

## *Anatomy of a Settlement: Jockeying for Position*

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### **Body**

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As the lawyers walked hesitantly through the outer door of the judge's robing room lugging their trial bags, they saw the judge perched at the edge of his large leather chair at the head of the conference table, scanning the day's schedule.

"Sit down, fellas," said the judge, taking the case card from his clerk. "Julie, how are you?"

"Fine, judge," said Julius Mandel, a veteran plaintiff's lawyer as well known for his pugilistic style as for his numerous million-dollar verdicts. "Looks like your wife's cooking is agreeing with you, judge," he said, noting the judge's recent increase in girth.

"Yeah, well," said the judge. "I don't get to move around as much as I did when I was a lawyer."

"You should join a health club, judge, or a country club, like me, and work out or take up golf. I'll see if I can put in a word with some of my friends in Albany. Maybe they'll start pushing on a raise for you guys again."

The judge was silent for a moment or two, trying to think of a way to respond to Mandel's flip, disrespectful tone. The judge, though outwardly amiable, had an intense dislike for many of the local trial lawyers who, like as not, had apartments on Park Avenue, and yet couldn't string a proper English sentence together in a memo or an affidavit. It was an internal battle that kept erupting inside him, and he was only too aware of the strains of envy.

He kept thinking that this was a guy who probably finished near the bottom of his class at Brooklyn Law School, but look at him now, while he couldn't even afford to buy his daughter the home computer she needs for her homework. Suddenly the judge's internal musing ended, and he said, "Now, Julie, you're not going to give me as much trouble as you did last time, are you?"

Then, turning and looking directly at the defendant's lawyer sitting across from Mandel, the judge said, "You know, this guy was impossible at trial. He battled me on every ruling."

"That's only because you hurt me, judge," said Mandel, a small smile developing at the corner of his mouth.

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The defendant's lawyer, a large, burly man in his mid-40's, had sunk into one of the wooden chairs opposite his adversary. For a moment or two, he listened warily to the repartee between the judge and the plaintiff's counsel, trying to determine if the outwardly fractious quality of the conversation contained the seeds of something more menacing to his client's position.

The judge perceived the defense lawyer's uneasiness and realized that perhaps the overly familiar tone used by Mandel might have conveyed to him a friendly relationship. The judge smiled and thought to himself that this lawyer should only know his real feelings about Mandel, and what a pleasure it would be to put the screws to him.

"You're Charlie O'Brien," said the judge.

"I am, your honor."

"Didn't you used to try cases for Travellers?" asked the judge.

"You have a good memory, judge," said O'Brien, obviously pleased that he had not gone unnoticed by the court.

"Anyway," said the judge, "can this be settled?"

"Judge, I'm always interested in settling cases. You certainly know that," replied Mandel.

"Yeah, but you always look for top dollar," snarled the judge.

"That may be true, judge, but that's because I'm a top lawyer."

"Look, Julie, let's get down to business. Whaddya looking for?"

"Judge, I just got into the case, and I haven't heard anything from the defendant."

"Your honor," said O'Brien, "I don't think it's incumbent upon me to bid against a number I've never heard."

"You're right," said the judge. "OK, Julie, I want to stop this bullshit. If you need to make a call, go ahead and give me a number."

"All right, judge, but wouldn't you like to know what this case is about before you beat me up?"

"Julie, are you trying to confuse me with the facts?" the judge said with a smile.

"How could you think that, judge?"

"OK, Julie. What's this about?"

"Your honor, my client Steve Parker is a 25-year-old former stockbroker. Four years ago, he went to see Dr. Paul Weinstein, a dermatologist, complaining of an ulcerated sore on his tongue. The doctor treated the sore with a salve for almost six months, and the condition worsened. It turned out that Steve has a squamous cell carcinoma of the lip.

