating budgets but a complete set of pro forma statements were not prepared. In an effort to resolve the cash problems, Stewart, with the help of Ford, developed a projected income statement, balance sheet and cash flow statement for the next year of operation (tables one, two and three).

Ford thought the statements indicated the company's cash problems were solved. "Look Ann, if our forecasts are correct, and our forecast should be accurate, since our assumptions were based on historical data and current market conditions, we are in a very good financial position. We begin the year with a cash balance of $226,350 and our projections indicate an ending cash balance of $85,645, well above our target of a minimum balance of $20,000. The income statement projects our highest profit ever and while our ending cash balance is lower than our beginning cash balance, we will not have used any of the $200,000 bank line of credit. Our cash problems should be history." Stewart agreed the projected performance looks good, but she was still not ready to agree that cash problems were history.

When Stewart and Ford were reviewing the projections with Cape Chemical's bank officer, he suggested the company prepare a monthly cash budget as another cash management tool and as an additional test of the adequacy of the current $200,000 line of credit. Stewart liked the idea.

Later when Stewart and Ford discussed preparing a cash budget, Stewart indicated she had no experience in preparing or using a cash budget. Ford stated that she also had limited experience preparing and using a monthly cash budget but she thought it was similar to preparing forecasted financial statements. The big difference is that monthly rather than annual projections would be needed. The Ford stated the first step would be to prepare a list of monthly operating assumptions.

ASSUMPTIONS

The assumptions used to develop the pro forma financial statements were used by Stewart and Ford as a starting point. Historical information and current market conditions were also used in developing the cash budget assumptions.

THE TASK

Prepare answers to the following questions:

1) Construct a monthly cash budget for Cape Chemical for the period January through December 2007. Assume that all cash flows occur on the 15th of each month. Is the current $200,000 line of credit sufficient to meet the needs of Cape Chemical during the year? Explain your answer.
2) The cash budget contains both cash inflows and cash outflows. Which do you feel are likely to be the most accurate? Explain your answer.
3) Stewart thought it would be beneficial to prepare an additional cash budget based on the 2006 collection schedule (a less optimistic assumption).

2006 Collection Schedule	% of sales
Current Month	20.0
Month following the sale	50.0
Second month following the sale	30.0

Will the $200,000 revolving credit agreement be sufficient? Explain your answer.
Note: Assume $39,000 of November and $195,600 of December revenue will be collected in January. Assume $48,900 of December revenues will be collected in February.

4) Why is depreciation expense not part of the cash budget?
5) The monthly cash budget prepared assumes that all cash flows occur on the 15th of each month. Suppose most of Cape Chemical's outflows are at the beginning of the month, while its collections are toward the end of each month. How would this fact alter the cash budget?
6) Temporary excess cash can be invested in marketable securities. What are the characteristics of marketable securities? If excess cash is projected to be continuing rather than temporary, are marketable securities the appropriate investment? Explain your answer.
7) Once again assume all cash flows occur on the 15th of each month. How large of a line of credit would you recommend Stewart and Ford arrange with the bank? Defend your answer.
8) Suppose the bank refused to grant a larger line of credit what options are available to the company?

SUGGESTED REFERENCES

Brigham, Eugene F., and Phillip R. Davis, *Intermediate Financial Management*, 9th Edition, South-Western/ Thompson Learning.

GROWING THE FRAUD INVESTIGATION DETECTIVE AGENCY

Frank S. Lockwood, Western Carolina University

ABSTRACT

Ken and Barbara Wilson founded the Fraud Investigation Detective Agency (FIDA) in 1987 for the purpose of providing services to insurance companies that offer workers' compensation coverage to Florida businesses. During the next four years FIDA achieved a reputation as reliable and efficient supplier of investigative services. The Wilson's detective agency grew to become the fifth largest private investigation agency in Florida, as measured by client billings. Both Ken and Barbara believed they could substantially increase the firm's revenues if they could only implement an appropriate strategy. This case is a continuation of a case previously published (The Fraud Investigative Agency, Entrepreneurship Theory & Practice, vol. 31, issue 2, pp 299-318) that described the creation of FIDA and the strategies used to generate certain competitive strategies. In that case we left Ken and Barbara Wilson contemplating various strategies that would grow FIDA. The Growing the Fraud Investigative Detective Agency Case begins with the Wilson's implementing a growth strategy that lead to increased revenues. They added a new partner who owned 50 percent of FIDA. The case ends with the Wilson's trying to decide on a strategy to save FIDA because they were unable to save FIDA from total demise due to the fact they did not have the control necessary to take the actions to save FIDA.

