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Mediation: An Opportunity for your Business to Capitalize on your Greatest Asset: You

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The New Year brings new opportunities, as the Middle East conflict and economic recession are forcing businesses to look for ways to stretch their resources. You can expect to see more bankruptcies, turnarounds, layoffs, financial disputes and litigation; dealing with these situations will further tax your precious dollars and personnel. At the same time, the world is becoming more multi-cultural; the information age has resulted in an implosion of interaction between people and businesses with widely disparate management, personal and behavioral styles, not to mention completely different languages, values and ethics. How can you manage all of this conflict and stay profitable in 1991?

Conflicts are Opportunities

Conflict is not necessarily negative. Conflict can be a very positive event, forcing you to make carefully considered decisions, to be creative and to seriously assess your options. These are your opportunities.

Approach to Conflict Resolution.

You probably try to resolve your everyday conflicts through compromise. Usually this requires a complete knowledge of the relevant information. Everyday conflict decision making includes layoff choices, budget cutbacks, putting off technology upgrades, and the like.

How does your company resolve its "legal" disputes? You have probably viewed your disputes in the context of the classic model of our legal system, the "adversarial" mode. You are probably also aware that businesses are simply an amalgam of complex human relationships. Perhaps your lawyer or other advisor has suggested that litigation may take its toll in legal fees and lost management resources (= lost opportunity costs), and has encouraged you to simply try to work it out face to face with the other side. Even if you recognize the value of preserving your business relationships: how often have you felt at a loss to directly resolve your own disputes through negotiation or communication, because you just don't believe it will do any good, because of the principle of the matter, or because of fear that you will compromise your legal position or look weak to the other side?

Mediation - A Process to Maximize Opportunities

Mediation is an increasingly popular method for dispute or conflict resolution, which can be used in classic "legal" disputes as well as other situations, such as negotiating any stage of a transaction. In a mediation, an experienced third party neutral provides a structure for the parties (and their professional advisors and consultants) to truly communicate. When all sides have stated and heard their respective needs, interests and values in any given situation, it is remarkable how creative they can be in fashioning solutions to meet them. If the parties get to the table, successful negotiations are likely. Because business relationships involve people, who have strong feelings about their business values, principles and ethics (money is a very emotionally charged issue), people often have difficulty in directly negotiating openly and objectively with the other side. A mediator therefore provides the important role of helping the parties sort through their positions, needs, values and interests, and enables communication to occur.

Mediation Empowers You, the Client, to Directly Resolve Your Dispute

A mediator directs a process which is designed to empower you to resolve your own dispute directly, and puts you in control of the outcome. A skilled mediator embraces conflict, and helps the disputants fully explore their respective values, needs and interests in an open and informal discussion. The parties are encouraged to engage experts and consultants as needed to gather and interpret information.

A mediator does not make any decision or render any advice (although in some models, such as labor mediation, the mediator may take a strong role in fashioning the result). The parties are free to make or not make an agreement. In litigation or arbitration, on the other hand, the parties look to the third party neutral to render a decision, which is generally binding upon them. In the latter model, the "win-lose" or "lose-lose" situation, one or both parties are unhappy, and have usually expended a tremendous amount of time and energy in "presenting" their case (legal fees, expert costs, staff time, lost opportunity costs). In mediation, parties experience "win-win", even if they have made compromises, because they have been heard and have participated in the fashioning of their own solution. As a result, most parties are satisfied after the mediation process and follow through with the commitments they make.

Benefits of Mediation

Mediation is a risk free opportunity to explore the possibility of finding common ground. Since it is exploratory only, it does not bind anyone unless the parties reach an agreement, in which case, of course, any agreement they reach is as binding as any other contract they may enter into. The parties always have the option to arbitrate, litigate or choose some other method of dispute resolution if communication attempts prove fruitless. Mediation is informal, confidential (there are no public records), flexible and inexpensive (in terms of both dollars and labor costs). Usually the parties split the cost of the mediator, who generally charges hourly rates akin to those of attorneys. Mediation can occur at any time in the dispute process; a large percentage of

mediations result in either immediate resolution or enhanced communication which later results in an earlier settlement than would otherwise occur.

Use your Professionals

Attorneys, management consultants, and other professional business advisors are becoming more aware of the mediation process and its utility in resolving business conflicts. Seek out professionals who are familiar with mediation and who can advise you through the process and who can assist you with communication techniques to achieve the desired results in your negotiations. Seek out mediators who are skilled and experienced in the process of mediation; unlike arbitration or litigation, the essence of mediation is the process itself.

Using Mediation in Your Business

Interbusiness. You can encourage your staff and customers to use mediation by including mediation or "good faith negotiation" clauses in your contracts. That is, you can contractually require parties to try to resolve their disputes directly before proceeding to arbitration or litigation. Your customers will be happy to know that you are interested in working things out, and the contract provision will remind otherwise hostile parties that there are human beings on the other side of the fax line.

Intrabusiness. Preserving and enhancing human resources can be achieved by training management and staff in mediation techniques, which largely consist of good listening skills. On a more formal level, designated staff can be trained as mediators. For example, hospitals are now training their bioethics committees to utilize mediation with patients and physicians making life support decisions for loved ones; real estate brokers use peer mediators to resolve commission disputes; the possibilities are endless. Don't neglect the opportunity to fully capitalize upon your resources, you!

Classic Mediation Opportunities. Mediation is particularly suitable in any conflict where there is any ongoing business relationship, such as in a construction contract dispute or partnership conflict. Other classic situations involve family owned business disputes, shareholder disputes, and relationships between employer and employee, landlord and tenant, licensor and licensee, distributor and distributee, etc. Do not neglect the importance of putting your business people on the front lines - direct communication means savings of time for other business opportunities, savings of professional and legal fees, and the possibility of preserving and enhancing existing business relationships.

Summary

Mediation should always be considered as the very first option to explore in any conflict, and continually considered as the resolution process develops. After all, good business is based upon good personal relationships. Good communications and recognition of the people involved in the business may be the very thing that turns your conflict into new opportunities for more profitable and enriching ventures with those business relationships you have sought so long and hard to cultivate. Remember, you, the client, are your most valuable resource.

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