"BACK TO THE FUTURE"

A STRATEGY FOR REDUCING LITIGATION COSTS THROUGH EARLY MEDIATION

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INTRODUCTION

It is no secret that at least 90 percent–perhaps 95 percent–of all lawsuits settle before trial. It is also no secret that cases generally don't settle until the discovery phase is completed and the case is nearly ready for trial.

If those cases could be settled before discovery, or at least early in discovery, hundreds of hours of time and thousands of dollars of transactional costs could be saved. In a given case, those savings could easily amount to at least 70 to 80 percent. For a group of cases, assuming one could settle 90 percent early and try only 10 percent, the savings could be 50 to 75 percent.

How can we help our clients take advantage of these savings? Based on an analysis of litigation costs which our firm began compiling in 1992 when we first installed our task billing system, we believe the answer lies in bringing cases to mediation as early in the proceedings as possible, ideally before the parties have launched into any substantial formal discovery.

Bringing a case to mediation *before* discovery is not an easy assignment. However, we believe it can be done if we lawyers and our clients will accept an approach to litigation which includes the following features:

(1) Adopting a policy of early mediation of every case which is suitable for mediation while at the same time continuing to move all cases forward until they are either settled or tried;

(2) Using not only trial counsel but also settlement counsel;

(3) Identifying all relevant issues of fact and law at the earliest possible time. This requires a willingness to spend money up front in the expectation that doing so will ultimately save money;

(4) Calculating a settlement value for each case as early as possible in the proceedings and periodically recalculating that value;

(5) Using a skilled mediator; and

(6) Adopting a procedure for periodically measuring the effectiveness of one's settlement efforts in order to improve settlement skills.

I have entitled this paper “Back to the Future” because this approach to litigation requires lawyers to think through their cases and evaluate probable outcomes before any formal discovery is undertaken–a task lawyers regularly performed in the days before our profession was overtaken by discovery.

WHAT IS MEDIATION?

Simply put, mediation is nothing more than an assisted settlement negotiation. The proceedings are private and privileged. Communications with the mediator are confidential unless, of course, one party gives permission for the mediator to reveal any such communicated information to another party. The mediator facilitates these settlement negotiations but does not impose a settlement upon anyone. The decision of whether to settle is left completely in the hands of the parties and their lawyers.

WHAT ARE THE MECHANICS OF MEDIATION?

There is nothing complicated about the mechanics of mediation. Typically, the process starts with the parties submitting a confidential mediation brief or letter to the mediator. Sometimes the mediator will then meet privately with the lawyer or the lawyer

and the client on one side, and then separately with the lawyer and client on the other side. The purpose of all of this is to help the mediator get a feel for the case and to gain a better understanding of the parties' respective positions.

Next, the mediator generally conducts a mediation session or “hearing.” This session will take at least a half day, more commonly a full day and sometimes longer. The session generally begins with a joint meeting which includes all of the parties, their counsel, the mediator and anyone else whose presence is necessary in order to reach a settlement–an insurance adjuster, for instance. The mediator introduces himself or herself, explains the process, ascertains that the necessary parties are present and secures a commitment from all necessary persons to stay with the process until it is complete.

Next, the plaintiff's counsel presents a synopsis of the plaintiff's case. The mediator will then typically ask the plaintiff if he or she wants to say anything in addition. In our experience, the plaintiff almost invariably has something to say.

The defendant's counsel then presents a synopsis of the defendant's case and if the defendant wishes to make a statement, he or she is generally encouraged to do so. Once again, we find that the defendant is usually eager to speak his or her mind.

The mediator then may ask clarifying questions but rebuttal argument is not generally encouraged. The purpose of the session is to let the parties (and their counsel) vent, to permit each side to evaluate its position against the position of the other side and (hopefully) to “humanize” the other side. At the very least, each side will usually come away from the general session understanding that the other side is just as passionately dedicated to its case as “we” are to “ours.” There is something therapeutic about confronting the other side and watching “our” lawyer champion “our” case.

