Focus BUSINESS LAW

With ‘efforts’ provisions, reasonable is better than best

Kenneth Adams

I f accomplishing a given contract goal isn’t entirely within a party’s control, the parties might agree to make that obligation subject to an efforts standard. One finds in contracts a host of efforts standards, with best efforts and reasonable efforts being the basic alternatives. What do those two terms mean? In addressing that question, Canadian judges and practitioners are prone to invoke the leading Canadian case on the meaning of the phrase “best efforts,” namely the opinion of Justice Jacqueline Dorgan of the Supreme Court of British Columbia in Atmospheric Diving Systems Inc. v. International Hard Systems Inc. v. Standard Life Assurance Co., T.L.R., Nov. 13, 1986 (Q.B.). English courts have endorsed a distinction between the two phrases—English courts have shown an unhealthy predilection for treating contract language as inscrutable code. But the opinion of the English Court of Appeal in Setz Ltd. v. Blackpool Airport Ltd., [2012] EWCA Civ 417, suggests that even English courts might now be more inclined to approach this issue rationally.

Ultimately, Atmospheric Diving Systems should be irrelevant to contract drafters. To avoid the confusion that goes with best efforts, use only reasonable efforts. More than that is required to structure a clear “efforts” provision, but it’s a good start.

Kenneth Adams is a speaker and consultant on contract drafting and author of A Manual of Style for Contract Drafting (ABA, 3d ed. 2013). He can be contacted at kadams@adamsdrafting.com.

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Contract drafting consultant

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