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The U.S. Women's National Team Pay Equity Lawsuit – Lessons on Mediation

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In the latest chapter of the saga that is the U.S. Women's National Team's (USWNT's) pay-equity lawsuit against the U.S. Soccer Federation (USSF), the Court granted summary judgment as to the USWNT's Equal Pay Act claim.

While the case is scheduled for a trial on the remaining claims (pertaining to travel accommodations and other working conditions), the Court's ruling effectively carves out the heart of the USWNT's case. Nevertheless, the UNWNT has appealed the Court's ruling and vowed to continue the fight for equal pay.

The dramatic twists and turns in this case teach us valuable lessons from an alternative dispute resolution standpoint.

The first lesson is that timing is everything when it comes to settlement negotiations. When the USWNT was in the midst of winning the World Cup trophy in France last summer, it was riding a wave of momentum, particularly in the court of public opinion. Surely, the USWNT had the upper hand when it went to mediation shortly thereafter, but the case did not settle.

The USWNT probably went into that mediation feeling like it had all the leverage. At the same time, it was early in the litigation, and there were many critical turning points to come. In this regard, it made sense for the USSF to wait things out before going back to the bargaining table if the price of settlement was too high the time.

In the Fall, the USWNT landed another blow when the Court granted its motion for class certification, thereby setting the stage for a class action trial the following Summer. At that point, the momentum was continuing to build against the USSF, but it still had a powerful weapon in the form of dispositive motions that could result in dismissal of the USWNT's case.

Then, earlier this year, when it seemed like it couldn't get worse for the USSF, it did. After losing major battles in the court of public opinion and the court of law, the USSF faced yet another setback – this time with key sponsors voicing support for the USWNT – when its attorneys made arguments about the skill level of the USWNT players that were characterized as sexist and demeaning.

This latest setback resulted in the resignation of the USSF President, the replacement of its legal team and a public apology. The USSF's new leadership also struck a more conciliatory tone in hopes of resolving the case before trial.

With a trial date around the corner and all of the momentum in the USWNT's favor, the USSF completely turned the tables on the USWNT when the Court granted its motion for summary judgment and dismissed the USWNT's Equal Pay Act claims.

After this stunning reversal of fortune, now the USSF has the leverage going into trial, and perhaps more importantly, into the next round of settlement negotiations. Knowing this, the USWNT has appealed the Court's ruling and requested a trial continuance pending the result of the appeal.

This brings us to lesson two, which is that litigation is no different from the matches in which the USWNT plays in that momentum swings are part of the game, and having the upper hand early in the match doesn't guarantee a victory when the final whistle blows. The good teams adjust their strategy and play through the momentum swings.

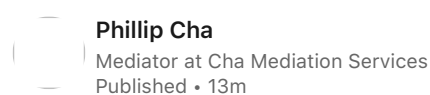
With a looming trial date and several important stages of the litigation completed, this may be an opportune time to revisit settlement negotiations. In light of the current posture of the case, here are some of the key issues on the table for the next mediation:

- What is the USSF's exposure with respect to the USWNT's remaining claims? How are the facts and law shaping up in this regard? When will the trial take place? The original May 2020 trial was already continued once to June, and it likely will be continued again indefinitely in light of the COVID-19 pandemic.
- What are the USWNT's chances on appeal? What is the trial judge's prior record on appeal in similar cases? Even more importantly, what is the timing for the appeal? In other words, will the trial be stayed pending the appeal, or will it have to wait until after the trial on the remaining claims? Either way, the appeal itself could take a year or more to play out.
- How will the public relations concerns impact the negotiations? As we have seen throughout the litigation, the parties have interests that go beyond the law, and each side certainly will be seeking a deal that they can spin into a win in the eyes of soccer fans, sponsors and the general public.

High-profile litigation like the USWNT pay-equity case often gives us useful teaching points for mediation. For one, the timing of settlement discussions is critical in framing the issues and applying leverage. Additionally, the momentum can swing back and forth in litigation, and the parties that can adjust and play through the swings often get the best results.

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For those who need a break from COVID-19 content, in a surprising development last week, the Court dismissed the U.S. Women's Soccer Team's Equal Pay Act claims, setting the stage for another round of settlement negotiations. Here's my take on the lessons learned from a [#mediation](#) standpoint. [#disputeresolution](#) [#litigation](#)