

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 \$30,000,000 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?**