

# New York Dispute Resolution Lawyer

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# Conflict Resolution and the ‘No-Gain Zone’: Why It Matters

By Matteo Castelli

## The No-Gain Zone

Any process to address a conflict entails costs. Every war, legal proceeding, or negotiation consumes resources. In the case of wars, these include human losses and severe economic damage. In every other context, the conflict and its resolution usually entail financial, emotional, reputational, temporal, and relational costs. When cumulative costs exceed any plausible gain (even the “best realistic outcome”), the process crosses into the No-Gain Zone<sup>1</sup> (or NGZ) – a stage where a party pursues a net negative return and costs outweigh any potential benefits.

Parties often do not realize they are in the NGZ because of the difficulty of valuing intangible interests, especially the intangible costs of protracted conflict, including risks, and the intangible benefits of resolution. Examples of intangible interests are: physical and emotional well-being, relationships, time, lost opportunities, emotional satisfaction, risk avoidance, trust, reputation, and business continuity. Such interests can translate into subjective costs or benefits in our decision-making. For example, time is one of our most important resources, and because it’s finite (and certain things in life can’t be delayed), we value it – often without realizing it. How often have you paid more for something because you were in a hurry and couldn’t take the time to shop around? Or because you felt that the potential savings elsewhere weren’t worth your time and effort?

Awareness of the NGZ threshold is vital because conflict resolution without cost awareness often becomes conflict perpetuation. Recognizing the NGZ ensures that the process itself does not become the main source of harm. The NGZ serves as a compass indicating that a process is producing negative returns and signaling the moment to pivot from confrontation toward stabilization and recovery. When the NGZ is reached (or is foreseeable), the rational and ethical focus should shift from pursuing the process to limiting harm. Tools include temporary truces or standstills, suspension of hostile communications, phased disengagement, and restorative or healing measures that reduce ongoing damage.

However, it is often very difficult to value intangible interests in disputes. For instance, this is usually the case in family matters, where emotions cloud judgment. The intangible costs of protracted litigation for the whole family easily overshadow the tangible costs, and result in a net negative for all

of the family members who enter the NGZ without realizing it. Litigants frequently underestimate the emotional and relational costs and overestimate the satisfaction or utility of a formal “win.” As a result, they may continue to pursue litigation long after the process itself has begun to generate a net negative return. The aggregate cost of continuation may exceed any plausible benefit well before a final decree is entered. This is especially true when intangible interests – such as emotional well-being, parental relationships, trust, and time – are systematically undervalued or ignored. Because these interests are difficult to quantify, they are often excluded from the parties’ implicit cost–benefit analysis, even though they may be decisive in determining whether the dispute has crossed into the NGZ.

High-conflict custody disputes offer a particularly stark example. A parent pursuing a custody battle may ultimately “win” the case, yet lose meaningful contact with a child whose affection and trust eroded during years of adversarial litigation. By the time the legal process concludes, the long-term relational damage may prove irreversible. In such circumstances, the tangible costs of litigation are often overshadowed by the far greater intangible losses suffered by all members of the family. In addition, after years of fighting, one or both spouses can become so emotionally scarred that they struggle with new relationships or carry lingering trauma that affects their career or mental health long term. A bitter divorce can sometimes set off a chain of events (like depression or substance abuse in one parent, financial ruin, etc.) that continues to affect the family long after the legal case is closed. These kinds of outcomes are often grossly underestimated by people at the start of a divorce. They think they’re just going to “get what they’re entitled to” and move on, not realizing that the fight itself might create new wounds and losses.

Recognizing proximity to the NGZ earlier allows parties to reframe objectives before the process itself becomes the primary source of harm. Rather than focusing exclusively on positional outcomes, practitioners can help parties reassess their goals in light of the full spectrum of costs involved – shifting attention toward preserving parental relationships, limiting psychological harm to children, and protecting family assets, tangible and intangible ones, from depletion. From this perspective, the NGZ does not compel settlement at any price; instead, it provides a disciplined framework for identifying when continued escalation no longer serves the parties’ underlying interests and when damage containment becomes the more rational course.

## Valuing Intangible Interests

The non-financial consequences of litigation may be intangible, but they are very real and must be factored in to properly assess whether litigation is worthwhile. People entering litigation often lack the experience to foresee how much time and emotional energy the process will consume. It can easily take over their lives, disrupting routines, draining mental and emotional resources, and delaying any chance of healing. These effects can cascade – causing not only individual suffering but also long-term harm to children, extended families, and future relationships.

In every dispute, it is critical to identify all intangible interests at stake and value them. Only by doing so can disputants assess how close they are to the NGZ and act accordingly. For each intangible interest, the key question for a disputant is: “What would I be willing to pay to obtain that benefit or avoid that cost?” Increasing risks also have a negative impact on the net present value of the case. These risks include the prospect of appeal, delay, emotional strain, reputational harm, and the erosion of family or business relationships.

Unfortunately, cognitive biases often prompt parties to charge ahead, right into NGZ, in a dispute with no positive outcome. For instance, many litigants identify the trial court’s decision as the end of the process and budget accordingly. As many “victorious” parties eventually learn, a win in the first court can be just the beginning: the other side might appeal and find a way to prolong the fight into NGZ for either party. By the time a final appellate decision arrives, the net benefit after the extra years of fighting might be far smaller or negative. When the risk of appeal(s) is factored in and valued correctly at the start of the effort to resolve the matter, the potential entry into NGZ earlier than people usually realize could be foreseen.

## NGZ and Position Asymmetry

Each party’s cost–benefit curve evolves differently due to factors such as:

- *Resource asymmetry*: A wealthier, institutionally backed, or state actor can absorb ongoing costs longer than a weaker counterpart.
- *Information asymmetry*: One side realizes sooner that no favorable outcome is realistically attainable while the other still overestimates its chances.
- *Psychological investment*: Ego, pride, or perceived injustice delay cost recognition for one side.
- *Non-material motives*: One party may value intangible interests – principle, deterrence, relationships, time or reputation – more than material gains, making continued conflict “worth it” in their own calculus.

Thus, while one party rationally may see continued engagement as destructive, the other may perceive remaining potential gain. When only one side perceives the NGZ, three recurrent dynamics emerge: (1) the party that recognizes the NGZ first hesitates to disengage, fearing it will be seen as capitulation or weakness; (2) the side still invested in “winning” may exploit the other’s fatigue, pressing for maximal concessions, sanctions, or reputational advantage, so that the conflict thus becomes predatory or punitive; and (3) the side that stays blind to costs may push until both suffer irreversible harm – financial collapse, reputational ruin, human casualties – before any settlement or ceasefire.

When only one side realizes the conflict is value-destroying, that awareness carries information but not bargaining power. The moment a party signals fatigue or a desire to exit, the opponent may read it as weakness and press harder. To minimize such risk, use of a neutral may be most valuable. A respected neutral can help the parties acknowledge and assess NGZ and related costs without loss of face.

Awareness of the NGZ doesn’t guarantee peace or resolution, but it’s the first act of rational leadership in an irrational conflict. When only one party recognizes the No-Gain Zone, that party controls the timing of disengagement, reframing, or transformation. The challenge is to act without appearing to surrender.

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## Endnote

1. The concept of “No-Gain Zone” was first articulated by the author in a manuscript currently under review.

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