THE EVALUATION OF A FLOATING-RATE SALE-LEASEBACK

Sanjay Rajagopal, Montreat College
srajagopal@montreat.edu

ABSTRACT

In order to limit its borrowing, and to maintain reasonable debt and coverage ratios, Rockhill Utilities, Inc. has adopted a policy of leasing rather than purchasing any additions to its fleet of vehicles. In the following case, Rockhill's management has requested the finance department to assess the value of also converting currently owned vehicles to leased vehicles via a sale-and-leaseback arrangement with another party. The case considers tax and financial statement implications of the leasing arrangement, and involves the use of basic valuation techniques and simple scenario analysis. Further, it provides a convenient backdrop for discussing off-balance sheet financing, and the process of deregulation in the utility industry. The idea for this case partly derives from field research, but all the names and numbers used are fictitious.

CASE SYNOPSIS

Rockhill, Inc. is an electric utility operating in the mid-west. The process of deregulation in electricity generation has transformed the utility's competitive landscape, prompting it to divest much of its generating assets, shift its focus to electricity transmission and distribution, and revise several of its financial policies. Among other things, the company has adopted the policy to lease, rather than purchase, any additions to its fleet of vehicles. While the vehicles it currently owns represent slightly over 40% of its entire fleet (with the remainder being leased), over time, its "lease-only" policy will eliminate owned vehicles altogether, since vehicles must eventually be replaced. In the meantime, though, it wishes to evaluate the economic advisability of speeding up the process of eliminating ownership by converting the owned vehicles into leased vehicles through a "sale and lease-back" arrangement with another party.

One of Rockhill's financial analysts, Meg Hawkins, has just been assigned the task of determining whether such a lease will add value to the firm. She must project the cash flow implications of the switch from ownership to leasing, and then estimate the present value of those incremental cash flows. Based upon her analysis, she needs to make a recommendation to management at the upcoming meeting. The estimation of incremental cash flows will require a careful consideration of the tax treatment of the leasing arrangement. Also, the analyst will need to check the sensitivity of the present value of the "lease versus own" decision to changes in the floating interest rate that the utility will have to pay on its lease.

GOING TO MARKET WITH A NEW PRODUCT: ST. LAWRENCE ISLAND, ALASKA

Wayne A. Roberts, Jr., Southern Utah University
robertsw@suu.edu

CASE DESCRIPTION

The primary subject matter of this case concerns the evaluation of alternative channels of distribution for a proposed new business. Secondary issues that can be examined include pricing through channels, the marketing concept and real world considerations, and information collection and analysis. The case has a difficulty level of 3 to 4. The case is designed to be taught in 1/2 to 1 class hour and is expected to require anywhere from no outside preparation to 1 hour of outside preparation by students, depending on how the case is presented. If desired, the case can easily be expanded to cover logistics issues.

CASE SYNOPSIS

St. Lawrence Island, Alaska, located in the Bering Sea, is actually closer to Russia than Alaska. There is very little economic activity on the island, and the native villages of Savoonga and Gambell are very interested in finding opportunities to generate much-needed cash and employment opportunities for their children.

One resource the island has is seaweed. A market study done on behalf of St. Lawrence Island indicates the health food market has been growing over 15%/year and that 30% of health food consumers purchased seaweed vegetables within the past year. One popular seaweed product, kombu, comes from a seaweed available in abundance around St. Lawrence Island.

This case describes the channels of distribution associated with this market, along with representative pricing, and asks students to evaluate three channel alternatives open to the St. Lawrence Islanders. The proposed alternatives can be evaluated by a number of criteria, such as economic (cash flow levels and risk), adaptability, and control. Important aspects of channel and buyer behavior uncovered during the market study are available, and may be given during the discussion regarding the alternatives.

The case may be introduced verbally and evaluated through the lecture format, or if desired, students may be required to read the case and respond to questions prior to class.

The beauty of this interesting, simple case is that it clearly demonstrates that channel members perform functions that someone has to perform, and that if a level is cut the functions need to be shifted to someone else. Further, it makes it clear that the best channel choice for an organization hinges on the relative strengths and weaknesses of the organization.

INTRODUCTION

St. Lawrence Island (SLI) is located more than 100 miles off the mainland of Alaska in the Bering Sea, less than 40 miles from Siberia. Temperature extremes vary from less than 30 degrees below to a record 67 degrees Fahrenheit. From mid-November to May the island is locked in Bering Sea ice, and the winds average over 15 mph. Mammals on the island include fox and a large unmanaged reindeer herd. The reindeer were introduced to the island in 1900. There are no docks on the island, and any materials brought in have to be either off-loaded the occasional barge via small boats or flown into one of the two small airstrips.

There are two villages, Gambell and Savoonga, on this isolated island. Interestingly, the distance between the two settlements is greater than the distance between Gambell and Siberia. Fewer than 700 Yup'ik Eskimos live in each village. The people predominantly follow a subsistence lifestyle, hunting and living off of walrus, seal, whales and fish. A very few people hold commercial fishing permits, and there is a small fish processing facility in Savoonga. Cash is derived from selling ivory carvings, archaeological artifacts, and from a few seasonal bird watchers. While most homes in Gambell now are tied into a water and sewer system, at the time of the case a sizable proportion of homes in Savoonga still relied on hauling water and on honey buckets, which are nothing more than sewage pails which must be hauled out and emptied.

