

Case Incident 1

David Out-Negotiating Goliath: Apotex and Bristol-Myers Squibb

Peter Dolan survived many crises in his five-year tenure as CEO of drug giant Bristol-Myers Squibb. There were a corporate accounting scandal, allegations of insider trading, FBI raids of his office, and a stock price that dropped 60 percent during his tenure. But in the end, what may have done Dolan in was his negotiation performance against the head of Apotex, a Canadian drug company founded by Dr. Barry Sherman

At its peak, Plavix—a drug to prevent heart attacks—was Bristol-Myers’s best-selling drug and accounted for a staggering one-third of its profits. So when Apotex developed a generic Plavix knockoff, Dolan sought to negotiate an agreement that would pay Apotex in exchange for a delayed launch of Apotex’s generic competitor. Dolan sent one of his closest lieutenants, Andrew Bodnar, to negotiate with Sherman. Bodnar and Sherman developed a good rapport, and at several points in their negotiations asked their attorneys to leave them alone. At one key point in the negotiations, Bodnar flew to Toronto alone, without Bristol-Myers’s attorneys, as a “gesture of goodwill.” The thinking was that the negotiations would be more effective this way.

As Dolan, Bodnar, and Bristol-Myers became increasingly concerned with reaching an agreement with Sherman and Apotex, they developed a blind spot. Privately, Sherman was betting that the Federal Trade Commission (FTC) wouldn’t approve the noncompete agreement the two parties were negotiating, and his goal in the negotiation was to extract an agreement from Bristol-Myers that would position Apotex favorably should the FTC reject the deal. Indeed, he nonchalantly inserted a clause in the deal that would require Bristol-Myers to pay Apotex \$60 million if the FTC rejected the deal. “I thought the FTC would turn it down, but I didn’t let on that I did,” Sherman said. “They seemed blind to it.”

In the meantime, Apotex covertly began shipping its generic equivalent, and it quickly became the best-selling generic drug ever. Thus, Sherman also managed to launch the generic equivalent without Bristol-Myers’s even considering the possibility that he would do so while still engaged in negotiations.

“It looks like a much smaller generic private company completely outmaneuvered two of the giants of the pharmaceutical industry,” said Gbola Amusa, European pharmaceutical analyst for Sanford C. Bernstein & Company. “It’s not clear how or why that happened. The reaction from investors and analysts has ranged from shock to outright anger.” Within a few months, Dolan was out at Bristol-Myers.

Questions

1. What principles of distributive negotiation did Sherman use to gain his advantage?

Answer: His goal was to get as much of the pie as possible. He was not looking for a long-term relationship and as such, he was in a win/lose mode. Their interests were opposed and he did not share information.

2. Do you think Sherman behaved ethically? Why or why not?

Answer: No, he did not bargain in good faith and he was deceptive in his tactics. He hedged his bets and planned to win regardless of the FTC ruling.

3. What does this incident tell you about the role of deception in negotiation?

Answer: Deception can be used, however, unethical it is not illegal. In this case, he and his company prospered due to his deceptive techniques.

Source: Based on J. Carreyrou and J. S. Lublin, "How Bristol-Myers Fumbled Defense of \$4 Billion Drug," *Wall Street Journal*, September 2, 2006, pp. A1, A7; and S. Saul, "Marketers of Plavix Outfoxed on a Deal," *New York Times*, August 9, 2006

Case Incident 2

Mediation: Master Solution to Employment Disputes

We typically think of mediation as the province of marital counselors and labor strife. More organizations use mediation to resolve conflicts than you might think. In fact, in the United States, Canada, Great Britain, Ireland, and India, mediation is growing rapidly as a means to settle employment disputes. We introduced mediation in this chapter; let's look at some examples when it has succeeded and when it has failed.

Mediation has often succeeded:

- When German public-services workers found themselves in a dispute with municipalities over pay and work hours, a strike ensued. The unions were pressing for an 8 percent pay hike, whereas the municipalities proposed a 5 percent pay raise. Two mediators were called in to oversee a mediation process during which strikes were banned. The mediators suggested a 6 percent raise, subsequently accepted by both parties.
- The Equal Employment Opportunity Commission (EEOC), the federal agency that oversees employment discrimination complaints in the United States, uses mediation extensively. Safeway, the third-largest U.S. supermarket chain, uses the EEOC to mediate numerous employment disputes. Says Donna Gwin, Safeway's Director of Human Resources, "Through mediation, we have had the opportunity to proactively resolve issues and avoid potential charges in the future. We have seen the number of charges filed with EEOC against us actually decline. We believe that our participating in mediation and listening to employees' concerns has contributed to that decline."

However, mediation doesn't always work:

- In 2008, the Screen Actors Guild (SAG) and the Alliance of Motion Picture and Television Producers (AMPTP), representing some 350 studios and production companies, engaged in prolonged negotiations over a new labor agreement. The negotiations failed, and the parties agreed to mediation. However, mediation also failed, and in response SAG asked its members to approve a strike authorization.
- When David Kuchinsky, the former driver for New York Knicks center Eddy Curry, sued Curry for sexual harassment, discrimination, and failure to pay \$93,000 in wages and reimbursements, the parties agreed to mediation. However, after the sides failed to reach a settlement during mediation, Kuchinsky reinstated his lawsuit, and Curry filed a \$50,000 countersuit.

