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When Settlement Brackets Make Sense Early In the Mediation

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A settlement bracket is a tool that mediators often use to overcome an impasse in settlement negotiations. The goal of a settlement bracket is to send a signal to the other a side about a potential settlement range without formally committing to a hard number that may represent a big move from its current position.

To illustrate how it works, let's say the parties to a settlement negotiation are at \$10,000 and \$400,000, respectively, and they are approaching an impasse. In an attempt to break the impasse, one of the parties can propose a bracket with an upper and lower end that is somewhere between their current positions of \$10,000 and \$100,000.

The key to the settlement bracket is the midpoint. For example, assume the party at \$400,000 proposes a bracket whereby it will lower its demand to \$200,000 if the other side increases its offer from \$10,000 to \$100,000. In this case, the midpoint between \$200,000 and \$100,000 is \$150,000, which is a sizable move down from \$400,000.

The other side then has the option of: (1) Accepting the bracket, at which point the next move goes back to the party that proposed the bracket; (2) Rejecting the bracket and proposing a counter bracket with a different midpoint; or (3) Rejecting the bracket and making a counter offer at a hard number somewhere above \$10,000. Either way, the party responding to the bracket now knows that the other side is open to a settlement somewhere around the midpoint of \$150,000.

Settlement brackets usually come into play in the late stages of a mediation, as a last resort when the parties are close to an impasse. But I believe that settlement brackets can be a useful tool early in the mediation as well. Here's why:

The bottom line is that a party proposing a settlement bracket is providing information about where it is willing close a deal. Yes, the use of a bracket protects the proposing party from making a bigger move than it would have if it is rejected, but it also serves to provide hope to the other side at a time when the negotiations may seem hopeless. Where there is hope, anything can happen.

Sometimes a mediation can stall at the starting gate when a party sends the wrong message with an opening demand or counter offer. A party making what is perceived to be an overly aggressive demand may have miscalculated. Where there is a lack of trust, a party may be wary about making a big move out of fear that it will not be reciprocated by the other side.

The typical result in this scenario is that the parties dig in and resort to a series of incremental moves that leave them with a wide gap and little hope of getting a deal done. In these situations, proposing a bracket early in the game may get the negotiations back on track by allowing the parties to hit the reset button and send a new message while avoiding the discomfort of a more drastic move.

Remember, it's all about keeping hope alive!

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Hey litigators, how do you feel about using brackets at mediation? Love em or hate em, I think they can be a useful tool, even when used early in the negotiations rather than later. Read my latest article to learn more. #Mediation #ADR #Disputeresolution

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