

Prescription for Sanity in Resolving Business Disputes:  
Collaborative Law

This article provides a pioneering example of the successful application of the alternative dispute resolution process known as Collaborative Law (“CL”) to solve a business dispute involving the break up and restructuring of a closely held business. While CL already has gained a solid foothold in the US, Canada and elsewhere in the field of family law, this case represents one of the first examples in the US of CL outside the family law context.

CL involves a process whereby each party to the dispute, and their attorneys, voluntarily enter into an enforceable agreement to settle the conflict without litigation and without a third party neutral such as a mediator or arbitrator. The CL agreement provides for:

- a series of settlement meetings with all parties and their attorneys present;
- the active engagement of all participants in a reasoned, interest-based process;
- informal and open discovery of relevant facts and documents;
- confidentiality with respect to matters disclosed during the CL process; and
- joint retention of all independent experts.

Finally, the CL agreement permits any party to the dispute, by giving notice, to terminate the CL process for whatever purpose including the commencement of litigation. Doing so requires all attorneys and experts involved in the CL process, and their respective firms, to withdraw from future representation in the dispute. Of course, parties are free to modify the CL process to meet their specific needs. The CL agreement results in a paradigm shift with the disputants and their lawyers sharing active involvement in problem solving and efficiently finding common ground. According to one of the corporate directors/shareholders; “CL allowed us a kinder, gentler and cost-effective way to restructuring our company.”

This case involved the break up and restructure of a Massachusetts corporation by the four original and equal shareholders who also constituted all of the directors, officers and key employees. The profitable business in question had grown over five years and provided computer and software consulting services to the life science industry. No shareholder agreement existed at the time that three of the shareholders informed the fourth shareholder that a restructuring (buy out) needed to take place due to “irreconcilable differences” that did not in any way reflect questions concerning the fourth shareholder’s technical competence. It was a painful and difficult revelation for the fourth shareholder to hear and for the other shareholders to state. The corporation’s Treasurer notes: “We had heard horror stories about companies that almost went bankrupt on lawyers’ fees while restructuring a business partnership. We wanted to prevent that from happening to us. We decided to give CL a shot, although it sounded too good to be true.”

Utilizing this innovative form of alternative dispute resolution, the parties came to an agreement in four months - approximately twenty percent of the time and legal cost anticipated if the dispute had gone to litigation. The final settlement resulted in:

- a new corporation being spun off for the departing shareholder/officer;
- compensation to the departing shareholder for his stock on equitable terms based on a jointly commissioned valuation but in a manner that did not cripple the other shareholders;
- a constructive and equitable process of mutually determining and agreeing on which customers would go with the newly created company;
- mutually beneficial non-competition covenants;
- a software re-seller agreement covering a difficult-to-value software product;
- a positive, jointly issued statement to the public; and
- maintenance of working relationships among the principals for future business joint ventures.

One of the corporation's founders concluded: "Our experience with CL was a very pleasant surprise; I would recommend it as a first step to dispute resolution. It worked for us because we were committed to the CL process. Our attorneys acted as facilitators to keep the process moving and to iron out the differences among the parties. The process was almost painless, even with a few bumps along the way. In the end, all of us walked away from the process feeling like everyone was treated fairly and all parties were satisfied with the outcome. CL also preserved the company's capital, so we could build two strong companies from the one we all started."

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