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Fairness and settlements

There's more than one way to slice a loaf of bread

BY NANCY NEAL YEEND

Sometimes when trying to help a client solve a problem, key points might be missed, especially those associated with decision-making criteria. People use decision-making criteria in all facets of their lives, for example buying a computer – “Do I want a laptop or desktop?” “What size memory does the computer need?” “What software is included?” “How much will it cost?”

Clients also use a variety of factors to decide if they will accept or reject a settlement offer. For example, sometimes their criteria may be confidentiality, and for some it may be time: “I will accept the offer today, but I will not if I have to wait six months.”

Attorneys use the law as their primary criterion for determining if a settlement offer is appropriate. Clients may need solutions that allow them to “save face.” Is the proposed idea even “doable,” or will the solution mean that the matter is finally over? Other criteria include tax consequences, financial compensation, prevention, fairness, and the list is endless.

If a case gets bogged down due to decision-making criteria, then the client is either unhappy with the attorney, the settlement or both. One of the biggest settlement stumbling blocks is the decision-making criterion of “fairness.” What is “fair” to one may not be “fair” to the other. One way to avoid this type of situation is to consider an old fable addressing fairness and stalemates.

Fable

Two men were about to eat lunch. One had five loaves of bread, and the other had three, for a total of eight loaves. Just as they were going to start eating, a stranger came up and asked if he could share their bread, and he would pay them.

The three men ate all eight loaves of bread, and the stranger paid them eight coins, which were all of equal value. The brother who had five loaves said he should get five coins, and his brother who had three loaves should have three coins. The other brother said, “No! I get four and you get four, because we shared – that’s fair.”

Since they could not agree, they asked the wise village mediator to help. The mediator said there is a third answer, which is fair to both. What was the division of the coins?

Each of five loaves were cut into three slices, which equals a total of 15 slices, and each of three loaves were cut into three slices, which equals a total of nine slices. Combined, there was a total of 24 slices of bread, and each of the three men consumed eight slices of bread.

So, what is the “fairest” way to divide the 8 coins between the brothers? The brother who provided the 15 slices ate eight of those slices, which means there were seven slices left. The brother who provided the nine slices, also ate eight of those slices, which means there was only one extra slice left. Therefore, the one brother gets seven coins, and the other brother who was arguing about “fairness” only gets one coin.



Fairness

When involved in negotiations, and someone proposes “fairness” as the standard for determining if they will accept the terms of a settlement, always remember this fable and to ask essential questions. The most important question is to request that the person proposing “fairness” to specifically define what they mean. One person’s definition may not be the same as someone else’s. It should not be surprising that some people will not be able to define what “fair” means to them – “I’ll know a fair offer when I see it.” This often is an indication that the person has not fully assessed the case and has failed to scrutinize its strengths and weaknesses.

Another important question to ask is what additional standards or criteria they will use to evaluate whether a settlement is appropriate. Most individuals have more than one standard by which they will evaluate any proposals or settlement suggestions. Getting more of these decision-making criteria out and on the table will enhance the probability of settlement.

Conclusion

Be aware that trying to resolve a dispute with only using “fairness” as the decision-making criterion is like trying to nail Jello to a tree. Have the participants consider the wider spectrum of criteria and identify all of them. The probability for settlement will increase substantially.

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