

Understanding (and working) the lifecycle Of executive compensation negotiations

Skillful negotiation lies at the heart of many protective executive compensation deals – whether the deals involve employment, change of control, severance or something else.

Understanding the law (employment, securities, contract, intellectual property and tax), the requisite documents, and the pertinent business environment behind a deal is critical, of course -- but a significant part of the battle lies in understanding the art of negotiation.

On both sides of the table, executive compensation negotiations involve people -- some of whom are smart, competent and honest; and some of whom may be just the opposite. They do not always act rationally or as expected. In spite of the best due-diligence, it is often impossible to predict the roadmap of a negotiation.

You can study texts on negotiation or game theory, but at the end of the day only experience lets you know what to expect from a variable set of circumstances – and how to respond.

There are stages to the negotiation lifecycle – each of which must be managed differently.

For example, consider the (roughly) three stage negotiation. The beginning stage of the negotiation lifecycle includes initial positioning and signaling. Both parties may send up trial balloons. Inexperienced negotiators might see these as deal-breakers, while an experienced negotiator knows that the chosen executive may have significant leverage, leverage that may cause an employer to drop what was initially a “deal-breaking” term.

The middle stage of the negotiation lifecycle may involves additional positioning and signaling, possibly bouts of intransigence or horse-trading, and perhaps multiple offers and counteroffers. At this stage, it is important to remember that any clause (unless illegal) can be written into a contract – even clauses not yet invented!

The end of the negotiation lifecycle involves a convergence of positions into an agreement or, alternatively, an impasse and the breakdown of the negotiation. A skilled attorney/negotiator should be able to help you navigate this area.

In a previous post -- [When negotiating executive compensation, you need your own counsel](#) – I mentioned that executives are usually better off negotiating for themselves (using their own attorney as “shadow counsel”) during the initial stages of negotiation – and bringing in their own counsel during the later “term-defining” stages.

Knowledge is important when negotiating executive compensation, but experience in the negotiation lifecycle accounts for a significant part of the battle.