

**Equal Employment  
Opportunity  
Commission**

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**WHY DIDN'T MY CASE  
SETTLE?**

**Presented by:**

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**4 Reasons Cases Do Not Settle**

1. The Mediator Lacks an Understanding of the Parties' Interest
2. One Party's Lack of Understanding of the Other Party's Interest
3. Representative Can Be a Major Benefit or a Major Barrier to Settlement
4. The "Principle" of Not Settling Cases Prevails

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**What Reasons Would You Add to the List That Cases Don't Settle?**

- 1.
- 2.
- 3.
- 4.
- 5.

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**I. The Mediator Lacks an Understanding of the Parties' Interest**

**A. The Mediator Unintentionally "Pushes" for the Acceptance of the Interest They Feel is Best for the Parties**

1. Pressuring a Party to Accept Settlement Proposals
2. Personalizing the Parties' Interest
3. Inserting Their Values in the Process
4. Avoiding Discussions of the Parties' View of Interest
5. Being Judgmental

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**What Barriers Would You Add to The List That Mediators Create?**

- 1.
- 2.
- 3.
- 4.
- 5.

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I. The Mediator Lacks an Understanding of the Parties' Interest (cont.)

B. Solutions to Overcoming Barriers that Mediators Create

1. Apply Maslow's Motivation Theory to Understanding the Parties' Needs

- Self-Actualization Need (Realizing All of One's Capabilities)
- Self-Esteem Needs (Feeling of Self-Worth)
- Social or Love Needs (Acceptance and Friendship)
- Safety Needs (Security, Protection from Harm)
- Physiological Needs (Food, Water, Air)

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Maslow's Motivation Theory



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Weatherspoon's Motivational Theory



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**B. Solutions to Overcoming Barriers that Mediators Create (cont.)**

2. Be Patient: Discuss Needs, Feelings, Desires
3. Use the Caucus to Clarify, Understand, and Explore Interests
4. Avoid Judgmental Communication
5. Explore "All" Interests Presented by the Parties




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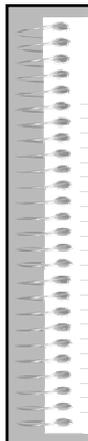
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**What Solutions Would You Add to the List**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

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**II. One Parties' Lack of Understanding of the Other Parties' Interest**

**A. Barriers that Parties Create Which Prevents Settlement**

1. They Don't Care About the Other Side's Interest
2. They Don't Clearly Understand the Needs of the Other Party
3. They Believe the Interests is a Pretext
4. They Devalue Each Other's Interests




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**What Barriers Would You Add to the List?**

- 1.
- 2.
- 3.
- 4.
- 5.

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**B. Solutions to Overcoming Barriers that Parties' Create**

1. Reversal of Role Play
2. Have Parties Consider Constraints on the Other Party to Settle
3. Let the Parties List Their Needs in Order of Priority
4. Have Each Party State the Other Party's Interest during Mediation



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**What Solutions Would You Add to the List?**

- 1.
- 2.
- 3.
- 4.
- 5.

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**III. Representatives Can Be a Major Benefit or a Major Barrier to Settlement**

**A. Barriers that Attorneys/Representatives May Create Which Prevents Settlements**

1. Using Mediation as a Tool for Discovery
2. Prohibiting the Parties to Express "Feelings": Only Legal Principles
3. Hidden agenda
  - Increase Billable Hours
  - Re-election of Union Officials
  - Retained for Future Litigation



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**A. Barriers that Attorneys/Representatives May Create Which Prevents Settlements (cont.)**

4. Misunderstanding of the Advocates' Roles During Mediation
5. Winning at all Costs is the Goal!
6. Confrontational Negotiation Style
7. Lacks Mediation/Negotiation Skills
8. Lacks Knowledge of Substantive Issues
9. A Place to "Show Case" Advocacy Skills
10. Lack of Settlement Authority
11. Lack of Adequate Preparation

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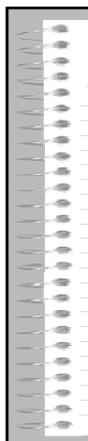
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**What Barriers Would You Add to the List that Representatives Cause?**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
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- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

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**III. Representatives Can Be a Major Benefit or a Major Barrier to Settlement (cont.)**

**B. Solutions to Overcoming Barriers that Representatives Create**

1. Have Separate Meeting with Representatives
2. Encourage Representatives to be Problem Solvers and Collaborators
3. Have the Representatives Outline BATNA and WATNA With the Mediator
4. Reality "Check" or Reality "Slap"




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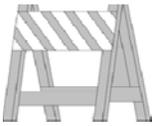
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**B. Solutions to Overcoming Barriers that Representatives Create (cont.)**

5. Review Ground Rules and Behavioral Guidelines
6. Build in Time for the Representatives to Meet Separately with Clients
7. Discuss With Parties the "Lose-Lose" Result
8. Create Doubts in Parties of Their Position
9. Encourage the Representatives to Let the Parties Speak



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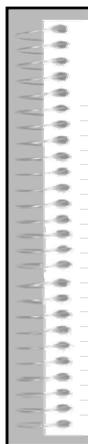
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**What Solutions Would You Add to the List**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
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- \_\_\_\_\_
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#### IV. The “Principle” of Not Settling Cases Prevails

- A. The Parties Refuse to Settle a Case Based on “Principles”
  - 1. The Parties “Ignore” Their Interest
  - 2. The Parties Fail to Consider the WSR [Worst Scenario Result]
  - 3. The Parties Fail to Consider Interest of Others
  - 4. Insist They Did Nothing Wrong: Why Settle?
  - 5. Believes the Other Party is Taking Advantage of the System

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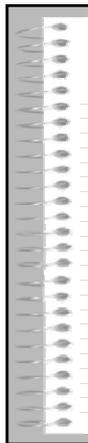
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#### What “Principles” Would You Add to the List

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#### IV. The “Principle” of Not Settling Cases Prevails (cont)

- B. Solutions to Overcoming the Barrier of the “Principle”
  - 1. Have the Parties Define the “Principle”
  - 2. Have Parties Explore the Cost of Buying the “Principle”
  - 3. Translate the “Principle” in Terms of Interest
  - 4. Discuss the Interest of Other Individuals Not at the Mediation
  - 5. Have the Parties Think About Tomorrow, If No Settlement

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What Solutions Would You Add to the List

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Conclusion



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