The residents of St. Lawrence Island need cash for electricity, snowmobiles, rifles, and many other goods. Further, villagers are concerned about the lack of opportunities for the younger people. Young adults often migrate to larger cities on the mainland in the search for employment, and without viable opportunities on the island the communities might wither. Therefore there is a high degree of interest in finding suitable economic opportunities.

NEW BUSINESS OPPORTUNITY

An entrepreneurial-minded individual from Fairbanks, Alaska, noted the quantities of seaweed that grew around the island, and suggested that the St. Lawrence Islanders explore the opportunity to harvest and market them. Following up on this suggestion, the Islanders, through the Alaska Department of Community and Regional Affairs, issued a request for proposals. A team was hired to do two things: first, to inventory the types and quantities of seaweed that grow around the island, and second, to explore market opportunities for the seaweed species that occurred in large enough quantities.

As it turns out, a very common type of seaweed in the area, genus Laminaria, is used commercially in several ways: for extractives (which is used in beer, frostings, dental material, toothpaste), as fertilizer, as fodder, and for food (kombu). The highest value use is as a food. The Japanese use it to flavor soups and casseroles, have kombu candy, and eat it plain. Koreans, Chinese, and other Asian nations also eat kombu. It should be noted that for Asian kombu consumers a little amount went a long ways; most packaged kombu was in approximately 8 ounce packages.

With regard to the food market, a number of options were examined. The possibility of exporting the seaweed to Japan was rejected, given that Japan already has a mature kombu industry and is tightly controlled; one bureaucrat could decide to disallow the importing of St. Lawrence Island kombu at any time. Further, discussions with Japanese industry participants led the research team to believe that fact that the seaweed came from pristine Alaskan waters harvested by natives would not bestow any differential advantages to St. Lawrence Island kombu: Industry representatives believe that taste was the most important product attribute, and their assessment of the taste of St. Lawrence Island seaweed was that it was not exceptional, or even above average, in this regard.

Selling to Asians in America, and to Japanese restaurants in the U. S., was also considered. However, this did not appear to be promising. Japanese restaurants bought supplies from wholesalers that already had adequate supplies and were not interested. Visits to ethnic grocery stores were likewise not encouraging; Korean stores stocked Korean kombu, and Japanese stores stocked Japanese kombu. Uwajimaya, a rather large Asian foods grocery store in Seattle, stocked Japanese kombu in a Japanese products aisle, Korean kombu in a Korean products aisle, and Chinese kombu in a Chinese products aisle. Store personnel said that customers bought products from their home country.

One market that appeared to be promising was the U.S. health food market. Health food sales were increasing over 15% per year, health food stores were increasing in number and sophistication, and seaweed products were beginning to be retailed through health food stores. Prices were higher

than for Asian-produced kombu, the products came from U. S. companies targeting health conscious consumers, and the field did not appear to be saturated with competitors. Significantly, it was estimated that 30% of health food consumers had purchased seaweed products within the previous year. It appeared that health food kombu was in the introductory, or perhaps the beginnings of the growth stage, of its product life cycle.

ALTERNATIVES

With this information, a group got together to discuss what the tentative scope of the new business should be. Three alternative models were raised for consideration:

Alternative 1. The first model called for St. Lawrence Islanders to simply harvest, dry, and bundle the kombu for sale to one or more health food manufacturers.

Alternative 2. The second alternative entailed turning the bulk kombu into a final packaged product, which would then be sold directly to retailers. The thought was that St. Lawrence Islanders could cut out the manufacturers and wholesalers, and keep more of the revenue and profit for themselves.

Alternative 3. The third alternative called for selling the final packaged product directly to consumers. In this model, the St. Lawrence Islanders could keep all the revenue involved for themselves.

CASE QUESTIONS

1. For the first alternative, consisting of focusing on harvesting and selling bulk seaweed to manufacturers, what exactly would the St. Lawrence Island business have to do with regard to the product, pricing, and promotion? Assuming pursuing this would be successful, how many channel relationships would have to be maintained? Success, under this alternative, would depend on what?

2. For the second alternative, which consists of selling a finished product to retailers, what additional tasks and activities have to be done with regard to the product, pricing, and promotion? Assuming pursuing this would be successful, how many channel relationships would have to be maintained? Success, if this alternative is pursued, would depend on what?

3. For the third alternative, which consists of cutting out the retailer and selling the final packaged product directly to consumers, what tasks and activities would have to be done beyond what would be required under the second alternative with regard to the product, pricing, and promotion? Success, if this alternative is pursued, would depend on what?

4. Roughly, what could the new firm expect with regard to sales and costs in the short term, and the long term, under each alternative? Why?

5. What sort of investments in people, equipment, and systems are associated with each alternative? What are the risks under each alternative?

