

**NEGOTIATION SKILL # 10:
CONSIDER THE BATNA AND WATNA**

Sometimes the Best Alternative to a Negotiated Agreement (BATNA) and the Worst Alternative to a Negotiated Agreement (WATNA) need to be considered before a decision to settle or compromise is made.

You don't have to wait for a Judge or jury to make a decision if you do this.

I am reading an interesting book by Lawrence Susskind, Co-Founder of the Program on negotiation at Harvard Law School, "Good for You, Great for Me: Finding the Trading Zone and Winning at Win-Win Negotiation". In it, he makes the argument that "consensus building produces better results" in work groups than the standard of "top down" management or "majority rule".

In mediation, we often refer to the Worst Alternative to a Negotiated Agreement (WATNA) as deferring to a Judge to make a decision about who is right and who is wrong and how much damages are to be awarded. This is the classic "top down" decision-making.

By contrast in a mediation, the parties are free to build consensus amongst stakeholders in each separate caucus (decision-makers within a corporation and lawyers and their clients) to reach a conclusion that feels acceptable to all—even if not the best possible outcome to one of several participants. It is reaching for the "good enough" to gain legitimacy where "almost everyone" is on board. This is where the lawyers can build consensus and get the job that they have been retained to do done.

In your next mediation, I would recommend reaching for the consensus, rather than the "best possible" outcome to see if you can "win" in the Win-win negotiation once you have arrived at the "trading zone" which you'd find acceptable.

P.S. I am honored to be conducting a training for the U.S. District Court's Settlement Officer Panel this week on "Ethics in Mediation" and then next week for the Chicago Bar Association on "The Final Hours".

P.P.S. I am also pleased to be included in this year's Daily Journal "Top Neutrals" list once again.