

LSU Law Center Dispute Resolution External Team Tryouts Case File

Crown Games, Inc. and Steven Gardiner

Tryout Instructions

Below you will find 2/3 of a standard negotiation competition case file – the general fact pattern given to both sides of a negotiation round and the additional confidential facts provided to one side of the negotiation. We have withheld (as would be the case at competition) the confidential facts for the other side of the negotiation.

For your tryout, please record a video in which you deliver an approximately 5-to-7 minute “pre-negotiation” analysis. A pre-negotiation analysis is the first part of a negotiation competition round. In the pre-negotiation, each side meets with that round’s attorney evaluators, outside of the presence of the opponent team. During the pre-negotiation analysis, students should directly address the camera and explain the following items:

- (a) Who is your client, and what are your client’s goals for the negotiation?
 - a. What are the client’s main interests? (“My client would be ecstatic if we left the table to today having accomplished_____. Nonetheless, the client would be happy if we at least accomplished_____.”)
 - b. What are the client’s hard limits? How will you avoid breaching the client’s hard limits?
- (b) What is your overall negotiation strategy, and why?
 - a. How are you going to approach accomplishing your client’s objectives?
 - b. Do you anticipate any roadblocks from the other negotiating party? If so, how do you plan to navigate those roadblocks?
 - c. What, if any, creative solutions would you propose to help meet your client’s objectives?

For your pre-negotiation analysis, you are permitted to create and use a PowerPoint or other presentation. Be sure to use the “Share My Screen” feature in Zoom if you use a PowerPoint; otherwise, the tryout evaluators will not be able to see it.

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General Information Provided to Both Parties

Steven Gardiner is a 36-year-old father living in the state of Silicon. Recently, using his background in computer science, he developed an educational game via a mobile app for his 4-year-old daughter to help her develop her reading skills. Gardiner launched his app by submitting it to a large, nationally known app store. The app, called “Reading Rulez!”, was unexpectedly successful, with over 450,000 downloads in the first month. “Reading Rulez!” quickly got the attention of Crown Games, a software and gaming tech company located in Silicon that specializes in educational computer games, video games, and websites for children aged 12 and under. Thomas Howard, an executive at Crown Games, reached out to Gardiner to discuss Gardiner’s work in creating and developing the app. Howard was especially impressed with the app’s user interface and simple, intuitive design for both kids and parents. After their first conversation, Howard learned that Gardiner was essentially a stay-at-home dad who did some guest blogging on various websites and dabbled in technology and software to keep himself busy.

After several conversations, Howard informed Gardiner that Crown Games was interested in offering Gardiner a position as a software and game developer. Gardiner was immediately flattered and intrigued, but said that he was pretty devoted to continuing his role as a stay-at-home dad and didn’t feel like he was ready to give that up. Howard replied that maybe that was something they could talk about and that Crown Games could probably make Gardiner a generous offer. Interested to see where things might go, Gardiner discussed his options with his wife. Together, they agreed that it would be worth it for Gardiner to continue discussions with Howard and Crown Games to see what kind of final offer might come from it. Over the next few weeks, Howard and Gardiner spoke several times on the phone, discussing salary, benefits, and other terms that would make up the job offer. After several conversations, the parties agreed on a few terms: if Gardiner did accept an offer to work at Crown Games, he would be a contracted employee with the title of Senior Software and Game Developer (based on Gardiner’s experience in the industry), and that he would receive full health benefits, a month of paid leave each year,

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and a 401(k) match of up to 5% of his annual salary. The parties have not reached a final agreement on certain other terms, including salary and the length of the contract term.

Even though the parties have not reached a final agreement on all of the terms of Gardiner's potential employment with Crown Games, Gardiner asked if Howard could provide a draft of the employment contract, with the parties' agreed-to terms included and, of course, blanks left for the terms that the parties had not reached a final agreement on yet, which Howard was happy to do. Once Gardiner received the contract draft from Howard, Gardiner was surprised to see a non-compete clause included in the contract. The non-compete clause stated that if the employee left his or her employment at Crown Games within the first two years of the contract, she or he was prohibited from seeking employment at "any other technology or software company" within a 300-mile radius in the state of Silicon for a period of one year.

Gardiner immediately called Howard and asked to know why he hadn't been informed that the contract would include a non-complete clause. Howard said that Crown Games' employment contracts always contained a non-compete clause and that Silicon law allowed them. Under relevant Silicon law allowing non-compete agreements, for the agreement to be enforceable, it must be in writing, signed by all parties, and supported by adequate consideration. A one-year restriction is presumptively reasonable, and the employee can offer a defense against the non-compete by showing an undue hardship.

The Negotiation: You represent Crown Games in this negotiation. Gardiner has requested a meeting to discuss several issues between the parties, including specifically the employment terms that the parties had not agreed to yet, the contract as a whole, and especially the non-compete clause. Gardiner emphasized to Howard that he wouldn't sign a contract until he'd had a chance to discuss its various terms at arms-length. Howard agreed and suggested that Gardiner send his attorneys to the negotiation, as Crown Games would have its in-house counsel present. Gardiner agreed to send legal counsel, and the parties arranged a time and place for the meeting.

