

The December dilemma: Why year-end settlements make strategic sense

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By Chad W. Firetag

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Consider the following dilemma: Sometime around February of any given year, an associate appears at a hearing to choose a trial date. The judge informs counsel that trial dates are available in December, and because judges set their cases when it is convenient for them, the matter is calendared on a date when eggnog and yuletide cheer are in season.

When the lead attorney learns of the December trial date, they shrug their shoulders and assume that the date won't be a problem; after all, December is almost a year away from February. Plus, since so many cases settle anyway, they conclude there won't be a need to go back to court to set a different trial date.

Fast forward seven months. The case remains unresolved and significant work remains undone. There were complications obtaining documents, numerous depositions were not taken or a myriad of other reasons that prevented the attorney from being adequately prepared.

The attorney knows that, with focused effort, they could be ready for a December trial. But the end of the year is a complicated time – colleagues are on vacation, clients are harder to reach, and the rhythm of



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the holidays make it challenging to maintain the momentum needed for thorough preparations.

Opposing counsel agrees to stipulate a trial date after the holidays, but the judge is amenable with only a brief continuance, which of course happens to fall in January. Seeing this as their only option, the lawyers agree to the new date. But it's a false victory: In avoiding a holiday trial, the lawyers have merely swapped one form of December misery for another, as trial preparation can be just as all-consuming as the trial itself.

Alas, the life of a trial attorney.

The solution is, of course, settlement. Our industry even has a name for these year-end resolutions: "settlement season." But year-end settlements aren't just about dodging holiday headaches; they're strategically advantageous. Cases settle more frequently in December than any other month, and for good reason: Proactive lawyers who leverage this timing secure better outcomes for their clients.

Consider these compelling incentives:

Psychological factors: Settlements play a critical role for litigants at any time of year, but the psychological impact is especially significant during the holidays. For many, the transition into a new year carries symbolic weight and represents hope, renewal and the opportunity for fresh beginnings. Parties almost always do not want to be in litigation, and the desire to settle is strong in December. By resolving a dispute before January, litigants can enter the new year unburdened by unresolved conflict, embrace a sense of

finality and move on with their lives. In this way, a year-end settlement offers both emotional and practical benefits, helping all parties achieve peace of mind and a positive outlook for the future.

Tax advantages: There can be significant tax incentives that encourage parties to settle before the new year. Those include, but are not limited to, considerations of tax timing rules, strategic income deferral or acceleration opportunities, corporate financial pressures and the ability to structure settlements in tax-advantaged ways.

Financial motivations: Year-end resolutions offer several financial advantages. On the defense side, many insurance companies and law firms close their books at the end of the year. An active lawsuit is just another liability (i.e., a headache) that many industries desperately want to eliminate. A trial means pre-

paring a key employee during the holidays, gathering documents to prepare an exhibit binder and/or arranging witness travel and accommodations. But a settlement means saving costs, freeing up reserves for other purposes and allowing management to close out the year without lingering uncertainties.

On the plaintiff's side, receiving a check at the end of the year is preferable to risking a defense verdict in the next. Plaintiffs feel satisfied that the compensation awarded addresses the harm they experienced and provides a sense of relief.

These and other factors make year-end settlement both practical and valuable for all parties. However, these opportunities often require the guidance of a skilled mediator who can navigate the unique pressures and motivations that define December negotiations. An effective mediator understands how to lever-

age holiday deadlines strategically, bridge seemingly insurmountable gaps between parties and transform year-end pressures into productive settlement discussions.

Rather than face the dual burden of trial preparation and holiday disruption, attorneys and their clients who proactively and strategically engage the mediator are in a much better position to achieve the incentives described above while maximizing strategic benefits. In the end, a successful mediation in December can turn what otherwise would be a holiday nightmare into a moment worth toasting at your next New Year's Eve party.

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