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Unconventional Dispute Resolution

Presented by

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*JW Marriott San Antonio Hill Country Resort
November 19, 2010*

What do you buy?



Who is Talking About U.D.R.?



*“Value Challenge:
Reconnecting Value to Costs”*



“Building a Different Law Firm”



*“Alternative Billing Practice
Beyond the Billable Hour”*



“Evolution of the New Lawyer”

U.D.R. 101

1. Early [Case] Assessment
2. Redefine the Conflict
3. Design Procedures/Structures
4. Align Client/Counsel Incentives
5. Relationship dba Trust
6. Conventional Wisdom: Overcoming it
7. BATNA?

ECA: What?

The Facts

- Complaint, claims, defenses, counterclaims
- A timeline, relevant facts, witnesses and key dates
- Witness interview summaries
- The 10 best and worst documents
- Current significant unknowable facts
- Evidentiary/documentary issues
- Likely trial themes
- Document map

The Law

- Claim and defense elements and burdens of proof
- Jury charge
- Appellate Court's relevant rulings
- Past verdicts in similar cases

The Forum and Opposition

- Court evaluation and report from recent trial or hearing
- Opposing party and counsel evaluation
- A memo outlining extra-judicial dynamics



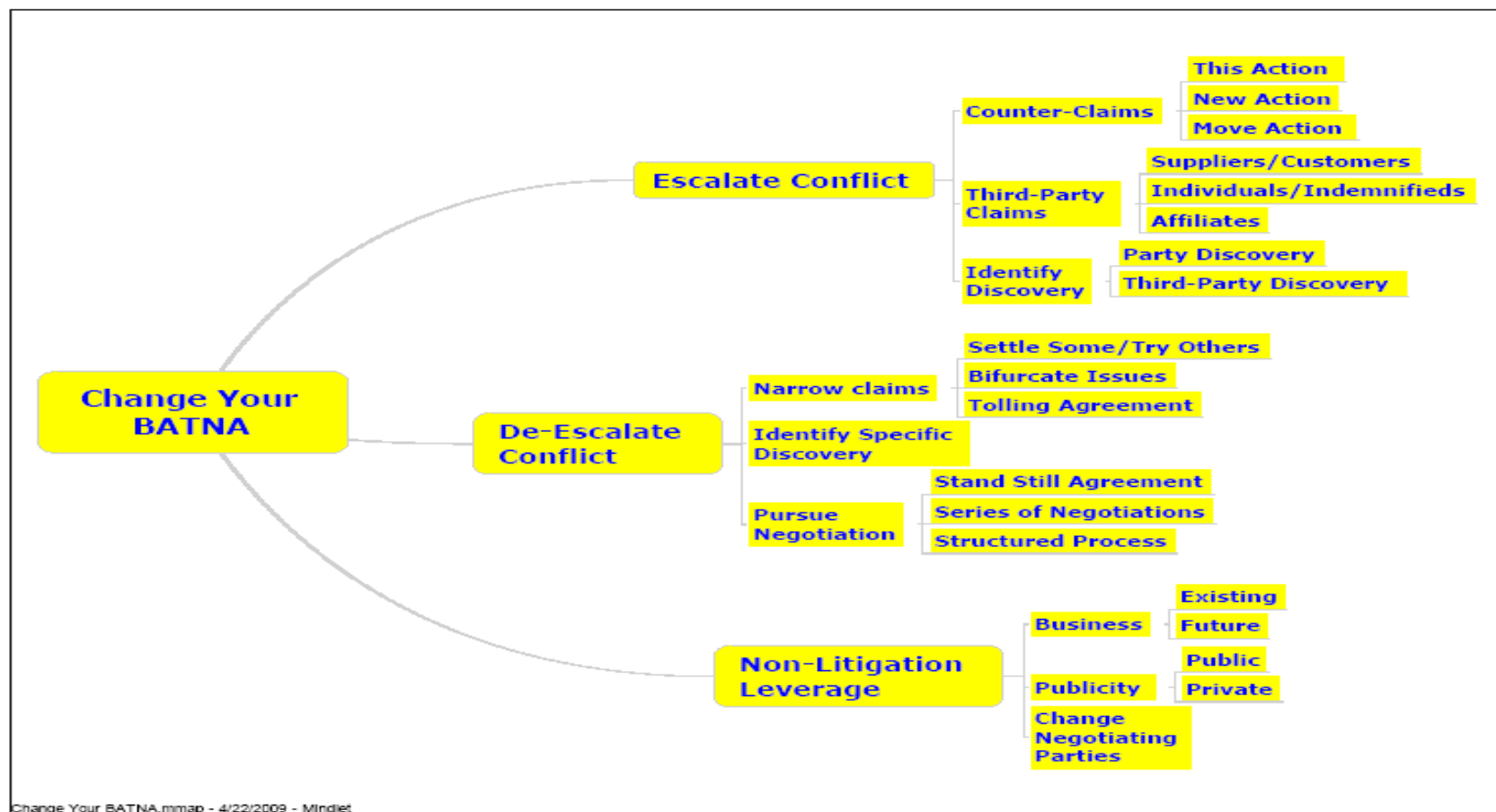
Early Case Assessment: How?