6. Recognizing that additional research is required, which alternative do you think represents the best bet for the islanders? Why?

YOURPRODUCTSUCKS.COM: INTERNET GRIPE SITES AT THE CROSSROADS OF TRADEMARKS AND FREE SPEECH

Leonard Rymsza, California State University, Northridge
leonard.rymsza@csun.edu
Kurt Saunders, California State University, Northridge
kurt.saunders@csun.edu

CASE ABSTRACT

The Internet has made possible another forum by which dissatisfied consumers can vent their complaints about poor service or purchases of substandard products. In the typical scenario, a disgruntled consumer purchases a domain name and sets up a website on which to publicize their gripes and criticism about the seller. In turn, sellers have responded with litigation to protect their trademark rights and silence the consumer. Recent cases arising from this strategy of creating "gripe sites" have pitted the seller's trademarks and goodwill against the consumer's freedom of speech.

This case study presents a multifaceted factual setting that raises numerous issues relating to trademark infringement, dilution, cybersquatting, commercial disparagement, and freedom of expression. Consumer decided to have new carpet installed in her living and dining room. She telephoned a nationally recognized home improvement – home furnishing company. Consumer scheduled an appointment for a salesperson to come to her home to measure the floors and provide her with carpet samples. The salesperson did not keep the initial appointment and did not contact consumer to let her know that the appointment would not be kept. Consumer was unhappy with this behavior but she, nevertheless, scheduled another appointment. The salesperson kept this second appointment but was approximately one hour late. Consumer was frustrated with the appointment mishaps but decided that since the salesperson was at her home she may as well have the rooms measured and look at the carpet samples. Consumer found a sample that was the perfect color and nap. The cost estimate for the carpet was also comparable to estimates that consumer had received from other retailers. Consumer ordered the carpet and made arrangements to have the carpet installed the next day.

The installation of the carpet went smoothly except that a silver runner was installed instead of a gold runner as specified in the work order. Consumer paid for the carpet and installation with installers promise to return the next day and install the proper runner. The installer failed to return the next day as promised. Within a few days of the installation, consumer noticed several seams in the carpet had become visible and that un-even surfaces had begun to appear. Following several frustrating attempts to schedule the return of an installer and failed attempts to correct the problems, consumer sent a letter rescinding the carpet contract and requesting the return of the $3,000 she had paid for the carpet. Consumer's request was denied and attempts to settle the matter proved fruitless.

Consumer decided to take several courses of action. One strategy resulted in consumer registering seven different internet domain names. The domain names included the name of the home improvement company in varying forms. Consumer began using one of the internet sites. The site contained a statement summarizing consumer's entire dealings with the improvement company and her dissatisfaction with the company's actions. Consumer was contacted several times by legal representatives of the improvement company and was asked that she cease and desist from using the company's name in any domain names. Consumer refused to discuss the matter and the

improvement company eventually brought suit against consumer alleging, trademark infringement, dilution, false designation, unfair competition, cybersquatting, various state law claims, and libel. Consumer countered that she was merely exercising her first amendment right of free speech.

This case study explores the intersection of electronic commerce, trademark law, and freedom of speech. As a pedagogical tool, the case can facilitate student understanding of the arguments presented for the protection of trademarks and domain names while at the same time considering the right of consumers to freely express their opinions and views. Moreover, the case can serve as a means promote awareness of legal risk in business decisions and to enhance the development of legal reasoning skills in business law students.

CON OR CON-STRUCTION?: THE CASE OF NYE CONTRACTING

Lucia S. Sigmar, Sam Houston State University
lss002@shsu.edu

CASE DESCRIPTION

The primary subject matter for this case concerns the development of a communications strategy for a scenario where expectations have diverged between a contractor and a client concerning prior verbal and written agreements. Secondary issues include the ethical obligations of contractors to their clients, contractor expertise in bidding jobs, and effective communication between the contractor and the client. This case was designed for use in an undergraduate business communications course, but can also be easily adapted for use in an undergraduate business law or business ethics course. It could be taught in a 1½-hour session and is expected to require 2 hours of outside preparation by students.

CASE SYNOPSIS

Alex and Lauren Stewart, new to the Houston area, retained the services of a general contractor to make repairs to the home that they had just bought. Although they took great care in researching, specifying the work, and hiring Nye Contracting, they encountered problems from the start with the contractor, his various crews, interruptions and delays in the work schedule, and poor quality work. The last straw for the Stewarts was Nye's demand for additional money for materials to complete the job. He also threatened to place a lien on the Stewart's home until the additional money requirement was met. At this point, the Stewarts feel compelled to document their refusal to pay additional money to Nye and to hold Nye to the terms of their initial agreement, to clarify their position to his demands, to document the extent (percentage) of the work accomplished to date in order to calculate what percentage of the agreed-upon wages should be paid to date, to specify what jobs still need to be done, and to document the deterioration of their business relationship with Nye for possible legal action. Alternatively, however, the Stewarts are considering more positive communication in the hopes of convincing Nye to complete the job he agreed to perform initially and to maintain goodwill.

