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Combatting Hardball Negotiation Tactics

By Max Factor III

It's 6:55 p.m. The air conditioning is going off in five minutes. The hardball vendor stands up and announces to the supplier, "I am fed up with your game playing and macho negotiation tactics.

"If you agree to accept \$60,000 in settlement of your \$100,000 in inflated past due bills, my company will recommence doing business with you at the former sales levels, provided we get a guarantee of no more price increases for the next 12 months. I am taking 10 minutes to call my wife and

rearrange dinner plans at the Water Grill at 8 p.m."

The vendor stands up and forcefully announces, "You have 10 minutes to decide."

"When I return," he continues, "Either it's a deal or you'll wait until hell freezes over before you'll see an offer of settlement."

Left in the room is Mr. Affable, counsel for the hardball vendor, the supplier himself and his legal counsel.

"He can go to hell," the supplier mutters angrily, in part because he had really expected to get at least \$70,000 paid on the \$100,000 owed to his company.

Affable smoothly apologizes for the conduct of his client, hardball vendor. "He is short-tempered, particularly when he is feeling time pressure. I know him; he'll do a deal for as much as \$65,000, once he calms down."

Attorney Affable continues: "You're probably thinking, 'Maybe it's better to walk away before he gets back in the room.' I hate to see both of our companies throwing good money after bad, when the court is not going to allow the whole \$100,000 claim. Is there a way that the vendor's offer of renewed business will make up some of that lost profit?"

The supplier confers with counsel and grudgingly agrees to \$65,000, but only if the supplier's company is assured of selling a minimum of \$250,000 per annum. The supplier's counsel adds, "I'll write it up, and the agreement must be signed when he returns."

The deal is written up by counsel and signed by the supplier, who states firmly, "No more negotiating." Affable leaves the room and returns with the agreement signed by the vendor. Affable congratulates the supplier on outlasting the vendor's irascibility.

What Affable does not say is that the hardball tactics of "good guy-bad guy" and "vanishing offer" worked again. The vendor would have happily paid \$75,000 to settle the litigation.

There are a number of effective counters to these hardball tactics.

Respond In Kind and Limit Further Discussions to Reciprocal Exchanges

When the vendor announces his "10-Minute Vanishing Offer" and leaves Attorney Affable in the room to negotiate, it is possible (and emotionally satisfying) to respond in kind with a "Nine-Minute Vanishing Offer."

"You'll want to let the vendor know that our counter-offer is \$80,000 and new business orders of \$250,000, cash on delivery for the next 12 months. In nine minutes, were leaving. So, he'll be coming back to an empty room."

Suggest that Attorney Affable get the final authority to negotiate a deal without the vendor present or go bring the vendor back. Set firm time parameters for making a deal or concluding the negotiations (to respect the vendor's scheduled time for dinner) so that a productive exchange of reciprocal concessions and a settlement may occur if — and only if — it is in everyone's mutual interest.

Affable will not terminate the negotiations for his vendor client. Affable will have a higher settlement authority than disclosed or a cell phone in his pocket, or both. Keep nibbling on Affable's \$65,000 offer with other counter.

No attorney eats crow when he or she can have the appetizer of a settlement before dinner at Water Grill. So the negotiations will continue and the supplier and the vendor will probably end up at \$70,000 instead of \$65,000.

Call Out and Reject the Hardball Tactics and Negotiate Process

A second excellent alternative is to explicitly call out the 10-Minute Vanishing Offer and Good Guy-Bad Guy routine for the hardball tactic that it is. Explain that it is not a process that you will tolerate in negotiations.

Then, immediately recognize the interests of the hardball negotiator with something like, "Let me restate my understanding of your client's interests: The vendor likes our client's reliability in deliveries and product quality, but feels he has been substantially overcharged.

He is hopeful of an agreement tonight, but he is ready to litigate if we pass up this opportunity for a mutually satisfactory deal; he believes our demand of \$80,000 is still not low enough to make a deal and he has a short time frame in which to achieve agreement since he has another engagement. Is that correct?"

Suggest process alternatives. "Let's respect the vendor's interests by rescheduling the completion of the mediation for a date in the near future." Alternately, you can offer a process of mutual concessions: "If it is possible for both sides to stay a few minutes, let's discover whether we can make it happen tonight through mutual concessions."

Another angle would be to say, "Let's forget about further negotiations and expensive litigation, and ask a neutral arbitrator to decide using baseball arbitration rules, in which the arbitrator must choose between the offer and explanation that the vendor submits and the demand and explanation that we submit. Then we'll see who is right."

There are many other process suggestions. If there is any game

in the 10-Minute Vanishing Offer, discussion will ensue, with a process anchored between \$80,000 and \$60,000, rather than lodged at \$60,000.

Ignore The Hardball and Play Your Own Game

The third (and to me, the most enjoyable) method is to chuckle when the vendor leaves. Then, turn to Affable and say "We won't make a deal at \$60,000, let's talk about everything else and come back to the money later."

When Affable refocuses on the money, just explain, "No deal will be made unless we reach resolution on each term, and the agreement is mutually acceptable. So, let's get started."

By switching to more cooperative areas of discussion and assuring agreement can be reached on all other terms, success becomes more probable. In this negotiation, one might suggest that there be an expansion of the "business offer" by providing an annual minimum of \$375,000, rather than \$250,000. Shrug off the notion that the deal must be done before dinner with such truthful flattery as, "You are too fine an attorney to prejudice your client's interests in a settlement because he has lost his temper."

Alternately, suggest with a smile that "If the deal is done later tonight, you can call your client on his cell phone after he has had a drink or two."

You could also say, in a deadpan voice, "In my experience, not much is going to change, whether we make a mutually agreeable deal in the next few minutes, the next couple of hours or a day or two from now, compared to what will happen if we each gear up and spend our client's money on litigation."

Affable will choose to play your game.

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