



BAGGING SETTLEMENT MEDIATION PHASE 3 – FINALLY, THE MEDIATION

Confidential Information for Bagger

You are the CEO and adult child of the founder of Bagger, Inc., a manufacturer and distributor of woven polypropylene and other synthetic bags for industrial and agricultural applications. While Bagger Inc. is capable of manufacturing and printing a large volume of standard, uncomplicated bags, it also holds several patents on specialty bags, with complex seal and valve designs.

Two years ago, you and your brother (the CFO, your father (the founder) and Bagger's top sales representative, B. Borman, teamed up to submit a winning bid on a contract with Delishco to supply 500 million bags over an 8-year period for Delishco's orange harvesting operations. To get the exclusive supply contract for such a large volume of bags, you offered Delishco a 25% discount from the lowest price offered to any other customer. Even for reasonably large customers, the price for this type of bag would be 12.5 cents per bag. Smaller customer prices would be in the 13 -14 cent range. You agreed to sell the bags at 10 cents because Delishco represented its volume as 70 to 100 million bags a year. To reach the 500 million contract target, you negotiated for an exclusivity period of 8 years (instead of the 5 years Delishco originally preferred). With only a 5-year contract, you would have insisted on 11 or 12 cents per bag, and Delishco's negotiators knew that. You wonder if the Delishco people have any notes because your brother's and Borman's notes clearly show that the 10 cents per bag price was only offered when the time period and the number of bags increased.

Of course, you NOW also strongly suspect the Delishco people also knew the sale of Delishco's harvesting operations was in the offing at the time. They got the benefit of your 10-cent price to make their net profit numbers look good - probably driving up the sale price. Of course, it was easy for them to agree to move from 5 to 8 years if they didn't intend to be in the business for half that long. All their resistance over the 8 years was a ruse - a fraud to get Bagger to lower the price.

Your brother, the CFO, and the company's outside lawyer at the time were most directly involved in the contract negotiations. In fact, your brother is sure he remembers getting specific assurances of a minimum of 500 million bags. He also remembers asking: "What if you sell off the orange harvesting? Then what happens to the contract? Are there any plans for a sale?" Delishco's in-house lawyer denied any plans for the sale. You suspect that Delishco's people knew a sale of the orange harvesting operation was just over the horizon. If they knew that, then their contract was a fraud - they would have known they wouldn't be buying bags for 8, or even 5 years. Of course, it would have been better to have written this into the contract, but it was implicit. While a future sale is not always knowable, here it was - at least for Delishco. Forget the lawyers, this is a matter of good faith in business.

B. Borman doesn't remember that conversation, or perhaps he wasn't there. But Borman is



perhaps most angry and bitter about the mess, adamant that they told Delishco the 10¢ per bag price was a 25% discount BECAUSE of the 500 million bag minimum. The time was extended to 8 years to get the 500 million bag order. He and your brother both made notes to that effect. He thinks Delishco's people took notes too.

When Delishco gave notice of the sale and cancellation of the balance of the order, they were pretty cavalier about the whole matter. The Delishco execs showed no remorse or concern for what this would do to your business. Bagger will have no time to recover from the loss. The profit margin on the 10-cent price was so low that Bagger hasn't built a rainy-day fund. In fact, because of the longer-term contract, Bagger invested in some additional bag-making machinery to fill the Delishco contract more efficiently. Bagger also invested in some more sophisticated machinery for special seal and valve bags to be marketed to other customers. This new machinery is just about up and running, but you have not secured customers to take up the increased capacity. Your cash outlay to purchase the equipment relied upon the Delishco contract. That is why it would be fair for Delishco to pay your lost profits. With a 10-cent per bag price, your net profit was only 1 cent per bag - which would have been \$3,500,000 on the remaining 350 million bags in the contract.

In fact, if Delishco had purchased the first 150 million bags at the normal 12.5 cents per bag, your profits to date would have been \$5,250,000, instead of the \$1,500,000. By that measure, they owe Bagger the difference of \$3,750,000. Even if you might have offered some discount for a 150 million bag order, say 11 - 11.5 - 12 cents, Bagger's profits would have been \$3,000,000 - \$3,750,000 million - \$4,500,000, or \$1,500,000 - \$2,250,000 - \$3,000,000 more than Bagger received.

To make matters worse, you have heard reliable rumors in the trade that Delishco recently purchased some sophisticated bag manufacturing equipment - from the equipment designer that Bagger dealt with. You strongly suspect Delishco just found a way to cancel their contract to compete with Bagger - taking other customers away. That's just bad faith and it's why you don't trust the Delishco people. They may just be out to kill your business.

At this point, you see no reason to settle for other than what is fair. You think Delishco should pay Bagger's lost profits or, at a minimum, the additional profits you would have earned without the 25% price discount, plus something to compensate for the abrupt interruption in your business. In most instances, you would be open to other business solutions, as long as they meet Bagger's business needs. But you will not agree to any "work out plan" that requires trust, given your strong suspicions about Delishco's motives and bad faith.

You have Bagger Inc.'s complete authority to settle this case. While your father, your brother, and Borman are VERY upset by what has happened, they know that you are just as angry as they are and that you are a tough negotiator. They know that if Delishco's representative or the mediator can convince you that an argument is valid or a perspective is valid, it must be so. If Delishco or the mediator have something to say in the mediation that strikes you as fair and reasonable, you are free and willing to work with them.