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Negotiations: Strategies for Dealing with Competitive Negotiators

By: William Dolan, Esq.

Negotiations: Strategies for Dealing with Competitive Negotiators

I) NEGOTIATION CONCEPTS

II) BACKGROUND (CASE STUDY)

III) WHAT WENT WRONG (CASE STUDY)

IV) GAME CHANGING STRATEGIES (CASE STUDY)



Negotiations: Strategies for Dealing with Competitive Negotiators

I) NEGOTIATION CONCEPTS

A) Leverage

B) BATNA - WATNA

C) Positions vs. Interests



Negotiations: Strategies for Dealing with Competitive Negotiators

I) NEGOTIATION CONCEPTS

A) Leverage - The power that one side of a negotiation has to influence the other side to move closer to their negotiating position. A party's leverage is based on its ability to award benefits or impose costs on the other side.



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I) NEGOTIATION CONCEPTS

A) Leverage

Examples of when you have leverage:

- Seller wants to sell property before upcoming foreclosure auction occurs to avoid hit to credit and you are the only potential buyer to whom seller is talking.
- Seller needs to free up cash by the sale of property for another investment that is time sensitive and you are the only potential buyer to whom seller is talking.
- You are the lender and you have a mortgage and PGs.



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I) NEGOTIATION CONCEPTS

A) Leverage

Examples of when you do NOT have leverage:

- You want to purchase the property for a steep discount, but you have no cash, no wherewithal to consummate a purchase, cannot close fast, and cannot commit to buy as-is.
 - Wholesaler?
 - You are a borrower/guarantor in default on a loan with confession of judgment provisions, and a mortgage on real property with equity.
 - You absolutely need the participation of the other party.
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Negotiations: Strategies for Dealing with Competitive Negotiators

I) NEGOTIATION CONCEPTS

B) BATNA - Best Alternative to a Negotiated Agreement – It is the most advantageous alternative course of action that you can take if negotiations fail and an agreement cannot be reached.

- Suspension of negotiations
- Transition to another negotiating partner
- Appeal to a court's ruling
- Formation of other alliances or alternative deals.

Generally, you should not accept a worse resolution than your BATNA.

- However, to ensure that deals are accurately valued, you need to take into account all considerations, such as **relationship value**, **time value of money** and the **likelihood that the other party will live up to their side of the bargain**. These other considerations are often difficult to value, since they are frequently based on uncertain or qualitative considerations, rather than measurable and quantifiable factors.
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Negotiations: Strategies for Dealing with Competitive Negotiators

I) NEGOTIATION CONCEPTS

B) WATNA - Worst Alternative to a Negotiated Agreement – It is the worst possible outcome if negotiations fail and an agreement cannot be reached.

- You cannot find a replacement deal and lose whatever profit you could have made on the lost deal.

- You get sued and have to spend a tremendous amount of time and money and experience substantial stress.

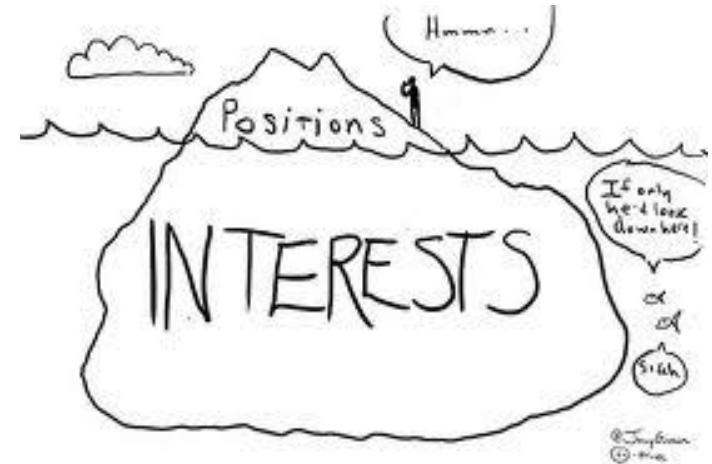


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I) NEGOTIATION CONCEPTS

C) Positions vs. Interests

- Positions
 - I want the window closed - I want the Window open.
 - I want to close in 60 days – I want to close in a week.
 - I want to get paid a salary for doing the job – I want to pay a flat price for the job. (LVF)
 - I want you to sign a non-compete – I do not want to sign a non-compete. (NSA)
 - I want you to personally guaranty the loan – I do not want to personally guaranty the loan. (EST)
 - I want tariffs applied to your goods – I do not want tariffs applied to our goods.
- What are the interests that these people are trying to satisfy with these positions?

