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Negotiating Tips

"You don't get what you deserve, you get what you negotiate."

Easier said than done. Negotiating is complicated. No one style is effective in every situation, and it's important to stay focused on your objectives and remain flexible in finding ways to achieve them. The other side will not necessarily play by your rules or behave in a reasonable way. The ideal case situation is when both parties are clear and collaborative and work towards a win-win solution.

Positive approaches include:

- * Talking about interests
- * Friendly discussion of issues
- * Facts, data to support position
- * Problem solving, looking for alternatives, tradeoffs
- * Acknowledging the other party's point of view
- * Asking questions, "What if?"

Negative approaches include:

- * Making demands
- * Provocative and threatening statements
- * Digging into a position
- * Being adversarial

If the negotiation becomes deadlocked, or the other party is

unreasonable to deal with, you may need to walk away. You can't force the other party to be reasonable, and making too many concessions is not the basis for a healthy business relationship.

Sometimes cultural or style differences make it advisable to involve an intermediary. Effective negotiation needs to be peer-to-peer. Involving an intermediary can help to bridge the differences and find the common ground or "win-win" outcome. Be careful in your choice of intermediary. You want a deal -- not a battle.

Not all lawyers are adversarial, but the sad truth is that lawyers make more money when there's a fight. Lawyers have an economic incentive to turn amicable business relationships into protracted negotiations and even adversarial outcomes.

Here are some warning signs:

- Lawyer is posturing and taking positions that are obviously one-sided and trigger protracted negotiations in order to get to a position of reasonable balance for all parties.
- Lawyer demands last-minute concessions, price reductions or other major changes just before the deal is to be completed.
- Lawyer uses massive boilerplate documents, 80% of which are incomprehensible and 90% are irrelevant to the deal.

Adversarial negotiations are unlikely to produce a good deal and business relationship. The deal needs to be fair to all parties to work well. The party that feels unfairly treated usually finds a way to get even.

To avoid having your deal derailed by such lawyer tactics, I recommend that you keep adversarial lawyers out of the negotiations. I recommend that:

- 1) The parties draft a term sheet which is the essence of their agreement on one page. (Answer the questions: Who? What? Where? When? And how much?)
- 2) Each party reviews the term sheet with his/her respective advisor and revises the term sheet based on such input. (Basically, use your lawyer as a coach and do the negotiating yourself.)
- 3) The parties discuss the agreement and revise the term sheet. Then, instruct the lawyers to write up your agreement, without gobs of boilerplate, and include a provision to mediate any dispute. (One lawyer should draft and the other review.)

With this approach, you'll get a deal that is fair and workable and an agreement that you understand. The parties should be able to track from the term sheet to the agreement easily.

Negotiating is situational. To get the outcome you want, you need to

adapt to the situation.

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