
Kluwer Mediation Blog

Categorize Your Case to Learn Its Value

Jeffrey Krivis (First Mediation Corporation) · Wednesday, June 26th, 2013

The Problem: You think that your client's pain is so severe and different than the typical client that you value the case higher than the other side will pay.

The Solution: Understand what category your adversary has put your case in and either accept it or try and create a new category of value.

Insurers have defined market values of cases in strict categories depending on a host of factors that have been vetted by actuarial specialists with complex software programs. This provides a reasonable sense of predictability when evaluating damages and allows for appropriate pricing of insurance products. The process is similar to the approach used by polling specialist Nate Silver on his Five Thirty Eight Blog in the New York Times to predict the Obama landslide when all other polling favored a different outcome. Convincingly, Silver used this approach to consistently predict with accuracy the last several presidential races based on accumulating data from all the polls and coming up with median numbers.

The strategy used by Silver is nothing new to economics and is similar to risk management as it applies to litigated cases. The key is to include all biased elements of polling and find a common median. This is somewhat counter intuitive in that being more inclusive actually provides a more accurate prediction of the outcome. In other words, Silver considers information from all polling sources, no matter how biased, when integrating the data into his values. The same holds true in litigated cases. Insurers and many corporations have unvarnished data that provides them with settlement values based on historical criteria that is based on certain categories of disputes, including the dispute you have brought to mediation. They know their marketplace and accept information from all sources. This allows them to quickly categorize a case and use simple economics to determine relative value.

You will quickly learn from the mediator whether the marketplace value is within striking distance of your own criteria for settlement and will likely negotiate a settlement. If your value is much higher, that means the defendant has categorized your case differently than you. Learning how the other side has categorized the dispute will give you a clear pathway toward settlement. Ignoring the criteria they used can result in falling over the fiscal cliff of resolution with no way to turn back.

Generally speaking, the cases will settle within the median numbers depending on the category of damage is alleged. Understand how your adversary is categorizing the case and then decide if it makes sense to you.

When you arrive at a settlement meeting, the other side desperately needs to put your case (and you!) into an existing category because the bureaucratic cost of inventing a new category for every new case is impossible for the system to handle. That is why so many big value cases don't settle until the eve of trial, when the bureaucracy has an opportunity to redefine the category and increase or lower the value.

Options include: (1) waiting until the case matures before negotiating; (2) pre-qualify the other side's settlement numbers before coming to the table; (3) ask defendant what they need to evaluate and remove the case from the garden variety arena.

When I meet you or your company or your product or your restaurant or your website, I desperately need to put it into an existing category, because the mental cost of inventing a new category for every new thing I see is too high.

I am not alone in this need. In fact, that's the way humans survive the onslaught of newness we experience daily.

Of course, you can refuse to be categorized. You can insist that it's unfair that people judge you like this, that the categories available to you are too constricting and that your organization and your offering are too unique to be categorized.

If you make this choice, the odds are you will be categorized anyway. But since you didn't participate, you will be **miscategorized**, which is far worse than being categorized.

To make sure you do not miss out on regular updates from the Kluwer Mediation Blog, please [subscribe here](#).

Profile Navigator and Relationship Indicator

Includes 7,300+ profiles of arbitrators, expert witnesses, counsels & 13,500+ relationships to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Learn more about the newly-updated *Profile Navigator and Relationship Indicator*



This entry was posted on Wednesday, June 26th, 2013 at 12:00 pm and is filed under [Uncategorized](#). You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can skip to the end and leave a response. Pinging is currently not allowed.