

**NEGOTIATION SKILL # 11:  
GIVE THE AGGRIEVED PARTY A CHANCE TO  
GRIEVE THEIR LOSS**

Nobel Prize winning behavioral economists know that most people are much more motivated by the risk of loss (loss aversion) than the potential benefit or gain that may come out of a given transaction. Daniel Goleman, author of "The Brain and Emotional Intelligence" refers to this phenomena as "The Art of Moving On".

*In mediation or negotiation, your client or your adversary do not have to get stuck ruing the past if you do this.*

The secret to allowing an aggrieved party to “move on” is not to deny the disappointment, frustration or anger, but to acknowledge it, respect it and then gently walk through the five stages of grief that anyone who has suffered a major loss in life will need to go. First, there is denial. This is often what leads to the lawsuit initially. It is both unrealistic and completely understandable in the context of a willingness to accept what has occurred. The next phase is protest and anger. This is where the aggrieved party will rage about unfairness and injustice. But following that, there is “bargaining”: the beginnings of what will pave the way for a favorable or at least tolerable outcome. The third stage is rationalization, sometimes accompanied by depression. But finally, there is acceptance. This is the moment when someone grieving the loss of the job or contract (or damages paid to another) can begin to feel and express gratitude and forgiveness. Because they are loss averse, this is the moment when they can feel relief and acceptance of a better future than the lawsuit or conflict has given them for the past few months or years.

While I am not a psychologist or grief counselor, there are certainly many cases in which the grief suffered as the result of the loss of a job, a severe or disabling injury or loss of a potential lucrative engagement can feel like losing a loved one for the aggrieved party. For the Defendant, payment of significant damages in a disputed claim can feel much the same. These stages and phases may help you to acknowledge the risk of loss and gently walk the aggrieved party towards a better future.