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Win-Win Approaches To Mediations

**Comments Presented to
The Surface Transportation Board
Ex Parte 699
Assessment of Mediation and Arbitration Procedures**

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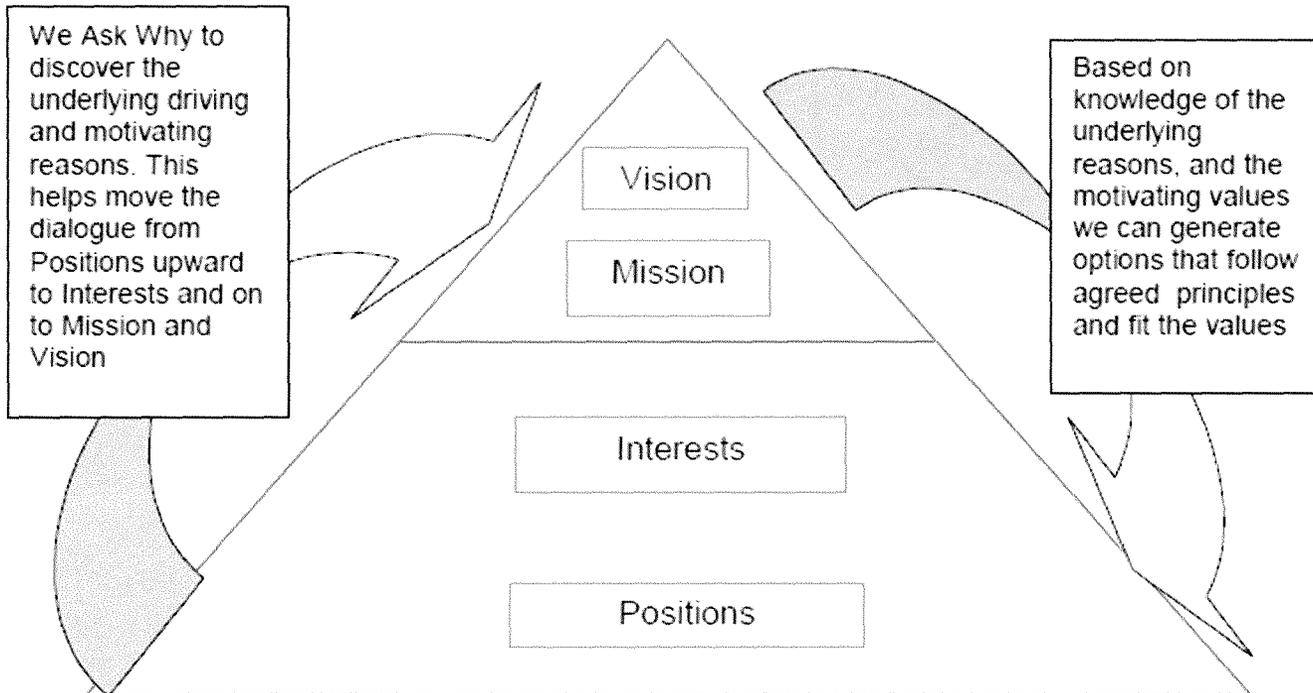
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Summary

- We have had positive experience with STB mediations in several Small Shipment Rate Cases as well as in other applications.
- The mediator has a key role in working with the parties and facilitating solutions. The mediator can help channel and focus the energy
- Decide on strategy:
 - Power-based bargaining with adversaries or
 - Principle and fact-based negotiating with partners
- Approach:
 - Identify Underlying Interests.
 - Agree on Guiding Principles
 - Generate and Evaluate Alternatives.
 - Develop the most promising
- Some of the techniques can appear counter intuitive but they are proven in application. The following charts outline the approach and the accompanying “White Paper” develops it.

