

Settlement Testing™

Cutting to the Chase in a Digital World

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Bodacious [*origin bold + audacious*] impressive, awesome, brave in action, remarkable, prodigious

Summary

How would lawyers and adjusters behave if we resolved disputes BODACIOUSLY?

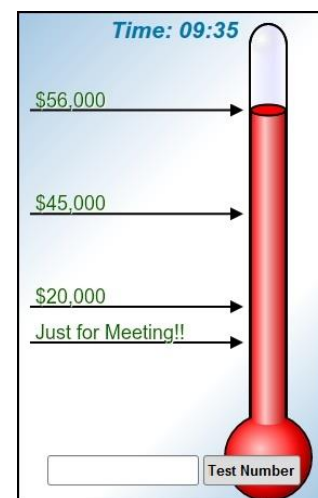
The first thing we would do is safely test our numbers. Before we invested in mediation or drafted pleadings, we would first get a clue how big our disagreement is. If we knew our gap was small, we would confidently pick up the phone and settle in two minutes.

If our testing showed a big gap, we would figure out what was causing it. We would swap whatever information we needed to reduce that gap. Then we would tailor a settlement process to bridge that particular gap as quickly and cheaply as possible.

Details

Step 1: Testing the Numbers

The Settlement Tester allows negotiators to safely test their numbers. It allows both sides to plug their Test Numbers into our online algorithms. Parties can honestly enter their most conciliatory number here –without being taken advantage of -- because the other side never sees your test Numbers. Only the algorithms see it. The algorithms compare the two test Numbers then on the table, and reflect how close the two sides truly are using a meat tester graphic... the higher the temperature, the closer you are to a meeting of the minds.



Testing takes 18 minutes of your time, and costs a fraction of traditional mediation.

Note: Before Settlement Testing™ in a real case, we suggest lawyers and adjusters get certified with First Court. This will ensure that you know exactly what you are doing in your first real Settlement Testing session. It will also save you 50% on your Testing fees! The online certification course takes about half an hour.

The entire Settlement Testing™ system is voluntary. After Testing, each party (including First Court) is free to drop out, take no more action, or do whatever they need to do.

If the parties walk away at that point, an entire day has not been wasted. Thousands of dollars have not been invested in a mediator. Nobody has compromised their negotiation position. Nobody will be angry or upset. The parties have simply taken a rational step to get some idea how large their gap is.

If the gap is small, they get on the phone and settle in two minutes. But let's assume the gap is large. What is the next step in the Settlement Testing™ system?

Step 2: Figuring Out the Cause of a Big Gap

At this point, First Court puts some skin in the game. We make the parties an unusual value proposition: if we don't settle your case, you don't pay us any settlement fee. We can do this based on over 25 years of experience resolving money disputes *bodaciously*.

Obviously the next step is to figure out why rational adults on each side of the case are coming up with such different valuations. Usually this is no mystery.

Keep in mind, both sides have strong motivations to settle out of court.

- Most plaintiff attorneys are practical--they correctly believe their clients are better served by a reasonable settlement than by a trial and an appeal.
- Few adjusters want to waste time, or spend any more on defense costs than is necessary.

Both sides are usually rational and motivated to settle. So if their genuine gap is large, then something is missing. In our 25+ years of experience we have found that four blunt questions can usually flush out that "missing something." When a testing session results in a large settlement gap we will ask both sides to provide short answers to four blunt questions.

First Court does not have time for sifting through lots of verbiage here. So we limit the length of the answers. We expect the parties to apply their superior knowledge of the case, and to tell us what we need to know in order to forge an agreement. Once we have answers to our four key questions, we formulate a settlement plan.

Step 3: Tailoring the simplest possible plan to settle this particular case.

Like snowflakes and clouds, no two lawsuits are exactly alike. We cannot predict exactly what will be necessary to resolve any particular conflict. Sometimes it may take a phone call. Sometimes it may take a short, mediated video conference call on Skype. Sometimes resolution may require feedback on one particular issue in a mini-trial.

Real Life Example #1: Wrongful death of an 18 year old motorcyclist who had recently graduated from high school. A star athlete and a straight-A student, Thomas was the apple of his parent's eyes. When mom and dad came to the mediation, they were still grieving – hard. They could not accept, and would not hear, anyone from the defense side of the table say that Thomas had done anything wrong in causing his own death.

The reconstructionists from both sides agreed that Thomas had turned off from a gravel road, headed west on a two lane highway, and for 17 seconds had proceeded directly into the headlights of two oncoming vehicles, a grain truck passing a sedan. Thomas never took any evasive action... he drove straight into grill of the passing truck.



Instead of arguing with the grieving parents, the First Court mediator asked plaintiff's counsel for the names of three people he respected, three people that he thought were fair and had good judgment. The mediator got them on the phone, one at a time. He read a one paragraph statement of the case to these respected friends of plaintiff's counsel, and asked for their reactions over a speaker phone, with the grieving parents and their attorney listening. Defendants were NOT in the room.

