



Weinstein International Foundation  
MEDIATING A BETTER FUTURE™

## International Mediation Writing Competition

### INSTRUCTIONS FOR STUDENT PARTICIPANTS

The Weinstein International Foundation invites you to enter this year's International Mediation Writing Competition.

**The competition is open to all full-time enrolled law students who are not yet qualified, practicing lawyers, from law schools located in China.**

The competition is intended to increase student interest in mediation, enhance the skill level of advocates in the mediation process and to raise the level of quality for the written memoranda submitted prior to mediation.

To find out more regarding student participation in the competition, please contact [mediation@xtu.edu.cn](mailto:mediation@xtu.edu.cn).

Your memoranda must not exceed 2500 words, with one part (at least 60%) to be shared with the other party and the mediator and the other part to be kept confidential between you and the mediator. You may be creative in your writing style but you are not allowed to add facts that are not included in the case.

All entries will be anonymized. Entries will be judged based on criteria that test your ability to marshal facts, law and procedural history effectively, your ability to be persuasive without alienating the other side, to suggest ways that the mediator might be able to maximize the likelihood of a successful mediation and, of course, your writing ability.

The maximum award for first place mediation briefs is \$1,000 (USD).



## International Mediation Writing Competition

### CRITERIA FOR GRADING

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#### CRITERION ONE: AN EXCELLENT MEMO SUMMARIZES FACTS EFFECTIVELY, ACCURATELY AND COMPLETELY

This memo must not exceed 2500 words. Any memo that exceeds the limit should be graded down. An excellent memorandum distills all the important facts down into an easily digested summary, and it does not lose accuracy in the distillation.

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#### CRITERION TWO: AN EXCELLENT MEMO USES LAW APPROPRIATELY

The simulation contains no applicable law. The applicable law is the law that students are taught at their law school. Participants in this competition are invited to do whatever legal research they want and to include relevant law in their memoranda. However, the most effective mediation memos are much lighter on the law than the memos written for a judge or magistrate called upon to render a decision. The memo should alert the mediator to any relevant rules or laws that the mediator should be aware of, but stops short of being a legalistic argument.

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#### CRITERION THREE: AN EXCELLENT MEMO PERSUADES THE OTHER SIDE ABOUT THE STRENGTH OF THE AUTHOR'S CLAIM

After reading an excellent mediation memo, the reader is left with the impression that the author is "right" - that is, that she has a strong claim. However, given that mediation is a process in which the author will need to persuade the other negotiator of that "rightness," the argument ought not to be strident or worded in such strong language that the other negotiator will react negatively or feel the need to argue back. An excellent memo is assertive without inviting argument.

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#### CRITERION FOUR: AN EXCELLENT MEMO INVITES THE OTHER PARTY TO NEGOTIATE IN GOOD FAITH

Excellent advocates are keenly aware that they must persuade the other negotiator to say "yes" to a proposal that will come during the mediation. Such an advocate judiciously chooses language that signals a willingness to make concessions in return for compromises or concessions from the other side. Some memos even contain an explicit offer to make a concession if the other side is willing to reciprocate. But even in the absence of such an explicit offer, an excellent memo is framed in such a way that the

opposing negotiator feels more inclined to come to the negotiation as a problem-solving ally, not a legal opponent.

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#### CRITERION FIVE: AN EXCELLENT MEMO OFFERS A HELPFUL DESCRIPTION OF THE NEGOTIATION HISTORY

It is always useful for a mediator to know what attempts at settlement have preceded the mediation. No mediator wants to repeat a failed past tactic or approach. Thus, it is incumbent on the advocates to let the mediator know what the negotiation or settlement history has been in the dispute. If that negotiation history is too self-serving, the mediator is likely to discount or dismiss it. And if the self-serving description is in the Open Part of the memo, it is likely to alienate the other side. An excellent memo summarizes the negotiating history accurately, and portrays prior failures to settle as "no one's fault."

