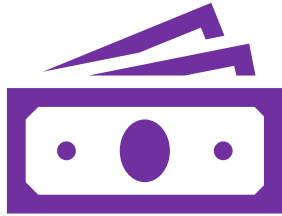


Negotiation Skills for the Litigator

STRATEGY, PSYCHOLOGY AND TACTICS

Value of Settlement

"A bad settlement is better than a good lawsuit"



Transaction Costs



Litigation Destroys
Relationships



95% of Cases
Resolve



Settlement Forums



Counsel to Counsel

Private Mediation

Judicial Supervised
Settlement Conferences



General Negotiation Strategies

The Five C's

Collaboration

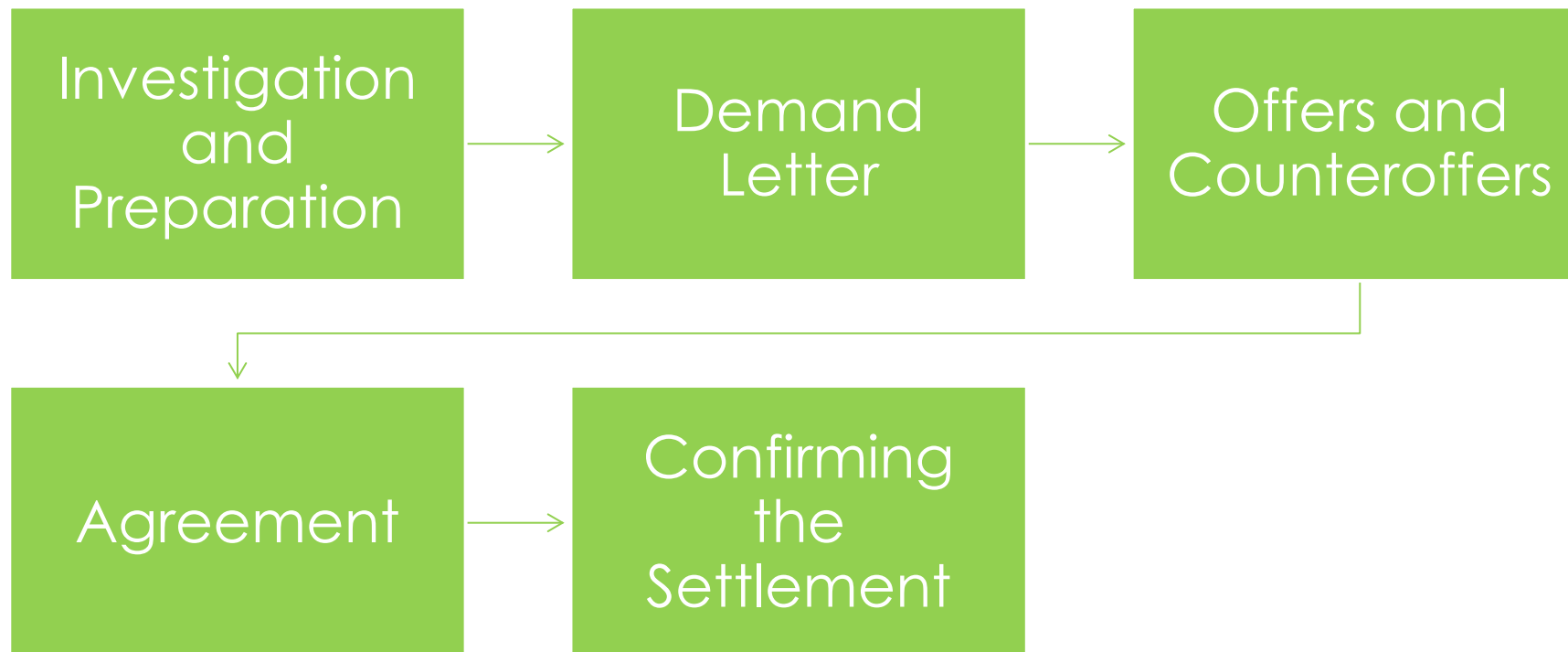
Communication

Compromise

Creativity

Credibility

Anatomy of a Settlement



Styles of Negotiation

Distributive Pie

Facilitative Integrative



A background image showing two people in business suits shaking hands. The image is dark and moody, with a blue and purple color palette. A solid purple rectangle is located in the top right corner.

Strategies for Effective Settlements



Each Case is
Unique

Objectives
and interest
vary



Pre-Settlement
Investigation
and Discovery

Know both
your case
and your
opponents



Timing of
Settlement
Negotiations

All parties
have to be
ready to
negotiate



Correct Settlement Forum

Counsel to
Counsel
Mediation
MSC



Client Preparation

The Client must
be ready to
resolve



Pre-Negotiation Considerations

- Know Your Settlement Range
- Zone of Possible Agreement
- Identify and Express Opposing Sides Challenging Factual and Legal Positions
- Consider Non-Monetary Solutions



Negotiation Pitfalls

- ▶ Opening Number or Demand
- ▶ Giving Away Something for Nothing
- ▶ The Objective is Settlement not Winning