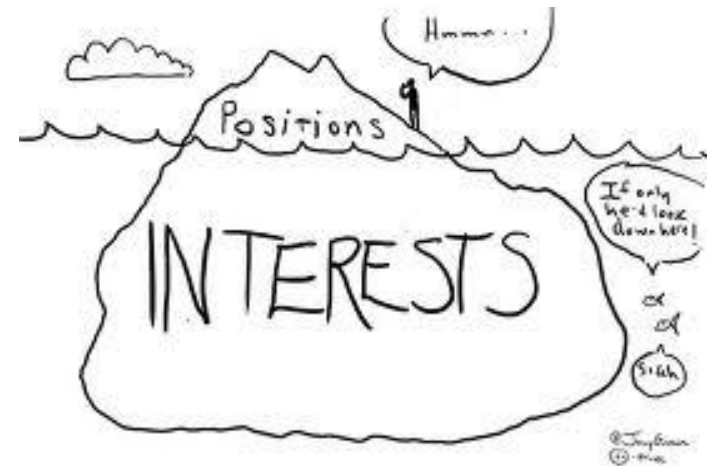


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I) NEGOTIATION CONCEPTS

C) Positions vs. Interests

- Parties can dig in on their positions
 - Interest in saving face gets created



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II) BACKGROUND

A) Facts

B) Parties

C) Negotiation meeting

Bill



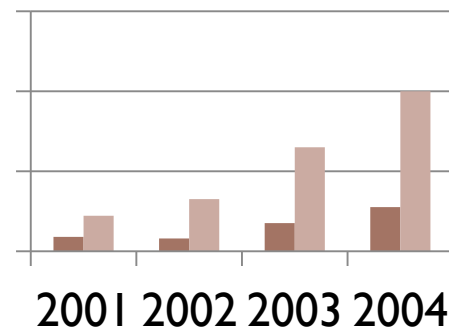
Bill, his attorney, and CPA

\$6,000,000

\$4,000,000

\$2,000,000

\$-

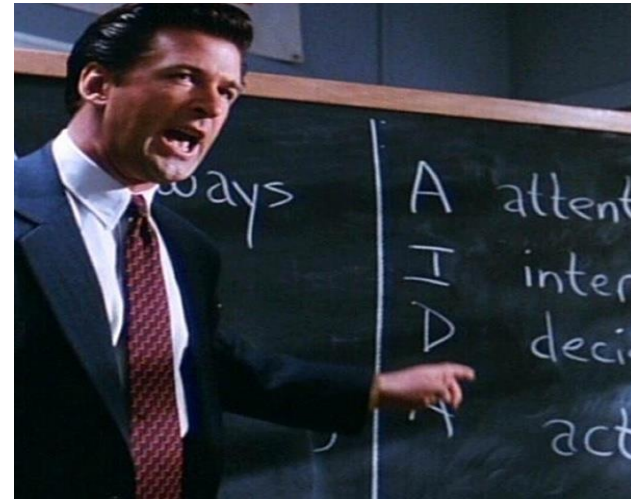


Profit

Sales

2001 2002 2003 2004

Jon



Jon and his attorney

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III) WHAT WENT WRONG?

A) Lack of preparation

- i) No research or discussion on how to deal with the unique personalities of the parties.
 - ii) No planning of format or objectives of the meeting.
 - iii) No exploration of either parties underlying interests.
 - iv) No evaluation of either side's BATNAs
 - v) No strategies on how to expand the pie.
- Only preparation
 - ❑ **Bill's Accountant** created a trial balance sheet and researched comparable sales of companies in the same industry.
 - ❑ The comparable sales data was never used.

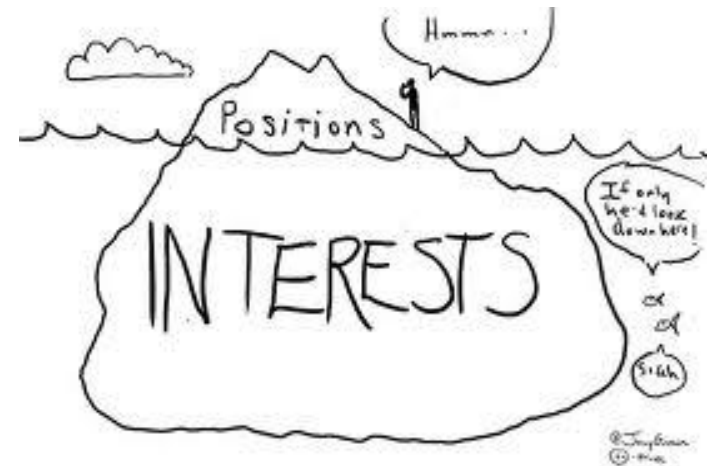


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III) WHAT WENT WRONG?

B) Focusing on positions not interests

- Parties dug in around their positions
 - Interest in saving face was created



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IV) GAME CHANGING STRATEGIES