Next, the parties break into separate caucuses. Generally, the mediator, the plaintiff and plaintiff's counsel will go to a separate room where the mediator can probe the case from the plaintiff's point of view, in detail and in confidence. The mediator will draw out from the plaintiff and the plaintiff's lawyer not only their feelings about the case in a general way but also what they perceive to be the strengths and the weaknesses of their case. All of this is done strictly in confidence. Nothing that the parties tell the mediator in these separate caucuses may be repeated to the other side without permission first being obtained. Finally, the mediator tries to obtain some sort of a settlement proposal from the plaintiff.

Where there are multiple parties, the mediator will ascertain whether the various parties arrayed on each side should themselves caucus separately or together. The choice is generally left to the parties although the mediator obviously has substantial input.

After caucusing with the plaintiff, the mediator then meets in separate caucus with the defendant and the defendant's lawyer. The process is essentially the same as in the meeting with the plaintiff and the plaintiff's attorney. Toward the end of the separate caucus with the defendant, the mediator will probably present the plaintiff's offer to the defendant, gauge the reaction (which is generally one of purported shock and outrage) and attempt to obtain a counteroffer.

The process is repeated as necessary. Sometimes, in order to break a deadlock, it is helpful for the mediator to meet privately with only counsel for the parties. Sometimes it is advisable to go back into a joint session with all parties. It is also common to go into joint session at the time of adjournment. Any agreement is reduced to writing and signed by the parties and counsel before adjourning.

DOES MEDIATION WORK AND, IF SO, WHY?

Mediation does work. One reason may be that clients and their trial counsel are aggressively focused on winning their case. This is not a frame of mind that is conducive to searching out common ground between the parties. On the other hand, a creative neutral mediator is often able to find areas of compromise that otherwise would elude the client and the client's trial counsel. Another reason is that the mediation process causes both lawyer and client to focus on not only the strengths but also the weaknesses of their case. This in itself often helps bring about settlement.

There are probably many other reasons why mediation works that escape us. It is a fact, however, that the vast majority of mediated cases settle during the mediation process. Are these cases that would settle anyway sooner or later, even without mediation? Because 90 percent to 95 percent of all cases eventually settle, the answer is probably yes. However, we have found that the mediation process accelerates settlement. Cases settle sooner with mediation than without mediation.

WHY MEDIATE?

The most commonly cited reason to mediate is the fact that it reduces the risk of litigation. It takes the power to make a decision out of the hands of third parties (*i.e.*, judges and juries) and permits parties to negotiate a solution to their dispute. There are many other reasons as well. For instance, work place morale requires an equitable system for resolving employer/employee disputes. Mediation is often incorporated into such a system. In some cultures–particularly Asian cultures–litigation as a method of resolving disputes is held in low esteem. Mediation in one form or another is the norm.

In our experience, one very compelling reason to mediate and to do so as early as possible in the proceedings is to avoid the high cost of litigation. In 1992, our firm began keeping track of our legal services for trial and appellate work on a stage-by-stage, task-by-task basis. Based on the data we have gathered and applying a healthy dose of informed guess work, we can calculate the difference in transactional costs (lawyer fees, expert witness fees, consultants and other miscellaneous costs as well as an estimate for time spent by the client) between settling a business case before discovery gets under way and settling that same case on the courthouse steps.

We estimate that if we settle a simple case before discovery rather than waiting until the case is ready to go to trial, we will cut our transactional costs by about 70 percent. If we settle a business case of intermediate complexity before discovery rather than waiting until the case is ready for trial, we will have reduced our transactional costs by about 80 percent. If we settle a relatively complex business case before discovery rather than waiting until it is ready for trial, we will have reduced our transactional costs by slightly over 83 percent. You can satisfy yourself as to the accuracy of this math and the assumptions upon which it is based by examining the schedule entitled "Cost Savings Using Settlement Counsel and Early Mediation" which is attached to this paper as Appendix A.

