



BREAKING IMPASSE WITH BRACKETING

Eleanor Barr, Esq.



1900 Avenue of the Stars
Suite 250
Los Angeles, CA 90067
(310) 201-0010 Tel.
(310) 201-0016 Fax

www.adrservices.org

Consider this scenario: Plaintiff makes an opening demand of \$800,000, defendant counters at \$20,000, and the negotiation stalls because each believes the other made an unreasonable opening offer.

The negotiation has barely begun, yet the parties are already at an impasse. This is a perfect time to use “bracketing,” a simple but powerful impasse-breaking technique, particularly when the parties are very far apart.

Bracketing, also called range negotiations, is a technique where parties make conditional offers, allowing the parties to explore other ranges without actually agreeing to them.

How Bracketing Works

In response to the \$20,000 offer, plaintiff proposes a range, for example, of \$650,000 to \$100,000. This range is essentially a conditional offer, meaning that plaintiff will move down to \$650,000 only if defendant moves up to \$100,000. By proposing this range, plaintiff is signaling that she will settle around the midpoint of \$375,000.

Now defendant must respond to this range, and will usually do so by proposing a range of his own. Perhaps defendant responds by proposing a range of \$150,000 to \$50,000. The defendant is signaling that he would settle around \$100,000.

At this juncture, plaintiff has three options. She could (1) propose a new conditional range, (2) offer an actual number, or (3) ask the mediator to propose a new range.

Some parties dislike proposing ranges because they fear that the other side will interpret the proposed number as an absolute move and not a conditional one. However, a good mediator will manage this process so that the proposed ranges themselves create momentum to continue the negotiation, even if the parties reach an impasse in the conditional bargaining.

If the parties continue to negotiate in ranges, then it is generally expected that plaintiff will propose a new range with a lower midpoint than that of her previously proposed range, and defendant will propose a new range with a higher midpoint than that of his previously proposed range.

Tips when Using Bracketing

It’s important to understand that when you’re negotiating in ranges, everyone will be looking at the midpoint of your proposed range. Therefore, *the midpoint of your initial proposed range should not be your bottom-line settlement number.*

Parties have a tendency to shy away from bracketing in mediation, but it can be very useful in helping them move into a settlement zone more quickly. *If your mediator proposes bracketing, be sure you understand how the mediator will manage the process, so you are able to negotiate ranges that further your client’s bargaining position.*

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