

*“Standstill Agreement”*  
*Steps to Resolving a Legal Dispute (Yildiz v. SuperStore)*

**Instructor Notes  
& Background**

**Title**

Standstill Agreement – Steps to Resolving a Legal Dispute (Yildiz v. SuperStore)

**Skills Addressed**

Drafting and revising (exchange of drafts with adversary and adopting language from sample agreements), negotiating, and managing clients

**Target Audience**

2Ls and 3Ls who have completed Contracts and have had some basic drafting and negotiating coursework

**Overview**

This is an intermediate-level dispute resolution scenario focused on negotiating and drafting a standstill agreement. The roles of the lawyers for each side should be played by students; the roles of the two clients should be played by practicing attorneys or instructors (or adjunct

faculty). The scenario is designed for use over two or more class sessions (total of 4 hours of in-class time and approximately 2 hours of out-of-class time):

1. Preparation / reading the materials (1 hour)
2. Meeting with the client (1/2 hour)
3. Meeting with the other side with clients available but not at the table (parties should not reach agreement, even if that means clients taking firm positions) (1 hour)
4. Defendant counsel drafts standstill agreement (between class periods - 1 hour)
5. Plaintiff counsel submits revisions (tracking changes) (between class periods -1 hour)
6. Counsel meet again with client (or with new client representatives for a twist) (1/2 hour)
7. Meetings between counsel for both parties to finalize agreement or prepare last offers with clients available but not at the table (1 hour)

### **Scenario Background**

Helena Yildiz is Vice President of Sales for SuperStore, a very large manufacturing and distribution company. Yildiz has been with SuperStore for nearly ten years.

Yildiz has sent a memorandum to the CEO with a copy to the General Counsel alleging that she has been deprived of a significant portion of her commissions for years. While she is not yet sure of the total amount, she is specifically alleging at least \$27,500 in underpayment and generally as much as hundreds of thousands. She also alleges gender discrimination. She has legal counsel and is threatening legal action.

The lawyers for both sides are negotiating a “standstill” agreement that would suspend any legal activities and allow SuperStore some time to investigate Yildiz’s claims (and perhaps allow the parties to resolve the dispute before litigation). Standstill agreements are not extremely common in these circumstances but are available to disputing parties as an intermediate, process-oriented step toward resolution.

Each student receives a packet of documents, including two sample Standstill Agreements. The sample agreements are ostensibly from previous legal disputes and have a number of suboptimal provisions and language use.

### **Learning Objectives**

- ✓ Build on drafting, revising, negotiating, and client management skills (this is not an introductory exercise and should be used mid-course or later)
- ✓ Use drafting and revising as an integrated process with face-to-face negotiations
- ✓ Work with a client on understanding client interests, developing strategies for resolution or no deal, and managing client expectations
- ✓ Understand the importance of an agreed upon process in resolving disputes, including the use of standstill agreements
- ✓ Use sample forms and previous agreements effectively in crafting a new deal

- ✓ Discuss issues of discrimination and disparities (and how to deal with these as a lawyer)

### **Handouts**

1. Packet for the client Helena Yildiz (Plaintiff)
2. Packet for the client Ashwin Desai (General Counsel for the Defendant SuperStore)
3. Packet for Robin Jax (Counsel for Helena Yildiz)
4. Packet for Terry Banks (Counsel for SuperStore)

### **Inventory of Documents in the Packets**

- Introductory Email to Attorneys (each attorney has an individualized email)
- Yildiz Memo w/ Attached Emails (for both attorneys and both clients)
- Confidential Letters from Counsel to Clients (each side has its own)
- Sample Standstill Agreements (for attorneys only)
- Confidential Background Information for Clients (each client has an individualized "Prep Sheet")

### **Teaching Notes**

1. Set-up and assignments for the students.
  - a. Introduction. Students should understand the complexity of this simulation. They will review a complex fact pattern, work with a client, draft and revise proposals and possible agreements, and negotiate the terms of a standstill agreement.
  - b. Schedule of assignments. It is useful to break up the simulation into various parts and have the students generate work product at each major stage, after they have read and reviewed their packet:
    - i. Interview plan or checklist for the initial discussion with the client
    - ii. Negotiation plan for the initial meeting with the lawyer for the other side
    - iii. First draft of / initial revisions to the Standstill Agreement (the attorney for SuperStore does the first draft of the Standstill)

- iv. Final version of the Standstill Agreement or last proposals (if no deal was reached)
  - c. Expectation of challenging discussions with clients and counterparts. The facts are set up so that a deal will be hard to reach, if at all. Both clients have unrealistic expectations at the start and are slow to back away from their initially firm positions. There are multiple issues to negotiate, and many are set up with opposing interests with difficult solutions.
- 2. Coaching opportunities during the exercise.
  - a. Drafting and revising. As drafts are exchanged, instructors can review and work with students on both the technical and substantive elements of the proposals and counterproposals. Standstill agreements are usually fairly concise and simplified documents, so the focus can be on the main action provisions. Students will need to work carefully on describing the provisions they include and also on revisions to the work of their counterpart until they have either reached a final agreement or time has expired. Instructors can work with students individually at each step.
  - b. Working with the client. Students will have multiple interactions with the client during this exercise, including an initial meeting (usually in a group with all of the students playing the same attorney role meeting with the client together) and one-on-one meetings during the negotiations as needed (the client should be available for all negotiation sessions in the hallway or in a breakout room). The parties here are sophisticated executives and should push their lawyers hard.
- 3. Debriefing points for discussion.
  - a. Managing difficult clients. Most students are reluctant to push back with clients (this is why for this simulation we encourage using practitioners or instructors for the roles of clients, and not other students), and this is particularly the case here where both clients are designed as sophisticated and experienced negotiators in their own right. Students should understand the value of clarifying interests with clients, including the varying degrees of importance of certain interests to clients, so that trade-offs and other creative solutions can be explored. They also must understand how to manage expectations through the discussion and investigation of consequences to no deal.
  - b. Dealing with positional tactics and hard bargaining. Because of the client instructions and the fact pattern, many students will be tempted to engage in adversarial negotiation approaches. Students should understand how to work through these challenges without getting emotionally involved. They should begin to see how enforcing a productive process built around interests and generating possible solutions can help keep difficult counterparts in line. They should also begin to understand how and when to say no and how to share potential consequences of no agreement.

- c. Using the drafting and revising process effectively. Students should begin to understand how and when drafting and revising can be used as part of the negotiation. Not every detail needs to be worked out between the parties before drafting begins. In fact, sometimes turning to the drafting process (even in an abbreviated fashion) can be a good “change of pace” when there is an impasse. Regardless, students should understand how drafting and revising are an integral part to the overall negotiation.
  
- d. Sometimes no agreement is better than a bad deal. The scenario is designed so that an agreement that satisfies the client’s needs better than no agreement is difficult to reach. Students sometimes feel pressure to reach an agreement as time expires and will neglect an analysis of what is best for the client under the rush of finishing the deal. It is important for students to recognize that no does not necessarily mean no deal, but merely that an agreement is not possible at this moment (not yet).