Definitive Creative Impasse-Breaking Techniques in Mediation

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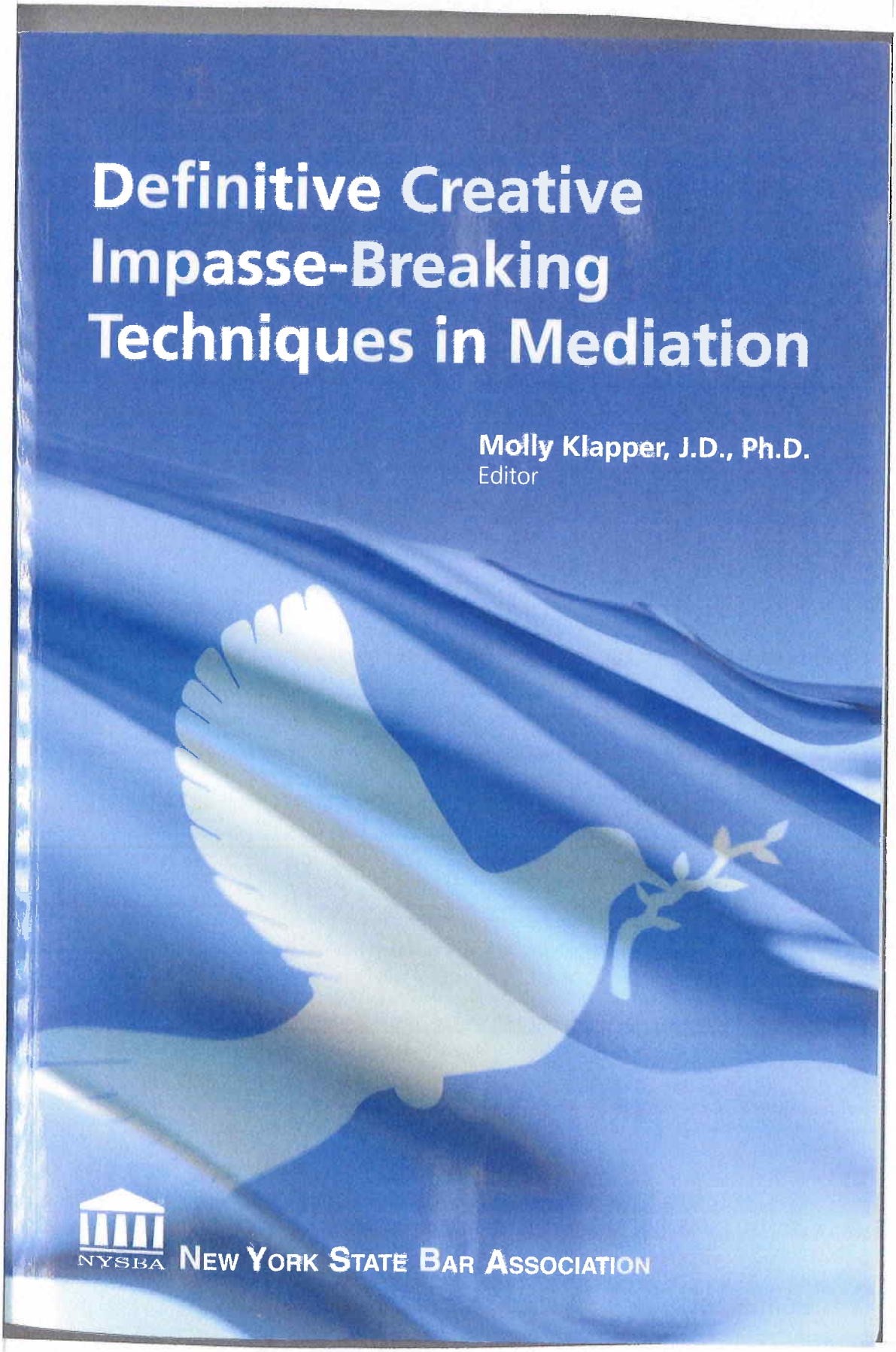
Editor



NYSBA NEW YORK STATE BAR ASSOCIATION

[15.0] I. MULTI-PARTY MEDIATIONS

One of a mediator's great joys, challenges and justifications can be found in the multi-party matter. Multi-party conflicts or disputes arise in every conceivable dimension of society. Take, for example, a school board's decision in renewing a teachers' union contract. Each board member can have diverse views and interests; within the union there might be different views, interest groups and political factions; school administrators have different views and interests; and the public itself—parents, students, and taxpayers affected by the decision—consists of multiple and divergent stakeholders. Zoning board decisions, end-of-life decisions involving large families (perhaps with second marriages), plant closings, any union negotiation, environmental resource use decisions—all involve multiple parties. Indeed, moving from business into municipal, state, national or international arenas, the set of multi-party disputes casts a wide net.

