

Why People Settle Disputes—Why People Don't Settle Disputes

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After 20 years of experience in disputes, litigation, settlement and mediation, I can conclude that people settle their differences for reasons that in fact are quite limited in number. Basically, the answer isn't technical or complicated, until you get into the details of the dispute or case. Similarly, the reasons why people do not settle their differences also tend to be limited in number. When working toward resolution of a dispute it is important to consider both why people do settle and why people do not settle.

People settle disputes because they decide that they prefer the terms of settlement to the alternative current options available and the perceived future circumstances and events that may exist or occur if a resolution is not achieved. That does not mean that the parties necessarily like the terms of settlement. In many and perhaps the majority of settlements the parties might very well tell you that they do not like the terms of the agreement, or that they believe the terms are unfair or just not "right." They might say or suggest that they intensely dislike the agreement, or that they are more likely than not to obtain a better final result by fighting longer or by having the dispute determined by a judge, jury or other tribunal. However, by far in a super majority of disputes the parties "voluntarily" decide to reach resolution before the dispute reaches a stage where resolution will be determined by an outside person or panel.

Each dispute or case is different, involving different people with different life experiences, personalities and emotions, different facts and circumstances, different laws, and different needs, interests and motivating factors. Nevertheless, the reasons why people decide to settle tend to include the following:

- Consideration of the future additional costs, disruption, stress and other possible or negative consequences if the dispute continues;
- Current and future reputation, publicity and control or dominance risks (as those risks pertain to the parties, and also as they pertain personally to the settlement decision makers with respect to their individual reputations, employment, stature or status, control, dominance or command);
- Uncertainty about the likelihood of ultimately prevailing;

- The eventual remedy that an uninvolved judge, jury or other tribunal might award, or even be authorized to award;
- The actual or perceived strengths, weaknesses and resources of the various parties;
- The unpredictability of the discovery, admissibility and interpretation of favorable and unfavorable evidence;
- The possible impact of the burden of proof at trial, etc.; and
- The opportunities that exist through mediation to fashion a resolution that avoids possible future negative consequences, or that maintains the status quo, or that creates a better environment for the parties and/or the settlement decision makers now, and perhaps also in future events, relationships and dealings.

Similarly, the reasons why people do not achieve resolution also tend to be limited in number. Consider the following challenges to settlement:

- Unreasonable expectations;
- A hidden or different agenda or objective;
- A belief that a benefit will be maintained or gained by the party or by the settlement decision maker by not settling;
- Mistaken or different beliefs about the law or evidence;
- Wanting to have his or her day in court (“justice”);
- Emotions;
- Teaching or demonstrating the other party, or other outside people, a lesson;
- A perceived strength of one party over the other party (not a level playing field);
- A perception that there is a lack of risk to the party or to the settlement decision maker if the dispute is not settled;
- A lack of a sufficient understanding about the needs, objectives and driving forces of the parties and the settlement decision makers;
- A need for greater evaluation of or creativity in the range of possible terms or options that are available for settlement;

-A party needs additional information or discovery, or case evaluation before resolution;

-A lack of involvement of the settlement decision makers, or not sure who the decision makers are (or, in some cases, a person with decision making authority or power may in fact be lacking or missing); and

-“Just not yet ready to settle“--need more time or other motivating factors--keep working on it, or try again later.

During the dispute resolution process it can be beneficial to temporarily step back from the fray, and to review or consider human nature and both the general reasons why people do resolve their disputes, and the correspondingly alternative challenges to resolution. In dispute resolution it is helpful to see the trees and the forest; the stick and the carrot.

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