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

Confidential Information for the DEC Representative

You are a senior official of New York's DEC, charged with enforcing environmental laws. The DEC faces political pressure to exact high fines as deterrence against environmental law violations. Businesses exert pressure in the opposite direction, claiming overzealous regulators and burdensome fines make New York inhospitable for business.

Best Bearings, Ltd. is a large, publicly traded British corporation, with locations in the U.S., Australia, and Thailand, with past annual profits usually in the \$50 million range. However, publicly filed financial reports indicate its corporate profits are down overall this year, with a particularly sharp downturn in New York state. You don't know Best Bearings' projected earnings for this year. Shareholders are largely U.S., British, or Australian citizens.

You strongly believe Best Bearings' fine should be significant. Although its new chief engineer reported the non-compliance immediately, that was his legal obligation. Best Bearings must be held responsible for at least five years of violations under the former chief engineer. In the past, DEC has obtained fines from \$50,000 to \$2 million for similar violations, depending upon the size of the corporation and whether the case went to a hearing or was negotiated. If you don't reach an agreement with Best Bearings, the matter will go to a regulatory hearing board to determine the fine and the fix. You want to avoid the board, which has some new members who may be sympathetic to Best Bearings in this difficult business environment. You are concerned they may impose a low fine – perhaps lower than \$50,000 - because Best Bearings came forward. Such a precedent will damage your ability to negotiate with other corporate violators.

Obviously, you would like to negotiate for a very high fine. If possible, you would like Best Bearings to agree to five years of audits by an environmental consulting firm, to ensure all standards are met. You do have some flexibility, as long as DEC can be confident that a top-notch monitoring and reporting system is in place and Best Bearings remains in full compliance. Finally, you want to be certain that DEC will clean up the site of its previous waste disposal. Based upon your staff scientist's report, you would prefer that Best Bearings commit to excavating the waste and arrange for shipment to an inland site, with a prepared sealed bottom, far from any groundwater sources. Because it requires excavation and hauling, the fix would admittedly be costly. You anticipate that Best Bearing will ask permission to undertake a less expensive fix. You may be open to some compromise, assuming that your scientists are satisfied that the approach is sound, and that Best Bearing guarantees its effectiveness. On the other hand, you are not sympathetic to Best Bearings' complaints about having to pay a little bit more.

Negotiate with Best Bearings' U.S. President to agree upon the fine, the fix for the waste site, and a rigorous environmental auditing and reporting process for the next five years.