A) Address the people problems

i) Perception

- Give **Jon** a Stake in the outcome
 - Involve him in the meeting format

ii) Emotion

- Public apology at the beginning of the negotiation
- Allow **Jon** to blow off some steam

iii) Communication

- Speak in terms that relate to oneself



Savage Chickens by Doug Savage



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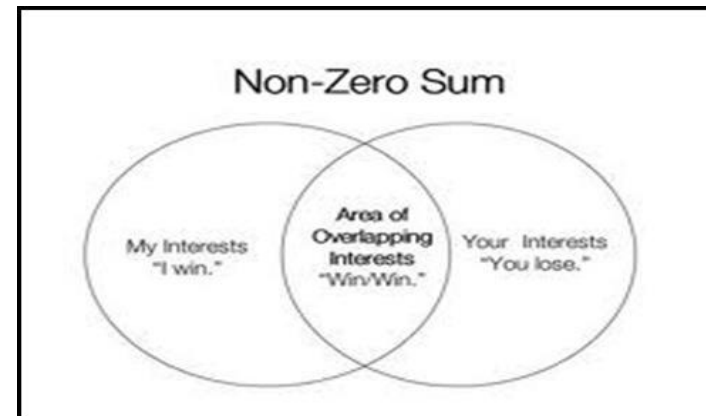
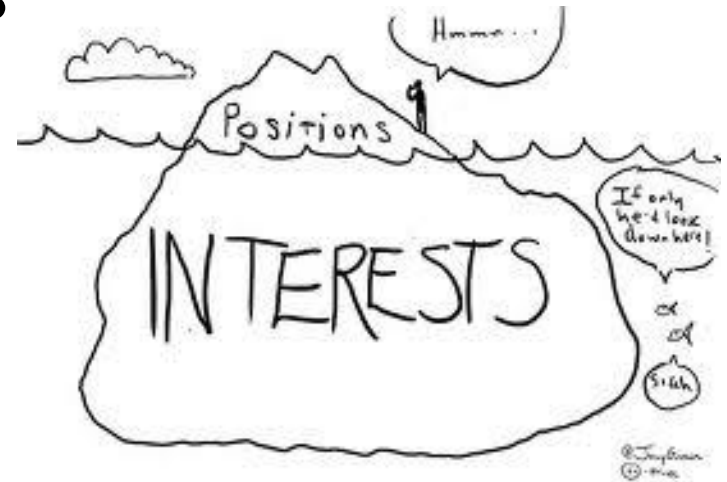
IV) GAME CHANGING STRATEGIES

B) Focus on interests not positions

i) Three types of mutual interests

- 1) Shared
- 2) Conflicting
- 3) Complimentary

- Logroll interests
- Need to identify interests and preferences



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IV) GAME CHANGING STRATEGIES

B) Focus on interests not positions

ii) How can one ascertain interests and preferences from a competitive negotiator?

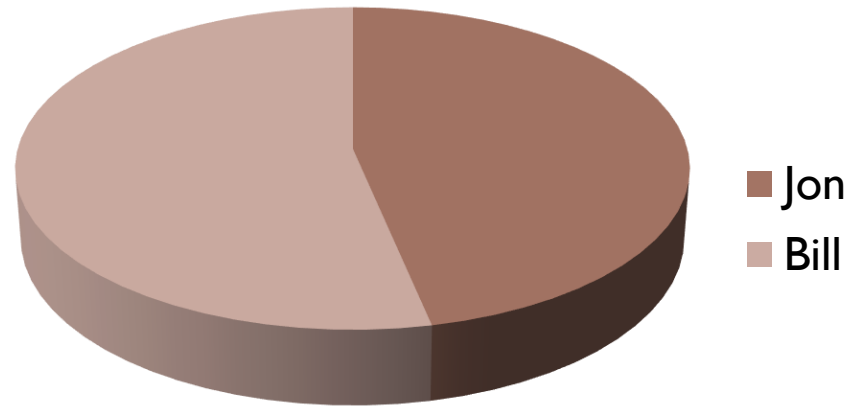
- 1) Ask questions about **Jon's** interests and preferences
- 2) Reveal my own interests and preferences
- 3) Simultaneously propose multiple offers of equivalent value



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IV) GAME CHANGING STRATEGIES

C) Invent options for mutual gain (expand the pie)



Co. Offices

Bill PA
Bill DE
Jon CA



New Venture

New Company
(performs ancillary services for main company.)



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IV) GAME CHANGING STRATEGIES

D) Use objective criteria and fair procedures

i) Objective criteria:

- Market value of the company

ii) Fair procedures:

1) **Jon** could have valued the company and **Bill** decided whether to buy or sell

2) **Jon** could have cut the company into two pieces and **Bill** could have decided which of the two pieces he wanted.

3) **Jon** and **Bill** could have worked together to separate the company into two pieces before deciding which partner would get either piece.



Company	EV/SALE S 2008	EV/SALES 2009	EV/SALES 2010	EV/SALE S 2011
Company A	0,9x	1,2x	1,2x	1,0x
Company B	1,6x	1,6x	1,7x	1,7x
Company C	1,3x	1,5x	1,4x	1,3x
Company D	0,6x	0,7x	0,7x	0,7x
Company E	0,1x	0,2x	0,2x	0,2x
Company F	0,4x	0,5x	0,5x	0,5x
Company G	2,4x	2,9x	2,8x	2,6x
Company H	0,7x	0,7x	0,7x	0,6x
Company I	1,5x	1,5x	1,4x	1,3x
Company J	1,5x	1,9x	1,8x	1,7x
Company K	2,0x	2,6x	2,4x	2,1x
Company L	0,7x	0,8x	0,8x	0,8x
Median	1,1x	1,4x	1,3x	1,2x
Mean	1,1x	1,3x	1,3x	1,2x

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