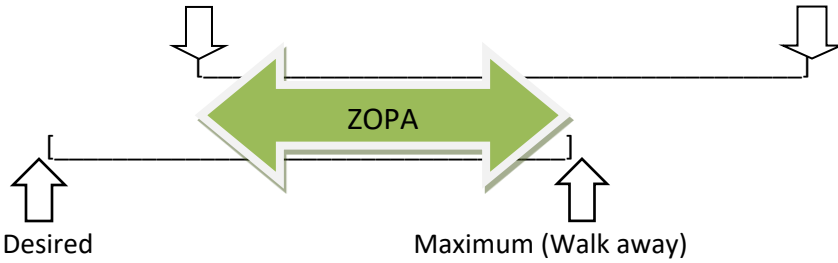


## Zone of Possible Agreement

### Plaintiff's Bargaining Position

Minimum (Walk away)

Aspiration



### Defendant's Bargaining Position

Arbitration, Mediation  
Facilitated Negotiations

For Business, Technology and  
Construction Industries

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## Negotiation Planning Worksheet

### INSTRUCTIONS

1. Consider the Strengths and Weaknesses of your case, referring to the checklist below.
2. Plug in the Numbers in the table at right. The Percentages must equal 100%. Add the numbers.
3. Compare this Net Equivalent Value to the Pending Offer; is it better than your expected outcome at trial ??

### Net Equivalent Value Calculation (NEV)

Best Possible Outcome \$ \_\_\_\_\_ x Likelihood % \_\_\_\_\_ = \$

Mid Range of Possible Outcomes; Most likely \$ \_\_\_\_\_ x Likelihood % \_\_\_\_\_ = \$

Most Adverse Possible Outcome \$ \_\_\_\_\_ x Likelihood % \_\_\_\_\_ = \$

Add the Numbers: The Sum of the Numbers Total to 100%  
is the NET EQUIVALENT VALUE = \$

Add or Subtract Expected Future Transaction Costs: + / - \$

### The Best Alternative to a Negotiated Agreement [BATNA ]

- Consider the Strengths of the Legal Issues**  
Simplicity of Legal Theory, Clear Factual Scenario  
Credible / Sympathetic Witness Presentation, Compelling Expert Evaluation
- Consider the Weakness of the Legal Issues**  
Factual Ambiguity, Difficulty with Proofs, Concern with Witnesses  
Substantiation of Damages / Rebuttal of Damages / Conflicting Experts Neutralizing Advantage
- Consider the Opportunities**  
Confidentiality of proceedings, Nondisclosure of settlement terms  
Immediate Resolution, Time Value of Money, Extended terms for payment  
Exploit or avoid "Special Factors" such as egregious conduct  
Sympathetic parties, Fairness, Equity, Reasonableness
- Consider the Threats**  
Precedent, Publicity, Multiple Actions  
Future Transaction Costs, Delay and Appeal  
Over valuating the strength of your position; Underestimating the strength of your opponent's case  
Risk & Uncertainty of the outcome, Financial Hardship  
Distraction from Business Operations, staff and executive commitments, Undermine Existing or Future Business Relations
- Options and Flexibility.**  
Explore the Interests of the Parties, what does each party they really need? Is there some way to address these underling concerns? What are the Options? Be Flexible in Negotiations, compromise is the key to successful resolution.

**Is the Negotiated Agreement better than the expected outcome at Trial?**