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

**Information for Delishco's Attorney**

You are a partner in a large and well-respected Cincinnati law firm. You represent Delishco Inc., an enormous Cincinnati-based multi-national corporation that harvests and/or produces a wide variety of food products and sells them all over the world. Two years ago, your client entered into a contract with a Bagger Inc. a manufacturer of woven polypropylene bags, to supply all of the bags used in your orange harvesting operations. The contract stated that Delishco would pay 10 cents per bag 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 Delishco, you interpret the language of the supply contract to mean that if Delishco doesn't need any supply, it doesn't have to buy bags. You understand that Bagger (or at least its lawyers) 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.

Bagger's lawyer informed you that Bagger would be demanding 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.

Bagger's lawyer is a partner in a small Philadelphia law firm. Because you've never dealt with Bagger's lawyer, you e-mailed a classmate in Philadelphia who indicated that this lawyer often makes trouble. The attorney often advises clients to litigate whether or not wise, and bills cases aggressively before settlement. They didn't know anything about Bagger's current business circumstances or decision-makers, but it's reputed to be a "shoot from the hip" company.

Your client, Delishco is much more formal and hierarchical in nature. Your client contact is with an associate general counsel in the legal department, who seems like a decent fellow. You don't know much about the business operations or the people



who were responsible for the original deal. You don't know who drafted the original contract.

You suggested to Bagger's lawyer that you try working with a mediator to try to reach a resolution of the dispute before any litigation is filed. Bagger's lawyer agreed.

On the topic of mediators, you suggested two Cincinnati mediators with whom you have mediated before. Bagger's lawyer suggested two mediators in Philadelphia with whom they have mediated. (Both parties would be willing to travel to the other city, if necessary, 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 Philadelphia mediators and Bagger's lawyer would call the Cincinnati mediators. Place the call to the first mediator on your list.