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#### CRITERION SIX: AN EXCELLENT MEMO OFFERS A REALISTIC ASSESSMENT OF THE OBSTACLES TO SETTLEMENT

A mediator needs to determine how he or she can help move the parties toward settlement. A critical piece of background information the mediator needs is an understanding of what stands in the way of an agreement. Sometimes the obstacle is obvious - for example, where one side denies liability and the other side insists that the defendant is liable. Or where one side values the claim in the tens of millions of Euros and the other values it in the hundreds. However, it is often the case that there are obstacles to settlement that are not immediately apparent to a mediator from the facts or negotiation history - for example, when the advocate has lost trust with her client and the client no longer believes the information the advocate brings to him. There are many such examples of hidden obstacles. An excellent mediation memo helps the mediator diagnose the roadblocks that will have to be surmounted before a settlement can be attained.

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#### CRITERION SEVEN: AN EXCELLENT MEMO PROPOSES USEFUL AND WORKABLE STRATEGIES TO HELP GUIDE THE MEDIATOR IN DETERMINING HIS OR HER APPROACH

Mediators are greatly helped when participants facilitate the structuring of an effective mediation process. While it is useful for a party to identify obstacles to settlement (see Criterion Six), it is even more useful when the parties then offer their perspective on how to structure the mediation in a way that overcomes the obstacles, exploits common interests and creates a settlement that both parties prefer over further conflict. An excellent mediation memo will contain at least one suggestion about how the mediator might proceed, and sometimes more than one. These strategies ought to arise organically out of the situation, and should not be monolithically biased in favor of the author's position.

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#### CRITERION EIGHT: AN EXCELLENT MEMO EFFECTIVELY BREAKS DOWN INFORMATION BETWEEN THE OPEN (SHARED WITH THE OTHER SIDE) PART OF THE MEMO AND THE CLOSED (CONFIDENTIAL) PART

One of the most important skills in mediation is knowing what to share with one's negotiation counterpart and the mediator, and what to keep between the mediator

and one's self. This skill is important during a mediation, but also in the writing of a pre-mediation memo. Many mediators prefer that the parties write something private in addition to something shared. The private memos often contain information about strategy, about the other side, about aspects of the negotiation history, and perhaps even about settlement targets and obstacles. To the extent that the memo ought to inform the mediator without inflaming the other side, this can be accomplished by keeping the information confidential.

However, advocates who keep too much information confidential fail to serve their clients' interests. It is the other side who must be persuaded. This means that as much information as possible ought to be in the Open Part of the memo and that the Closed Part is kept to a minimum.

Moreover, the information in the Closed Part still needs to be accurate and believable. If the author is too one-sided in the Closed Part, the mediator will naturally discount the strength of the author's statements.

A fine balance needs to be struck, but an excellent memo manages to expertly walk the line between shared and confidential information.

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#### CRITERION NINE: AN EXCELLENT MEMO IS WELL-WRITTEN

This point ought to be obvious. When an advocate takes the time and exercises the skills required to produce a well-written work, he or she makes the job of the reader much easier. Well-written works are more persuasive and show the author in the best possible light. When spelling and grammar are perfect, when word choice is creative and appropriate, when sentence and paragraph structure evince care and skill, the product and the argument contained therein are all more likely to do the intended job.



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**LETTER OF APOINTMENT TO DRAFT A MEDIATION BRIEF**

TO: OUR NEW ASSOCIATE

FROM: SENIOR PARTNER

RE: Union of Milk Producers of Sunland (UMPS) vs Milk Industries Association (MIA)<sup>1</sup>

DATE: March 20<sup>th</sup> 2024

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Our firm is very pleased to have hired you. You seem like a lawyer with a terrific career ahead of you. The leadership of the firm has great faith in your abilities, and as a result, we have decided to give you a very important and urgent task. Your job is to write a mediation brief in support of our client Antifreeze Supplies Ltd. The mediation will take place tomorrow morning.

This case file contains:

- A) A summary of the case (as presented by our client)
- B) A transcript from a confidential interview with the client
- C) An article on the current situation

We are confident that you will be able to prepare this brief as soon as possible.

Do your best work. We have placed our trust in you.

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<sup>1</sup> Disclaimer: This is a work of fiction. Any similarity to actual persons, or actual events, is purely coincidental. The original case and transcript were drafted by Senior Fellow Eleni Charalambidou. The reproduction, translation, editing or use for commercial purposes is strictly prohibited without the written consent of the author.