The broad array of multi-party disputes produces a wide range of issues, many of which fall outside the focus of this chapter but bear mention. These include the basic problem of convening. Identifying interest groups, selecting their representatives in what would otherwise be an impossibly unwieldy discussion, and managing intraparty communication are just a few of the threshold challenges in mediating these matters. As environmental mediators know all too well, it can even be a challenge to find a common legal framework that creates a shared sense of risk. Upstream users of water in Vermont might affect the availability or condition of water in downstream states and might eventually have an impact on the environment and users of natural resources as far south as the Chesapeake Bay. Local authorities in the downstream states might have no authority to regulate upstate users. Environmental Protection Agency regulators have, at times, convened sessions of stakeholders for negotiated rulemaking ("reg/neg") to address these problems.[1]

1 These observations were raised by David Batson of the EPA and others at an all-day conference, "Changing Times, Changing Legal Practice: Effective Legal Strategies to Resolve New Environmental Disputes," held at The University Club in New York City, Nov. 17, 2009. The conference, presented by Pace Law School's Kheel Center on the Resolution of Environmental Interest Disputes, included Lowenstein Sandler PC, Leyland Alliance and Wilson Elser Moskowitz Edelman & Dicker LLP as co-sponsors, and had a good number of participating sponsors, including the Federal Bar Association's Alternative Dispute Resolution Section and its Environment, Energy, and Natural Resources Section; the American Bar Association Section of Environment, Energy, and Resources; the Environmental Law Institute; the New York City Bar Environmental Law Committee; Pace Law School Center for Environmental Legal Studies; and the New York State Bar Association's Dispute Resolution Section.

Several years ago, the Conflict Prevention and Resolution Institute's (CPR) annual meeting featured an exercise in facilitated multi-party negotiation, drawing on the hypothetical of rebuilding the World Trade Center (WTC). It was an excellent display of the unique features of multi-party negotiations and the ways in which they benefit from a neutral facilitator.[2] In that post-9/11 scenario, five divergent groups struggled to arrive at a mutually acceptable solution to questions of how the WTC site will be used (memorial or commercial), who will pay for the rebuilding, and who will get credit for posterity. This negotiation was held in the shadow of media coverage. Three of the five stakeholders (victims' families, state, and city, as well as insurers and developer) involved numerous members. In view of the pressure applied by constituents "outside the room," it was important to be able to structure a constructive discussion in which all could strive for consensus.

This WTC scenario underscores the value a neutral party might bring. The neutral can help develop a good structure for talks, identify interests and issues, help in setting and revising the agenda, conduct caucuses, deal with the formation of independent cabals, assist in brainstorming, help with reality testing, and maintain constructive focus as the terms of this multi-factorial deal are hammered out. One enhanced challenge for the mediator in this type of negotiation is working the balance between remaining a background player—a facilitator, drawing out the parties' interests and thoughts for resolution—while exerting sufficient influence to maintain a structured and progressive discussion. There is a tangible risk that relations and communications will fray where each group excessively asserts its own interest and stalls consensus-seeking talks by fili-

2 Rebuilding the World Trade Center Site: An Exercise in Multi-Party Negotiation, presented by Professor Lawrence Susskind of the Harvard Law School Program on Negotiation, draws on taped segments of a 90-minute exercise used by participants in the January 2007 Annual Meeting of CPR (now the International Institute for Conflict Prevention and Resolution). Each of the multiple groups consisted of six participants, representing (1) the families of those who died as a result of the collapse of the World Trade Center buildings on Sept. 11, 2001; (2) the Port Authority of New York and New Jersey, representing the owner of that land; (3) the City of New York: (4) the Silverstein group, which had a long-term lease on the site and was responsible for rental payments and rebuilding; (5) the insurer of the collapsed buildings; and (6) a facilitator charged with fostering a constructive negotiation. The tape and associated materials can be purchased at http://www.pon.org/catalog/product_info.php?products_id=417. This author was part of a CPR working group that developed the initial problem, under the guidance of Peter Phillips of CPR. The raw material for that program was reworked and refined by Professor Susskind and his students prior to the January 2007 CPR Annual Meeting. An obvious takeaway from this role-playing is that—with divergent interest groups under public scrutiny, the tendency to form caucuses among fewer than all participants, and the need for consensus—the participants benefited greatly from having a facilitator manage the discussion.

bustering, table pounding, or withdrawal. The mediator brings value here by developing a transparent process while preserving the ability to caucus and, fundamentally, by keeping people at the table. With all of this activity, the artful mediator is challenged to keep the "less is more" philosophy of neutral intervention close at hand.

