
GEE WIND v. SPINPOWER

NEGOTIATION

Teaching Note

This fairly simple two-party simulation is intended to teach effective distributive negotiation strategies and behaviors. While the fact pattern describes potential litigation and legal claims, entanglement in any hypothetical litigation is not the most important element in establishing a reasonable settlement.

The case involves a request for proposal (RFP) response for a profitable project where the rights to supply wind turbines to All-Ag, a large midwestern agribusiness, are at stake. Project bidder GEE-Wind is a wholly owned subsidiary of Giant Electric Engine Co (GEE-Co.) and generates 20% of GEE-Co.'s revenues. Despite GEE-Wind's presentation garnering positive comments at its All-Ag contract pitch meeting, Gee-Wind was shocked to have lost the bid to an upstart firm, SpinPower. Shortly after learning that they lost the All-Ag bid, GEE-Wind obtained information suggesting that SpinPower received inside information about GEE-Wind's bid and that SpinPower disparaged GEE-Wind, alleging that GEE-Wind's technology and installation speed were inferior, that their turbines were noisier and required more frequent ongoing repairs to remain serviceable. GEE-Wind also learned that SpinPower asserted that Gee-Wind management would be difficult to work with.

GEE-Wind's President was VERY angry, convinced that All-Ag and SpinPower were playing them, and that the bidding process was rigged. At the president's request, GEE-Wind's attorney drafted a complaint against SpinPower for \$200 million, claiming slander, tortious interference with contractual relations, tortious interference with an advantageous business relationship, and stealing trade secrets. Counsel for Gee-Wind did inform his client that litigation was not likely to be successful and that it could hurt their business since it would require GEE-Wind to reveal earlier problems with their wind turbines.

Moreover, even though GEE-Wind would not be suing All-Ag directly, All-Ag would still be dragged into the fight through discovery. It is not wise to be viewed as an enemy by All-Ag, which owns and is always acquiring parcels of land that GEE-Wind could sell services on. All-Ag could block GEE-Wind from future bids if they feel that GEE-Wind sues frivolously when it misses out on a contract, perhaps even warning other companies to not invite Gee-Wind to bid, lest they too risk stoking the anger of a vexatious litigant. Most significantly, there is at least one other enormous chunk of property soon to be available for lucrative wind turbine leasing that GEE-Wind can submit a competitive bid on. If GEE-Wind had won the All-Ag deal, they couldn't have done this upcoming job. In negotiation lingo, GEE-Wind does not have a great BATNA.

GEE-Wind counsel has communicated this to the client, who finally said "Just negotiate for as much as you can, this bad faith kick in the teeth from SpinPower has got to be worth something." The lawyer is instructed to negotiate as large a settlement figure as possible. Counsel for GEE-Wind assumes that his client would interpret any offer under \$100,000 as insulting. The lawyer is mindful that the clients' profits, had they won the bid, were



projected to be \$50 million over the first five years, and \$20 million per year after that. If SpinPower's projections were at all similar, this contract will be VERY lucrative for them.

On the SpinPower side, their outside counsel's investigation confirmed that GEE-Wind's legal claims are without merit. They are aware that GEE-Wind's President might be angry and feel humiliated by the way the bid process went. They are also aware that there are at least one or two more chunks of land likely to be available for leasing within the next year that GEE-Wind would be free to bid on and generate revenue from. SpinPower would not have enough capacity to bid on these. (Note: from a pure negotiation perspective, it would make sense to have SpinPower agree not to bid on that contract. However, that arrangement would raise antitrust and related legal issues. If the students put in such a term, an instructor should explain that even if it reflects their interests, it should NOT be part of any agreement.)

From a settlement perspective, SpinPower is willing to pay MUCH more than it would normally pay when faced with a claim as feeble as GEE-Wind's current cause of action. They do not want to reveal projected profit margins or technical designs and are willing to pay a premium to make sure no privileged information sees the light of day during discovery. While the client hasn't said so, counsel for SpinPower is suspicious and concerned that some former GEE-Wind engineers who moved over to SpinPower may have brought confidential information that facilitated SpinPower's recent technological breakthroughs. It's possible that discovery could shine some unwanted light on that issue. Finally, SpinPower is concerned that All-Ag would be dragged into the fight through discovery and might decide not to deal with SpinPower ever again.

Most importantly, SpinPower's owners want to take the company public within a year and would have to disclose the \$200 million-dollar lawsuit filed by GEE-Wind, even if the suit is without merit.

SpinPower is thus willing to spend significant money to settle this case. Its technological breakthroughs have allowed SpinPower to greatly reduce installation time and costs, minimize repairs, and increase output. They project profits at 50% more than they had projected at the time they bid on the project. SpinPower has authorized counsel to settle with GEE-Wind for up to \$20 million.

Bottom line: The ZOPA measured in dollars is between \$100,000 to \$20 million – ENORMOUS!

I initially wrote this simulation for a negotiation workshop given to a group of litigation associates at a large law firm. It yielded a wide range and a nice distribution of results and was debriefed as a classic distributive problem where the initial dollar offers and demands acted as anchors. The key to considering where to start with a dollar offer or demand was considering the other side's BATNA and reservation price. Negotiators are well-served by actively hypothesizing about what the other side's circumstances are, what matters to them, and what might worry them. Of course, they should be curious and seek information about the other side's interests and circumstances when they first sit down before moving to numbers.