

**SCHAU'S SETTLEMENT STRATEGIES**  
**NEGOTIATION SKILL #4:**  
**INFLUENCE THE AGENDA TO YOUR ADVANTAGE**

There is a basic structure and rhythm to mediation of litigated disputes that we've come to expect. First, you spend awhile learning the facts and each disputants point of view of the narrative that brought them to their lawyers and ultimately to their mediators. Then you spend some time beating each other up about the legal fine points pro and con. Finally, you get to the big question: damages.

But your settlement discussions do not have to follow the format most comfortable and predictable. As litigators, you can influence the agenda for the mediation to your client's best advantage.

If you know, for example, that your client, the Defendant, has extremely limited resources, but will need terms to settle, you don't need to begin the dialogue spending hours on the facts and the law if, in the end, you will need the Plaintiff to accept terms that are highly unusual and bear virtually no relation to the true value of her case.

Recently, I have mediated two cases to illustrate the point. In the first, the defense counsel sent me a 50 page brief, consisting of Points and Authorities supporting a Motion for Summary Judgment. Consequently, we spent many hours on issues of legal liability, only to find that the Company was insolvent and could not pay even a nuisance value to settle the case unless it was paid personally by people who had not been properly served and over at least one year. After the Plaintiff became entrenched in her position in reaction to the legal brief, the case did not settle and both sides were sorry they took this approach.

In the other, the defense counsel asked to dispense with the issues of the fine points of the wage and hour case before me, because the settlement could only be paid by imposing a note on the defendant's personal residence, which was already encumbered by a first and second trust deed.

# SCHAU | mediation

Problem Solver. Mediator. Author. Ally.

Once the Plaintiff reluctantly expressed her willingness to accept those terms, fixing an amount became easier and both left satisfied with this creative settlement.

You can positively impact the result of your mediation by carefully analyzing your preferred agenda and then directing the mediator to approach the conversation with your objectives in mind. You can also do this by emphasizing your strongest points and simplifying your weaknesses, so that the dialogue is focused on the best foot forward.