Shifting from the host of public and community disputes and deal making, we now turn to the realm of civil litigation. Perhaps first in mind for litigators is the multi-defendant case—for example, construction cases, or third-party liability matters—where multiple defendants and third- or fourth-party defendants have been added to the fracas. Often, insurers are involved. Similarly, there is the class action or its variant, the multi-plaintiff case. Beyond these, the areas where multiple parties and interest groups are involved in litigation are legion.

[15.1] II. THE CONSENSUS-BASED RISK ALLOCATION MODEL

Civil litigators are all too familiar with one phenomenon in the multi-defendant case: mutual finger-pointing. When asked who bears responsibility for a particular occurrence or loss, defendants have a tendency to direct attention away from themselves and seek to shift the burden of payment onto one or more of the other defendants. In construction-related cases, or the third-party insurance world in general, this is a frequent occurrence. Often, counsel or claims adjusters will enter a negotiation with a predetermined percentage they believe their company should bear relative to the other defendants. Moreover, they have set views on the percentage responsibility the other parties should bear as well—particularly party X, whom they deem to be the chief target, or party Y, who was in a position similar to their own. This can generate feelings among professionals not unlike sibling rivalry.

Over the course of several mediations in which this common phenomenon arose, I developed and refined an approach that has proven to be consistently effective in extricating multiple defendants from the quagmire caused by mutual finger-pointing. This approach can be termed a "consensus-based-risk-allocation model." It can be seen as an effort to garner information from the parties themselves and to have the solution to their imbroglio emerge from their own thought processes, rather than have it independently developed and pronounced by the mediator. Because it involves an amalgamation of their collective thoughts, it is seen as consensus based. It is termed a "risk allocation" model because it involves the thought processes of all defendants (including counsel and insurance

representatives) in calculating how risk of loss at trial should be assessed and allocated among all of the defendants.

Before describing this process, one social-psychological phenomenon bears noting: Defendants can get hung up on relative percentages and looking over their shoulders at what the other defendants are contributing. Dealing with hard dollars can help disengage defendants from this inter-party struggle. The consensus-based risk allocation model is designed to shift parties' focus from percentages to hard dollars and to focus each defendant on its own pot rather than the other defendants'. This helps parties move from stalemate to progress.

The procedure is fairly straightforward. First comes preparation and diagnosis. I typically hold an initial joint session with all parties and one or more caucuses (private, confidential meetings with fewer than all parties). Because multi-defendant negotiations are cumbersome, plaintiffs often are surprisingly willing to share their more or less realistic desired settlement number earlier on in the process, to enable the mediator to be effective. This is essential to the method's success. During the initial caucuses—first with the entire group of defendants and then with subgroups of defendants—the mutual finger-pointing becomes apparent, producing its diagnosis. To address this problem, I hold a series of caucuses with each of the defendants. In each caucus I ask the same set of questions:

1. What is the likelihood the plaintiff will win at trial and, if so, how much?

2. What percentage liability will be allocated to each defendant?

3. How much will it cost to try this case?

Answers to these questions are recorded on an Excel spreadsheet, with a horizontal row for each defendant's answer and a vertical column for each defendant discussed. Examples of these spreadsheet templates are presented in tables 1, 2, and 3.[3] Question 1 is developed a bit further, to account for any comparative share allocated to a successful plaintiff. A final row is added to take the averages of the input from all defendants.

By the time this approach is used, there has been back-and-forth, in joint session and via initial caucuses, on all parties' views of the strengths and weaknesses of the case, addressing both liability and damages. Risk

3 See tables 1, 2 and 3 in the appendix at the end of this chapter.

analysis, if needed to develop greater realism, can be performed before or in conjunction with the discussions in these caucuses. My general observation is that by the time we have gathered answers to the above three questions, the parties have reached a certain degree of realism and have developed some trust in the process and the mediator.

When the interviews have been completed, I develop three different types of "pots," or economic scenarios.