Depending on the number of cases that a client has and the mix of cases (*i.e.,* simple cases, cases of intermediate complexity and complicated cases) and assuming that 90 percent are settled early, the overall savings on litigation costs can easily be 50 to 75 percent. Moreover, if a client has a number of pending cases, the savings on the 90 percent that settle will be sufficiently substantial that the 10 percent which do not settle can

be thoroughly and aggressively tried without cutting corners because of budget constraints.

HOW DOES SUCH AN EARLY MEDIATION SYSTEM WORK?

The very first step that we must take if we want to take advantage of the cost savings inherent in early mediation is to adopt an unequivocal policy that contains at least two elements. They are: (a) A strong commitment to settle–on a reasonable basis–all cases that can be settled and to do so as early in the preparation process as possible, and (b) an equally strong commitment to pursue trial preparation of all cases as expeditiously as possible until they are either tried or settled. The other side must know that even though we are willing to settle on a reasonable basis and even though settlement talks may be under way, we are simultaneously preparing the case for trial and will unhesitatingly try any case that cannot be reasonably settled.

The second step is to appoint not one, but two lead counsel. One is to be the lead *trial* counsel and the other is to be the lead *settlement* counsel. They both start working on the case at the same time. Trial counsel's job is to prepare the case and bring it to trial at the earliest possible date. Settlement counsel's job is to settle the case as soon as possible. These two lawyers must, of course, coordinate their activities, but both roles cannot be fulfilled by the same person. The lawyer charged with trying the case needs to concentrate on winning. The lawyer charged with settling the case needs to search for compromise. Those are two distinct mental frameworks and they are antithetical.

The third step is to identify all important factual issues and legal issues. This, of course, is an ongoing task which will be repeated continuously until the case is tried. The point here is, we must not delay. We must make sure the first effort at such an analysis

is completed long before any formal discovery begins. This is not as difficult as it may seem. It requires some preliminary informal discovery, *i.e.,* reviewing documents, interviewing witnesses, etc. It also requires the direct involvement of the lead trial counsel and the lead settlement counsel and it depends, in large measure, on their experience and ingenuity. It is not a project that can be left to the junior members of the team. This effort can be focused by the use of such techniques as logic diagrams, sometimes referred to as "dependency diagrams." An example of such a diagram is attached to this paper as Appendix B.

Having identified the factual and legal issues, the fourth step is to place a settlement value on the case. In our opinion, this is a job for the settlement counsel. A useful tool is decision tree analysis. An example of such an analysis is appended to this paper as Appendix C.

In order to value a case, it is not necessary to have exhaustively researched all the factual and legal issues. It is sufficient to have identified them, thought about them for a bit and performed some preliminary research and investigation. We can then evaluate our percentage chances of success on each issue. Our evaluation may not be as precise as it will be after all legal research and factual investigations are complete but, then, we will never be 100 percent certain on any issue anyway.

At that point, we are ready for the fifth step–proposing mediation to the opposition. This is the job of the settlement counsel. Settlement counsel advises the opposition of the client's policy of simultaneously trying to settle while pursuing case preparation, and urges early mediation. Is it difficult to bring the other side into the early mediation process? Yes. Is it impossible? No. The key is the ingenuity and creativity of settlement counsel.

The sixth step is to obtain a qualified, neutral mediator. Early mediation differs from mediation when the case is ready for trial in that settlement just before trial will generally occur, if at all, in one session. Early mediation is a process. For instance, it is common for one side or the other to announce during a mediation session that he or she cannot go further without some key piece of information. That is a cue for the mediator to expedite the process and ascertain whether the other side will furnish the requested information without the need for formal discovery. Because early mediation is a process rather than a one-shot event, it is important to obtain the mediator's consent to remain available until the case is resolved, either by settlement or by trial.

Finally, we need a method of tracking our rate of success. This whole system is predicated on settling those cases which can be settled and doing so as early as possible. In order to sharpen the skills required for early settlement, we need to measure our progress.

