

“I’ll Take My Chances At Trial”—Do You Really Mean That?

After a lawsuit has lasted a while, a client will often become somewhat used to being in the conflict. The client will understandably take ownership of the dispute, which may be necessary in order to deal with the inherent frustrations and delays of litigation. The client may also become accustomed to paying attorneys’ fees.

While taking ownership can be helpful to a client’s ability to handle what some call “the vagaries of litigation,” such ownership can also unconsciously inhibit the ability to evaluate a reasonable settlement offer. Taking ownership can mean opening ourselves up to the “endowment effect,” which translates into thinking whatever we own is worth more than its value is to another person.

This psychological phenomenon was illustrated in an interesting study involving the price of a generic coffee mug. One test group physically received a mug and were told they could take it home or sell it. The other group didn’t receive a mug but were simply asked how much they would spend to buy the same, generic mug. Even a short period of ownership created an “endowment effect” as the selling group demanded a higher price.

However, taking ownership of a position in a lawsuit may present problems when evaluating a settlement proposal, particularly because social scientists have proven that humans experience losses more acutely than we appreciate gains of the same amount. Similarly, during a negotiation, we put more weight on our own accommodations than equivalent moves by the other side. When presented with a reasonable settlement offer relative to the opportunities and risks presented by a lawsuit, a client who has taken ownership may say, “I’ll take my chances at trial!”

To combat these psychological challenges, a client should understand that there are many factors to consider when evaluating a settlement offer. While attorneys’ fees are certainly important, they are simply part of an overall number. As a plaintiff or defendant, try to look at the dispute without that sense of ownership that it took to endure the litigation up to that point. With this new perspective, it might make sense to accept the settlement offer and get on with your life, without the conflict. A trained mediator can help the parties and their lawyers with these efforts.

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