Negotiation Pitfalls

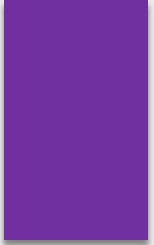
- ▶ Argument to Opposing Side is Not Focused on Movement
- ▶ Accurate Assessment of Litigation Risk on both sides
- ▶ Have a Litigation Plan in Place, just in case
- ▶ Assessing your case by “What’s in the Box”



Psychological Aspect of Negotiations

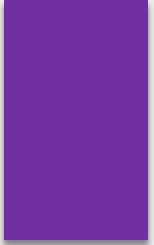
*Influence in Settlement Negotiations:
15 tips*
Stacie Hauser:Advocate August 2019

*Influence: The Psychology of
Persuasion*
Robert Cialdini 1984

- 
- ▶ Value of Collaboration
 - ▶ Pre-suasion
 - ▶ Receptive Opponent
 - ▶ Emphasize your Strength AND Validate their positions
 - ▶ Tethering Your Number
 - ▶ Suggesting Creative Solutions



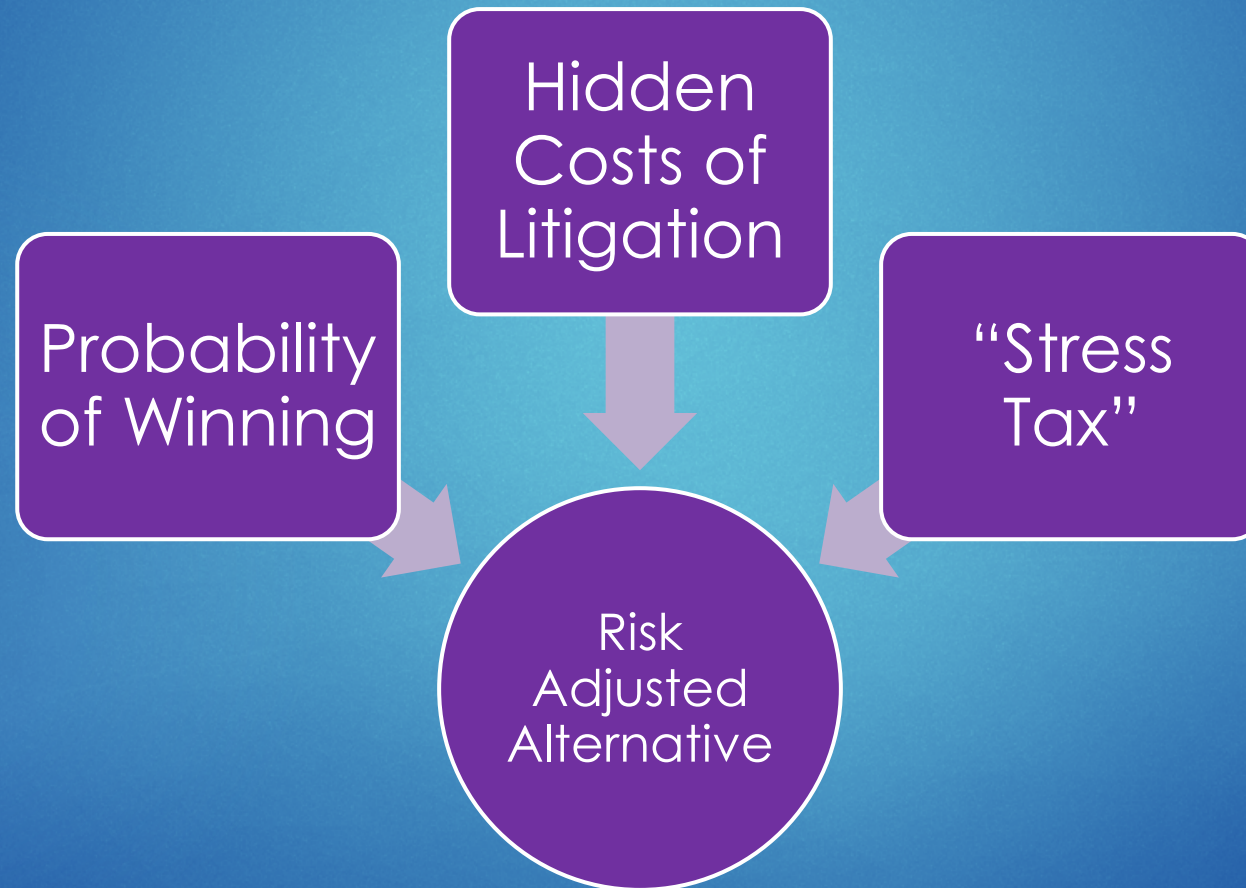
Psychological Aspect of Negotiations

- 
- ▶ Reciprocity
 - ▶ Accommodate Needs
 - ▶ Value of Liking
 - ▶ Show an Interest in meeting their needs
 - ▶ Focus on Solutions
 - ▶ Both Positions Consistent
 - ▶ “Unity”
 - ▶ Common Goal Problem Solving



BATNA:
BEST ALTERNATIVE
TO A NEGOTIATED
AGREEMENT

Best Alternative to a Negotiated Agreement



Effective Settlements Are
Not About Persuading
Opposing Counsel That
Your Case is Worth \$\$\$ but
Persuading the Other Side
That Their Risk-Adjusted
Alternative to Settlement is
Worse Than \$\$\$





Thank You

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