In our firm, we have developed a staged budgeting system. The first or “initial” stage begins when we are retained and ends when the case is at issue. The second or “case development” stage begins when the case is at issue and ends approximately 100 days from trial. The third or “final trial preparation stage” begins approximately 100 days from trial and ends when trial begins. The fourth stage is the trial and the fifth stage is post-trial involving such proceedings as motions for new trial, motions for judgment NOV and, in a bench trial, the process of settling the court's statement of decision. Among other things, the budget helps us be aware of where we are chronologically in our preparation. For instance, if we settle a case and our budget tells us that we are halfway through the case development stage, we know that we were not as successful in our mediation goals

as we would have been had we only been ten percent of the way through the case development stage.

ANSWERING THE CRITICS

Surprisingly enough, this approach of early mediation and the use of settlement counsel meets with resistance on the part of some lawyers and clients. The following are the more commonly encountered objections, together with our answers to those objections.

1. It is common for lawyers to say that they have to do substantial formal discovery before even thinking about mediation. We disagree. Lawyers today forget that there was a time, prior to the mid-1960s, when lawyers regularly tried cases with very little, if any, formal discovery. The practice then was to think carefully about one's case before filing pleadings. A lawyer was expected to identify the factual and legal issues, gather evidence informally and *then* file a pleading. More discovery followed, some formal but more often informal. Formal discovery was much more limited than it is today. The process of thinking through a case can be separated into three steps: (a) defining the problem; (b) gathering intelligence (*i.e.*, facts and law) and (c) coming to conclusions. Today step (b) dominates the time of litigators. Before discovery became popular, trial lawyers concentrated their time on steps (a) and (c). This gave them focus, which meant the time spent on step (b) was spent efficiently.

We have been involved in several large arbitrations in the Northern California dry gas fields in which no discovery whatsoever was available. All subpoenas for documents and witnesses were issued to be returned on the mornings that the arbitrations began. We tried our cases before panels of lawyers and retired judges. As nearly as we can tell, the

quality of the presentations and the outcomes of the arbitrations were not adversely affected at all by the complete lack of any formal pre-trial discovery.

2. It is sometimes asserted that early mediation may be a great idea but it simply won't work. The other side won't bargain until it has been hammered about in discovery and made to see just how empty its case is. It is true that in some instances, "the other side" is completely unreasonable, but we suspect that in most instances, the combination of aggressive trial counsel pushing the case toward trial and persuasive settlement counsel pushing the case toward settlement, can bring the "other side" to the mediation table.

3. Another objection one often hears is that this case is different–it is a matter of principle. It won't settle early because our client wants his day in court. That may well be. However, an interesting aspect of mediation is that it provides a client with a risk-free way of "having his day in court." The client gets to hear his lawyer present his case to a neutral mediator and then is even given an opportunity to personally have his say. Because the decision to settle or not settle is in the hands of the parties, it does no harm to mediate. Nothing requires either party to agree to anything.

Furthermore, even if the case does not settle, there is a side benefit to going through early mediation. The early analysis that early mediation compels will often allow discovery and trial preparation to thereafter proceed in a more focused, cost-effective manner. Thus, going through early mediation often helps pay for itself, even if the case does not settle.

4. Another objection is that double tracking (*i.e.,* using both trial counsel and settlement counsel) is too expensive. We believe that double tracking probably adds less

than 10 or 15 percent to the cost of any case that is tried to completion. Paul J. Mode, Jr. and Deanne C. Siemer in an article entitled *The Litigation Partner and the Settlement Partner*, Litigation, Vol. 12 No. 4 Summer 1986, p. 33, 50, estimate the added cost to be somewhere in the five percent range. That is the downside risk. The upside potential is the opportunity, if successful, to save hundreds of hours of preparation time.

ARE THERE CASES WHERE MEDIATION IS INAPPROPRIATE?

There most certainly are cases where early mediation is inappropriate. One such instance is where one or the other side is trying to establish legal precedent. Such cases simply have to be tried. Similarly, where it is important to one side or the other to obtain provisional remedies such as injunctions, receiverships, attachments, etc., early mediation is not appropriate–at least until the provisional remedy has been either granted or denied.