Two of the respected friends said that it looked like suicide. That was all it took. The parents were able to accept a contributory fault allocation of 30%. The case was resolved in 20 minutes.

Sometimes, of course, it turns out the defense side of the table needs a reality check. For both sides, it is much better to make that happen earlier, as a result of a smart Settlement Plan, than at the hands of a public jury rendering its verdict.

Real Life Example #2: Young man delivering paycheck to a worker on a construction site is killed when a brick wall falls on top of him. Defense team is convinced a jury will put lots of blame on decedent because he was not authorized to be on the premises, and because he was in the U.S. illegally.

First Court assembled a group of twelve jurors from the trial venue. We showed them pictures of decedent's family, and a ten minute video of the defendant's Safety Director. Most of the jurors disliked the Director, ignored the decedent's illegal behavior, and found the defendant largely responsible.



Again, the goal of the Settlement Plan is to provide feedback—fair, objective, inexpensive feedback—on the precise issues that are separating the parties, and in a way that is emotionally meaningful. Somewhat like a public jury, except the feedback is narrowly focused, comes to you much faster, and is much less expensive.

Whatever we recommend, you will be able to see and digest the proposed settlement plan, and to make your own decision on whether you want to proceed with it. Should the Plan resolve your dispute you will also know exactly what that will cost you.

Conclusion

Settlement Testing™ is a fast, low cost and rational way for lawyers and adjusters to settle money damage disputes. It initially requires 18 minutes of your time, and fees can be as low as one hundred dollars. That initial investment will give you a great idea how close you are to a resolution. If you are close, you can confidently pick up the phone and settle. If you are not close, First Court will produce the simplest possible plan for reaching an agreement. You will pay no additional settlement fee unless the plan actually results in a settlement.

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1. What if the Opposing Side Won't Agree to Try Settlement Testing?
 - a. We cannot help you. This ballet requires two dancers.
2. In the Course of the 18 Minute Negotiation, When Should I Get Really Serious About My Numbers?
 - a. Your first test Number should reflect 90% of what you are willing to do. The Settlement Tester will then be quite hot—this will give both sides confidence that they can get to a match, or an overlap, in the next two rounds.
3. Can Either Side Go Backwards with Their Test Numbers?
 - a. No, the system will not allow this.
4. How Can I Tell How Close We Really Are?
 - a. 100% on the Tester means your test Numbers either match or overlap.
 - b. Beyond that, you can discern how close you are by reading the Tester when the test Numbers are entered. The goal of our system is to give you a decent idea of how close you are, without revealing too much. Because if we were to show the parties EXACTLY what the other side's number is, then both would be obligated to defend the numbers, the dangers of being honest would sky rocket, and the games would begin.
5. How do I Know my Test Numbers Will be Kept Confidential?
 - a. You can rely on First Court's 25 year reputation, on our perfect BBB rating, on the threat of ethical sanctions against our President, attorney Mike Liffbrig, and on our self-interest: We have absolutely nothing to gain, and everything to lose, by violating the confidences of our clients.
6. What if We Need a Few More Minutes to Get the Case Settled—Can We Extend the 18 Minute Deadline?
 - a. No. The system is hard-coded to shut down the Testing after 18 minutes. We have harvested the power of a real deadline, so there are no exceptions. If you are close to settling and just need a few more minutes you can always take your discussion "off system" in order to complete a deal over the phone. Or you can schedule another follow up Testing session.

7. What if My Opponent is Stalling or Wasting Time?

- a. This is a chance you take in making your investment in Settlement Testing. We have no way to compel either party to respond or participate.

8. What if My Case Involves Multiple Parties?

- a. Settlement Testing™ is now available in cases with up to 20 defendants. You are able to test global settlements (i.e. between plaintiff and ALL defendants) as well as settlement proposals with individual defendants. Obviously we allow more time for such disputes—typically about ten minutes/party.

9. What Happens if My Opponent Misses the Agreed Upon Testing Session? What if I Miss It? What if we Need to Re-Schedule?

- a. You can easily reschedule. But that time and energy is lost to our system. You and your opponent are each out your initial investment.

10. Could We Test for Settlement on the Eve of Trial, Or After a Jury is in the Box? How Long Does it Take to Schedule a Testing Session?

- a. It usually takes one business day after the first party registers for us to setup a new case in the system. If you call and let us know of a shorter deadline, we can usually get a Testing session up and running for you in half an hour.

11. How do I Get Started? How do I Propose Settlement Testing in a Real Case?

- a. You fill out a simple form from our website. First Court will then approach the other side, explain the advantages of Settlement testing, and answer any questions. If the other side agrees to participate, we will schedule your Settlement Testing session at a mutually agreeable date and time.

12. I'm an Adjuster. Do I Need an Attorney to Test for a Settlement?

- a. No. Like Teddy Roosevelt's White House, Settlement Testing™ is open to every adult who is showered and sober.