



And So It Goes!

A Quarterly Newsletter from David M. Zacks, Esq.

“Less is More”

Since my last newsletter, I mediated a complex wrongful death aviation case. I was impressed with counsel who all agreed the issues involved coverage, hull damage claims, property damage claims, subrogation claims and the like. All counsel were very sensitive to the emotional needs of the widows of several passengers who were killed in the plane crash. All agreed there was no reason to have the plaintiffs relive this traumatic experience by sitting through a full day of mediation. They were instructed not to attend, but stand by for phone calls if they were necessary. The cooperation, empathy and strategic move agreed on by all counsel in advance, led to multiple issues being resolved amicably and efficiently throughout the day.

On the “QT”

Consider letting the other side have the final say in selecting the mediator, keeping in mind that mediation should be a speedy and conciliatory process. If you are considering, for example, three mediators and they all appear to be equally qualified, why not go along with the one your opposing party prefers. Of course,

if there is an actual conflict, you would not select the recommended mediator, but if the other side is comfortable with their option and believes their mediator to be skilled enough to get the case resolved, think about it before rejecting their recommendation. It might actually be to your advantage. Such a mediator will have more credibility with your opponent than someone who is viewed as being in your favor. As long as you remember that a mediator is not a decision maker, he cannot force you to accept a settlement you do not find worthwhile. So there is little risk in accepting a mediator proposed by the other side, and possibly a good bit to be gained.

Worth Reading

Rick Packer, a consultant with The Table Group Consulting, sent me an interesting read. The title of the book is *The Culture Code – The Secrets of Highly Successful Groups* by Daniel Coyle. Here is his brief summary:

Team dynamics are at the heart of my work. This book explores the cultural qualities of effective teams and does so with specific

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examples from Google, The San Antonio Spurs, a military unit, and several others. The author pinpoints how safety, created by the leader, creates the conditions for performance. Our brains are deeply obsessed with psychological safety, but it does not process it logically. By learning – leaders need to continuously reinforce to team members that they belong. Cues sent that signal something different will surface symptoms of dysfunction. Favorite quote ***“We focus on what we can see – individual skills. But individual skills are not what matter. What matters is the interaction.”***

In the best-selling book by Chip and Dan Heath, ***Decisive: How to Make Better Choices in Life and Work***, the authors discuss the “best friend” principle. Consider how this principle could help you in a mediation. The authors point out when you think of your friends, you see the forest, when you think of yourself, you get stuck in the trees. Consider asking, “What would your best friend do?” The idea is not to use this principle as an argument for your own case. What you must ask yourself is, “Would you really tell your best friend that this is the best option?”

The Last Word

The passing of Maya Angelou was a real loss to the world of poetry, literature, academics, theater and film. One of her memorable messages include:

“I’ve learned that people will forget what you said, people will forget what you did, but people will never forget how you made them feel.”

We should all strive to bring out the best in others in the year ahead.

Best of luck for a healthy and productive 2019 and I hope to connect with you soon!

David