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DEALING WITH EMOTIONS IN THE RESOLUTION OF BUSINESS DISPUTES

This paper addresses the reality and impact of emotions in mediated settlement negotiations for the resolution of disputes in business cases. The author discusses some of the emotions commonly encountered in business disputes, even among sophisticated mediation participants, and offers suggestions on how to deal with those emotions.

By C. Edward Dobbs *

In domestic relations, personal injury, and job discrimination cases, strong emotions are anticipated to surface in the course of dispute resolution efforts. Disputants in business controversies, on the other hand, often believe that the path to resolution is an entirely rational process as “it’s all about the money,” and that open displays of emotion are a sign of weakness or loss of control.

EMOTIONS PERMEATE THE NEGOTIATION PROCESS

In the real world of settlement negotiations, emotions permeate the process.¹ Even though parties may appear

superficially to be entirely rational and outwardly calm, emotions affect each party’s perceptions, optionality analysis, judgment, and interaction with counterparts.² Emotions are frequently experienced in groups that may include a mix of the following – anxiety, fear, frustration, embarrassment/shame/guilt, and anger. Of those various emotions, the one most consistently exhibited in settlement negotiations is anger.

Participants in business disputes may be dismissive of the suggestion that emotions play a significant role in their bargaining. That perception may lead them to focus almost exclusively on the facts underlying the dispute and the applicable legal principles, and to ignore the impact of emotions. When emotions manifest themselves during the process, however, it will become all-too apparent that they play a pivotal role in reaching settlement closure. It is not uncommon to hear a

¹ See generally, Daniel L. Shapiro, “Emotions in Negotiation: Peril or Promise,” 87 MARQUETTE L. REV. 737 (2004). A highly evaluative mediator, who believes that the path to settlement is “talking sense” into the parties regarding the relative strengths and weaknesses of their respective cases, is also unlikely to appreciate (and therefore prone to overlook) the emotional underpinnings of a dispute and their effect on mediation participants.

² See Jennifer K. Robbennolt and Jean R. Sternlight, PSYCHOLOGY FOR LAWYERS 65 (ABA 2012) (“Emotion inevitably influences how we attend to, perceive, construe, remember, and process information”).

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