

Strategic Advocacy Beyond Litigation: **COUNSEL'S ROLE** in Early-Stage Negotiation and Mediation

In commercial practice, disputes rarely begin as legal problems. They start as business disagreements, strained relationships, unmet expectations, or breakdowns in communication. Yet too often they are approached primarily through the lens of legal rights and procedural strategy. By the time formal proceedings commence, positions have hardened, costs have escalated, and commercially sensible solutions may no longer be attainable.

These challenges are further amplified in cross-border disputes involving multiple jurisdictions, foreign courts, or arbitration proceedings. In such cases, legal fragmentation, parallel proceedings, and enforcement uncertainties significantly increase costs and timelines. Yet, despite this added complexity, the underlying commercial interests of the parties often remain consistent and can still be addressed through well-structured, interest-based negotiations.

Increasingly, sophisticated businesses—and their counsel—are recognizing that effective advocacy does not begin in the courtroom. It begins much earlier, in negotiation rooms, boardrooms, and sometimes even in informal conversations aimed at preserving value rather than “winning” a case. This is particularly relevant in multi-jurisdictional disputes, where formal proceedings can quickly become resource-intensive and operationally disruptive, diverting management’s focus away from core business activities. Strategic advocacy beyond litigation focuses on identifying real interests, managing risk proactively, and designing solutions that courts are not equipped to deliver.

From Positions to Interests

A fundamental insight of negotiation and mediation theory is the distinction between positions and

interests. Positions are what parties say they want; this could be payment of a specific sum, termination of a contract, or enforcement of a clause. Interests are the underlying reasons why they want it. This could include liquidity pressures, reputational concerns, continuity of operations, internal governance issues, or simply the need for acknowledgment and closure.

Many commercial disputes are driven as much by human dynamics as by financial issues. Perceived unfairness, loss of trust, internal politics, or reputational sensitivities can sustain conflicts long after purely economic considerations would suggest settlement. In cross-border contexts, these dynamics are often compounded by differences in legal systems, procedural expectations, and cultural approaches to dispute resolution. However, even in such settings, once the parties’ underlying interests are properly identified, the pathways to resolution tend to converge regardless of jurisdictional complexity. Counsel operating in negotiation settings must therefore manage not only legal arguments but also emotional undercurrents.

Yet traditional legal training emphasizes positions. Lawyers are taught to assert claims, defend rights, and evaluate the likelihood of success under the law. Courts, by design, operate within the boundaries of pleaded claims; a judge cannot award relief that has not been requested.

Early-stage negotiation and mediation, however, operate in a broader space. They allow parties to explore options that go far beyond legal remedies: restructuring commercial arrangements, revising timelines, adjusting risk allocation, or preserving ongoing relationships. In many cases, the commercially optimal outcome would not be legally available in adversarial proceedings. One of the most important determinants of success in negotiation or

mediation is timing. Intervening too late—after formal positions have been entrenched—significantly reduces flexibility. Conversely, engaging early can prevent disputes from crystallizing into zero-sum contests.

For investors and businesses operating in complex environments, this distinction is critical. A dispute framed solely as a legal battle may overlook solutions that protect long-term value.

Counsel's Evolving Role

In early dispute resolution processes, counsel's role shifts from adversarial advocate to strategic problem-solver. This does not mean abandoning the duty to protect the client's interests. On the contrary, it requires a deeper understanding of what those interests truly are.

Effective counsel must:

- ▶ Help the client clarify objectives beyond legal entitlements.
- ▶ Assess not only legal risk but also commercial, operational, and reputational exposure.
- ▶ Maintain negotiating leverage without escalating conflict unnecessarily.
- ▶ Identify acceptable settlement zones early.
- ▶ Design solutions that are durable and enforceable.

This requires skills that extend beyond doctrinal legal analysis: active listening, stakeholder mapping, risk communication, and an ability to translate business realities into legally sound arrangements. In practice, this multidisciplinary approach is increasingly expected from modern business counsel.

At BLC Law Office, for example, early-stage dispute strategy typically involves close coordination between dispute resolution, corporate, and transactional teams to ensure that any negotiated outcome is not only legally robust but also commercially viable and implementable. In recent years, BLC Law Office has been involved in a number of complex, multi-jurisdictional matters where early-stage advocacy and facilitation of interest-based negotiations enabled clients to avoid parallel proceedings in foreign courts and high-value international arbitration. In several instances, disputes with potential exposure in the multi-million USD range were resolved through structured negotiation processes at a fraction of the anticipated cost and within significantly shorter timeframes.

Importantly, early engagement does not signal weakness. On the contrary, it can strengthen a party's strategic position by demonstrating preparedness, reasonableness, and control over the process. In many instances, a well-structured early dialogue—supported by credible legal analysis and a clear understanding of enforcement and litigation alternatives—creates leverage, enabling parties to resolve issues on terms that protect long-term value while avoiding unnecessary escalation.

Also, this does not dilute the lawyer's role; it expands it.

Counsel becomes not only a defender of legal rights but also an architect of workable solutions.

Conclusion

Strategic advocacy beyond litigation reflects a shift from reactive dispute management to proactive value preservation. It requires counsel to engage earlier, think more broadly, and align legal strategy with business realities.

None of this suggests that litigation or arbitration should be avoided at all costs. Formal proceedings remain essential in many cases—particularly where rights must be clarified, precedents established, or enforcement compelled. However, they should be viewed as one instrument within a broader strategic toolkit.

The most effective dispute strategies integrate negotiation, mediation, and, where necessary, litigation in a coherent sequence rather than treating them as mutually exclusive alternatives.

For investors operating in today's complex and often cross-border commercial landscape, the ability to resolve disputes efficiently, without destroying underlying value or diverting resources from core business activities, is a competitive advantage. Lawyers who can guide clients through negotiation and mediation—while remaining fully prepared for formal proceedings if needed—provide not just legal services, but strategic partnership.



Rusa Tchkuseli
Partner of BLC Law Office



Giga Batlidze
Partner of BLC Law Office

FOR MORE INFORMATION AND ADVISE
PLEASE CONTACT US:

129th David Aghmashenebeli Ave, Tbilisi, 0102, Georgia
Tel.: +995 32 292 24 91, 292 00 86, 200 04 91
blc@blc.ge blc.ge