

Counsel:

It was my pleasure working with you today on this case. We made significant progress but still had a meaningful gap at the end of the day. In order to close the remaining gap and reach a settlement, you agreed to entertain a mediator's proposal from me. This proposal is not my evaluation of the case. Instead, this proposal represents a settlement amount that I believe would be fair and reasonable in light of the negotiations today, the issues and the litigation risks for both sides, and also represents an amount that neither side was willing to get to today.

The rules of this proposal are as follows:

1. no negotiating with the proposal; only yes or no answers are acceptable;
2. yes or no answers are due by 5 p.m. eastern time next Tuesday, April 25;
3. the proposal is double blind. I will only report that there is or is not a settlement; and so in the event of only 1 yes response, the party that said no will not learn of the yes from me.
4. as soon as I receive both answers, I will disclose the outcome so if you are ready before April 25, feel free to answer sooner.

As for the proposal, the following terms, all subject to memorializing in a formal written settlement agreement, apply:

1. payment amount
2. payment due within 21 days of execution of a settlement agreement, with insurers using best efforts to pay sooner
3. confidentiality subject to the usual exceptions for regulators, auditors, reinsurers, etc.
4. mutual releases

I urge the parties to give serious consideration to the proposal because there are quite a few unknowns in this case including how state courts will approach a coverage dispute involving non-standard policy language; how the court would apply the state rules of policy interpretation; what the pleadings would actually say; what defenses would be raised; what evidence would emerge in discovery; how much the discovery effort would cost; how the accounting experts will respond to any new information and how this will impact the damage projections; what issues if any, might remain for a jury; and what an appeal would look like, if one resulted.

With all that being said, my proposal is for settlement to be reached at \$825,000 payable from _____ to _____.

I look forward to receiving your responses on or before 5 pm. Eastern on April 25.

Thank you

Andrew