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express trucking: executive team dynamics (role play) (A)—Vice-president, legal affairs (Alex)

Jacques Neatby, Louis Hébert, and Jean Poitras wrote this case solely to provide material for class discussion. The authors do not intend to illustrate either effective or ineffective handling of a managerial situation. The authors may have disguised certain names and other identifying information to protect confidentiality.

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THE Vice-President, Legal Affairs (Alex)

“Enough is enough! I expect you both to have figured this out before our executive committee meeting. That leaves you 20 minutes.”

So spoke Richard, the chief executive officer (CEO) of Express Trucking, a company where you, as Alex, have been vice-president (VP) of Legal Affairs for the past 15 years. Your CEO was addressing you and Dominic, the company’s VP of Sales (see Exhibit 1).

At issue is a contract that Dominic will finalize and sign tomorrow with a new client: China Porcelain. You found out about the contract this morning because your CEO sent you a copy, not because Dominic told you about it. You have looked at the contract only briefly (you have been busy solving issues elsewhere).

Although the contract includes a liability clause (i.e., a clause that sets out which party is responsible if the goods transported by Express Trucking are damaged), you do not recognize it. It is certainly not the standard liability clause that you drafted to protect Express Trucking and that, according to company policy, Dominic and others are obliged to include in every contract. You suspect the lack of this standard liability clause is why Dominic did not show the contract to you. It is not the first time this situation has happened.

About your company: Express Trucking

Express Trucking is a trucking firm specializing in shipping commodities, although its strategy in recent years has been to diversify its cargo. Established in the early 2000s at the height of the commodities boom, Express Trucking has fallen on hard times, notably because of a lawsuit by one of Express Trucking’s clients—BeauBois Furniture (BeauBois)—when BeauBois’s merchandise suffered damage while sitting in an Express Trucking vehicle. Although the damage was caused by a freak storm that overturned the truck, BeauBois sued Express Trucking and won a multimillion-dollar award because Dominic’s predecessor had accepted a liability clause that BeauBois’s lawyer had drafted and inserted into the contract.

Dominic’s predecessor was fired, but the incident almost cost you your job. You kept your job because you proved that Dominic’s predecessor had sent you a draft of the BeauBois contract only at 7:00 p.m. the night before the contract was signed. Thus, you never had a chance to see it because you had already left the office.

After that incident, Richard, your CEO, had said menacingly, “We need to manage risk better or we’ll ALL lose our jobs. I’ll be evaluating you on that basis from now on!” To that end, you drafted a standard, ironclad liability clause that protects Express Trucking from, among other things, any “force majeure” (i.e., an unforeseeable event). Company policy now makes it clear that this clause must be included in every contract Express Trucking signs with a client.

Dominic: the VP of Sales and your teammate

Dominic is very charming but also ambitious. You suspect he joined Express Trucking because Richard will soon be retiring as CEO. Dominic and you have never really gotten along. He grew up in a working-class neighbourhood and dropped out of university before completing his degree. You sense he carries a chip on his shoulder because you are a lawyer and come from a well-to-do family.

Preparing for the discussion you will have with Dominic

You want to impress upon Dominic the importance of having the client accept the liability clause you drafted specifically to protect Express Trucking. (When you have been involved in negotiations with other clients, you have been able to get them to accept it, so you know it is possible.)

It is also important that Dominic understands the need to respect the company’s policy, which requires that the clause be included in every contract. However, it does not appear that he does. In fact, just last week, one of Dominic’s salespeople omitted to include the clause in a contract he negotiated. Fortunately, you were able to catch it just in time.

If you let Dominic get away with not including the liability clause in the China Porcelain contract, it would send the message that the clause is optional. What will members of your own team say when you have been pressuring *them* not to let anyone get away with this?

Furthermore, you are 100 per cent sure that the clause you drafted will stand up in court and will protect Express Trucking from another devastating lawsuit that could bankrupt the company. Dominic (who fancies himself a lawyer because he took a few law school classes before dropping out) does not seem to grasp the importance of the liability clause.

If the discussion with Dominic proves futile, you may still have another opportunity to succeed. The executive committee meeting will include Richard, and based on prior conversations with him, you feel confident he will side with you.

However, you want to resolve the situation beforehand because you need to get home early again today. Your son Kyle is sick and, as a single parent, you have no choice but to get home. Even after you put Kyle to bed, your day will still not be done because you must review Express Trucking’s shareholder agreement. Your CEO wants to ensure the company is protected against a hostile takeover.

It is going to be another long night.

Exhibit 1: the situation In short

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| Richard | * CEO of Express Trucking * Your boss |
| Alex | * *You* * VP of Legal at Express Trucking |
| Dominic | * VP of Sales at Express Trucking * Recently joined the company; bright but ambitious; does not seem to put Express Trucking’s interests ahead of his own * Fancies himself a legal expert |
| BeauBois Furniture | * A former Express Trucking client * Sued your company on the basis of a liability clause drafted by their own lawyers and inserted into a contract with Express Trucking |
| China Porcelain | * Potential new client; a contract to be signed with them tomorrow * Contract includes a liability clause drafted by *their* lawyers, not the one you drafted to protect Express Trucking |

Source: Created by authors.