INTRODUCTION

The Benning Corporation bought John and Elise Montgomery's 8-year old, two-story, 5,000 square-foot Houston home in the upscale golf community of Pinehurst as a part of a relocation deal. The house stayed on the market for approximately three years, and because it was largely unoccupied during this time, regular maintenance was not performed leaving the house in need of many repairs.

After careful consideration of the improvements that it required, newcomers Alex and Lauren Stewart made a low-ball offer on the property which was accepted by The Benning Corporation.

The Stewarts wasted no time in addressing two major problems with their brick veneer home. Non-structural, interior water damage had been caused by deterioration and rot of the caulking and exterior wood trim in and around the door frames and window casings, and doors. And the concrete floor in the attached garage had developed one large crack and several smaller ones due to the settling of the structure in the substrate soil. After setting a detailed scope of the work on these

two projects (one for the exterior wood replacement, painting, and caulking and one for the garage floor), Lauren set about contacting contractors in the area, and after initial interviews and bids, and contacting references, selected Joe Nye Contracting for the two jobs to be performed simultaneously by his work crews under his direct supervision.

Prior to beginning work on the project and at Lauren's request, Mr. Nye had provided a signed copy of the scope of the project, the two-week time frame, and his estimate for the work, along with a copy of his liability insurance and licensure. He and his workers had signed a warranty and indemnification agreement required by the Stewart's prior to beginning the job on May 1. In addition, Nye had further agreed to be on-site to supervise his workers. The Stewarts were confident that they had done the necessary due diligence for the project and placed their trust in Mr. Nye for a quality job. And, as requested by Mr. Nye, they had paid a materials draw of 50%, the remaining 50% to be paid upon completion of the project.

THE FIRST WEEK

Mr. Nye and his work crews arrived on the property as scheduled on Monday, May 1, to begin work. Problems began almost immediately. Materials were not on site, instructions were not given to the crews whose primary language was Spanish, and Mr. Nye left, presumably to supervise work elsewhere. The Nye Contracting workers, left to their own devices, made half-hearted attempts to remove caulk, scrape paint, and chip out the cracks in the garage during the morning, but by the afternoon, had gathered in small and talkative groups in the backyard, on the patio, and in the driveway.

The next morning, Lauren approached Mr. Nye about the lack of materials on site, his lack of supervision the previous day, and his distracted workers. He responded that the workers had no need of materials yet in this first phase of the job, and apologized that another job had required his immediate attention the day before, but that he would be on site to supervise and direct his crews from now on, that these were individuals who had been with Nye Contracting only a short time and were unfamiliar with the company's work ethic. The next few days went better than the first: Mr. Nye supervised his workers (with only brief absences to obtain materials as needed) as they prepped word surfaces, replaced trim, caulked, and laboriously chipped out the cracks on the garage floor.

By Friday morning, the "house" crew was ready to begin painting, and the "garage" crew was still chipping. Mr. Nye had brought the necessary painting supplies for the job that morning, but told Lauren that he was unable to stay as he had problems at another job site which would take him away all day Friday and Saturday. He would, however, be back on site on Monday morning with additional materials for the garage floor. He then lined out the day's work with his crews, and left. When Lauren arrived home later that evening, she was appalled at the mess left in the driveway: paint cans left open, paint spatters on the pea gravel driveway, brushes unwashed with cans of solvent nearby, the garden hose uncoiled and white paint residue on the hose and spray attachment. Inside the garage, concrete debris and empty tubes of caulk and cans of paint, blue tape, hamburger wrappers, paper drinking cups, beer cans, and plastic littered the floor. Ladders were still set up in backyard, and more lunch litter was on the patio table. Lauren left the mess as it was, determined to talk to the crews on Saturday morning about cleaning up after themselves at the end of each day.

On Saturday morning, only three workers out of the entire "house" crew showed up; the "garage" crew did not show up at all. In halting Spanish, Lauren asked the workers to clean up after themselves and provided large trash bags for that purpose. The three workers complied willingly enough, and Lauren proceeded to walk around the house to look at the painting that had been done the day before. Some of the work had been neatly done, but she was again appalled to find that most of the work resembled the work of a five-year-old: white paint spatters and drips on the red brick veneer, drip marks on the window casings and doors, and uneven paint coverage on the trim and doors. In some cases the caulking, too, had not been smoothed, making a bumpy and uneven surface

for the paint. Lauren called the crew's attention to the problems, and found herself supervising the three throughout the day so as to avoid additional mistakes. She resolved to discuss the situation with Mr. Nye the next week.

THE SECOND WEEK

On Monday, neither Nye nor his crews showed up at all. Or Tuesday. Or Wednesday. Lauren's attempts to contact Mr. Nye by phone were unsuccessful although she left repeated messages.