[15.2] A. Trial Outcome and Transaction Costs

Using the trial-outcome predictions recorded on the Excel spreadsheet, I calculate the average of the amount the plaintiff is predicted to win. Thus, for example, if there are ten defendants, there will be ten educated guesses of damages at trial, which can be averaged. By luck of the draw, in most instances where I have used this method, there has been minimal doubt that the plaintiff would win, but exuberant disagreement on the allocation of responsibility among defendants. Therefore, in these scenarios, there is little need to apply a total loss risk factor to the averaged damages number. See, for example, the results reflected in table 4.[4]

In table 4, 1 is assigned to the "Plaintiff Wins" column, serving as a 100% type of multiple against the damages and any plaintiff's comparative liability share. If, however, there were a strongly perceived risk that the plaintiff would have an outright loss, that risk factor column can also be completed and averaged. The resultant average can be applied to the average damages number to produce the defendants' collective view on case value. An example of this additional calculation is displayed in table 5.[5]

The net result, with either set of expectations on the plaintiff's likelihood of winning at trial, is the defendants' collective assessment of case value. By itself, this could be used as a framework for negotiations.

Beyond this, the predicted defense costs can also be calculated as in table 6.[6]

Significantly, one might make the common observation that collective transaction costs outweigh the risk of loss at trial. These costs are properly cumulated rather than averaged. When combined with trial outcome,

4 See table 4 in the appendix at the end of this chapter.

5 See table 5 in the appendix at the end of this chapter.

6 See table 6 in the appendix at the end of this chapter.

they give us the collective sense of the combined exposure to damages and transaction costs. An example is shown in table 7,[7] positing the simplified case of all the defendants' recognizing that the plaintiff will win something at trial. Figures for this table are drawn from tables 4 and 6.

If there is any doubt about the candor of the various defendants' own cost estimates, the costs can be averaged for use when discussing likely costs with a particular defendant (see table 6). There is also the more cumbersome approach of including costs for every defendant in the third question during the initial interviews of each defendant and using those figures. This is typically unnecessary but can be used to produce the numbers to fill in the Costs Through Trial column of table 7.

With the development of the above-noted numbers, the mediator is in a better position for discussing risk analysis and transaction cost analysis with any defendant.

[15.3] B. Probable Settlement Number

It also pays to make note of the amount the plaintiff needs to settle the case. The first set of numbers, on case outcome and transaction costs, can now be used to reassess the realism of the plaintiff's probable settlement number. Before holding further discussions with the defendants, I might reengage the plaintiff in an exploratory caucus to get a better sense of what is needed to settle the case. Of course, it is important to be careful not to disclose to the plaintiff confidential information gathered in the defendant caucuses. Nevertheless, all of the information supports the development of an educated guess at a probable settlement number. For purposes of our examples, let us assume that the plaintiff would settle the case for $1.5 million.[8]

7 See table 7 in the appendix at the end of this chapter.

8 While this is just a hypothetical, given the assumptions in tables 4–6, this is not an unrealistic number. $1.5 million is 75% of the average projected case outcome where the plaintiff wins every time ($2 million, per table 4), and is a lesser discount off the projection where the plaintiff is seen as having some risk of outright loss (approximately $1.65 million, per table 5). There are benefits in having present use of funds, as opposed to waiting for trial (although this is somewhat offset by New York's 9% judgment interest rate). There are also benefits to the plaintiff's counsel, who often operates on a contingent fee, in spending less time on the case, avoiding outlay of expenses on experts and other litigation-related costs, and in trading an uncertain win after trial and possible appeal for the certainty of a settlement. Of course, we are assuming that the entire group of defendants has not radically underestimated realistic damages at trial. Use of risk analysis in the caucuses where this information is gathered can help with quality control for these figures.

[15.4] C. Graduated, Lesser Offer Pot (GLOP)

The goal of the overall exercise is to arrive at a proposal that might work for all parties, and that will be perceived by the defendants as credible and savvy. The alternative dispute resolution community is well acquainted with the concepts of integrative bargaining and principled negotiation. Fisher, Ury, and the Harvard Negotiation School have alerted us to the drawbacks of positional, as opposed to interest-based, bargaining.[9] Nevertheless, it is typical of negotiations for cases of this sort to occur in stages, with a pattern of alternating decreasing demands and increasing offers. Thus, it is wise for the mediator to develop two or more smaller numbers, one smaller than the next, that can be used as initial and subsequent offers to the plaintiff on behalf of all defendants. Developing these numbers will enhance the mediator's overall credibility with the defendants. For purposes of our example, where $1.5 million is the projected settlement pot, let us call the smallest GLOP $1 million and the next GLOP $1.25 million.[10]

Next it is time to develop each defendant's share of the settlement pot. Using the information gathered on the Excel spreadsheet, the mediator now derives the average of all the defendants' views concerning each defendant's relative liability. An example of this approach can be seen in table 8.[11]

The average for each defendant is shown in the bottom row. The right-hand column may be used as a check, to be sure that the percentages are correct. The total of all percentages should be 100%, shown as "1" in that column. Any comparative share for the plaintiff has already been worked into the trial outcome, projected settlement pot and GLOP numbers.

