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**BAGGING SETTLEMENT  
MEDIATION  
PHASE 1 – INITIAL CONTACTS**

**Information for Bagger's Attorney**

You are a partner in a high-quality boutique litigation firm in Philadelphia. You represent Bagger Inc., a distributor and manufacturer of woven polypropylene bags, based outside of Philadelphia. Two years ago, your client entered a contract with a large Cincinnati company, Delishco Inc., to supply all the bags used in its orange harvesting operations. The contract stated that Delishco would pay 10 cents per bag for up to 500 million bags, over a five-year period, and that Bagger would be Delishco's exclusive supplier during that period. Under the contract, if Delishco had not purchased 500 million bags within 5 years, the contract would extend out to 8 years. According to Bagger, (and stated in the contract), the price of 10 cents per bag represented a 25% discount under normal prices, in consideration for Bagger being named the exclusive supplier. For 18 months, Bagger supplied Delishco with bags: a total of 150 million bags were purchased during that period, for a total of \$15 million.

Six months ago, as part of a corporate reorganization, Delishco spun off its orange harvesting operations and sold them to a separate company. The Delishco/Bagger contract made no mention of the contractual obligations continuing to a successor. Delishco notified Bagger that it would not be purchasing any more bags under the contract.

On behalf of Bagger, you interpret the language as intended to mean that Delishco was obliged to buy 500 million bags - if not in 5 years, then within 8 years. Delishco (or its lawyers) interprets the language of the supply contract to mean that if Delishco doesn't need any supply, it doesn't have to buy bags.

As instructed by your client, you informed Delishco's lawyer that Bagger would demand its lost profits on the balance of \$35 million it would have received under the contract, if Delishco didn't want to buy the remaining 350 million bags.

Delishco's lawyer is a partner in a well-respected Cincinnati law firm. Because you have never dealt with Delishco's lawyer or his firm before, you e-mailed a law school classmate in Cincinnati who indicated the firm's reputation is one of stonewalling until they have billed a case significantly, even if a defense has little merits.

You understand from your client that Delishco is quite formal and hierarchical in nature. You don't know who Delishco's decision-maker would be: whether marching orders are coming from inside counsel or the business decision-makers.



Your client, Bagger, is a remarkably successful, family-owned closely held company. The founder's two children are the CFO and the CEO. The founder remains Chairman of the Board and is still actively involved, though he must be past 70 years of age. You don't know whether any of the family members were directly involved in the negotiation of the contract with Delishco. You do know that B. Borman, one of Bagger's more senior salespeople, was responsible for the Delishco account. Thus far, your contact has been with Borman.

When you called Delishco's lawyer and explained the type of damages Bagger was seeking, he suggested working with a mediator to try to reach a resolution of the dispute before any litigation is filed. You agreed.

On the topic of mediators, Delishco's lawyer suggested two Cincinnati mediators with whom he had mediated before. You suggested two mediators in Philadelphia with whom you have mediated. (Both parties would be willing to travel to the other city, for depositions would have to be scheduled in both cities if the case doesn't settle.) The next logical step seemed to be telephone conversations to check the mediators' availability within the next six weeks and, ultimately, to select a mediator. It was agreed that you would call the Cincinnati mediators and Delishco's lawyer would call the Philadelphia mediators. Place the call to the first mediator on your list.