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International Energy Disputes
Negotiation Strategy
GOALS OF MEDIATION

• To find a business solution rather than focusing on trial arguments about which party is right or wrong

• Consider a range of settlement options in advance and think about the point of view of the other side and what their needs might be

• Work with the mediator to create an atmosphere where the parties can discuss potential resolutions and, eventually, settle on an acceptable solution
FUNDAMENTAL PRINCIPLES

INFORMATION IS POWER:

• Obtain as much relevant information
• As early as possible
FUNDAMENTAL PRINCIPLES

Types of information to gather when faced with a dispute:

• Substantial facts

• Motivational facts
FUNDAMENTAL PRINCIPLES

Substantive facts:

• Contained in the documents and material related to the dispute

• Includes the who, what, when and where of the dispute
FUNDAMENTAL PRINCIPLES

Motivational facts:

• The objectives and interests of all the parties and their representatives

• Includes the motives, fears, concerns and interests of the parties to the negotiations
FUNDAMENTAL PRINCIPLES

Once the information is gathered
The negotiator should:

• Develop a strategy
• Determine an objective
TIMING:

• Negotiate when your leverage is high
• Leverage comes from superior knowledge
• This advantage can shift over time
FUNDAMENTAL PRINCIPLES

Who should be involved?

• In house counsel, outside litigator and key players within the client organization should get together at the outset, to gather documents and share stories

• Bring senior executives with authority to settle

• They should physically attend – mediation is a dynamic process
THE STAGES OF THE NEGOTIATION PROCESS

There are three main negotiation stages:

1. The Assessment phase
2. The Persuasion phase
3. The Bargaining phase
THE STAGES OF THE NEGOTIATION PROCESS

1. The Assessment phase

• Information gathering and planning phase

• Takes the longest amount of time: gathering information and delaying disclosure until one has gathered enough information to know which information is advantageous to disclose
THE STAGES OF THE NEGOTIATION PROCESS

1. The Assessment phase (contd.)

• Quantify both side’s interests

Interests include not only the amount a party might be willing to pay to settle, but also the parties’ motivating factors that may encourage settlement (eg. An apology)
THE STAGES OF THE NEGOTIATION PROCESS

2. **The Persuasion phase**

- Involves the strategic sharing of information to persuade the other side to settle and resolve the dispute.

- In deciding how to persuade an opponent, it is important to understand what information to disclose / to avoid disclosing.
THE STAGES OF THE NEGOTIATION PROCESS

2. The Persuasion phase (contd.)

• Also important in the persuasion phase is to decide when it should occur

• Mediation usually involves both persuasion and bargaining, it is important to be prepared with a detailed argument with exhibits and convincing proof – enough to convince the other side that you are ready to try the case, if necessary
THE STAGES OF THE NEGOTIATION PROCESS

3. The Bargaining phase

- This phase involves the actual exchange of offers in the negotiation process

- It is important, prior to entering the bargaining phase to decide on an offer and concession strategy and have a target goal range within which to settle as well as concession points along the way
3. **The Bargaining phase** (contd.)

- It is also important to prepare the client thoroughly prior to the bargaining phase: if an attorney is going into mediation with a client, the client needs to be fully appraised of the strategy, so that he/she does not give away information through gesture, facial expressions or words that diminish leverage – body language and nonverbal communication is to be checked
THE TERMS

The drafting and negotiation of terms

- Once the negotiation is over, this stage covers drafting and negotiating the terms of the agreement

- Documenting the settlement: a possibility is to make a list of deal points agreed upon and ask client representatives to sign this short form agreement – to start with

- Payment over time, confidentiality and obtaining a release for other matters are all possible terms to be incorporated in the agreement
PROBLEM SOLVING NEGOTIATION

• Alternative to adversarial-type negotiations

• Focuses on addressing as many of each party’s needs as possible, rather that focusing on a win-lose type negotiation

• The parties inventory their needs and wants, classify and compare them, and search for win-win solutions
The problem solvers are less concerned with the negotiation offer or bargaining strategy, and are more interested in an expansive attempt to find a negotiation outcome, that serves as many of each of the party’s interests as possible.
PROBLEM SOLVING NEGOTIATION

Problem solving negotiation (contd.)

• This is often a negotiation strategy that is used when the parties are interested in maintaining a relationship after the negotiation

• The presence of a respected third party is deemed to increase the impetus to agree
CONCLUSION

• The effective advocate moves through the successive stages in the assessment, persuasion and bargaining phases only when prepared for the next stage

• Persuasion requires detailed strategic disclosure and a balanced argument. Bargaining should be planned with ultimate goals and concession points in mind

• Controlling the disclosure of information and the agenda leads to obtaining maximum leverage in the negotiation process and the best results
THANK YOU

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