



CADRS Dispute Resolution

Using the CADRS Negotiation Tool



CADRS Negotiation Tool

- Use for preparation; no need to share with CADRS staff
- Use to organize dispute and negotiation process to maximize results

Note: The CADRS Negotiation tool is intended to assist parties prior to initiating negotiations; the negotiation process may refine or provide additional information regarding the other party's interests, needs, or potential available resources to resolve a dispute



Review of Negotiation Process

1. Identify Parties' Initial Positions
2. Determine ALL Parties Needs/Interests
3. Identify Potential Resources
4. Explore Negotiated Options
5. Identify Objective Standards to Evaluate Options



Initial Preparation

- Identify initial position (i.e. – what are you asking for?)
- Identify other party(ies) initial position;
- Identify pertinent facts and supporting documents; craft an “elevator speech” that can be used to describe dispute and position
- Think about past offers to settle and history of relationship – is there anything that may give clues as to how the other party might negotiate or what may have helped resolve issues in the past?



Identifying Party Interests

- Tip: the best negotiation results occur when parties look beyond positions to meet party needs or interests
- 3 categories of party needs that determine underlying party interests:
 - Procedural: fair process to determine outcome, consistent results, etc.
 - Emotional: respect for parties, reputation, personal relations, etc.
 - Substantive: commercial, business relations, receive cargo, etc.
- Tip: try to identify and prioritize potential interests for both parties in the space provided in the negotiation tool for both parties; priorities will be a key role in crafting future settlement proposals



Party Goals and Options

- Ascertain each party's goal by examining potential interests
- What is the best option available to both parties if negotiation/use of ombuds/mediation fails? (e.g. lawsuit, substitute service, replace lost cargo, purchase another cruise, etc.) This is called the "Best Alternative to the Negotiated Settlement" or BATNA
- Tip: Parties with stronger BATNAs have a stronger advantage in negotiations



Party Goals and Options

- Ascertain each party's worst case scenario of negotiaiton/use of ombuds/mediation fails (e.g. loss of business, lawsuit, financial harm, loss of cargo, loss of cruise, etc.) This is called the "Worst Alternative to Negotiated Agreement" or WATNA
- General Tip: Parties with a weak BATNA and strong WATNA tend to fair worse in negotiations

Suggestions for Identifying Resources



- Identify potential resources before the negotiation
 - Immediate Resources? (e.g. time, money, positive reviews on blogs, confidential treatment of settlement, release immediate hold on cargo, etc.)
 - Obtainable Resources? (e.g. future business dealings, information/research that may be desirable to parties, etc.)
 - Need Third Party Participation? (e.g. asking another party to waive demurrage, asking another party to remove a lien, requesting another party to remove negative comments, etc.)
- Tip: If third party authorization or input is necessary to effectuate a solution speak with CADRS staff about bringing that party into the negotiation.

Linking Resources and Interests



- Link party resources to generate settlement options
- Example Dispute: Party A is shipper that is disputing a surcharge with Party B, a carrier. Party A does not believe the surcharge is justified. Party A just received a significant contract to ship product over a 5 year period. Party B is a new carrier that is seeking to increase its business opportunities.
- Linkage: Party A agrees to use Party B for a portion of its new business if Party B agrees to waive the disputed surcharge and offer a competitive rate for the new business



Crafting and Defending Settlement Proposals

- Identify opening offer that can be offered or countered after the initial exchange of opening positions (i.e. first move after the opening of the negotiation)
- Identify a bottom line or “walk away point” prior to entering into the negotiation/mediation/ombuds; bottom line should consider BATNA and WATNA
- For all other offers- use the negotiation process and the mediator/ombuds to help craft and deliver offers



Defending Offers

- Offers sometimes dismissed as “unfair” or “unrealistic”
- Tip: Use objective criteria to bolster and support each offer made
- Identify potential criteria before the negotiation and list on the tool
- Examples of objective criteria:
 - Fair Market Value
 - Industry Custom
 - Equal Treatment
 - Third Party Audit (e.g. volume/measurement dispute)
 - FMC or other government regulations



For Additional Assistance

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