## DOCUMENT NO 1: SUNLAND MILK CRISIS - CASE SUMMARY

**CLIENT:** Union of Milk Producers of Sunland (UMPS)

Sunland is grappling with a financial crisis and, in an effort to stabilize its situation, it has been gradually increasing its taxes. The country's economy relies heavily on the export of agricultural products, with Sunland being the primary milk provider in the region.

Until now, individual milk producers in Sunland, represented by the Union of Milk Producers of Sunland (UMPS), have been selling almost their entire milk production at a fixed price to four large multinational companies dominating the milk industry throughout the region. These companies share aligned interests and have formed the Milk Industries Association (MIA), even though each one has a bigger market share on a different dairy product (milk, cheese, yogurt, ice cream etc).

UMPS and MIA entered into their initial contract three years ago, with a duration of two years and the option for renewal every two years thereafter. The agreement was successfully renewed last year for an additional two-year term. Under this agreement:

- UMPS would sell an agreed quantity of milk per year to the four MIA companies at a fixed price of 700 Sunland dollars per ton.
- The price could be renegotiated every two years before contract renewal.
- The agreement would be automatically renewed after the two-year period unless one party provided written termination notice three months before expiration.
- Termination of the agreement could also occur in the event of unforeseeable circumstances (force majeure), provided that those have lasted for more than 60 days.

As the financial crisis deepened last year, producers attempted to renegotiate the price before the contract renewal, considering the impact of the new taxes. Also, the prices for livestock feed skyrocketed due to recent wars and natural disasters in the countries that are the main feed providers/exporters. However, the four multinational companies refused to adjust their purchasing prices for milk, citing their own challenges stemming from the tax increase and decreased demand due to reduced consumer purchasing power. Ultimately, UMPS agreed to renew the contract in writing with the same price of 700 dollars per ton, but for a slightly reduced quantity. Instead of 3.5 million tons, UMPS would now provide 3 million tons of milk to MIA.

In an effort to increase individual producers' income, UMPS acquired several neighborhood shops across Sunland with the intention of converting them into local outlets for selling fresh



milk only (no other dairy products), thereby enabling producers to sell directly to the public the remaining 0.5 million tons. However, these shops were unable to obtain the necessary operating licenses. Suddenly, laws governing food distribution changed, mandating significant investments in milk processing equipment. This requirement made it impractical for small distributors to bottle and sell milk directly to consumers. UMPS suspects that this legislative change was influenced by the political lobbying efforts of MIA, aimed at preventing local producers from bypassing them and selling directly to consumers.

Last month, under pressure from foreign creditors, the government of Sunland imposed even higher taxes. On the next day, milk producers declared their inability to afford the taxes and feed costs any longer. UMPS attempted to renegotiate with MIA, but the latter reiterated that the situation adversely affected their operations as well, making it impossible for them to pay more for milk. They argued that any increase in milk prices would necessitate significant layoffs to reduce operational expenses and prevent bankruptcy. Raising the final dairy product prices was deemed unfeasible, especially because they were already considered high, with some countries in the region even regulating them by law (price cap). The Union remained skeptical of these arguments and decided to take drastic action. Producers issued a force majeure termination notice and ceased supplying milk to all four companies immediately, citing financial ruin due to company policies and taxes.

To garner media attention, milk producers took to the streets in protest, distributing their milk for free, directly impacting the interests of the companies. This, coupled with the milk shortage for the four companies, caused a significant decline in dairy product sales across the region, resulting in substantial financial losses. Additionally, the companies faced another issue: with Sunland producers being their primary milk source, they lacked sufficient milk for production and were unable to meet delivery deadlines in most regional markets. Due to food safety regulations and import quotas, importing the required volume of milk from distant regions was not feasible. Consequently, they might face lawsuits from supermarket chains for failure to deliver agreed products, as well as political accusations of operating as a cartel attempting to control the regional milk industry. This damaging scenario severely tarnished their reputation, with marketers predicting long-term effects on sales. Rectifying this would necessitate an extensive and costly marketing campaign to regain consumer trust.

Furthermore, milk producers in Windland, the region's second-largest milk producers, announced their intention to follow Sunland producers' lead if the four companies failed to adjust their milk buying prices.

