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# Kluwer Mediation Blog

## Wanting It Too Much. When to Let the Babies Cry Themselves to Sleep

Jeffrey Krivis (First Mediation Corporation) · Tuesday, December 16th, 2014

Imagine a marine layer floating over a coastal town. A family in this town is hopeful that the sun will burn the fog away so they can go to the beach and enjoy the great weather. The day seems to go on forever and the sun never comes out. The family ends up being stuck in their cabin, agitating each other while the parents are trying to figure out what to do with their children who are driving them crazy. The children are totally bored and expect their parents to figure out ways to keep them busy.

Consider the same scene in the mediation room. Lawyers are antsy because there is not enough movement in the negotiation. They refuse to take the mediator's recommendations or respond in a meaningful way and the case is gets locked up. The lawyers look to the mediator to burn the fog away because after all, that's why we "get paid the big bucks," to quote a former client.

When they disregard our advice and create failure because they are lazy and refuse to take any initiative in the process, should we call it a day and let them achieve failure for their client, or do we have other options? Do we let the babies cry themselves to sleep or do we take extraordinary action?

Let's discuss what direction to go when the fog doesn't lift and the children are acting like babies. Things to consider:

1. *Protection* – do you protect the lawyer from him or herself at all costs?
2. *Cover* – is it possible they lack initiative because they are constrained by internal corporate challenges and they just don't want to inform you?
3. *Gravity* – is it worth fighting the natural forces that might necessarily push the case into impasse mode no matter what we do?
4. *Middle Way* – do we continue to search for the middle way between the extremes of risk and reward and try and sell that to the parties?
5. *Artificial Impasse* – should we consider creating an impasse, but in our minds its really artificial because we're not going to let them leave because we get paid the big bucks to keep 'em talking?

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The graphic features a black background with white text and a circular icon. The icon depicts a magnifying glass over a group of stylized human figures, representing a search or investigation process. The text is arranged in a clean, modern layout with a horizontal line at the top.

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