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5 Ways for In-house Counsel to Create and Capture Value in Negotiations

Skills and Professional Development

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A large majority (70 percent) of in-house counsel negotiate “daily” or “all the time,” according to an audience polled at the recent ACC APAC Annual Conference, where I spoke with my dear colleagues Terry D. Thornley, general counsel, APAC, and Singapore data privacy officer at Spencer Stuart; Nathalia Lossovska, head of legal, APAC, at WTW; and Wee Meng Chuan, CEO of the Singapore International Mediation Centre.

Yet at the same time, only 30 percent felt adequately equipped with skills and tools to optimize their results.

Building on these all-too-common statistics, my co-panelists and I shared some of the most effective negotiation approaches and avoidable mistakes.

This post summarizes these learnings and stories for in-house counsel to take away for their daily work, and one that you can use for your personal gourmet adventures around the world! ?

1. Uncover the true interests of the other party

Imagine a common contracting issue: A successful architect sues a developer for unpaid fees on a project. He worked on the project, but because of a dispute was not able to finish it.

To add insult to injury, after his removal from the project, the developer submitted the development for a design competition and won. But the name of the original architect had been removed. Sting!

It was only in mediation, a process of facilitated negotiation that uses the help of a neutral third person, that the parties discovered this sting, not the money, was the main driver for the architect's claim. With the architect's name back on the project, the developer went on to compete in a second competition, and the deal was sealed. It's a win-win also for the developer, who submits this project with the name of this famous architect.

Remember: *Positions* are what the other side will tell you, e.g., suing for money. *Interests* are what they are really after, e.g., recognition and reputation here. But you have to build trust with the other side and dig deeper to find out about these motivating interests!

2. Uncover the real power of your alternatives

A supplier with the contractual obligation to deliver a specific gearbox part to you suddenly demands a 20-percent price increase, threatening to stop delivering next quarter. Your business leaders try to negotiate, but the supplier won't budge. So the business leaders come running to you. "*Enforce this contract with full steam*."

The situation looks dire: Failing further deliveries, your plant of 5,000 people will stand still within as little as two months. A positive outcome of a lawsuit is far from guaranteed under the current market conditions, with the supplier claiming all kinds of hardship.

And even if you win, enforcement will never be fast enough to keep your plant running. You may have a contractual right — but no power to force the other side to deliver. In negotiator terms: Your BATNA (Best Alternative to Negotiated Agreement, i.e., Plan B) is weak. That is wrong. It's horrible.

Once in-house counsel in this case had analyzed the full picture of the situation, only one real alternative emerged, and it was not "*enforcing with full steam.*" The company **had to** get back to the negotiation table..

Reopening stalled negotiations and finding common ground was not an easy task. But it paid off when it was discovered that the supplier's main shareholder wanted to get rid of this unprofitable part of the business. Together the parties found a buyer who agreed to purchase the business unit. The client also offered a longer contract with minimum quantities as a guarantee. The plant keeps running. The supplier also achieved their goal of selling.

Remember: When the business comes to you and shouts for "enforcement" and "getting their *rights*," make sure you take a step back and analyze your **alternatives** (BATNA). Look for the most likely outcome to achieve the actual business needs. As mentioned in point 1, people will come with their positions. Your job is to find their interests and get them the corresponding results.

3. People – process – preparation

"Eighty percent of negotiation success is determined before you enter the negotiation." Internal negotiations are no different, one panelist shared. "*When negotiating for headcount and budgeting in the firm, I make sure I walk in with a bulletproof business case.*"

If nothing else, think about the “3Ps” before going into a negotiation: People, Process, Preparation.

This includes researching the opposite party, their interests, their priorities, and their quirks — anything you could use to connect to them on a personal level.

Remember: By failing to prepare, you are preparing to fail. Nothing makes you more confident in your negotiation than solid preparation, and it’s not just the matter at hand, but the person and process just as much.

4. Be proactive about rapport-building

“We went into a negotiation where a colleague saw a former team member and suddenly became much too cooperative,” one panelist shared. A personal connection can go a long way, so be sure to have it working for you, not against you.

Creating rapport with the other side can make or break a deal. We often underestimate the power of sharing a meal or connecting over a coffee.

“Many of our mediations get settled over a coffee outside the mediation room. Yet, parties spend too much time preparing their arguments, and not enough time on how to create rapport with the other side,” another panelist added. “We are more likely to get a ‘yes’ if we establish a positive relationship, get them to listen, and get through to them if we build a personal connection.”

Remember: People want to say “yes” to people they like. Showing up with a genuine effort to make a good deal for both sides and building trust and rapport goes a long way.

5. Identify all competing interests and sequence negotiations strategically

“*The CEO said we need this strategic deal closed as soon as possible,*” one panelist shared. Many in the audience could relate to this narrow focus on a single interest.

However, the negotiation team consisting of multiple stakeholders raised other competing interests (e.g., the price, the ability to integrate the software into the organization, the ability to fit the client's needs, etc.).

The negotiation was split into two steps: first an investment and second a potential buyout. Because the negotiation of the two steps took time, it gave the other stakeholders time to highlight competing interests with the CEO, complete further diligence, and eventually determine that the deal didn’t meet all the required interests.

During this process, the team had regular updates with the CEO. Ultimately, they agreed not to move forward with the deal after confirming the additional interests, identifying the various diligence issues.

Remember: Initial management statements are not always the full picture. Competing interests need to be surfaced and addressed as early as possible. It is important to strategically sequence the negotiation to provide time to fully vet and analyze interests. Finally, it is important to bring stakeholders along on this journey.

And one more pro tip I loved to take away: One of the panelists worked with a partner in Peru who had a special restaurant "negotiation move." Upon arrival, he would hand the waiter a US$100 note and a US$20 upfront tip and say, "Bring me what you would have for US$100." This generosity, trust, and flexibility often gets him off menu items, the freshest ingredients, and a spread of a meal well beyond the investment. Small moves of establishing rapport, being vulnerable, and giving a trust advance in daily negotiations can go a long way.

For more professional tips, join ACC!

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Dr. Claudia Winkler is an Austrian lawyer and the Founder & CEO of The Negotiation Academy LLC. Over the past 10 years, she has lived across four continents and personally trained more than 10,000 professionals to boost their negotiation confidence and get ahead in their careers. Working with Tier 1 law firms and Fortune 500 companies across Asia, the Middle East, Europe, the United States, Latin America, Africa, and Australia, her team support clients with customized in-person and self-paced online training in 126 countries.

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