"He's had two major operations since then and, as a matter of fact, is undergoing esophageal surgery today or tomorrow. There is a good chance that he might not make it through this surgery. The cancer has spread to such an extent that the doctors give him at most a month or two to live."

"Did you know that, Mr. O'Brien?" the startled judge asked.

"I'll concede that the situation is grave, your honor."

"All right, all right," said the judge. "Julie, what's your demand?"

"Judge, before I give you a figure, I was about to tell you where I believe the malpractice exists."

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"OK," muttered the judge, thinking to himself, "Why do all these attorneys have to give speeches before they'll start to negotiate?"

"Your honor," said Mandel. "This doctor, who calls himself a dermatologist, neglected my client for six months, while he was his patient; he didn't even take a biopsy. Had he done a biopsy, the cancer could have been arrested and treated at a much earlier point in time."

"For the record, your honor," said O'Brien, "my client vigorously disputes this charge. He believes, and I think the jury will find, that his treatment was by the book."

"Yeah," laughed Mandel. "That's if the book was called, 'How to Murder your Patients.'"

"Judge," said O'Brien, rising from his seat, "I take personal offense at that remark. I'm not going to sit here and be insulted by that man."

"Oh, stop your crap," Mandel roared.

The judge wondered idly if he should reprimand Mandel for his informality or O'Brien for his hypersensitivity. Instead, he nudged both of them back to a discussion of settlement.

"Julie," the judge said, "I want a demand. Stop beating around the bush."

"Judge, my client will take -- today only -- \$ 750,000. Do you have it?" he said, looking directly at O'Brien.

"That doesn't seem terribly out of line," said the judge. "Charlie, can you meet it?"

"Judge, I'm sorry, but at this time I don't have any money on the file. It's a serious case, but you know how it is with insurance carriers -- the layers of command."

"Look," said the judge. "This case has been kicking around for a while. Let's not bullshit each other."

"Judge," said O'Brien, "I'm trying to be very straight with the court. While we think the case is completely defensible, we are, I'm sure, prepared to make a generous offer."

"Well, why don't you just make that generous offer," said the judge, now clearly exasperated. He had finally pushed Mandel to make a demand, and now this idiot was hedging.

"I told you, your honor," said O'Brien, "I can't offer anything yet."

"This is ridiculous," said the judge. "I think we better get on with the trial."

"Let him tell you what the policy limit is," said Mandel.

"Yeah, how much are we talking about?" said the judge.

"One million dollars, your honor."

"One million? Is there any excess coverage?"

"Not to my knowledge, your honor."

"Well, I'm really puzzled. Here's a young man dying of cancer, and you're playing games with me with only a million in coverage."

"Judge, I resent your implication that I'm playing games with the court," said O'Brien.

"It's no implication, it's a clear statement," the judge lashed back. "What kind of garbage is this? This kid will be a terribly sympathetic witness. The doctor could be working to pay a judgment here for the rest of his life."

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"And, I want to state for the record," Mandel interrupted, "that this case can be settled within the policy limits."

"Listen, judge," said O'Brien, his voice rising, "I feel that I'm being ganged up on here. As I said, our position is that we believe this case is completely defensible, but we are prepared to make a serious evaluation and offer."

"I've heard that," said the judge.

"I have nothing else to say at this time, your honor," said O'Brien.

"Do you want to call your people?" said the judge, thinking that a softer touch might work a little better.

"I don't want to mislead you, your honor," said O'Brien, "but at this juncture I'm not sure it would do any good."

"I'm really having trouble reading you, counselor. What's wrong now?"

"Well, judge, one of the problems I'm faced with is that my client won't commit to any settlement."

"You're kidding," said the judge. "Faced with the possibilities that exist here?" At least, the judge thought, now he knew what was going on.

"Yes, your honor. He's very fearful that a settlement will be entered into a computer data bank and hurt him in the future."

"Do you want me to talk to him? I can be very persuasive."

