F E E S & B U R G E S S, P.C.

S U P P L Y C H A I N M A N A G E M E N T M E M O

Volume 9, Issue 2 May 2012

Hope for the Best, But Plan for the Worst – Being Prepared for Supply Chain Disruptions

Just over a year ago, Japan was devastated by a massive earthquake. The tsunami produced by the quake and the subsequent nuclear incident that resulted from these events brought a substantial portion of the country's industry to a standstill. Companies that relied on Japanese-made products to support their operations found themselves having to scramble to find alternate sources, with some Japanese suppliers remaining shut down for months. While these events combined to create a one-of-a-kind disaster far larger in scale than most, it is not uncommon for natural disasters and other unexpected events to negatively impact a company's supply chain in a profound way. It is important for companies to be mindful of these risks and to take appropriate steps to prepare for them.

Proper disaster planning is not limited to developing strategies for coping with natural disasters. In recent years, given the global economic downturn, another notable risk to companies' supply chains has been the possibility that one or more key suppliers could shrink, thereby reducing their capacity, or go out of business entirely. The civil unrest and changing political landscape in the Middle East in the last year is another example of the kinds of events than can disrupt supplier production on a large scale. Regardless of the type of event affecting a supplier, some of the same basic measures can be implemented by companies to limit the resulting detrimental effect on their supply chain.

In taking steps to protect themselves from these kinds of supply-chain interruptions, companies should start with the supplier-selection process. To the extent possible, companies should avoid relying on a single source for any product that they use in their operations. Furthermore, when selecting a second source, it may be wise to choose one that is located in a different region, or even country, in order to minimize the risk of a single event, like a natural disaster, war, or economic crisis, affecting both suppliers.

If a company believes it would be beneficial to enter into an agreement with a supplier whereby the company commits to buying all of its requirements for a product from that supplier (for instance, if doing so would allow the company to get better pricing on the products it buys), there should be a provision in the parties' contract that allows the buyer to go to alternate sources if the preferred supplier is unable to deliver the required product for any reason. In that situation, the buyer may want to go the additional step of having an alternate supplier qualified in advance, so production can start at the alternate supplier's shop as quickly as possible, if the need arises.

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It is also a good idea for a company to confirm that each of its suppliers has its own disaster plan in place. Beyond just verifying a plan exists, it is best to ask to review the supplier's disaster plan, so you can make sure its plan adequately insures that your company will not face a significant supply disruption if an event impacts your supplier. You may not want to take this step for every supplier, but it is advisable to at least do this kind of review for your most critical suppliers, particularly any sole-source suppliers.

You can also try to get suppliers to commit to maintaining a safety stock of critical products that can be called upon in case an event impacts the supplier's production. However, this option tends to come with added costs. Suppliers will often request carrying or warehousing fees to hold products for extended periods of time.

In the absence of such fees, most suppliers will insist that the parties' contract require the buyer to purchase the products in the safety stock after a set period of time. That could result in the buyer ending up with more product than it needs. Nonetheless, a well-managed safety stock program with the right contract terms governing its operation can be a valuable tool in protecting against potential supply-chain interruptions, especially if the inability to obtain a particular product could halt the buyer's operations.

Another option is to include a provision in the contract between the buyer and the supplier stating that the buyer's orders will be given priority over other customers in the event the supplier lacks sufficient capacity to meet all of the demand for its product. This type of provision may not help in a situation where the supplier's production is reduced to zero, but it is nice to have in place for situations where the supplier's capacity is temporarily reduced or it sees a spike in its overall demand that it cannot meet.

There are also some insurance products that provide coverage to protect against the economic impact that can result from supply chain disruptions. Contingent Business Interruption Insurance (sometimes called Contingent Business Income Insurance) and Supply Chain Insurance are two forms of coverage that companies looking to insure against this type of risk might want to discuss with their insurer.

Of course, a key component in being able to respond quickly to disasters and other events affecting your supply chain is to remain vigilant for these kinds of events. Knowing your suppliers, the kinds of risks they are most likely to face, and being aware of world events that might impact them can allow you to address supply chain concerns before they become supply chain problems.

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Fees & Burgess, P.C., Calendar of Events

Contingent Employees, Independent Contractors and Labor Outsourcing

Date: May 23, 2012
Time: 11:30 a.m. – 1:00 p.m.
Location: Online Webinar
Cost: $49.00 per listening site

Join us on May 23, 2012, for a webinar presented by Jeff Roth and Leah Green focusing on contingent employees, independent contractors, and labor outsourcing. In this webinar we will discuss various issues including misconceptions and facts surrounding contingent employees; types of contingent employees; who is an employee; specific laws and treatment of the contingent worker relationship; Family and Medical Leave Act; Occupational Safety and Health Act; Labor Relations/National Labor Relations Act; and employee benefits leased employee definition.

The cost is $49.00 per listening site. Any Fees & Burgess, P.C., coupon can be used towards attendance for this webinar. This program has been submitted for HRCI credit.

Contracting Under the UCC: A Basic Primer to Articles 1, 2, and 2A

Date: July 31 – August 1, 2012
Location: Boston, Massachusetts

These sessions, presented by Allen Anderson and Ryan Blount of Fees & Burgess, P.C., and in conjunction with the 2012 NCMA World Congress, provide a practical introduction to the foundations of domestic commercial contracting. These sessions will feature discussion of risk management in several areas key to those buying or selling under the Uniform Commercial Code ("UCC"), including formation of commercial agreements and determination of applicable contract terms; performance issues under those agreements or terms, including risk of loss and delivery, acceptance, repudiation, warranties, and disclaimers; and, of course, disputes, remedies, and dispute resolution.

These sessions will be divided into four parts:

Session number 318, will be July 30, 2012, from 4:00 p.m. – 5:15 p.m.
Session number 418, will be July 31, 2012, from 11:15 am – 12:30 p.m.
Session number 517, will be July 31, 2012, from 2:30 p.m. – 3:45 p.m.
Session number 617, will be July 31, 2012, from 4:00 p.m. – 5:15 p.m.

For more information, please click here to visit the 2012 NCMA World Congress Website.

For more information on these, and other future events, please visit us online at www.feesburgess.com, or contact us at seminars@feesburgess.com.

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SPEAKERS

FEES & BURGESS, P.C., provides speakers, training programs, seminars, and webcasts for various trade associations; business groups; and clients. For information regarding a program, contact seminars@feesburgess.com.

NEWSLETTERS

FEES & BURGESS, P.C., also publishes *F&B Quarterly Bytes,* focusing on multiple practice areas; and *F&B SCM Memo,* focusing on the supply chain management industry. To receive any of these newsletters, please e-mail newsletters@feesburgess.com with your contact information.

To remove your name from our mailing list, please e-mail newsletters@feesburgess.com.

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