On Thursday morning, a very apologetic Mr. Nye with two new work crews showed up on the Stewart's doorstep. He explained to Lauren that he had been having problems with the previous crews and had fired all but two of them, but that the new crews were prepared to finish the job as quickly and as efficiently as possible. He also apologized for the sloppy work that had been done and assured her that they would remove the white paint from the driveway and brick veneer and correct any problems to her satisfaction. He had also brought the epoxy filler for the garage floor so that the new "garage" crew could complete filling the cracks.

For the next two days, the crews worked diligently and cleaned up at the end of each day, even though Mr. Nye was not available to supervise them. For the most part, Lauren assumed that role to avoid further delays on the project. The crews attempted, unsuccessfully for the most part, to remove the paint residue from the brick veneer and to correct the sloppy caulking and painting errors of their predecessors. The "garage" crew had finished filling the cracks and sanding the lines, and had swept and cleaned the floor in preparation for the first coat of marine-grade epoxy primer and paint on Monday morning.

THE THIRD WEEK

On Monday morning, Mr. Nye arrived early with his crews. While the crews were setting up, Mr. Nye explained to Lauren that he had miscalculated the materials expense in the original bid for the specified two-part epoxy paint and that he would need an additional $1,500 for materials to complete the project. Lauren explained to him that his bid earned him the job, and that as an experienced contractor, he should know the costs associated with construction projects. The epoxy paint was a fundamental requirement of the garage job from the outset. And further, that given the delays and problems with crews and the quality of the work, she didn't feel particularly inclined to continue to pay for his mistakes in terms of time or money. When she pressed Nye to explain exactly where he had miscalculated materials in the original bid, his response was vague, saying only that the epoxy paint had been much more expensive than he had originally thought. Lauren told him that she'd discuss the situation with Alex that evening and would get back with him the next day.

The following morning when Nye arrived on site, Lauren told him that she and Alex had agreed that they would hold him to the original bid for the work. Nye's face reddened with anger as he took a couple of steps towards Lauren, and with closed fists threatened to place a contractor's lien on the property until he was paid the additional amount. He promptly collected his crews and his materials and left the Stewart residence leaving the work on the house and garage uncompleted.

PARTNERING WITH AN NGO TO START A MICRO-LOAN PROGRAM IN A GHANA VILLAGE: A GLOBAL ORGANIC TRIPLE-BOTTOM-LINE SOCIAL ENTERPRISE IN THE MAKING

Harriet Stephenson, Seattle University
Harriet@seattleu.edu
Donna L. Mace, Executive Masters in Non Profit Leadership
DonnaLMace@aol.com

CASE DESCRIPTION

The primary subject matter concerns social entrepreneurship which incorporates the triple bottom line. Secondary issues including financing new ventures, human resource development and motivation, globalization of collegiate curriculum with experiential/service learning methods, globalizing microenterprise, entrepreneurship in a nonprofit. This could be used in for profit or nonprofit management or entrepreneurship courses, developmental economics, finance. It has a difficulty level of four, appropriate for senior level and five, appropriate for the first year graduate level. The case is designed to be taught in 1-3 class hours with two hours of outside preparation that can be done on line.

CASE SYNOPSIS

The director of a student consulting program in a university hears about a way to globalize the program by partnering with an ngo out of New Hampshire, WomensTrust, to start a micro loan program in a Ghanaian Village. A meeting is called with interested colleagues, alumni, and students. There is support for the concept but several other possible scenarios are proposed. A go with Ghana decision is made somewhat unilaterally. Entrepreneurial enthusiasm abounds a typical start up. The team must now quickly do its home work-- get the buy in of the relevant stakeholders especially the Dean of the Business School, and the University Administration. The Dean would be concerned about the level of positive impact on students and alumni and mitigating possible increased overload on faculty. There is a desire to make sure this is a triple-bottom-line social enterprise, which achieves desired outcomes of helping empower women to have more secure lives for themselves and their families. The people, profit, and planet aspects must be addressed. Is there someway of getting to Ghana without burning tons of carbon dioxide during a 14,000 mile round trip flight? The model calls for investing $15,000 to begin a micro loan program which charges interest to its peer lending group members and then becomes self-sustaining at 400 borrowers. How are they going to raise the $15,000 to start the process? It is an organic development model which may grow into providing help with education, health, and meeting other needs if the women feel that is what they want. How will that be financed? What if the team doesn't get the buy in? The reservations cannot be canceled. They can't arrive in Ghana without knowing what they can commit to.