9 *See, e.g.*, Roger Fisher & William Ury, Getting to YES (2d ed., Penguin 1991).

10 As with the observations in note 8, *supra*, associated with the probable settlement number, one might keep in mind that GLOPs of $1 million and $1.25 million are made in the context of a $2 million projected trial outcome (table 4, where the plaintiff always wins something) or a $1.65 million projected trial outcome (table 5, where the plaintiff is assumed to have some risk of outright loss). These GLOPs represent, at the low end, 50% of the table 4 risk and a lesser discount off the table 5 risk. They nevertheless provide encouragement to the plaintiff with a seven-figure starting offer. As comfort to the defendants, they still represent about only 25% of the defendants' combined case exposure ($4 million, per table 7). It is interesting to observe how factoring in transaction costs widens the zone of savings realized by the defendants and theoretically should encourage them to sweeten the pot for the plaintiff, coming closer to the plaintiff's projected trial outcome. Steve Hochman refers to this effect as the "win-win range."

11 See table 8 in the appendix at the end of this chapter.

As mentioned above, it is important to move the defendants away from thinking in terms of percentages to thinking in terms of their own dollars. Thus, once each defendant's percentage has been obtained, the mediator can create different charts on the Excel spreadsheet for each of the three sets of numbers[12] described above. Let us look, for example, at a chart applying each defendant's percentage to the trial outcome number. We can posit a trial outcome of $2 million and ten defendants collectively assessed to bear the proportionate shares reflected in the averages in table 8; that is, 25%, 20%, 15%, 10%, 10%, 5%, 5%, 5%, 2.5%, and 2.5%. In that scenario, the dollar allocations would be as shown in table 9.[13]

Application of a defendant-specific transaction cost figure would add that defendant's acknowledged defense costs to that defendant's trial outcome number. So, for example, a defendant with a $500,000 trial outcome allocation and a projected $250,000 transaction cost would be assigned a combined projected risk and transaction cost figure of $750,000. Applying the allocation percentages shown in table 8 to the costs recorded in table 6 and the presumed trial outcome quantified in dollars in table 9 produces the total per-defendant case exposure figures shown in table 10.[14]

Again, if the defendant's acknowledged defense cost seems off, an adjacent column could display the sum of that defendant's projected share of trial outcome and average defense costs. Thus, if average defense costs were $400,000, the number for Party A, above, would be $900,000.

There is no need at this stage to add general risk factors. Any meaningful risk factor for the plaintiff should have been worked into the calculation of the plaintiff's projected trial outcome. Risk factors relating to a given defendant's liability already should have been worked into the derivation of that defendant's percentage share. There is a separate question on "spin." What does the mediator do with the old-fashioned hardball negotiator, the consummate low-profile liability ducker, the outright spinmeister? The mediator has some choices here. One is simply to let the numbers do their magic. The greater the number of defendants, the lower the impact of one defendant's outrageous denial of obvious risk. Take, for example, a defendant with an objective risk of 25% liability—let us call that defendant HN, for hardball negotiator. If there are 20 defendants and each assesses HN's liability at 25%, but HN assesses its own liability at

12 The three sets of numbers are trial outcome, projected settlement, and GLOP.

13 See table 9 in the appendix at the end of this chapter.

14 See table 10 in the appendix at the end of this chapter.

5%, the average of the 20 estimates would be 24%, a modest adjustment (see table 11[15]).

Of course, if there were just ten defendants, the average would permit somewhat greater skew. Nevertheless, even with ten defendants, the variance would be just two percentage points, with an average of 23% (see table 12[16]).

At a certain point—say, with five defendants, where the average would be 21% (see table 13[17])—the variance might grow intolerable.

This leads to the question of whether the mediator might make a separate "spinmeister" adjustment. An adjustment of this sort raises all sorts of ethical questions, of course.[18] But before making any such adjustment, it pays to be aware of other social phenomena. First, there is the age-old observation that force begets counterforce. Sometimes, precisely because of his hardball tactics, the hardball negotiator incurs the suspicion and ire of other defendants. This might be reflected in their assessment of that defendant's risk. Of course, if this goes overboard, there is the question of whether a countervailing adjustment is needed. In addition, there is a host of different negotiator personalities involved in any multi-defendant case. There might be one defendant's representative who understands that it objectively bears the lion's share of the risk. This defendant might be eager to resolve the matter. As a consequence, it might be willing to take on even a modest increase in its own portion to be sure that the case settles. That defendant's representative, and others, might be well aware of the hardball curmudgeon and be openly willing to adjust rather than let HN gum up the works. It is helpful to keep in mind throughout these reflections the difference between the trial outcome share and the share that includes transaction costs. There is typically a good amount of fat created by the combined share, which can help justify either an adjustment or failure to make an adjustment.