HOW CAN ONE FIND A GOOD MEDIATOR?

The first question is what is one looking for in a mediator? In our opinion, one needs to evaluate mediators on three levels: Knowledge, skills and judgment. By way of knowledge, a good mediator ought to have had some formal training in the techniques of mediation. Should that mediator also be highly experienced in the subject matter area involved in the dispute? We think that is not particularly important. Invariably, the parties will know the law and facts of the case far better than does the mediator. The mediator is a facilitator who asks questions. Seldom is the mediator called upon to impart subject matter knowledge to the parties.

From the standpoint of skills, the mediator should certainly have good people skills and a good sense of humor. In addition, it helps to be persuasive, diplomatic, creative,

tenacious, compassionate and trustworthy. In the medical profession, it is called "good bedside manners."

Finally, the mediator needs to have good judgment. Judgment is one of those things we all recognize but cannot adequately define. We believe good judgment, which we think of as the ability to foresee the future consequences of present actions and thus the ability to make sound choices, is an indispensable quality in a good mediator.

Where does one look for a mediator? One finds good mediators the same way one finds good lawyers. Generally by reputation and word of mouth. Most mediators work independently. There is also a non-profit organization of attorney mediators, the Association of Attorney Mediators ("AAM") headquartered in Dallas, Texas, with local chapters in various other cities and states, which annually publishes a roster of mediators. Many bar associations also have lists of persons who claim to have training and experience in alternate dispute resolution, including mediation. Finally, there are at least two large commercial organizations which will provide mediators. They are the American Arbitration Association and the Judicial Arbitration and Mediation Service/Endispute ("JAMS").

One question we must ask ourselves is whether we want a mediator who will voice opinions as to the outcome of our case. Some mediators use a "settlement conference" or "evaluative" style. That is, they evaluate the respective positions of the parties and predict outcomes in order to encourage settlements, much as judges do in mandatory settlement conferences. More commonly, mediators adopt what is sometimes referred to as an "interest-based" style. There, the mediator acts more as a facilitator and avoids evaluating and predicting outcomes. Our view is that the so-called interest-based style

of mediation is more effective than the settlement conference style of mediation, particularly in early mediation.

This leads us to the next question: What about retired judges as mediators. Some retired judges are very fine mediators and other are not particularly good. The one problem with retired judges as mediators is that judges tend to judge. They are used to telling each of the parties what's wrong with his or her case in an effort to lower expectations and, thereby encourage settlement. Such an approach may work well on the eve of trial when the parties are exhausted by months of discovery but, in our opinion, it does not accomplish much early in a case. Mediators, on the other hand, tend to ask questions and search for compromises while avoiding being judgmental. In our opinion, this is the more effective approach for early mediation.

WHAT IS THE ROLE OF AN ADVOCATE IN MEDIATION?

In our view, advocacy in mediation is more in the nature of negotiation than argumentation. The advocate's job is not so much to convince the mediator as it is to convince the other side. That being so, there are a few do's and don'ts we try to keep in mind when we represent clients in mediation:

(7) Do not become personal, overly aggressive or insulting, particularly when in joint session. Do be reasonable but firm.

(8) Be patient and encourage our clients to be patient. Keep the process going. It takes time to persuade the other side. Sometimes it may take several sessions.

(9) We are in mediation. That means we are the settlement counsel. Set a friendly tone. If the other side is to dislike someone, let it be the trial counsel.

(10) As in negotiations, don't be so aggressive in our demand that it brings mediation to a halt but, within a range of reasonableness, make high demands (if we are a plaintiff) or low offers (if we are a defendant). Create the impression there is very little give in our demand or offer. Remember, if we don't ask for what we want, we won't get it. Also, there is generally no such thing as a “final offer.”

WHAT CAN WE REASONABLY EXPECT FROM MEDIATION?

The first thing we can reasonably expect from a policy of early mediation is that our clients will enjoy substantially reduced litigation costs and we will have substantially reduced the average time we take to satisfactorily dispose of our cases.

