

Settle Up!

Settlement Newsletter



January 2018

It's About the Money – or Not

Some time ago I attended an evening meeting for ADR professionals. Our presenter was extremely well-versed in conflict resolution. She teaches courses all over the world on human dynamics, power, mediation and conflict resolution. During the course of her presentation she made several comments that caught my attention. Among other things, she claimed that no disputes are truly about money.

Her claim surprised me. I've litigated for decades, and I've spoken to plenty of people about money. Sometimes it seems like the only thing that matters *is* the money, and for many years I've often said "It all comes down to money." When our presenter said that no disputes are about money, I knew I would be asking her some follow-up questions.

After the presentation, I sat down at a

table with her and with her non-attorney sister. Several ADR attorneys joined us. I asked the presenter about her "non-money" comment. She reaffirmed her position: "They (the conflicts) aren't about money." I responded, "Of course they are." She said, "Give me an example." I said "Take a personal injury case - there is wage loss, medical bills, pain and suffering. Clearly it's about the money." The presenter then started listing case examples where plaintiffs sought money, but where the real issue driving the litigation was actually something entirely different.

One of the lawyers at the table spoke up and described a case where a brother and sister, both in their eighties, were suing each other. His client (the brother) agreed to settle the dispute for far less than the attorney thought he should. The brother finally said "Now I will be able to sleep at night." Clearly that litigant had non-monetary concerns that were bothering

him. Was the litigation just too taxing for this octogenarian? Did he feel that he needed to salvage his relationship with his sister by taking less than he might

*"This isn't about the
money."*

otherwise get? Whatever the reason, something moved him to settle for less than his attorney thought he should accept.

After this story, one of the other attorneys shared a story about a personal injury case where a claimant was injured in a public facility due to negligence. During the case, this attorney asked the claimant how much money she wanted in settlement. The claimant had no idea – because the issue wasn't really about money. The real issue was about an injury caused by a defendant's negligence. The claimant

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wanted recognition and an apology – and she wanted the condition to be fixed so it didn't happen again. The attorney observed "People make mistakes. If they (the public facility) had just acknowledged their mistake and apologized, it would have been all over. As it was, we went through a lot because they wouldn't admit that." That night I realized that many lawsuits have less to do with money and more to do with feelings, emotion, pride and the need to be respected.

The following story won't come as a surprise to anybody who has been a litigator. I once litigated a case between family members that ended up in

mediation. Emotions were high. Everybody was suspicious of everybody else's motives. I finally said to the mediator (in private) "This isn't about the money." And it wasn't. It was about respect. It was about emotion. It was about treatment. It was about equality. But sometimes the only way we can address those things is through a lawsuit about money. In those situations, the money is important, but only because of what the money represents. Sometimes a plaintiff can't take less money, not because they want more money but because taking less would represent a victory for the other side, or an admission of defeat or wrongdoing themselves.

Notwithstanding these examples, some cases truly are about money. But others aren't. Why is this important? Because a mediator who quickly and accurately discerns the true cause of conflict will be in a superior position to settle a case. If a party tells the mediator "It's not about the money," then a perceptive mediator will ask "Then what *is* it about?" Once a mediator finds out what the lawsuit is really about, the mediator can fully address the core issues. And once a mediator does that, the non-monetary case is far more likely to settle.

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