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Confidential Information for Crown Games

Crown Games is eager to bring Gardiner onto its team of game developers. Howard and some of the other executives at Crown Games think that Gardiner's "Reading Rulez!" app shows real ingenuity in design and content, and they all agree that Gardiner's kind of creative thinking is exactly what Crown Games is looking for in a developer. Additionally, Crown Games has experienced some high turnover in the past year. Four of its senior developers have left to either take care of family obligations or work for tech companies in other states. To stay competitive, Crown Games desperately wants to recruit talent like Gardiner and knows that it must offer him a generous and competitive contract.

Crown Games isn't surprised that Gardiner is hesitant to agree to the non-compete clause of the contract—other prospective employees have had the same reaction. However, Crown Games insists that a non-compete clause be included in every employment contract that it offers for several reasons. Being a company in the tech industry, Crown Games has a special interest in protecting certain information from being leaked to or shared with competitors. The non-compete clause helps Crown Games protect trade secrets and other forms of intellectual property, client lists, vendor information, knowledge of business methods, and company profit information. The state of Silicon has one of the largest number of tech companies in the nation, and the possibility that a Crown Games employee could leave and go to work for a local competitor is very real.

The language of the non-compete originally included in Gardiner's contract is essentially boilerplate non-compete language that Crown Games puts into its contracts. Crown Games has never faced a legal challenge to this specific language, but thinks a Silicon court would uphold the validity of the clause. Several other employees have requested, as Gardiner has, to negotiate the terms of the non-compete, which Crown Games has been willing to do.

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For instance, the distance to which the non-compete applies or the language restricting an employee from working for “any other software or technology company” are things that Crown Games thinks Gardiner may want to negotiate. The 300-mile radius includes the city that Crown Games is located in, Silicon City, as well as the neighboring city of Oxbridge. Crown Games wants Oxbridge to be covered by the non-compete because one of its biggest competitors in the education software industry, Edu-Tech Limited, is located in Oxbridge. Crown Games wants to be sure that its employees cannot leave and go to work immediately for Edu-Tech. Therefore, Crown Games will insist on keeping the 300-mile radius provision in the non-compete clause, but is willing to adjust the language of the restriction to make the non-compete apply more narrowly to education software companies, if necessary. Additionally, Crown Games would prefer to keep the non-compete restriction in place for one year, but is willing to drop the restriction to 6 months in exchange for more favorable terms regarding other provisions of the non-compete, such as the distance provision.

As to the other terms that the parties have not finalized, Crown Games would like to offer Gardiner a term of employment of 3 years, with the non-compete clause kicking in if Gardiner leaves within 2 years. However, Crown Games is willing to be flexible with the length of the term if necessary. Crown Games would be willing to offer Gardiner a term of employment of up to 6 years, but would not be willing to adjust the 2-year length of time within which the non-compete clause applies.

As far as salary, if Gardiner will agree to the non-compete as written in the original contract, Crown Games would be willing to make a salary offer of up to \$120,000. Additionally, if Gardiner agrees to the non-compete as originally written, Crown Games would be willing to offer Gardiner a bonus package, as it has done with some of its developers in the past. Under the bonus package, Gardiner would receive a \$20,000 bonus payment for each app or video game that he develops that is both approved to go to market and that sells at least 50,000 units (for apps, this would be the equivalent of 50,000 downloads). As far as Crown Games is concerned, if Gardiner insists that the non-

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compete terms be less restrictive, he has to be willing to accept a lower starting salary with either a less generous bonus package or none at all. Depending on how much Crown Games has to compromise on the terms of the non-compete to satisfy Gardiner, Crown Games has authorized its counsel to decrease the amount of the salary and adjust the amount and terms of the bonus package, with the lower end of an offered salary to Gardiner being \$75,000 with no bonus package.

Finally, during their prior discussions, Gardiner had said something to Howard about desiring an option to telecommute from home, rather than being required to work in the office. Crown Games understands that other tech companies sometimes offer their employees a telecommuting option, but Crown Games tried this approach a few years ago with bad results. The employees' productivity dropped considerably, and office morale nearly disappeared. At Crown Games, its employees do quite a bit of collaborative work in teams, and Crown Games sees it as essential that the employees be face-to-face most of the time. However, Crown Games is also keenly aware of its recent turnover rate with employees.

Therefore, Crown Games is open to providing an option for Gardiner to do some telecommuting, while still requiring that Gardiner be in the office for important team work. Crown Games is leaving the final arrangements for any telecommuting option in the hands of its counsel and will agree to anything that is in Crown Games' best interest.

More generally, so long as your doing so will not interfere with its other priorities, Crown Games hopes you will be creative in thinking of other steps that Gardiner can take to advance the interests of Crown Games and in securing Gardiner's agreement to take those steps. Crown Games is leaving the negotiation to your discretion and will agree to anything that is in Crown Games' best interests. You may provide additional, non-self-serving information and details consistent with the facts as stated above.