



MICHAEL R. DILIBERTO, ESQ.



Take It Or Lose It

Don't it always seem to go
That you don't know what you've got 'till it's gone
They paved paradise, put up a parking lot
Joni Mitchell—"Big Yellow Taxi"

On March 13, 2012, Encyclopedia Britannica announced that it was discontinuing its print encyclopedia editions. Sales skyrocketed after the announcement, going from an average of 60 sets per week to 1,050 per week. Sales got so frenetic that at one point they sold two sets per minute, requiring a senior vice president and chief marketing officer to jump in and start taking orders over the phone.

This true story illustrates the persuasive power of the principle of "scarcity." Social scientists have proved that people find objects and opportunities more attractive when they are scarce, rare, or dwindling in availability. How does this work? One explanation is that our reaction is a form of loss aversion. If I tell you that there is only one more encyclopedia left, and once it's gone you can never buy one, you experience a threat of loss. We all hate loss. So, you buy the encyclopedia.

The scarcity principle is what drives negotiation deadlines. Plaintiff's counsel asserts that his client is prepared to settle for \$150,000 now, but once they have to file the complaint, the settlement price will increase. Defense counsel responds with an offer accompanied by a time limit: "I'll keep this offer open for 24 hours. After that the offer is off the table and we start over."

To be effective, a scarcity claim has to be credible. There should be some actual reason for a deadline or a claim of limited availability. Otherwise, it's just posturing. Also, people don't like to feel threatened, but they don't mind being warned.

Instead of a threat to take an offer off the table unless it is accepted today, express it in terms of a warning. For example, plaintiff's counsel might explain that the demanded settlement sum is available today before his client incurs expensive attorney fees and costs. Defense counsel might explain that the reserves formula the company sets aside for lawsuits changes each quarter, and after today a new quarter's formula will apply and today's settlement offer won't be available.

Justify a scarcity claim with a credible warning and your settlement offer may become a collector's item