

Special Chemistry

Simulation of the Role of Lawyers in Mediation

Problem-Solving Advocacy and Primarily Joint Sessions Video script ¹

Example of a Problem-Solving Approach to Opening Statement for Gigem AG:

- Set the tone,
- Frame third party issues,
- Recognize both perspectives, and
- Enlist assistance from the mediator.

Gigem Lawyer:

"Thank you. We welcome this opportunity to try to settle this dispute in a way that makes sense for each of our clients. We recognize that there is an issue whether Mico has infringed Gigem's patent on its Bi4a product. As you know, it is our legal position that Mico did, and this is also what the trial judge has found. We presume that you will appeal the Canadian court's decision. At this late stage of the litigation, each side is presumably well educated on the legal risks if the litigation continues. I am ready to further discuss our legal position later if you would like to and if it seems necessary.

Ms. Mediator, we welcome your assistance today, especially in helping us communicate better, something we have had difficulty doing. In the spirit of trying to settle this case, my client would like to say a few words to Mico's CEO."

Gigem CEO:

"Mr. Mico, I appreciate that you are here to try to settle this dispute. It should come as no surprise that we are angry. You have infringed our patent protecting Bi4a and you gained access to our proprietary technology by hiring our former employee, Luke Brand. You would not even try to settle this dispute before today when we asked to meet. Furthermore, your infringing activities have damaged our reputation and have created confusion for us in the international market. You sell products containing our patented substance in Canada and also ship to the US and other countries on a large scale. As a result, the Court ordered you to pay us CA\$9 million dollar. Yet here we are, still willing to mediate. We hope that you can appreciate and understand our view, although we are open to hearing any new information and are ready to find a fresh way to resolve this dispute as soon as possible, with the help of the mediator."

Gigem Lawyer:

"We want to emphasize that we welcome this opportunity to try to settle this dispute although we know we have a strong legal case. We also have a number of clarifying questions we want to ask about Luke Brand to ensure he is not disclosing our proprietary information."

This script and accompanying materials like an educational video and the role play instructions can be downloaded from: www.ACBfoundation.nl

¹ Script based on a role play written by Manon Schonewille (©2009-2010, all rights reserved) (Result ACB, Toolkit Company & Utrecht University), that served as a mediation problem in the 5th ICC International Commercial Mediation Competition. A caucus-style mediation script based on that case was written by Giuseppe de Palo (JAMS International), as part of the EU sponsored project "Lawyers in ADR". The script for this video production was written by Hal Abramson (Touro Law School), Jeremy Lack (Altenburger) and Manon Schonewille. ©2009-2010, all rights reserved.