



BOXALL BATTLES

PHASE 6- STRATEGIC INTERLUDE II

Questions initially for Keith Nelson's Lawyer, Then shifting perspective to Dianne's lawyer and a mediator

[This interlude may be limited to Keith's side. If the instructor chooses to have participants receive it, the discussion could take place in two groups, one for each side. Either way, it should take place before you read the role information for the BoxAll Pre-Later Meeting.]

Yesterday, you learned potentially important, if not explosive, information regarding Dianne Nelson. If true, it may provide insight into her motivation in this action. From your perspective, it may serve as ammunition against her in future legal actions or negotiations.

First, it seems that Dianne Nelson is romantically involved with the Sales VP at BoxAll. Both divorced, they live in the same neighborhood, and connected at a block party at least six months ago. (Your tennis doubles partner, who is a friend of Dianne's in the same neighborhood, mentioned this to you. She knows you represent Keith.) This suggests that Dianne may be motivated to control BoxAll so she can fire Keith and install her new boyfriend as CEO. Or, even if Keith remained, she could insist that executive bonuses be more evenly distributed – less to Keith and more to other executives. If BoxAll were targeted for acquisition by a large company, she could threaten to hold up any sale without terms favorable to “key executives.”

In light of this information, you wouldn't be surprised to learn that her VP boyfriend was feeding information to Dianne about Keith or promising her some role and a title at BoxAll if they could force Keith out.

You have absolutely no confirmation regarding Dianne's or the VP's actual intentions. You are just thinking about possible motivations and putting two and two together.

Your tennis doubles partner also said that “Dianne seems to have mom on their side.” Dianne told her that she likes to go to out to dinner with her mother and the VP to show her that BoxAll would be in good hands if Dianne had the deciding vote in the business. It doesn't hurt that the VP is handsome and charming to the mother. Dianne told her friend that she and her mother had a “good chuckle” at the idea that “We girls could win out at BoxAll after all those years of Nelson men keeping us out.”

You know that their mother has formally retained separate counsel to represent her in this dispute. But you do not know how involved the lawyer has been, or whether the lawyer has had her evaluated for competency of late.

You don't represent BoxAll in this matter. BoxAll's corporate counsel is your law school friend who originally referred Keith to you.

Consider the following questions:

What if anything should you do with this information?

Does this new information impact whether you would prefer to first try to negotiate settlement directly, or whether to suggest mediating as a next step?

Do you have any obligation to share this information with counsel for your client's mother?

[All participants may join in this discussion, no matter what their role in the simulation. But it should take place before reading their role information for the BoxAll Pre-Later Meeting.]

Now, consider the question from two different perspectives:

Dianne Nelson's lawyer:

What if you are Dianne Nelson's lawyer and Dianne Nelson tells you of her romantic relationship with the BoxAll VP, but mentions no scheme to oust Keith and install her boyfriend? Or, what if she DOES tell you of her grand plan?

What if you are Dianne Nelson's lawyer and she tells you of the dinners with her mother and the VP boyfriend, and that she would like her mother to re-allocate ownership. She tells you it was her mother's idea, so that "we girls could win in the end."

A mediator:

Assume the lawyers and parties decided to try to mediate their dispute and you are the mediator. You are in private caucus with Dianne Nelson and her attorney, and you learn this information from them.

Neither Dianne nor her lawyer disclosed or even hinted at any of this during the joint session. So far, Dianne has just talked about wanting "equality in everything."

Neither their mother nor her lawyer is participating in the mediation. You had spoken with the mother's lawyer beforehand; he assured you that she would be happy with "whatever the kids work out." The mother's lawyer hadn't mentioned anything about dinners with Dianne and her new boyfriend. You suspect the lawyer is unaware, but can't be sure.

What should the mediator do? What obligations does the mediator have?

Does the calculus change if the mediator learns this information in a side conversation with Keith's lawyer? What if Keith's lawyer tells the mediator that the lawyer has not yet shared this information with the client?

[All participants may join in this discussion, no matter what their role in the simulation. Or, the discussion could take place in two groups, one for each party's side. Either way, it should take place before they read their role information for the BoxAll Pre-Later Meeting.]