MIA retaliated by filing a lawsuit against UMPS, alleging breach of contract on the grounds that the circumstances (tax increase) did not constitute force majeure, and even if they did,



termination required a written notice sent at least a month in advance according to the contract terms. MIA demanded immediate delivery of the agreed milk and claimed 2,000,000 Sunland dollars per day in direct damages (25 days have passed already), plus additional damages resulting from supermarket claims due to dairy product shortages. After receiving the lawsuit, the president of UMPS hired our office to represent them.

This situation has financially drained milk producers and the four multinational companies, attracting international attention. We suggested to attempt mediation. Our client invited MIA to mediation and the latter agreed. The date is set and we now need to prepare the mediation brief as soon as possible.





## DOCUMENT No 2: TRANSCRIPT OF PRIVATE DISCUSSION BETWEEN ADVOCATE AND CLIENT ON THE CASE

**Advocate:** I need to know everything about this case to be able to help you. I have been following the events on the news and social media, but I need to hear your side of the story. What went wrong with MIA and the four companies?

**UMPS President:** They are operating like a cartel. They negotiate the prices together, making it impossible for us to improve our situation and survive. They kept saying no to any reasonable price increase and that is why we decided last year to keep some milk and try to sell it directly to the consumers with a reasonable profit margin that would increase our income. But we are sure they lobbied to change the laws in order to make it impossible for us to do so! We are furious. They left us no other choice, so we decided to take drastic measures and go public. It was the only way they would listen to us. We are wondering now if we can also move against them for the new law on milk distribution which requires significant investment in milk processing equipment...

**Advocate:** That will be challenging. Will you be able to prove that they somehow forced the new law just to exclude you from the market?

**UMPS President:** Unfortunately we don't have hard evidence but we know they have a lot of political influence....

**Advocate:** Ok, we will keep that in mind, but please consider that even if you could prove the political influence, lobbying per se might be not necessarily illegal. We would have to prove that any campaign to change the law was illegal, exceeding the acceptable lobbying efforts, and that the measures adopted by the new law are unreasonable and against free competition principles. These processes take years, are expensive and really hard to prove...

**UMPS President:** Oh, we don't have years... we are already out of time. What about the fact that all four companies negotiate together through MIA? Isn't that against competition principles and laws? Isn't that a cartel?

**Advocate:** We are looking into that. Our team of experts in competition law is examining whether MIA can negotiate prices as an association or this constitutes a practice that breaches competition laws. Still, competition claims are risky and may also take years to be resolved.

You came to us because they have filed a lawsuit against you, claiming damages. Our litigation department is examining all possible arguments for court, but for the time being our priority is to build



a strategy to face these claims as quickly as possible and negotiate to cover your interests during mediation.

**UMPS President:** These claims are ridiculous! They are asking for a huge amount just to shake us down because they are left out of milk. Of course we had the right to terminate the contract, since the circumstances have changed so much and they were not willing to renegotiate the prices. If the new tax increases aren't force majeure, then what is it?

**Advocate:** This is a valid argument, which would still have to be assessed by the court though. There is always some risk with force majeure clauses. Tax increases may or may not be considered as such.

**UMPS President:** It is not just the tax increases, it is also the prices of feed!

**Advocate:** I understand your point and your financial exhaustion. This will definitely be our argument. Nevertheless, the increases in the prices of feed took effect before the renewal of the contract, so they might not be considered as unpredictable circumstances for your current deal, unless they are taken under consideration cumulatively.

Generally we believe that there are strong arguments in your favor for issuing a termination notice on force majeure clauses. There is a problem with the timing though, because according to the contract the unpredictable circumstances should last for at least 60 days, and you stopped providing milk immediately after the last tax increase. Our goal is to avoid interpretation risks at court and reach a good agreement during mediation if possible.

**UMPS President:** Ok, so what do you suggest in terms of strategy?

**Advocate:** In order for us to design a strategy, I need to know what you need from them. What are your current needs?

**UMPS President:** Well, we have to get back in business with them as soon as possible. There are no other buyers for our milk at the moment and we are financially ruined. But we need viable prices. Ideally 900 dollars per ton. We also need to structure a more flexible deal that will take into account inflation, taxes and expenses and will allow us to renegotiate prices reasonably when they are not viable for us. And of course we are not willing to pay them damages. We don't have the funds they request anyway.

