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Problem Solver. Mediator. Author. Ally.

BARRIERS TO SETTLEMENT LESSON #6

Priming in Negotiation

Mediation in litigated disputes is often the result of a pre-mediation demand. That demand is generally couched in the language of monetary damages but economists and social psychologists have learned that if your negotiation counterpart is primed for successful negotiation, you may arrive at a better outcome more readily.

Here's how it works. If you make an initial "aggressive" demand and, in response, your counterpart offers to engage in mediation, consider a strategy of an initial demand at or before the hearing that includes plenty of non-monetary terms as well as the aggressive financial ones. For example, if you have sent a demand letter asking for \$25 million in damages against an individual who in no way could satisfy such a judgment, be prepared to include several meaningful concessions, such as cooperation in other pending suits and investigations, support in financing the ultimate settlement, full releases with non-disparagement clauses, agreements of confidentiality and the like either before or at the initial stages of negotiation.

It's easy to respond with a "no" to a financial demand that extends beyond any possibility of payment, but when it is "primed" with many potential terms that could be useful, you will keep your opposing party's attention and bring them around to a negotiation that may end up being the best possible solution for both parties. If they get some meaningful concessions, a significant monetary offer may not feel quite as bad, even though it is likely to be well below the \$25 million initial ask. You have "primed" your opponent by adjusting his/her expectations and you and your client will enjoy more success in the negotiation (as well as less hostility!).

This priming effect is generally known to experienced negotiators, so if your mediator does not offer up the concept, make sure that you suggest this option early on.

P.S. Happy Father's Day and Congratulations to all of the Grads, Dads and couples tying the knot this month. We are celebrating our 37th wedding anniversary and Father's Day with all of our "over 21" children in Napa this weekend. Cheers!