Additionally, we can reasonably expect that early mediation will give us an earlier, better understanding of our case. Among other things, it will help us see our case from other view points. Therefore, even if our case does not settle, we will know more about our case after the mediation than we did before.

Mediation will give us a reasonable chance at a fair settlement. It will never give us complete victory. On the other hand, it will never saddle us with a complete loss.

We, as lawyers, have much to gain from early mediation. We will have the satisfaction of serving our clients well and, hopefully, cementing relationships with satisfied

clients who will reward us with return business and referrals. There is another facet to this also. This is a prescription for moving cases along, for breaking the cycle of one prolonged

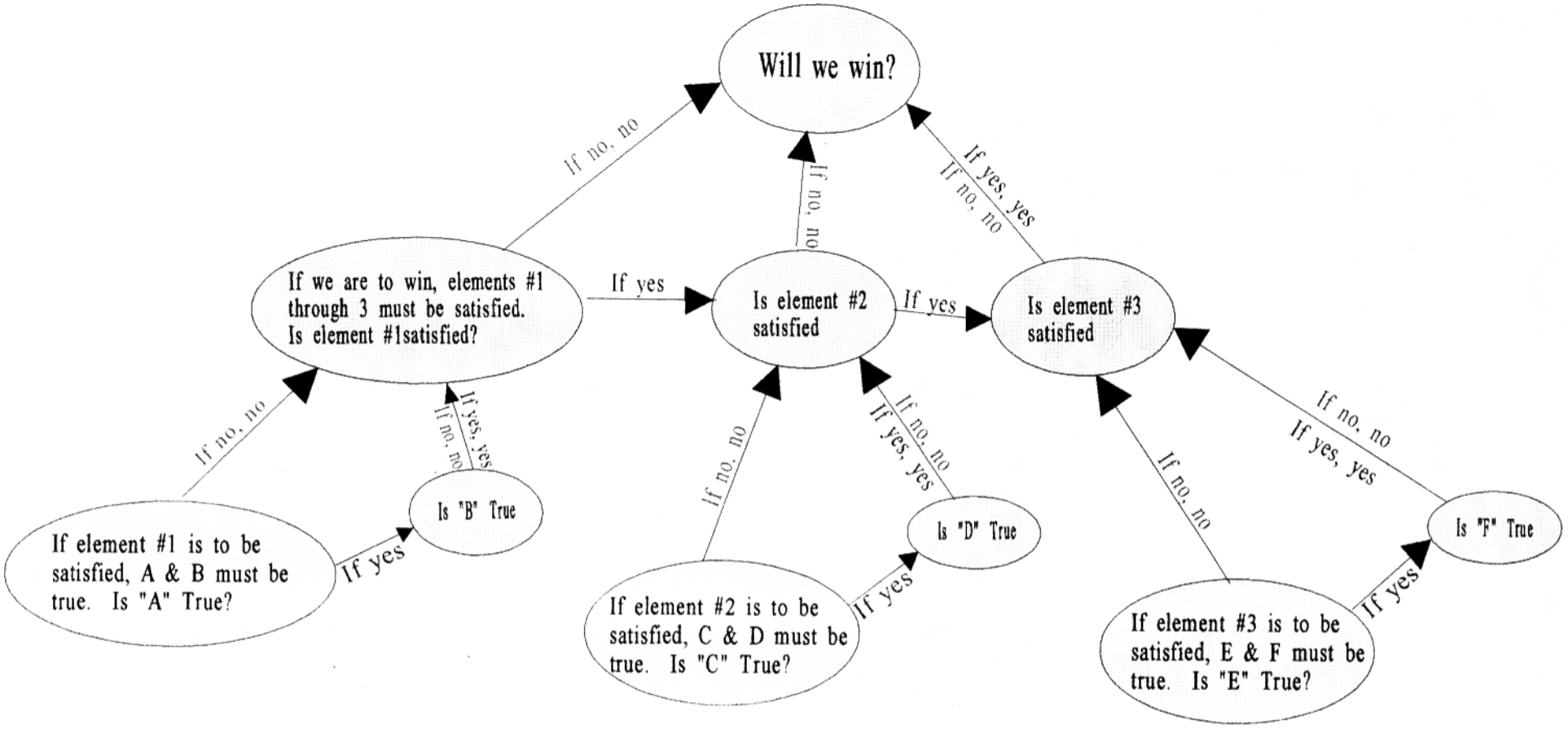
discovery battle after another. It calls for replacing discovery with negotiation. It just may be that in the process we will have helped make the practice of law a more exciting and enjoyable profession.

