

# WV's "No-Nonsense" Guide to Negotiating Better Contracts

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# **FIVE (5) IMPORTANT GOALS**

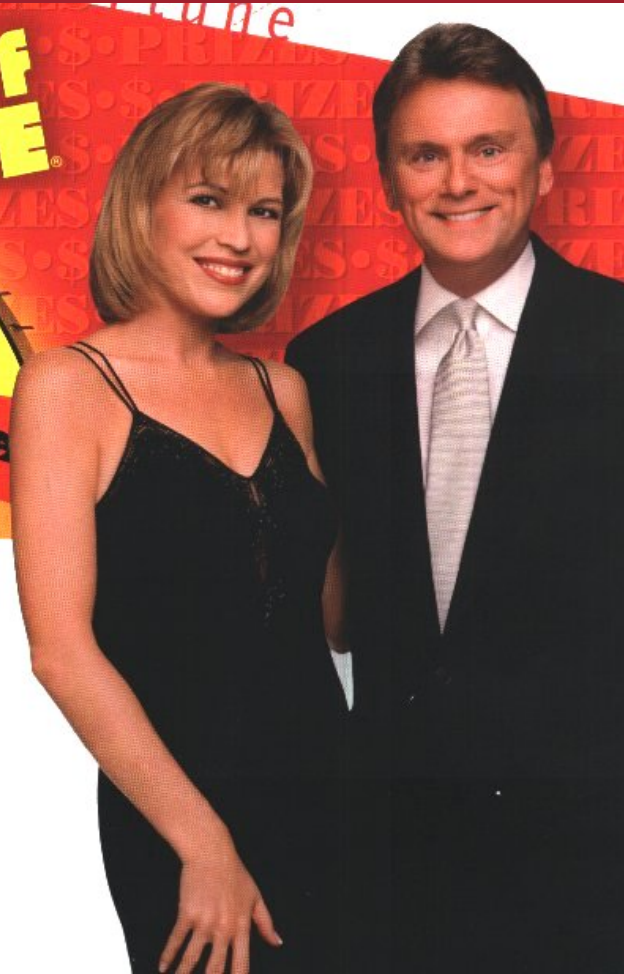
- Explain Value of Creating Contracts
- Offer Methodology to Better Prepare for Contract Negotiations
- Provide Some Substantive Insight into Why You Should Care about Legal Provisions
- Understanding that Legal and Business terms can be negotiated together
- Give You Something You Can Use Instantly to Improve Your Business Practices

# NINE (9) KEY THEORETICAL CONCEPTS

*How should you and your lawyers understand your business?*

- Wheel of (Mis)Fortune
- Relationship Creation by Necessity
- 3 Tools to Manage Business Risk – contracts, structure and insurance – focus on contracts
- Value Creation a Function of Good Relationship Management
- How to manage relationships?
  - Identify BENEFITS to extract
  - Identify RISKS to avoid/manage/allocate
  - Create Relationship OPERATING MANUAL (a.k.a. “ a contract”)
  - Monitor Over Time

# The Wheel of (Mis)Fortune



# NINE (9) KEY THEORETICAL CONCEPTS

- Proper relationship management requires time to prepare properly for negotiations; role of the lawyer to use his/her cumulative experience to help you identify more benefits to extract and more risks to avoid
- Everything has a beginning, middle and end and the best time to provide for the end is at the beginning ...  
*“start with the end in mind”*
- Less than 5% of Contractual Disputes Ever Get to Court ... so this means that contracts are 95%  
ABOUT CREATING, KEEPING AND USING  
LEVERAGE
- Contracts are also about RISK ALLOCATION

# NINE (9) PRACTICAL CONCEPTS

*How do you use these to your advantage?*

- Apply notions of forecasting and probability theory
- Determine an efficient level of negotiation
- Use “term sheet technique”
- Consider who is in best position to prepare agreement
- Avoid risk of preparing contracts that NO ONE WILL EVER SIGN
- Beware of the dreaded “in house” counsel
- Fight hard to protect against your adversary’s REPLACEMENT
- Pick you spots ... do you really need what you are asking for...
- Tie in Pricing to Other Terms ... bells & whistles relate to pricing ...

# **THIRTY (30) LEGAL “DEAL POINTS”**

***Why you should care about including these as part of your early business negotiations?***

***Consider additional issues specific to the nature of the particular new relationship and/or to your particular industry.***

- Parties
- Services
- Acceptance/Delivery of Products & Deliverables
- Force Majeure
- Payment Terms
- Expenses

# *THIRTY (30) LEGAL “DEAL POINTS”*

- Exclusivity
- Duration/Term
- Termination Provisions (Automatic & Discretionary)
- Consequences of Termination
- Representations & Warranties
- Covenants
- Indemnification/Risk Allocation & Liability Limits & Exclusions
- Insurance
- Taxes

# ***THIRTY (30) LEGAL “DEAL POINTS”***

- Governing Law/Venue
- Compliance with Local Laws
- Dispute Resolution
- Assignment/Change of Control
- Ownership of Work Product vs. Licensing Issue
- Confidentiality
- Restrictive Covenants
- Restrictions on Right to Contract
- Performance
- Survival

# ***THIRTY (30) LEGAL “DEAL POINTS”***

- Inspection/Audit Rights
- Product Warranty/Return Issues
- 3rd Party Obligations
- Legislative Concerns

# *Employment Agreement Considerations*

Certain areas/concerns must be dealt with when drafting employment agreements. These include:

- Timing of the offer
- Avoiding the verbal offer
- Clearly identifying duties and responsibilities
- Clearly identifying benefits
- Ownership of work product
- Addressing rights upon termination of employment
- Addressing any appropriate post-employment obligations