**Advocate:** Ok, we will build the strategy around these needs. But we expect that they would push back in the price increase as they did in the past, since they claim that the financial situation is difficult for them as well. How can you convince them to pay that amount?



**UMPS President:** They need the milk. We also have the public opinion in our favor and after your research, we may try filing claims based on competition laws which will damage them further. Milk producers in other countries are following our lead. They need us and we need them, we are co-dependent. They should pay at least a bit more.

**Advocate:** What is the lowest purchasing price that would be viable for you?

**UMPS President:** Well, in worst case scenario we could survive with a price around 830 dollars per ton, but we would need assurances that the deal will be more flexible this time and there will be clauses that ensure sustainability. During the mediation we would like to learn more about their actual financial situation as we don't believe that they cannot afford any increase.

**Advocate:** Sure, we will prepare for that.

There is another important issue we should discuss. I am going to play the devil's advocate here. What about the damages they are claiming? There is a lawsuit pending against you and rumors about supermarkets that are prepared to go after them for not fulfilling their obligations, hence creating more damages. How can you convince them to forget about those?

**UMPS President:** Our goal is to use the leverage we have to avoid them altogether. We want to argue that we had every right to terminate the contract and we have no liability. But, I understand the risks that you mentioned about the 60 days period. If they insist and we can reach a reasonable agreement on the purchasing price, we can send them milk on the same day to resume operations. We can also deliver for free the excess quantity we have in our fridges at the moment instead of money. If no deal is made we will have to throw it away anyway. They could use that excess quantity for products and give them as a promotion to the supermarket chains to appease them...

**Advocate:** This is good. But what if it is not enough? We need to be prepared for all scenarios, so are there any other alternatives?

**UMPS President:** Well, we put all our money in buying the local shops that are now useless. If they can help us operate them somehow, we would have more revenue to cover some potential damages arising from supermarket chain claims. They have political influence, they have equipment... we might be able to brainstorm and work something out. Operating these shops will provide more opportunities for us in general.

**Advocate:** Thanks for sharing all that. So we will build a strategy with the goal to avoid damages to the extent possible, renegotiate a flexible sustainable deal with a viable purchasing price (minimum 830 and ideally 900 dollars per ton), and find a way to brainstorm on the operation or exploitation of the local shops.

This article was published in one of the most popular news websites. It already has thousands of views and hundreds of comments.

# SUNLAND TIMES ONLINE

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MARCH 10, 2024, last updated 19.00

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## Sunland Milk Crisis: Clash of Titans in the Dairy Industry

By columnist Georgina Adams

During the last two weeks we are all witnesses of apocalyptic images in the dairy section at supermarkets!

As the feud between the Union of Milk Producers of Sunland and the Milk Industries Association becomes more aggressive, consumers are deprived of the basics in an era that the financial situation is already difficult for households. Yogurt is rarer than gold and parents make queues out of supermarkets at 7 in the morning to get whatever is available...

In the heart of Sunland, a battle of epic proportions is unfolding within the dairy industry. It's a clash between local milk producers and the titans of the multinational corporations.

Sunland's economic woes, compounded by soaring taxes, have left its milk producers, represented by UMPS, scrambling for solutions. Attempts to renegotiate contracts with MIA, comprising the powerful multinational companies dominating the regional milk market, hit a brick wall. The corps, facing their own financial strains from tax hikes, refused to budge.

Faced with a stalemate, UMPS made a bold move, invoking force majeure and halting milk supply to the corporations. They took to the streets, distributing free milk to draw attention to their plight. The ripple effect was felt across the region,

with dairy sales plummeting as consumers rallied behind the producers.

But this showdown isn't without repercussions. The corporations swiftly retaliated with a lawsuit against UMPS, alleging contract breach and demanding substantial damages. With Sunland's milk flow disrupted, the corporations face a cascade of challenges, from legal battles to reputational damage.

As tensions escalate, global eyes are fixed on Sunland. The presidents of MIA and UMPS have tentatively agreed to mediation, but the outcome remains uncertain.

In the heart of this dairy crisis, it's a clash of titans - a battle for survival that could reshape the landscape of the Sunland milk industry for years to come.