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## Why Do Some Plaintiffs Reject Even a Great Settlement?

From time to time, we have a mediation where the plaintiff has an unusual attachment to the continued pendency of the lawsuit. I have seen this on a few occasions where the individual is suffering in their business or personal life—middle-aged and lonely, a widow or widower, divorced, ignored, under-employed, or otherwise disenfranchised. The lawsuit is empowering but only in an illusory and ultimately self-defeating way. The plaintiff's lawyer or paralegal responds as they must to the client's phone calls or emails. They have the defendant's attention. The lawsuit gives them a feeling of importance and control because they are the focus, and by refusing settlement, they command continued attention.

Consequently, we sometimes find the case is hard to resolve because there is a hidden psychological conflict—the desire to be compensated versus the desire for the litigation to continue to serve unmet emotional needs. Usually I can spot this phenomenon. I call them "sticky" plaintiffs. This sort of plaintiff will raise a strange impediment or invent weird non-economic conditions early in the day that are almost invariably deal killers. They will claim the other side is insulting them. They sometimes bicker unexpectedly with their attorney or the mediator, argue money is irrelevant or assert their lawyer is disloyal by suggesting that settlement is warranted. They sometimes engage in victimization or assert they are being unfairly asked to make an immediate decision, which is, of course, expected over the course of the mediation session. The plaintiff won't admit the attraction to the lawsuit, but the symptoms reveal themselves if you patiently watch and listen.

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When we encounter this sort of plaintiff, we have to stop talking about the deal or the money and temporarily wade into the deep end of the emotional lagoon to determine if we can find a substitute for the lawsuit—a future plan, a project, something for the plaintiff "to do" post-settlement. We also try to disabuse the plaintiff of the notion that they have control, stressing that the control exists only now and their perceived control diminishes each day after mediation as the case is turned over to the judge or jury.

These plaintiffs have a dependency problem. They need to be shown the value in moving forward and the limitations and even later harm that might ensue from this unhealthy attraction to the lawsuit. Premediation discussions with the client are imperative so that these problems will reveal themselves before the mediation begins and the lawyer and mediator can help the plaintiff engage in some introspection before and during the mediation session that may open the door to consideration of reasonable offers. Sometimes, friends or relatives are helpful voices in the room as well. Being cognizant of the plaintiff's unhealthy emotional connection to the lawsuit is on occasion a necessary first step in getting to a deal.

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