

Unsolved Mysteries: What Are the Top Ten Negotiation Blunders, And How Can You Stop Making Them?

By Richard G. Halpern

Only about 5% of all civil suits are settled by going to trial. That dynamic 5% gives attorneys a chance to use all the skills they may have developed in law school clinical programs, but therein dwells an irony: nothing you are likely to have studied in preparing for a legal career gives you background in the one skill central to success in the other 95% of your cases.

The missing skill?

Negotiation.

It is something many of us pick up as we wander through the marketplace of life, as we buy cars or agree on nuclear non-proliferation treaties. We probably don't take courses in negotiation, except from Hard Knocks U., and most of us can only gauge our proficiency in it by assessing whether our negotiation efforts are "successful" (whatever that means).

The Halpern Group is preparing a pamphlet on the Top Ten Negotiation Blunders by plaintiff's counsel in settlement conferences, and this newsletter will periodically expand on one of them. There is a problem, however: the search for these gaffes uncovered 28 blunders, not ten. So, we invite readers to assist us in making the final choices: which of the 28 negotiation errors listed below have you committed recently? Which ones don't sound like errors? (That's a dead give-away.) And which ones do you not understand?

It's a useful checklist for you, and valuable information for us. Either check off your top ten and send it to us, or drop us a note or fax (973-379-3763) with the numbers you've selected. And if you can't wait to find out how to avoid one of the blunders listed, just call The Halpern Group 800 number, and ask Rich Halpern. It's one of his favorite topics.

So here, for the first time (not in order of priority!), is the list of Plaintiff's Attorneys' Top Twenty-Eight Negotiation Blunders:

1. Failing to Recognize the Proper Function of the Claims Community
2. Failing to Utilize the Power of "Indifference"
3. Rebutting the Defense Position in Settlement Conferences
4. Treating "Pain and Suffering" as One Element of Loss
5. Allowing the Defense to "Trap" You into a "Needs Based" Negotiation
6. Attempting to Negotiate a Structured Settlement
7. Making a Settlement Demand Prematurely
8. Not Knowing When or How to Withdraw Your Demand
9. Making Unrealistic Settlement Demands
10. Misusing Verdict Data-Bases in Case Valuation
11. Staying at the Negotiating Table Too Long

12. Leaving the Settlement Conference Prematurely
13. Negotiating with a Time Limitation
14. Making Inappropriate Time Limit Demands
15. Allowing Yourself to be "Double-Bracketed"
16. Failing to Capitalize on Dramatic Events
17. Failing to Create and Maintain Credibility
18. Talking When You Should Be Listening
19. Taking "Absolute" Positions
20. Inadequate Presentation of General Damages
21. Painting Yourself Into a Corner
22. Focusing on What You Wish to Say Instead of What Is Being Said
23. Failing to Understand the Psychology of Negotiation
24. Failing to Understand Human Motivation
25. Agreeing to Mediation or Arbitration Before Having Tried Negotiation
26. Failing to "Paper" Your Adversary's File
27. Getting a Reputation for "Trial Reluctance"
28. Erroneous Mindset: "What Are They Going to Give Me?" versus "Release for Sale!"