
Kluwer Mediation Blog

Use a Ballot to Settle Multiple Claims at the Same Time

Jeffrey Krivis (First Mediation Corporation) · Thursday, May 16th, 2013

The problem: Many cases involve multiple claims and have limited resources to divide up. For example, if several people are injured and an insurance policy has been tendered, the injured victims have to come up with a method by which a fair division of the policy proceeds can be determined.

The solution: Use an old-fashioned ballot, just like in an election.

While there are numerous variations, here is one simple approach: each plaintiff or his counsel will fill out a ballot (prepared by the mediator) in which they provide a confidential percentage apportionment of the proceeds.

After receiving the ballots from everyone, the mediator “digests” the data and then presents the parties with his or her recommendation as to how the mediator should apportion the policy proceeds.

The mediator bases his or her recommendation on specific input from the parties and verifying that the method used to obtain the input is mathematically acceptable and fair. Next, the mediator presents his or her recommendations to each of the parties in multiple, double-blind proposals where the parties must either accept or reject the mediator’s proposed numbers.

If everyone accepts the mediator’s proposed numbers, obviously there is a deal. If anyone rejects the numbers, the mediator is then in a position to reengage in the negotiation with the person that rejected the proposal to find out what that person’s constraints are and to see if some of the funds can be redistributed to accommodate the concerned participants.

The reason this approach works nearly every time is that the participants are not permitted to discuss their ballots with each other. Although they will no doubt stack the deck in their favor, due to the number of players involved, the mathematics will even out as the mediator accumulates the data. If the mediator notices one party significantly overreaching, the mediator can intervene privately with that party and discuss the possibility of the party amending his or her ballot.

This approach also works well with multiple defendants in a single plaintiff case. Since the defendants cannot consult with each other, they will want to avoid being left out in the cold.

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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green.

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