**DOUBLE- BLIND SETTLEMENT TECHNIQUES: SPLITTING THE DIFFERENCE**

**BY: JUDGE MORTON DENLOW (RET.)**

**ERISA BREACH OF FIDUCIARY CASE FOR IMPROPER PAYMENT OF CLAIMS**

**PLAINTIFF RETAINED DEFENDANT TO PROCESS CLAIMS FOR PLAINTIFF’S SELF-INSURED HEALTH PLAN. PLAINTIFF ALLEGED THAT DEFENDANT HAD IMPROPERLY PAID MORE THAN $30,0000,000 IN CLAIMS OVER A NUMBER OF YEARS.**

**PLAINTIFF’S INITIAL SETTLEMENT DEMAND IN ITS MEDIATION STATEMENT WAS $26,000,000 AND DEFENDANT’S INITIAL OFFER IN ITS MEDIATION STATEMENT WAS $4,000,000.**

**PARTY NEGOTIATING MOVES AT THE MEDIATION:**

**PLAINTIFF: $23,000,000 DEFENDANT: $4,500,000**

**PLAINTIFF: $18,000,000 DEFENDANT: $6,000,000**

**PLAINTIFF: $15,000,000 DEFENDANT: $7,000,000**

**PLAINTIFF: $12,000,000 DEFENDANT: $8,000,000**

**DURING THE COURSE OF THE MEDIATION, PLAINTIFF STATED TO ME IT WILL NOT SETTLE IN 7 FIGURES AND DEFENDANT STATED TO ME IT WILL NOT SETTLE IN 8 FIGURES.**

**ALTERNATIVES:**

1. **HAVE PARTIES CONTINUE TO NEGOTIATE**
2. **SUGGEST A DOUBLE-BLIND SPLITTING THE DIFFERENCE AT $10,000,000, NOT AS A MEDIATOR’S PROPOSAL, BUT TO TEST THE WATERS.**

**I CHOSE THE DOUBLE-BLIND SPLITTING THE DIFFERENCE AND BOTH SIDES SAID YES TO THE $10,000,000.**

**WHY DO IT AS A DOUBLE-BLIND?**

**HOW TO EXPLAIN IT TO THE PARTIES?**

**WHAT IF I SUGGESTED THE $10,000,000 AND REVEALED THE RESPONSES AND ONE OF THE TWO PARTIES HAD RESPONDED NO TO THE $10,000,000?**

**WHAT IF ONE OR BOTH PARTIES SAYS NO UNDER THE DOUBLE-BLIND METHOD? NEXT STEPS?**