RED FLAGS FOR DC TAKEOVER PLANS

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Takeover Red Flags

- The *real* takeover red flags are not characteristics of your client
- They are things *you* do during the takeover process and afterwards

Three Takeover Goals

- How to do the job *effectively*
- How to do the job *profitably*
- How to limit risk of *liability and/or litigation*
Part I

EFFECTIVE TAKEOVERS

Goals

For the Plan
– Get the plan running smoothly.
– Make sure it is compliant with the law.

For You
– Get the info you need.
– Don’t repeat mistakes made by predecessor.
– Don’t disrupt plan, client, or your business.
Steps

• *Pre-Assess the Client*

• Prepare for a Transitional Year

• Make the Client Yours

Assessment

• What you want to find out:
  – Do we want to work with this client?
  – Can we and do we want to do this work?
  – Can we meet the client’s expectations?
  – Can we do all this without:
    • Disrupting our business?
    • Losing money?
    • Creating unacceptable liability?
Planning

• Goal: by end of transitional year:
  – Case looks like all your other cases
  – Plan is running smoothly
  – Client’s expectations met
  – Case is profitable
  – Acceptable risk level

Planning

• You and your client should both be prepared for that first year to be:
  – More difficult
  – More expensive
  – More thorough
Making the Client Yours

• Build the relationship …
• Be a *leader* in the relationship
• Long-term planning
• Who should be involved in the process?

Group Discussion #1
Effectiveness
Effectiveness Red Flags

1. Not evaluating client thoroughly before you take on the case
2. Not questioning what went wrong before so you know what not to repeat
3. Not planning and communicating the steps you will take
4. Not being the leader

Part II

PROFITABLE TAKEOVERS
Formula for Profitable Takeovers

• Prediction of fees/costs
• Communication to the client
• Agreement
• Modification as necessary

Do You Know When a Takeover is Profitable?
Does a Takeover Have to Be Profitable?

No

... As long as you intended for it to be a loss leader!

Communication

• Services agreement and §408(b)(2) disclosure
• Keeping track of what you do
• Clear and prompt reporting of services and fees
• Advance advice/approval of fees when possible
Group Discussion #2
Profitability

Profitability Red Flags

- Not figuring out whether you want to be profitable and how much you have to charge to be profitable
- Not communicating the expected fees or changed circumstances to your client
- Not taking credit for free stuff
Part III

LIMIT LIABILITY

In a takeover situation, your Client thinks You will be responsible for everything from now on ...

... Even if it happened before you came!
#1 Liability Protector:

Your Services Contract

In Your Contract, You Can ...

- Limit responsibility to review/warrant past work
- Outline conditions for representation
- Discuss charges for takeover processes
- Provide for indemnification
#2 Liability Protector:
Your Letters and Records

#3 Liability Protector:
Your E&O Insurance
#4 Liability Protector:

Your Ethics

Group Discussion #3
Liability Limitation
Liability Limitation Red Flags

- No service agreement (or client won’t sign)
- No limitation on liability for work done by other providers
- Poor recordkeeping
- Voiding your E&O policy because you don’t know what it says you need to do

FINAL THOUGHTS ...
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