

The Only Thing We Have to Fear is the Law Itself
“A Mediocre Settlement is Better than the Greatest Victory at Trial”
by (FDR), Frank D. Rubin, Attorney

Clients love to say to me, “Take them to the wall”. Usually that means the client won’t pay my bill. Clients who look at litigation in terms of scorched earth have an unrealistic mind set.

The cost of litigation, actually taking a case to trial is prohibitive. It is not as if the lawyer is there to “rip you off”, it is just that a ton of work has to be done by the attorney to prepare a case for trial. There is no such thing as a simple case. There is no case that is an obvious winner that cannot be rebutted by the other side.

At a trial there is randomness due to the story each side gives. The litigants of side “A” and side “B” will weave a tale that bears only a marginal resemblance to the truth of the facts of the situation. In those few cases where the facts are not dependent on who is the best storyteller, the way the law governing the situation is applied can be implemented by the person in the black robes with breathtaking randomness, arbitrariness, stupidity or worse yet, completely ignored.

At least at a Las Vegas casino you can mathematically calculate the odds. Simply put, the odds always favor the casino. The only question is by how much in any particular casino game.

Even with 33 years of experience as an attorney, you have little assurance that I could give an accurate prediction of the outcome of a trial.

Judge Jack Tenner (of the O.J. Simpson trial), had a client of mine in a settlement conference many years ago. The client, a stubborn man, told Judge Tenner, “I can’t philosophically settle with the other side, they are crooks”. Then my client used the magic words when he told Judge Tenner that he was in court to “get justice”.

Judge Tenner looked at my client square in the eyes and said, “Justice...you are in the wrong place. The only guarantee we give you at this courthouse is we give you a decision. Justice? We get lucky once in awhile”. Once past that hurdle, we settled the case in about an hour.

Getting vengeance, justice or having the law properly applied to truthful testimony is a rare event. It is not that our system doesn’t invite it; it is just that such a result rarely happens.

Carol, my client was being sued by Bob. The issue was title to a condominium. After eight hours of settlement conference supervised by a very hands-on judge, my client, who had the title to the condominium, agreed to deed the condo back to the Plaintiff, Bob. Carol even agreed to pay off some of a second mortgage she had on the condo. All Carol was to net was \$10,000.00. Bob, at the last minute, turned it all down. The settlement

Judge was all over Bob. The case was set for trial. Bob's attorney was so upset with Bob that he left the case the next day in disgust.

A month and a half later, after three grueling days of trial, Carol won everything the court could award her. Bob got absolutely nothing. Carol kept title to the condominium. Two years and an appeals court later, Carol again prevailed. By that time, the condominium had gone up in value and was worth more than the \$10,000.00 for which Carol had agreed to settle. The value of the condo, even after attorney's fees and costs of a trial and appeal, still left Carol with a significant gain.

Still, a few days after the appeal in her favor became final, Carol repeated the mantra: "A mediocre settlement would have been better than our greatest victory at trial." The costs, financial and emotional, the trauma, the delay and the uncertainty were not worth it. Next time you are involved in a lawsuit and some halfway reasonable settlement is proposed, let go of your anger, forget your raging survival hormones, your desire for scorched earth revenge and seriously consider a mediocre settlement.

Don't think your lawyer is lazy or selling you out. In most cases you are trading off long term aggravating uncertainty for a specific, clear resolution.

You will not be handing the resolution of the case to the arbitrary whim of 12 dedicated citizens (a jury) or the bored, overworked discretion of a government bureaucrat (judge). Keep control over your fate. Keep a very open mind to accepting a plain vanilla, undramatic, not fulfilling, mediocre settlement. It usually beats the greatest victory at trial.

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