APPENDIX A

COST SAVINGS USING SETTLEMENT COUNSEL AND EARLY MEDIATION

		SIMPLE BUSINESS CASE (CATEGORY ONE)				INTERMEDIATE BUSINESS CASE (CATEGORY TWO)				COMPLEX BUSINESS CASE (CATEGORY THREE)			
		A	B	C	D	E	F	G	H	I	J	K	L
		Settle on Court	Trial w/o Any	Mediate Early	Mediate w/o Success	Settle on Court	Trial w/o Any	Mediate Early	Mediate w/o Success	Settle on Court	Trial w/o Any	Mediate Early	Mediate w/o Success
	Trial Lawyer time	House Steps w/o Mediation (hrs.)	Mediation (hrs.)	With Success (hrs.)	Then Try (hrs.)	House Steps w/o Mediation (hrs.)	Mediation (hrs.)	With Success (hrs.)	Then Try (hrs.)	House Steps w/o mediation (hrs.)	Mediation (hrs.)	With Success (hrs.)	Then Try (hrs.)
1	Initial Stage (case not yet at												
2	issue)	31.00	31.00	31.00	31.00	93.00	93.00	93.00	93.00	208.00	208.00	208.00	208.00
3	Case Development Stage												
4	(primarily discovery)	175.00	175.00	0.00	175.00	524.00	524.00	0.00	524.00	1195.00	1195.00	0.00	1195.00
5	Final Trial Preparation (final												
6	one hundred days)	52.00	52.00	0.00	52.00	152.00	152.00	0.00	152.00	341.00	341.00	0.00	341.00
7	Trial	0.00	36.00	0.00	36.00	0.00	120.00	0.00	120.00	0.00	288.00	0.00	288.00
8	Post trial	0.00	13.00	0.00	13.00	0.00	36.00	0.00	36.00	0.00	82.00	0.00	82.00
9	Unusual Facts or Law	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra
10	Dilatory Tactics	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra
11													
12	Settlement Lawyer time												
13	Initial Stage (case not yet at												
14	issue)	0.00	0.00	15.50	15.50	0.00		46.50	46.50	0.00	0.00	104.00	104.00
15	Case Developement Stage												
16	(primarily discovery)	0.00	0.00	0.00	8.75	0.00		0.00	26.20	0.00	0.00	0.00	59.80
17	Final Trial Preparation (final												
18	one hundred days)	0.00	0.00	0.00	2.60	0.00		0.00	7.66	0.00	0.00	0.00	17.05
19	Trial	0.00	0.00	0.00	1.90	0.00		0.00	6.00	0.00	0.00	0.00	14.40
20	Post Trial	0.00	0.00	0.00	0.65	0.00		0.00	1.80	0.00	0.00	0.00	4.10
21													
22	Client time												
23	(assume 45 percent of atty time)												
24	Initial Stage (case not yet at												
25	issue)	13.95	13.95	13.95	13.95	41.85	41.85	41.85	41.85	93.60	93.60	93.60	93.60
26	Case Development Stage												
27	(primarily discovery)	78.75	78.75	0.00	78.75	235.80	235.80	0.00	235.80	538.20	538.20	0.00	538.20
28	Final Trial Preparation (final												
29	one hundred days)	23.40	23.40	0.00	23.40	68.40	68.40	0.00	68.40	153.45	153.45	0.00	153.45
30	Trial	0.00	17.10	0.00	17.10	0.00	54.00	0.00	54.00	0.00	129.60	0.00	129.60
31	Post Trial	0.00	5.85	0.00	5.85	0.00	16.20	0.00	16.20	0.00	36.90	0.00	36.90
32	Unusual Facts or Law	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra
33	Dilatory Tactics	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra
34													
35	Consultants and experts time												