GIVING BAD NEWS TO CLIENTS: A CONSULTING TEAM'S NIGHTMARE

Harriet Stephenson, Seattle University
Harriet@seattleu.edu
Leo Simpson, Western Kentucky University
iamleo@msn.com
Hoang Pham, Seattle University
Alex Riede, Seattle University
Krystal Bolibol, Seattle University
Ulziidelger Bat-Och, Seattle University
Richard Franck, Seattle University
Hanh-Ngu Yen Pham, Seattle University

CASE DESCRIPTION

The primary subject matter of this case concerns consultant communicating bad news to client. Secondary issues examined include role of expectations in influencing interpretation of qualitative data, use of focus groups, students gaining trust of client, Potential conflict of values between consultant and client. relationship between time spent on consulting and perceived quality of outcome. The case has a difficulty level of four to five, appropriate for senior level and also first year grad level. or one of first sessions in consulting class. The case is designed to be taught in 1-3 hours with or without outside preparation.

CASE SYNOPSIS

A Diverse student undergraduate team of 6 representing Japan, Vietnam, China, US, with English as second language by half of the members, takes on consulting project for senior capstone course. Serial entrepreneur with several previous successes has invested over $500,000 in an idea and has piloted it for the past year in one specific geographic area within a metropolitan area. The pilot has not gained traction. Client requests that student help him market the product/service as is. He did no marketing research prior to starting the business. He is unwilling to put any more significant investment of his own money in this. He wants to be able to demonstrate that the product/service is a super idea in order to get investors to help him roll this out nationally. Client gives students detailed business plan which client developed himself. Students critique business plan and conclude "we find fundamental flaws with the core business concepts as well as with the implementation of the concepts." Students proceed to run four different focus groups including in the class. In addition, they survey current and past users of the service, retailers where the service would be offered to see if they would pay for advertising, and did convenience survey of college students as potential users. Six weeks into quarter students conclude that this is not a viable idea without significant investment and even then was questionable. Students email to client that findings so far indicate client should dissolve his business. Client disappears. Will not respond to email or phone calls. Student consultants must finish project without required feedback and input from client. The team member who was the spokesperson-emailer for the bad news feels if he hadn't been so blunt they wouldn't have lost the client.

HOW MUCH IS A REFERRAL WORTH? THE CASE OF AMERICAN MORTGAGE COMPANY (AMC)

Laura Sullivan, Sam Houston State University
ls003@shsu.edu
Hadley Leavell, Sam Houston State University
fin_whl@shsu.edu

CASE DESCRIPTION

The primary subject matter of this case involves the contractual relationship between American Mortgage ("American") and Davis Caldwell (a principal investor in the American Mortgage Company). Caldwell has brought a lawsuit against American because of an alleged breach of contract. The breach relates to Caldwell's belief that he was entitled to receive five basis points on all loans closed at American's Austin, Texas branch. It is Caldwell's belief that this entitlement was to continue indefinitely. Secondary issues include oral agreements, statute of frauds and statute of limitations. The case has a difficulty level appropriate for undergraduate Business Law course. The case can be taught in one to two class hours, depending on the desired detail level for the discussion. It should take approximately one hour of outside preparation by students.

CASE SYNOPSIS

Davis Caldwell, an investor and a principal in the American Mortgage Company (American) recommended to American's president, Ted Slater that they should consider opening a new location in Austin, Texas. Caldwell stated that since the real estate market in Austin was very active this was perfect opportunity for American. Since the idea for the location was Caldwell's, Ted Slater paid Caldwell five basis points for all loans closed at the Austin office during the period of October 2003 to October 2004. American paid Caldwell roughly $300,000 during the one year time period. After October 2004 the payments ceased.

After the payments ceased Caldwell sued American. He claimed breach of contract. It was Caldwell's contention that he was to be paid the five basis points on all loans closed at the Austin location for the duration of his affiliation with American.

The main question, did the parties have a contract? If so was it barred by the statute of frauds?

UNDERSTANDING CONSTRUCTIVE DISCHARGE: SOME CASES

Neal F. Thomson, Columbus State University
Thomson_Neal@Colstate.edu

CASE DESCRIPTION

The primary subject matter of this case is the employment concept known as constructive discharge. Secondary issues include employment discrimination, and mixed-motive cases. This case has a difficulty level of three, intended for an upper division, undergraduate course. This case is designed to be taught in one class hour, and is expected to require two to three hours of outside preparation by students.

CASE SYNOPSIS

Federal law protects employees from many types of discrimination. Discrimination may include wrongful termination of an employee. However, what many do not know is that a company may still be guilty of wrongful termination, even if the employee quits, rather than being fired. The following case describes the concept of constructive discharge, explains the characteristics of a "constructive discharge" and then presents some scenarios, in which students are required to determine whether constructive discharge took place.

INTRODUCTION

Many types of employment discrimination are prohibited by federal laws, including Title VII of the Civil Rights Acts of 1964 and 1991, The Age Discrimination in Employment Act, The Americans with Disabilities Act, the Rehabilitation Act, and the Equal Pay Act (Federal, 2007). Many states and localities have additional laws, which expand these protections, such as New Jersey's Law Against Discrimination (About the NJ, 2006). These laws protect against disparate treatment, adverse impact, and many other types of unfair conduct. However, what many people do not realize is that these laws even extend protection to employees who voluntarily leave their job, if certain conditions are met. This situation is known as a constructive discharge.