It grows clear that the issue of whether and, if so, how, to make adjustments is a tricky one. The ideal approach is to make no adjustments or to engage in adjustments as much as possible at the front end, in the initial

15 See table 11 in the appendix at the end of this chapter.

16 See table 12 in the appendix at the end of this chapter.

17 See table 13 in the appendix at the end of this chapter.

18 These questions, relating to candor, transparency, quality of the process, long-term impact on repeat users of the mediator and on the mediator himself or herself, the mediator's role, inter-party fairness, and other issues may be reserved for another article or for a forum discussion.

caucus with each defendant. If adjustments are made, I would feel an obligation to disclose that adjustments of that kind were made when explaining the consensus-based risk allocation model and its results to all defendants.[19]

Returning to our numbers, just as percentages are applied to the trial outcome numbers, so too percentages are applied to the other two sets of numbers—the proposed settlement number and the GLOP. Typically, we copy and paste the first chart and then substitute the alternative assumption—proposed settlement number or GLOP—which, thanks to the magic of Excel, changes the balance of the numbers for each defendant's share. The results are displayed in table 14.[20]

[15.5] III. THE JOINT DEFENDANTS' CONFERENCE CALL

Once all numbers are worked out,[21] I typically hold a joint conference call with all defense counsel. I explain what I did and ask whether the defendants would like to hear the outcome of this experiment. Invariably, all are eager to hear the results. It is important to explain that the settlement assessment and each of the proposed defendants' shares are the result of a collective effort. With their agreement, I let defendants know what the collective proposed settlement pot is, as well as what two or more lesser pots (the GLOP) would be. I then give them the dollar share (not percentage) for each defendant contributing to the pot in question. One variation of this approach is simply to present the lowest pot and explain that while this is not expected to settle the case, it seems like a good start. In all instances, where there is no "spinmeister adjustment," it is important to emphasize that the numbers are entirely a passthrough of the defendant's best estimates. Any adjustment would pose a test of the mediator's tact to communicate this without upsetting the applecart. Defendants can be told that this is essentially the result of their estimates, but that the mediator might have made a "tweak" here or there in order to obtain a workable

19 To the extent a mediator thinks of making adjustments, a result-oriented approach might include the pragmatic consideration of whether the dollar figures for each of the defendants can be obtained from that defendant. This can integrate financial capacity, intransigence, bargaining style, and all sorts of realpolitik factors. Again, it would be ideal to make no adjustment in order to maintain the purity of the model and lessen the predictable gamesmanship that might ensue after the necessary disclosure of the mediator's methodology.

20 See table 14 in the appendix at the end of this chapter.

21 Depending on the circumstances, parties and the numbers involved, "working out the numbers" might also involve making caucus calls to specific defendants to test the waters on the numbers that will be appearing for that defendant in the proposed settlement number and GLOP charts.

package. This balance of transparency and obscurity is an art that actually generates approval and greater acceptance of the result.

Seeking permission is key to obtaining the defendants' buy-in. Beyond this, it is required because the proposed numbers will be presented as the collective result of confidential caucuses and, thus, are based upon confidential information. Not surprisingly, the defendants will have consistently expressed unanimous interest in the outcome.

Typically, defense counsel return to their carriers or clients with a report on this unusual conference call. I will follow up with each of them by phone caucuses or might simply get an email approving of a defendant's share. More often than not, the vast majority of defendants return with approval. At times, there might be a need for further adjustment of one or more shares. This can involve some telephone caucusing and, perhaps, some horse trading with the help of one or more parties who, for one reason or another,[22] have some additional flexibility.

In sum, I deliver to the defendants three packages for presentation to the plaintiff—an initial, a subsequent, and a final pot—identifying, by dollar figure only, each defendant's contribution to each of these three pots. A doable settlement path appears in place of what had been a field of warring soldiers. Through channeling the defendants' own information into reasonable grids, the consensus-based risk allocation model can create productive order out of the chaos of multi-party bargaining sessions.

22 Reasons for flexibility could include that they have assessed their risk as worse than the collective number would suggest, that their combined risk and transaction cost well exceed the proposed number, that they have greater distance and recognize one or more recalcitrant parties as potentially holding up a good settlement or as possibly having even less risk than has been assessed for them.

