MARKING THE TRAIL
NEGOTIATION

Confidential Information for Syd Willette's Attorney

Your client, Syd Willette, recently moved to Cincinnati from St. Louis to be closer to family; he and his spouse are both from the area and decided it would be best to start a family close to the future grandparents. Syd was pleased to have landed a promising new job in sales for a large medical device company headquartered in Cincinnati.

For the last 5 years, Syd was employed in sales for Pako, Inc., a manufacturer of industrial packaging equipment in St. Louis. Pako had paid him a minimal base salary plus commissions calculated as 20% of net sales revenues in the previous quarter. Syd gave Pako plenty of notice before leaving and arranged to meet with Sales VP Lee Danker about trailing commissions. According to Syd's records, he had sales that had already yielded net revenues of $100,000 – thus $20,000 due on the next quarterly check. (The quarter ended a few days after his departure). Syd had assumed that he would also receive "trailing commissions" on his booked sales – those that had not been shipped or paid for but were confirmed orders – totaled $250,000 that would come in over the next 6 months. Syd's 20% commission would have been $50,000. Frankly, Syd had been hoping to cash them out upon his departure.

Syd based his claim on the Pako commission sales agreement that stated: "salespeople who leave the company in good standing will be paid trailing commissions on six months' net sales, after offsets for returns and revocations."

Lee Danker took the position that this applied only to sales booked and *net sales revenues collected* in the past six months that may not yet have been covered in a quarterly commission check. He asserted that going back six months instead of the (three month) quarter allowed for any necessary adjustments, returns, etc., from the previous quarter's check.

Lee agreed that Syd's commission pay-out – looking backward at net revenues for the past quarter – would be about $20,000. But he flat out refused to pay any of the additional $50,000 in commissions on sales orders booked, saying these "weren't really sales yet." Syd argued the point, and Lee then refused to pay even the $20,000 on past revenues unless Syd would sign something giving up any other claims. Syd refused, and stormed out.

As soon as the move to Cincinnati was complete a week or so later, Syd came to see you for legal advice. You suggested that it might be wise to negotiate a settlement. Syd agreed.

As you explained to Syd, fully litigating this case would be costly and take time. You estimate $5,000 in attorneys, fees for initial filing and pleadings, and $20,000 in fees in the unlikely event that the case went to trial. It might not be worth it, even though Syd would testify that booked orders were referred to as "sales" at Pako and knows other salesmen in the industry would testify that trailing commissions applies to booked sales that are paid later. Complicating matters further, you would need access to Pako's records over time to verify what happened to Syd's booked sales. The other problem is that suit would be filed in Missouri; Syd would need local counsel, would have to travel to St. Louis, and would be distracted from his new job. Syd agrees: NOT worth it.

Syd explained that, while he is angry at Pako, he is also cash strapped. He never imagined Lee would be so deceitful as to withhold his last quarterly check for $20,000. The move to Cincinnati was expensive, and Syd and his spouse have been hit with $10,000 in unexpected work needed in the new house. Since they are going to have to do some repairs, it would make sense to tie in some renovations they might have otherwise delayed. Those will cost an additional $15,000 - $20,000. It would help to have access to these funds as soon as possible.

Bottom line: Syd has instructed you that, while he would like to avoid litigation, he absolutely will not settle for less than $20,000 immediately, and $25,000-$30,000 would be far, far better. Still, the idea of settling that low doesn't make him happy. After all, he figures the company owes him a total of $70,000 – the $20,000 on revenues already collected and $50,000 on sales made and due to come in over the next six months. And frankly, he thinks Pako should pay "some kind of penalty for jerking me around" – at least the cost of chasing them – your attorney's fees.

While Syd acknowledges that, theoretically, some of the booked sales could involve future cancellations or returns, he believes that is a silly excuse in this instance. These sales were almost all to solid companies with thriving businesses – extremely low credit risks.

Syd was well-liked by Pako's customer companies, and they would not like to hear that Pako treated him badly. Without directly threatening, Syd commented to you that he could make sure those booked sales evaporated for Pako, if he didn't get commissions on them.

Negotiate the best deal you can for Syd.

