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**BETWIXT & BETWEEN BEARINGS  
NEGOTIATION  
(A)**

**Confidential Information for President of Best Bearings**

Best Bearings, Inc. is a large, publicly traded British corporation with annual profits usually in the \$50 million range. Over the past year, overall corporate profits have been lower, with a particularly sharp downturn in orders and profitability in the New York location, which is your responsibility. Best Bearings U.S.A. is now slated to earn no more than \$5 million in profits this year. Shareholders are largely U.S., British, and Australian citizens.

You strongly believe that Best Bearings should only pay a token fine. After all, your new chief engineer immediately reported the non-compliance to the General Counsel, as soon as he discovered it, and the General Counsel immediately reported it to the DEC. A fine is a punishment. It doesn't make sense to punish a good corporate citizen who reported its own violation and has worked diligently to correct the problem. In the past, DEC has obtained fines from \$50,000 to \$2 million for similar violations, depending upon whether the case went to a hearing or was negotiated privately and depending upon the size of the corporation. If you don't reach an agreement with the DEC, the matter will go to a regulatory hearing for the fine to be determined. You want to avoid a hearing because you fear current political pressures will lead to an extremely high fine - perhaps more than \$2 million.

Obviously, you would like to negotiate for as low a fine as possible. However, you would be less resistant to a significant fine if the DEC would allow Best Bearings to do self-auditing and reporting, instead of paying for an external audit, and if the DEC would accept your expert's recommended method for cleaning up the site of previous waste disposal.

The President of Best Bearings' Australian company recently faced a similar problem and told you that external environmental audits are extremely expensive and intrusive. An "external expert firm" charges top dollar and likes to work on its schedule, which inevitably disrupts your operations. You are also concerned that external audits can lead to breaches in the confidentiality of Best Bearings manufacturing processes.

Regarding site clean-up, your engineers have recommended capping and sealing the current waste site, using the latest technologies. DEC would prefer that Best Bearings excavate the waste and ship it to an inland site, with a prepared sealed bottom, far from any groundwater sources. Because it requires excavation and hauling, you know the DEC fix would be far, far more costly.

Negotiate with the DEC representative to arrive at the amount of an agreed-upon fine, the type of fix for the current waste site, and whether the DEC will insist upon an external audit vs. internally generated (but certified) environmental audits for the next five years.