APPENDIX

Table 1

	% Chance Plaintiff Wins	Damages	Plaintiff's Comparative Share	Resulting Case Value
Party A				
Party B				
Party C				
Party D				
Party E				
Party F				
Party G				
Party H				
Party I				
Party J				
Average				

Table 2

	Percentage Allocations									
	Party A	Party B	Party C	Party D	Party E	Party F	Party G	Party H	Party I	Party J
Party A										
Party B										
Party C										
Party D										
Party E										
Party F										
Party G										
Party H										
Party I										
Party J										
Average										

Table 3

	Costs Through Trial
Party A	
Party B	
Party C	
Party D	
Party E	
Party F	
Party G	
Party H	
Party I	
Party J	
Average	

Table 4

Assumption: Plaintiff Wins Every Time				
	Plaintiff Wins	Damages	Plaintiff Share	Resulting Case Value
Party A	1	$ 2,800,000.00	0.333333333	$ 1,866,666.67
Party B	1	$ 2,300,000.00	0.25	$ 1,725,000.00
Party C	1	$ 2,775,000.00	0.2	$ 2,220,000.00
Party D	1	$ 2,500,000.00	0.25	$ 1,875,000.00
Party E	1	$ 2,250,000.00	0.33	$ 1,507,500.00
Party F	1	$ 2,300,000.00	0.25	$ 1,725,000.00
Party G	1	$ 3,250,000.00	0.333333333	$ 2,166,666.67
Party H	1	$ 3,750,000.00	0.25	$ 2,812,500.00
Party I	1	$ 2,000,000.00	0.5	$ 1,000,000.00
Party J	1	$ 3,100,000.00	0	$ 3,100,000.00
Averages	1	$ 2,702,500.00	0.269666667	$ 1,999,833.33
			Case Value Rounded Up	$ 2,000,000.00

Table 5

Assumption: Varying Views of Plaintiff's Likelihood of Getting Any Damages/ Winning Anything				
	Plaintiff Wins	Damages	Plaintiff's Share	Resulting Case Value
Party A	0.75	$ 2,800,000.00	0.333333333	$ 1,400,000.00
Party B	0.8	$ 2,300,000.00	0.25	$ 1,380,000.00
Party C	0.9	$ 2,775,000.00	0.2	$ 1,998,000.00
Party D	1	$ 2,500,000.00	0.25	$ 1,875,000.00
Party E	1	$ 2,250,000.00	0.33	$ 1,507,500.00
Party F	0.66	$ 2,300,000.00	0.25	$ 1,138,500.00
Party G	0.5	$ 3,250,000.00	0.333333333	$ 1,083,333.33
Party H	1	$ 3,750,000.00	0.25	$ 2,812,500.00
Party I	0.5	$ 2,000,000.00	0.5	$ 500,000.00
Party J	0.9	$ 3,100,000.00	0	$ 2,790,000.00
Averages	0.801	$ 2,702,500.00	0.269666667	$ 1,648,483.33

Table 6

	Costs Through Trial
Party A	$ 250,000.00
Party B	$ 200,000.00
Party C	$ 250,000.00
Party D	$ 200,000.00
Party E	$ 150,000.00
Party F	$ 175,000.00
Party G	$ 250,000.00
Party H	$ 250,000.00
Party I	$ 75,000.00
Party J	$ 250,000.00
Average	$ 205,000.00
Rounded Average:	$ 200,000.00

Table 7

Assumption: Plaintiff Wins Every Time			
	Trial Outcome	Costs Through Trial	Combined Case Exposure
Party A	$ 1,866,666.67	$ 250,000.00	$ 2,116,666.67
Party B	$ 1,725,000.00	$ 200,000.00	$ 1,925,000.00
Party C	$ 2,220,000.00	$ 250,000.00	$ 2,470,000.00
Party D	$ 1,875,000.00	$ 200,000.00	$ 2,075,000.00
Party E	$ 1,507,500.00	$ 150,000.00	$ 1,657,500.00
Party F	$ 1,725,000.00	$ 175,000.00	$ 1,900,000.00
Party G	$ 2,166,666.67	$ 250,000.00	$ 2,416,666.67
Party H	$ 2,812,500.00	$ 250,000.00	$ 3,062,500.00
Party I	$ 1,000,000.00	$ 75,000.00	$ 1,075,000.00
Party J	$ 3,100,000.00	$ 250,000.00	$ 3,350,000.00
Av/Total	$ 1,999,833.33	$ 2,050,000.00	$ 4,049,833.33