Questions

1. Drawing from the preceding examples, what factors do you think differentiate occasions when mediation was successful and when it failed?
Answer: The response will vary depending on a student's opinion. Students will likely mention the successful mediation will occur most often when the opposing positions are relatively close together making compromise more likely. They may say that openness to accept mediation is necessary. They may say that

opposition that includes a large amount of emotional animosity is likely to fail. Other thoughts may come up.

2. One successful mediator, Boston's Paul Finn, argues that if the disputing parties are seeking justice, "It's best to go somewhere else." Why do you think he says that?

Answer: Again, student response depends on opinion. But, one idea that should come from the process is that some believe that mediation is a trade-off to justice. Instead of legal disputes being resolved in the judicial system that calls for a decision to be made by peer groups, mediation results in resolutions fostered by a single professional. The goal of mediation is harmony, not justice.

3. Do you think a mediator should find out *why* the parties want what they want? Why or why not?

Answer: The answer to this is simple. Yes, the mediator should find out from the sides what the dispute is about and what is sought for resolution. Without this information, any result is likely to be arbitrary and totally unsatisfying to the parties involved.

4. The EEOC reports that whereas 85 percent of employees agree to mediate their charges, employers agree to mediate only 30 percent of the time. Why do you think this disparity exists?

Answer: Many students will perceive that employees have confidence in the mediation process to give themselves leverage against the corporation. Time delay is a result as well. Employers likely see mediation as unfairly slanted toward employees and, therefore, a process where the employer is most often the major loser.

Sources: Based on M. Kapko, "Actors Union Seeks Strike Vote After Federal Mediation Fails," *Forbes* (November 23, 2008), www.forbes.com; K. Tyler, "Mediating a Better Outcome," *HR Magazine* (November 2007), pp. 63–66; A. K. Finkle, "A Mediation Primer," *IPMA Newsletter* (May 2008), pp. 26–38; and K. O'Brien, "The Closer," *Boston Globe* (April 12, 2009), www.boston.com.

Instructor's Choice

Negotiating with the Labor Relations Board

Power struggles often end up as negotiation and bargaining scenarios. One place to trace historic negotiations between management and labor is the National Labor Relations Board Web site (see www.nlr.gov). Go to the Web site and link to Case Summaries found under the News Room menu. Choose a famous case, summarize the conflict, describe the negotiation issues, and summarize the eventual outcome of the case. Once you have done this, indicate the form of conflict present and how the negotiation process helped to resolve the conflict.

Instructor Discussion

The NLRB Web site has several famous cases documented and filed. It is interesting that the NLRB often changes its political stance on issues as members often change as new governmental administrations are brought into power. For this reason, the viewer can see that some issues are re-visited. It is useful to present a contemporary case to illustrate the negotiation process. Since the Web site is updated frequently, the instructor can choose a case that has just been heard or one that is more classical in nature. Based on the way the case is presented on the Web site, the instructor could present the case without revealing the ruling and have the students try to determine what the eventual ruling (and justifying reasons) was.



EXPLORING OB TOPICS ON THE WORLD WIDE WEB

Search Engines are our navigational tools to explore the WWW. Some commonly used search engines are:

www.goto.com
www.lycos.com

www.google.com
www.hotbot.com

www.excite.com
www.bing.com

1. Let's start out with a laugh. Go to despair.com and see what their commentary is for dysfunction. Point to: <http://www.despair.com/demotivators/dysfunction.html>. While you are there feel free to look at some of the other posters that "spoof" traditional motivational posters found on the walls of businesses and schools. Enjoy!
2. How do you handle conflict when it arises? Seven guidelines for handling conflict can be found at: <http://www.mediate.com/articles/jordan2.cfm>. Think of a conflict you are involved in or have been involved in recently. How could you have applied these guidelines to that situation? Is there room for improvement in your conflict management skills? Write a short reflection paper (or a paragraph or two) on one of the guidelines and how you plan to use it in future conflicts.
3. If you have never been involved in labor negotiations, it can be a challenging task—especially if you lack experience in the process. Preparation is key. Every manager should have an understanding of the process. Learn more at: <http://www.mediate.com/articles/lynnK.cfm>. Are there lessons in this article that could be applied to any negotiation process—for example, buying a car, negotiating a contract with a vendor, etc.? Think of a circumstance where you might find yourself explaining a negotiation process to a friend and the skills necessary to be successful. (Use the article for ideas.) Write out the scenario and skills and bring it to class.
4. Negotiating with other cultures requires an understanding of the culture and the individuals with whom you are negotiating. Point to: <http://www.mediate.com/articles/lauchli.cfm> to learn more about negotiation and dispute resolution with the Chinese. As the book has discussed, the Chinese are a collectivist culture different in many ways from Americans. Write two or three things of interest you learned from reading this article and bring it to class.
5. Read the article by Stella Ting-Toomey titled "Intercultural Conflict Management: A Mindful Approach" at: <http://www.personal.anderson.ucla.edu/richard.goodman/c4web/Mindful.htm>. Write a short synopsis of the three major points of the paper. What is the most interesting or intriguing idea put forth in the paper? Do you agree or disagree with her assessments? Bring your written work to class for further discussion.
6. The University of Colorado offers a great deal of information regarding conflict management on their Web site. One page provides abstracts of selected readings

on transformative conflict resolution. Some readings are more global in nature—others are geared to the organization. Point to: <http://www.colorado.edu/conflict/transform/abslist.htm> and select three abstracts of interest to you. Print them off and bring them to class. Prepare a short presentation on what you learned from articles. Be prepared to talk about them before the class or in small groups.