CONSTRUCTIVE DISCHARGE

Black's Law Dictionary defines a constructive discharge as "a termination of employment brought about by making the employee's working conditions so intolerable that the employee feels compelled to leave." However, this does not mean that every unhappy worker can quit their job, and claim constructive discharge. In order to be a constructive discharge, several criteria must be met. According to Niznik (2007), for someone to successfully claim that they were constructively discharged, there must have been some recent and substantial change to the individual's job or working conditions. Furthermore, these changes must be "so extraordinary and intolerable that they would compel any reasonable employee to quit, under the same circumstances. Additionally, the changes must have been intentionally made, even though it could be reasonably expected that the change would lead to the employee quitting. These changes must also be tied to some other sort of legal violation, such as race or gender discrimination, or the attempt to restrict an employee from exerting their legal rights. Finally, the employer must have no justifiable reason for the change. In short, they have made work unbearable, for the purpose of forcing you to quit. They also must have

done it because of some legal restriction which kept them from just firing the employee. This could include an employment contract, anti-discrimination laws, labor laws, or any other restriction to employment-at-will.

Normal changes in a business environment would not meet these criteria. For example, a business requiring that their professional employees make their own copies, because the business could no longer afford a secretary, may annoy the employee, but would not be intolerable enough to meet the standard here. It also would have a business justification. Similarly, being moved to a less desirable office, while annoying, would not constitute "intolerable". In contrast, requiring an employee to tolerate sexual harassment, would clearly meet the requirements of this doctrine.

Please read and consider the following cases. In each case, an employee voluntarily severed their employment. Read their stories, and then answer the questions that follow.

CASES

Situation 1 – In March 1998, Mary Suders was hired as a police communications officer by the Pennsylvania State Police. Shortly after she began working, her three supervisors began barraging her with sexual harassment. One would make comments regarding sex with animals, and would repeatedly bring up the topic of oral sex. Another frequently grabbed his genitals in her presence, and similarly, made references to oral sex. The third made comments like "a monkey could do your job".

During this time, Ms. Suders repeatedly took a computer skills exam, which was the first step required for a promotion. Each time, her supervisors informed her that she failed the test, and would have to try again. In June 1998, she ran across her tests, ungraded, in a drawer in the women's locker room. This was an unusual spot for tests to be stores, and even more unusual was the fact that they had not been graded. She decided to hold on to the tests, as proof of what was going on. However, her supervisors caught her, arrested her, handcuffed her, and threatened charges of theft against her. Upon her indication that she wanted ot quit her job, they released her. (Pennsylvania, 2004)

Situation 2 – In 1986, Bernadine Duffy went to work for Magic Paper Group as a Customer Service Representative. She was promoted to Senior Customer Service Representative in January 1987, and to Assistant Customer Service Manager in July 1989. In 1993, she alleges that she applied for, and was passed over for promotion to Manager of the Order Processing Customer Service Department. Chosen instead was a younger worker. She claims that she later was given the same tasks as the manager was, but without as large an increase in pay. She indicated that she was told that the long hours were too much to expect from someone of her age. Further, she was told that she should look for a different job, more appropriate for someone her age. She indicated that this situation was adversely affecting her health.

She says she was the only supervisor subjected to weekly performance ratings, was left out of management meetings, was dropped from all committee work, and was chastised for not participating in company events. Her overall performance was rated as average or higher, however, her performance as a supervisor was rated below average.

In 1996, Ms. Duffy quit. Then she filed suit, alleging constructive discharge, based on age discrimination, as well as alleging unfair treatment due to her weight, violation of the Americans with Disabilities act and the WARN act.

Scenario 3 In July of 1999, an impasse in labor negotiations between Major League Baseball and the Major League Umpires Association led 56 of the umpires to tender their resignations. They were unable to otherwise pressure the owners, because their current contract prohibited strikes or work stoppages. The owners responded to this by hiring 25 replacement umpires, and then informing 22 of the current umpires that their resignations were accepted, and

they no longer had jobs. These 22 umpires then attempted to rescind their resignations, a move that the owners refused to allow. The umpires argued that “by living in fear that they would be locked out or fired at the end of the current collective bargaining agreement without any hint that negotiations for a new labor contract were forthcoming, employment conditions were such that the umpires were forced to take these actions and were, thus, constructively discharged”. (Major League, 1999). They further argued that the acceptance of the resignations constituted a “concerted activity” to hinder the union’s abiulity to negotiate, and was therefore an unfair labor practice. The owners disagreed, asserting that there was no indication given that the end of the contract, which would occur in December 1999, would lead to a lockout or dismissal.

QUESTIONS

1) Was there some sort of illegal discrimination, or similar actionable violation of the law alleged in this case?

2) Do you feel the facts in the case support the claim? Why or why not?

3) Does this situation meet the criteria of constructive discharge?

4) What could have been done to avoid this situation?

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