Table 8

	Percentage Allocations										
	Party A	Party B	Party C	Party D	Party E	Party F	Party G	Party H	Party I	Party J	Total Percentage
Party A	0.2	0.25	0.15	0.1	0.1	0.05	0.05	0.05	0.025	0.025	1
Party B	0.3	0.15	0.2	0.1	0.1	0.05	0.025	0.05	0	0.025	1
Party C	0.35	0.25	0.1	0.075	0.1	0	0.05	0.025	0.025	0.025	1
Party D	0.2	0.2	0.15	0.1	0.1	0.1	0.05	0.05	0.025	0.025	1
Party E	0.2	0.15	0.2	0.125	0.1	0.05	0.075	0.075	0.025	0	1
Party F	0.25	0.2	0.15	0.1	0.1	0.05	0.05	0.05	0.025	0.025	1
Party G	0.25	0.25	0.1	0.125	0.075	0.05	0.025	0.05	0.025	0.05	1
Party H	0.2	0.15	0.2	0.075	0.125	0.05	0.075	0.05	0.05	0.025	1
Party I	0.3	0.2	0.1	0.1	0.1	0.05	0.05	0.05	0	0.05	1
Party J	0.25	0.2	0.15	0.1	0.1	0.05	0.05	0.05	0.05	0	1
Average	0.25	0.2	0.15	0.1	0.1	0.05	0.05	0.05	0.025	0.025	1

Table 9

	Trial Outcome
Party A	$ 500,000.00
Party B	$ 400,000.00
Party C	$ 300,000.00
Party D	$ 200,000.00
Party E	$ 200,000.00
Party F	$ 100,000.00
Party G	$ 100,000.00
Party H	$ 100,000.00
Party I	$ 50,000.00
Party J	$ 50,000.00
TOTALS:	$ 2,000,000.00

Table 10

	Trial Outcome & Costs
Party A	$ 750,000.00
Party B	$ 600,000.00
Party C	$ 550,000.00
Party D	$ 400,000.00
Party E	$ 350,000.00
Party F	$ 275,000.00
Party G	$ 350,000.00
Party H	$ 350,000.00
Party I	$ 125,000.00
Party J	$ 300,000.00
TOTALS:	$ 4,050,000.00

Table 11

	Percentage Allocations
	HN
Party A (HN)	0.05
Party B	0.25
Party C	0.25
Party D	0.25
Party E	0.25
Party F	0.25
Party G	0.25
Party H	0.25
Party I	0.25
Party J	0.25
Party K	0.25
Party L	0.25
Party M	0.25
Party N	0.25
Party O	0.25
Party P	0.25
Party Q	0.25
Party R	0.25
Party S	0.25
Party T	0.25
Average	0.24

Table 12

	Percentage Allocations
	HN
Party A (HN)	0.05
Party B	0.25
Party C	0.25
Party D	0.25
Party E	0.25
Party F	0.25
Party G	0.25
Party H	0.25
Party I	0.25
Party J	0.25
Average	0.23

Table 13

	Percentage Allocations
	HN
Party A (HN)	0.05
Party B	0.25
Party C	0.25
Party D	0.25
Party E	0.25
Average	0.21

Table 14

	Trial Outcome	Trial Outcome & Costs	Projected Settlement	Smallest GLOP	Largest GLOP
Party A	$ 500,000.00	$ 750,000.00	$ 375,000.00	$ 250,000.00	$ 312,500.00
Party B	$ 400,000.00	$ 600,000.00	$ 300,000.00	$ 200,000.00	$ 250,000.00
Party C	$ 300,000.00	$ 550,000.00	$ 255,000.00	$ 150,000.00	$ 187,500.00
Party D	$ 200,000.00	$ 400,000.00	$ 150,000.00	$ 100,000.00	$ 125,000.00
Party E	$ 200,000.00	$ 350,000.00	$ 150,000.00	$ 100,000.00	$ 125,000.00
Party F	$ 100,000.00	$ 275,000.00	$ 75,000.00	$ 50,000.00	$ 62,500.00
Party G	$ 100,000.00	$ 350,000.00	$ 75,000.00	$ 50,000.00	$ 62,500.00
Party H	$ 100,000.00	$ 350,000.00	$ 75,000.00	$ 50,000.00	$ 62,500.00
Party I	$ 50,000.00	$ 125,000.00	$ 37,500.00	$ 25,000.00	$ 31,250.00
Party J	$ 50,000.00	$ 300,000.00	$ 37,500.00	$ 25,000.00	$ 31,250.00
TOTALS:	$ 2,000,000.00	$ 4,050,000.00	$ 1,500,000.00	$ 1,000,000.00	$ 1,250,000.00