36	(assume 20 percent of atty time)												
37	Initial Stage (case not yet at												
38	issue)	6.20	6.20	6.20	6.20	18.60	18.60	18.60	18.60	41.60	41.60	41.60	41.60
39	Case Development Stage												
40	(primarily discovery)	35.00	35.00	0.00	35.00	104.80	104.80	0.00	104.80	239.20	239.20	0.00	239.20
41	Final Trial Preparation (final												
42	one hundred days)	10.40	10.40	0.00	10.40	30.40	30.40	0.00	30.40	68.20	68.20	0.00	68.20
43	Trial	0.00	7.60	0.00	7.60	0.00	24.00	0.00	24.00	0.00	57.60	0.00	57.60
44	Post trial	0.00	2.60	0.00	2.60	0.00	7.20	0.00	7.20	0.00	16.40	0.00	16.40
45	Unusual Facts or Law	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra
46	Dilatory Tactics	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra
47													
48	Misc. Costs (assume an amount equal												
49	in value to 10 percent of atty time)												
50	Initial Stage (case not yet at												
51	issue)	3.10	3.10	3.10	3.10	9.30	9.30	9.30	9.30	20.80	20.80	20.80	20.80
52	Case Development Stage												
53	(primarily discovery)	17.50	17.50	0.00	17.50	52.40	52.40	0.00	52.40	119.60	119.60	0.00	119.60
54	Final Trial Preparation (final												
55	one hundred days)	5.20	5.20	0.00	5.20	15.20	15.20	0.00	15.20	34.10	34.10	0.00	34.10
56	Trial	0.00	3.80	0.00	3.80	0.00	12.00	0.00	12.00	0.00	28.80	0.00	28.80
57	Post trial	0.00	1.30	0.00	1.30	0.00	3.60	0.00	3.60	0.00	8.20	0.00	8.20
58	Unusual Facts or Law	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra
59	Dilatory Tactics	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra	extra
60													
61	Mediation time												
62	Mediator	0.00	0.00	15.00	15.00	0.00	0.00	20.00	20.00	0.00	0.00	28.00	28.00
63	Lawyers	0.00	0.00	20.00	20.00	0.00	0.00	25.00	25.00	0.00	0.00	33.00	33.00
64	Client	0.00	0.00	15.00	15.00	0.00	0.00	15.00	15.00	0.00	0.00	23.00	23.00
65													
66	Summary												
67	Total Trial Lawyer Hours (exclusive												
68	of mediation)	258.00	309.00	31.00	309.00	769.00	925.00	93.00	925.00	1745.00	2115.00	208.00	2115.00
69	Total Settlement Lawyer Hours (exclusive												
70	of mediation)	0.00	0.00	15.50	29.40	0.00	0.00	46.50	88.10	0.00	0.00	104.00	199.35
71	Total Client Hours (exclusive												
72	of mediation)	116.10	139.05	13.95	139.05	346.05	416.25	41.85	416.25	785.25	951.75	93.60	951.75
73	Total Mediation Hours	0.00	0.00	50.00	50.00	0.00	0.00	60.00	60.00	0.00	0.00	84.00	84.00
74	Total Consultants and Experts	51.80	61.80	6.20	61.80	153.80	185.00	18.60	185.00	349.00	423.00	41.60	423.00
75	Total Misc. Costs (stated as the												
76	equivalent of hours)	25.80	30.90	3.10	30.90	75.90	92.50	9.30	92.50	174.50	211.50	20.80	211.50
77													
78	Total Cost of trial stated as Hours	451.50	540.75	119.75	620.15	1345.75	1618.75	269.25	1766.85	3053.75	3701.25	552.00	3984.60
79													

APPENDIX B



Schedule B
Logic Diagram Example

APPENDIX C