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A FORWARD APPROACH TO NEGOTIATING YOUR EXIT PACKAGE.

Better economic times do not mean the end of outplacement. Better economic times increase mergers & acquisitions: this will generate outplacement. Companies do not need two CFOs. Better economic times will require aggressive strategies. Those who were leaders during the cost containment era may find that they are outplaced.

When you get your pink slip, what should you do?

We recommend six steps: (1) give a Mona Lisa smile (2) say nothing to anyone outside your immediate family. (3) Get an employment attorney. (4) Decide who to negotiate with (5) negotiate forwards and not backwards (6) decide what to negotiate for.

GIVE A MONA LISA SMILE. Resist the urge to get emotional. It won't accomplish anything. You will probably be given a package containing a document that has a contract. In return for a severance package that is slightly better than the standard package offered in the human resources manual you agree to release the company from any and all claims "from the beginning of the world until the end of time."

DON'T DISCUSS THE MATTER WITH ANYONE OTHER THAN YOUR IMMEDIATE FAMILY. People may call you on the phone that night and ask what happened/how are you? Be neutral and ask if you could visit them in a few weeks to provide assistance in your job search. Focus on the future. You may be in shock and you may be hurting. Do not say something you might later regret.

GET AN EMPLOYMENT ATTORNEY TO HELP YOU. It seems counterintuitive to pay for the services of an attorney at a time when you have just been terminated but pay you must. You have been given a contract to sign. You want expert legal opinion about what you can negotiate and how to negotiate. Even if you have few legal rights, many companies operate in culture of "the squeaky wheel gets greased." Don't you owe it to yourself to stick up for yourself?

You have been given a contract to sign. In what state is that contract enforceable? It will state in the contract. You want an attorney who is licensed to practice law in the state where the contract is to be enforced.

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You want an attorney who is a specialist in employment law. The person who handled your highly contested divorce may now be your friend. Don't let this attorney advise you. Your next door neighbor might have a great solo practice and will say she can handle your case. We advise you to go for a specialist in employment law. Much of employment law is based on local judicial precedent rather than the laws in the books. You want to speak with someone who studies local court rulings in the state where the contract will be enforced.

Talk with your friends and call your local Bar Association.

DECIDE WHOM TO NEGOTIATE WITH.

The worst person to negotiate with is the Human Resources person in your office. That person may have designed the severance program you are seeking to challenge. At the very least, Human Resources is the "keeper of the flame" for an easy to administer standardized approach firing. You, on the other hand, want a customized approach that meets your unique needs.

A better person to negotiate with is the company attorney. This is a conversation best done between your attorney and the attorney representing the company. Two legal professionals who are emotionally unattached from the issue can talk about risk management and money with ease.

The best person to negotiate with is the person who fired you. Make sure that this discussion is with the guidance of your attorney. Your attorney need not appear at this meeting. Let your attorney coach you what to say.

The question always comes down to who will pay for your more generous severance. If the person who fired you agrees to pay for it with money from her budget, then that question is settled.

YOU NEGOTIATE BACKWARDS OR FORWARDS?

Backwards negotiation assumes the company cares about the past. If so, then the past represents a significant leverage. Examples of Backwards Positioning:

- I worked so hard on achieving the merger.....
- You would not be as successful as you are today if it wasn't for all my work.....
- I was never given a chance.....
- The deck was stacked against me.....

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Most companies we work with care little about the past. It is the future that obsesses them.

The art of negotiation is to imply that there is a future risk that can easily/cheaply be managed without making threats. Doing this is an art. And this is why you need a lawyer to guide you. Examples of Forward Positioning:

- The dollar gap between us is only \$xxxx. If you get your way, I leave a disgruntled ex-employee. For \$xxxx more I leave a proud alum who will recommend this company to future prospective employees and to potential acquisition targets. We are talking about \$xxxx here. I will remain in our industry at the conclusion of the non-compete. I will be a business factor and I will have social and professional networks that will intersect this company's social and professional networks. Why are we having such a hard time with each other over \$xxxxx?
- The dollar gap between us is only \$xxxx. There is a Company Values statement displayed in the lobby. It says this company places value in treating employees with respect and dignity. For \$xxxx I will believe that I was treated with respect. It costs \$xxxx to make those words on a piece of paper located in the lobby something that is real. Why is \$xxxx such a big deal? We are talking about your corporate values.
- This company has never settled for being average. This company is always about exceeding the pack. And yet in this severance package you have settled for average relative to other companies in the industry. Yes, it sends a negative message to me. But the more important thing for you might be the message it will send to those employees who remain with you. You are saying to these employees, "We expect above average results from you but we settle for average if you are fired for no fault of your own."

WHAT TO NEGOTIATE FOR: MONEY, COMMUNICATIONS, AND OUTPLACEMENT.

The positioning statements we have outlined above all assume that you have asked around your industry and gotten a sense of what is "fair", "customary" and "average." You want to push for a severance package that is above average in return for the signature on the waiver of rights contract.

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Many companies will insert a non-disparagement clause in the package that states you will say nothing negative about the company. That is fair, as long as the clause also states that the company will say nothing negative about you. Some companies will have references go through the human resources department and HR will discuss nothing except name, dates of employment, and whether the person was fired or resigned. That situation may be less than ideal. But it is better than having a boss you do not trust provide the reference. The non-disparagement clause is important in a small company with unsophisticated top management.

Outplacement services are designed to help plan and then to execute your effort to achieve a “soft landing” in the wake of your departure. Outplacement is typically provided by 80% of mid cap to large companies. Like any professional service, the person who works with you is more important than the tangible steps of any program.

You do want to ask for executive outplacement service. And you do want to talk with the outplacement firm that Human Resources has selected for you.

But you do want to request the right to select your own firm within the limitations of the outplacement fees that have been agreed upon.

It is your career. Select an advisor that you are comfortable with.

There is a big difference between outplacement and executive outplacement.

Outplacement is a training-oriented service with a focus on group activities and web based tools. It is a useful resource when companies must process thousands of people in a cost efficient manner.

Executive outplacement, on the other hand, is a 1:1 consulting service with an emphasis on customizing the next steps of your professional life. Firms that are members of the Association of Career Firms International exchange information about best practices and must subscribe to a code of ethics:

<http://www.acf-northamerica.com/about.html>

And do ask peers who went through Executive Outplacement for recommendations.

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PLACE THIS ARTICLE IN YOUR “JUST IN CASE” FILE.

You ought to have a “Just in Case” file to look at when life’s stresses hit. Your being fired is one of those life events that might best described as “when” it happens rather than “if.”

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