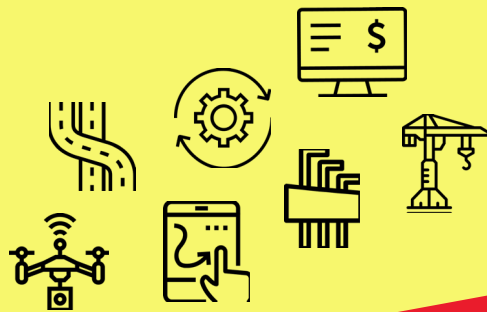




PREPARING FOR THE INDUSTRY OF TOMORROW



The Art of Understanding & Managing “Unfair” Subcontracts

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Learning Objectives

By the end of this session, participants will:

1. Be able to explain to their colleagues, why it is important to understand risks that arise from contract general conditions.
2. Be motivated to implement contract review strategies or to improve on existing strategies.
3. Possess foundational concepts for negotiating contracts with up-stream parties.



Who's The Villain: Charlie, Mr. Wonka, Grandpa?

What Should Charlie and His Grandpa Have Done?



R.T.F.C.



The Art of Understanding and Managing “Unfair” Subcontracts

What is “unfair”?

For today’s purposes: Assigning risk to a party that is not in a position to control the Risk



The Art of Understanding and Managing “Unfair” Subcontracts

What to do with unfair risk?

1. Accept it unknowingly
2. Accept it knowingly and mitigate
3. Share it
4. Transfer it



In order to determine whether a contract provision is unfair, you must?

R.T.F.C.

Punctuation Matters

Let's eat, dad! vs Let's eat dad!





Punctuation Matters

- If the Subcontractor delivers the building pad complete by August 1, 2014 General Contractor will pay Subcontractor an additional \$250,000.00.



Punctuation Matters

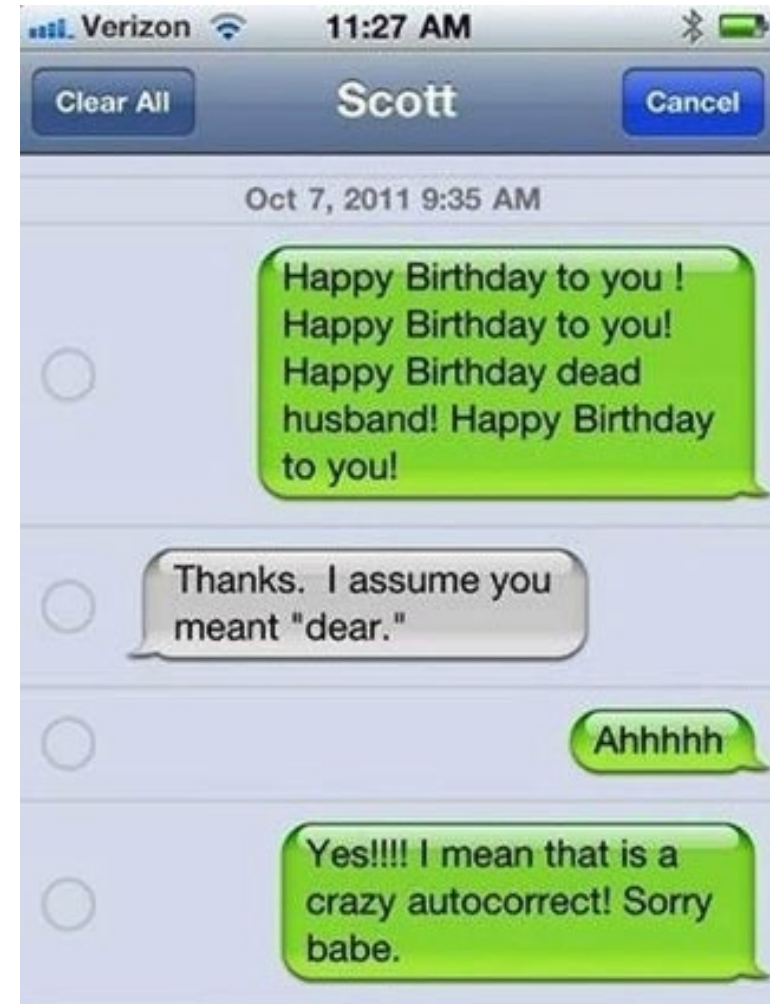
If the Subcontractor delivers the building pad complete, by August 1, 2014 General Contractor will pay the subcontractor an additional \$250,000.00.

VS

If the Subcontractor delivers the building pad complete by August 1, 2014, General Contractor will pay the subcontractor an additional \$250,000.00.



Words Matters





Words Matters





Words Matters

“As a condition precedent to any right to financial recovery of a claim, Subcontractor shall give Prime written notice of any claim not later than 24 hours after the first occurrence of the first event giving rise to the claim”.



R.T.F.C.



Getting Started

Contract Review Strategies

- Be Deliberate
- Set Attainable Goals
- Be Cost Conscious (Time and Money)



Contract Review Strategies

- **Create a Top 10 List**
- **Establish Review Bench Marks Tied To Contract Values**
- **Establish Other Key Review Criteria (e.g. Project Types, Relationships, etc.)**

Negotiation Strategies





Negotiation Strategies

Pick The Right Time





Negotiation Strategies

Assess Your Leverage





Negotiation Strategies

Know
Your
Audience





Negotiation Strategies

Categorize & Prioritize Targeted Terms





Negotiation Strategies

Look For
Alternate
Ways





Top 10 List

1. Does Not contain Liquidated Damages.
2. Does contain reasonable payment terms.
3. Does contain a mutual waiver of consequential damages.
4. Does contain reasonable notice provisions.
5. Does contain a choice of law term that selects the law of the state where the project is located.



Top 10 List

6. Does Not contain a No Damage For Delay Provision.
7. Does Not contain a claim waiver hidden in the mandatory lien waiver form.
8. Does Not contain a broad form indemnity term.
9. Does Not give power to upstream party to make final and binding decisions about claims/disputes.
10. Does not impose design liability.



QUESTIONS?

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