✦ Win-Win Mediation Approach



- Maintain a fact based approach
- Maintain a principled approach
- Accept reasonable needs of the other party as legitimate
- Help meet reasonable needs rather than blocking them

↓ **Comparison of Position-Based and Interest-Based Approaches**

<u>Approach:</u>	<u>Position Based</u>	<u>Interest Based</u>
<u>Goal:</u>	Victory over adversary	Problem-solving solution
<u>Techniques:</u>	<p>Extract Concessions</p> <p>Discard relationship if that appears expedient</p> <p>Make threats, offers, counter-offers</p> <p>Focus only on bottom line</p> <p>Strive for one-sided gains</p> <p>Search for a single answer</p> <p>Insist on positions</p> <p>Try to win a contest of wills</p> <p>Apply sufficient pressure to force a win</p>	<p>Attack the problem</p> <p>Support the people</p> <p>Explore mutual interests</p> <p>Include all aspects that help build a solution</p> <p>Develop options for mutual gain</p> <p>Develop and Choose from multiple options</p> <p>Insist on objective criteria</p> <p>Apply mutually agreed principles</p> <p>Follow principles applied to facts</p>
<u>Level of Trust:</u>	Generally Absent	Unnecessary

Source: Adapted from work by Fisher and Ury; Harvard Negotiation Project

Conclusion

- We have had positive experience with STB mediations in several Small Shipment Rate Cases as well as in other applications.
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↓ About The Tom O'Connor Group

The Tom O'Connor Group assists clients by providing regulatory and litigation support and by offering management consulting services. The firm's regulatory and litigation support activities involve the development, preparation and presentation of expert witness testimony before courts and regulatory agencies. Members of the firm have participated in dozens of proceedings before state commissions and Federal commissions that regulate the transportation industries in both the U.S. and Canada. The Members of the firm have provided litigation support in the form of expert witness or economic research services in antitrust, merger, divestiture, rate and other cases before Federal and state courts.

In the area of management consulting, we assist both government and private clients in developing management information systems, evaluating contract performance and conducting management audits.

The Tom O'Connor Group specializes in the analysis of the operations, costs, revenues and services of enterprises, both public and private, involved in all modes of surface transportation. We have developed an array of transportation and logistics related negotiation planning and financial and management tools, including detailed models for negotiations, litigation, cost allocation, accounting, traffic flow, and carrier operations. These tools have been successfully employed on behalf of clients in well over 500 projects, including merger proceedings, contract negotiations, strategic planning and operational analyses. Our transportation practice extends beyond the U.S. borders throughout North America and into Eastern Europe.

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Selected Prior Testimony Related to Issues Addressed in Ex Parte 699

- **Testimony on STB Rate Guidelines in Small Shipment Cases.** Verified statement was submitted to Surface Transportation Board (STB) on behalf of SK clients in STB Ex Parte 646 in June 2004.
- **Oral Testimony on STB Rate Guidelines in Small Shipment Cases.** Oral Testimony was presented to the full Surface Transportation Board on behalf of SK clients in STB Ex Parte 646 in July 2004.
- **Testimony on STB Stand Alone Costs focusing on alternatives.** Comments submitted to Surface Transportation Board (STB) on behalf of SK in STB Ex Parte 657 in April 2005.
- **Oral Testimony on STB Stand Alone Costs focusing on alternatives.** Presented to Surface Transportation Board (STB) on behalf of SK in STB Ex Parte 657 in April 2005.
- **Oral and Written Testimony on the first ever STB Small Shipment Rate Case.** Comments submitted to Surface Transportation Board (STB) on behalf of BP Amoco in STB Docket NOR 42093 in May-June 2005. The case was resolved successfully through mediation.
- **Oral and Written Testimony on Rail Fuel Surcharges.** Comments were submitted to the Surface Transportation Board (STB) in April 2006 and oral testimony was presented the STB in May 2006 on behalf the American Chemistry Council. The testimony was submitted in STB Ex Parte 661. The issue is under adjudication.
- **Oral and Written Testimony on a second STB Small Shipment Rate Case.** Comments submitted to Surface Transportation Board (STB) on behalf of Williams, Olefins, LLP in STB Docket NOR 42098 in 2006-2007. The case was resolved successfully through mediation.
- **Oral and Written Testimony on a third STB Small Shipment Rate Case.** Comments submitted to Surface Transportation Board (STB) on behalf of US Magnesium in STB Docket NOR 42014 in 2009. The case was decided by the STB in favor of US Magnesium and subsequently affirmed by the Court. In 2010, two additional medium shipment cases were resolved successfully through mediation prior to filing evidence.