Best Practices

- Written Objectives
- Tiger Team
- Concentrated Effort
- Specific Deadline
- Joint Buy-in
- Joint Presentation

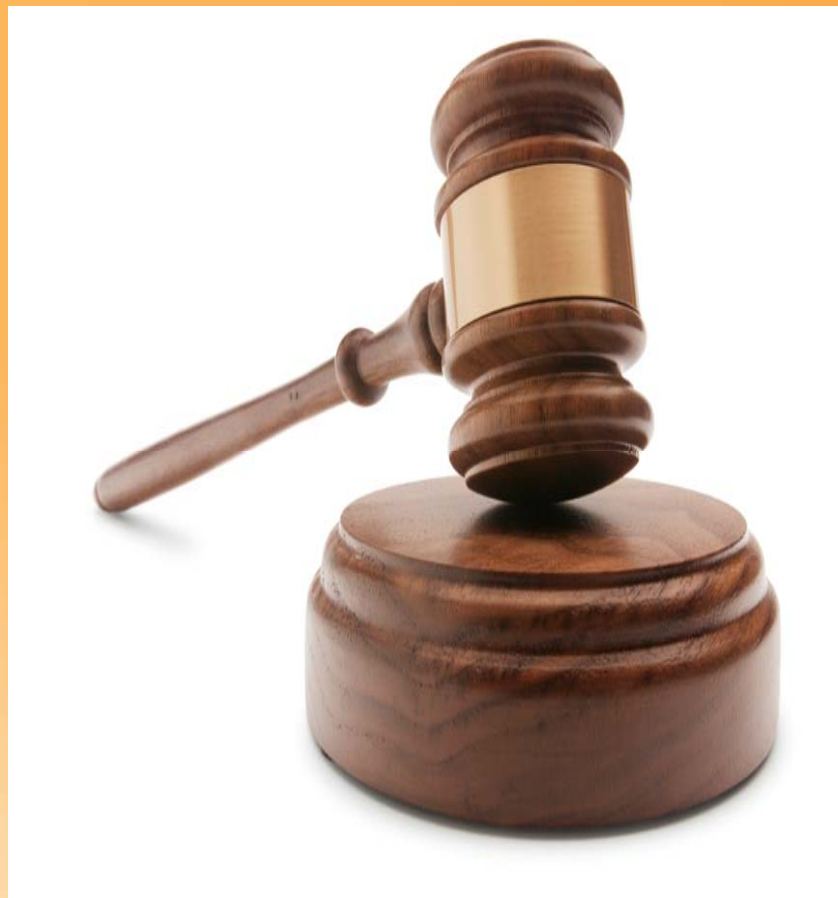


Redefine the Conflict



Design Procedures

Non-Binding Arbitration
Early Discovery Exchange
Unilateral Presentation
Summary Jury Trial
Competitive Mock Trial
Shared Focus Study
Retired Judge
Court Conducted Mediation
Court's Mediator
Council of Wise Wo/Men
Stay for Specific Discovery
Mediator's Proposal
Two Witness Saturday Trial
Post-Dispute Arbitration



Define Structures



High/Low
High/Low Baseball
Bifurcation
Initial & Contingent Payment
Time Limits
Fee Limits
Discovery Limits
Rule 68 Offer
Mix and Match

Align Client/Counsel Incentives

Contingent

Hybrid

Volume Discount

Reduced Rate with
Target Bonus

Monthly Retainer

Flat Fee Case

Flat Fee Components

Decreasing Rate

Early Resolution Bonus

Mix and Match



The Relationship

Team Continuity
Relationship Managers
Legacy Work Product
Systematic Feedback
Litigation Prevention
Consulting
Free Information Flow
Conflict Waivers
Recommendations
Defined Objectives
Accountability



Conventional Wisdom

“Worldly wisdom teaches that it is better for the reputation to fail conventionally than to succeed unconventionally.”

John Maynard Keynes



But Be Prepared for BATNA



The McKool Smith Method: Trial Preparation

Catalog the Evidence

Fact memo: every relevant fact known about the case

Proof outline: trial proof and evidence prepared during discovery

Exhibit indices: by issue, number & chronology

Publish and Refine Strategies

Jury scripts

Prepare opposition's case

Jury test, evaluate results, and retest

Team Coordination

Action list/accountability

Team meetings

Monthly/weekly status reports



Most TOP 100 Verdicts

2008

\$250 million: Medtronic Vascular Inc. v. Boston Scientific

\$59 million: Pioneer Corp. v. Samsung SDI Co. Ltd.

\$28.1 million: Adderley v. National Football League Players Assoc.

\$21 million: Anascape Ltd. v. Nintendo of America Inc

2009

\$290 million: i4i Limited Partnership v. Microsoft

\$19 million: Opti, Inc. v. Apple, Inc.

\$138 million: Versata Software v. SAP America, Inc.

\$20 million: City of San Antonio v. Hotels.com

2010 [?]

\$105.5 million: VernetX v. Microsoft ... so far



Questions?



Unconventional Dispute Resolution

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