**DOUBLE-BLIND SETTLEMENT TECHNIQUES: CONFIDENTIAL SETTLEMENT BRACKETS**

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

**PLAINTIFF** **DEFENDANT**

Pre-Mediation Demand Pre-Mediation Offer

$15,000,000 $500,000

**MOVES AT THE MEDIATION:**

**EXCHANGE OF NUMBERS**

First Move: $14,500,000 $550,000

Second Move: $ 9,500,000 $700,000

Third Move: $ 9,000,000 $750,000

**SWITCH TO EXCHANGE OF DISCLOSED BRACKETS**

Parties Choose Their Bracket Range – I explain their midpoint is the Message

First Bracket: $3,000,000 - $6,000,000 $1,000,000 - $1,600,000

**Midpoint** **$4,500,000** **$1,300,000**

Second Bracket: $2,250,000 - $4,250,000 $1,200,000 - $1,800,000

**Midpoint** **$3,250,000** **$1,500,000**

Third Bracket: $2,250,000 - $3,750,000 $1,400,000 - $1,800,000

**Midpoint** **$3,000,000** **$1,600,000**

Parties are now aware they are $1,400,000 apart at the midpoints

**MY SUGGESTION TO THE PARTIES:**

**SWITCH TO DOUBLE-BLIND BRACKETS WITH $200,000 SPREAD**

**MIDPOINT OF BRACKET REPRESENTS PARTIES SETTLEMENT NUMBER**

Explain three possible messages by putting examples on Board for the parties if you are in person or explaining it to the parties if you are on ZOOM.

**Three possible messages but no disclosure of numbers**

$2,700,000 - $2,900,000 $1,600,000 - $1,800,000

**Midpoint** **$2,800,000** **Different Planets** **$1,700,000**

$2,300,000 - $2,500,000 $1,700,000 - $1,900,000

**Midpoint** **$2,400,000** **Progress/Hope** **$1,800,000**

$2,000,000 - $2,200,000 $1,800,000 – $2,000,000

**Midpoint** **$2,100,000** **Touching**  **$1,900,000**

Mediation Continues with Parties Giving Me Confidential Brackets with $200,000 Spread

$2,000,000 - $2,200,000 $1,500,000 - $1,700,000

**Midpoint** **$2,100,000** **$1,600,000**

The Parties are now $500,000 apart at the midpoint, but they do not know it.

I tell them there is “good progress and hope.”

**ASK PARTIES TO MAKE MINIMUM DOUBLE- BLIND MOVES:**

I ask Parties if they will move their midpoint by a minimum of $100,000.

This is done in confidence. They both say yes.

PLAINTIFF DEFENDANT $1,900,000 - $2,100,000 $1,600,000 - $1,800,000

**Midpoint**  **$2,000,000** **$1,700,000**

Parties are now $300,000 apart but they do not know it

**ASK PARTIES TO MUTUALLY DISCLOSE MIDPOINTS:**

I ask Parties if they will mutually disclose midpoint, and they say yes.

**ASK PARTIES TO SPLIT THE DIFFERENCE ON A DOUBLE-BLIND BASIS:**

I then ask, on a double-blind basis, if Parties will split the difference at $1,850,000

**THEY BOTH SAY YES AND THE CASE SETTLES AT $1,850,000**