"I'm well aware of your honor's abilities in that sphere," said the lawyer. "Let me talk to him."

In a few minutes, O'Brien returned and told the judge the dermatologist was interested in speaking to him.

"Fine," said the judge to O'Brien. "OK. You, Julie, please leave. I need to speak to him alone."

"No problem, your honor," said Mandel. "But tell him I'm looking forward to beating his brains in when I cross-examine him."

"Your honor," said O'Brien. "I don't think we have to be subject to the rantings of Mr. Mandel."

"Rantings?" exclaimed Mandel. "This slimy guy kills a healthy young man, and I should go easy on him! He's not going to forget me, judge."

"Both of you, get out," roared the judge. "Bring the doctor in right away."

In the moment or two before O'Brien returned with his client, the judge received a call from the assignment judge who pressed him on his progress toward settling the case.

"I got two jury cases stacked up for you," the assignment judge said.

"Listen, I'm doing everything I can."

"What's the problem? There's a small policy; if I had the time to talk with those guys I'd have it settled in no time."

The judge mumbled a few final words to his caller before hanging up. He felt alternately depressed and annoyed at the pressure being placed on him, but he was aware that the assignment judge controlled his assignment to the medical malpractice complex, for which there had been keen competition by his colleagues. He understood the message and decided to increase his efforts on the case right away.

At that moment, O'Brien was back with his client. The judge invited them to be seated. Dr. Weinstein had the face and skin of a man in his 20s, but carried himself like a man worn down by stress. The judge bemoaned meeting such a distinguished physician under these difficult circumstances and, after a moment or two of pleasantries, got down to business.

"Doctor, I'm sure your lawyer told you why I wanted to speak to you."

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"Yes, your honor."

"You know, doctor, you have the power to settle this case or not," the judge said. "I'm sure if you permit your insurance carrier to enter into settlement negotiations, we could probably wrap this thing up."

The doctor sat there for a moment, looking down at his tie. He seemed smaller and slighter to the judge than when he first had seen him.

"Judge," said Weinstein, handing him a bunch of documents, "can I discuss the case with you? I mean, if you go over some of these charts with me, you'll see I did absolutely nothing improper."

"Doctor," said the judge, pushing the charts away. "If we have to get into the nitty-gritty of what you did or didn't do, I might as well try the case."

"But, judge, how can I agree to settle a case where I didn't do anything wrong?"

"That's a very good question, doctor, and it deserves a serious response. You know, listening to cases is basically what I do for a living. And over the years -- let's see, I've been doing this for more than 20 years now -- I've seen juries come in with some of the craziest verdicts. You wouldn't believe it."

The doctor squirmed in his chair.

"What I'm really saying is that by settling, you eliminate all risk. And there's a lot of risk here, it seems to me."

"But, your honor," interrupted Weinstein, "please just read these charts; they'll show you conclusively that my treatment was absolutely correct."

The judge felt his impatience growing. He thought for a moment of how the assignment judge would needle him at the weekly productivity meeting to be held in a day or two. He tried to gain eye contact with O'Brien, who was sitting just to the right of Weinstein, but the lawyer wouldn't meet his gaze.

"Look, doctor, I'm trying to do you a favor. You know, if I settle this case, there are five more to take its place. So it really doesn't matter to me which case I hear. But this kid here -- the plaintiff -- is very sick; he may die in a month or two. He's going to be a very sympathetic witness. And you, doctor, you only have a million in coverage. Do you know what that means?"

"What?"

"It means that if the plaintiff wins here, the verdict in my opinion will be well over a million," said the judge. "And you'll have a new partner, the plaintiff or his estate. How are you going to feel about that?"

"I don't know, judge," said the doctor. "But I really need you to hear me out."

The judge once again tried to make eye contact with the doctor's lawyer, who again studiously avoided the judge's approach.

"Well, yes or no, doctor. Are you interested in settling this case?"

"Your honor, I don't want you to be upset with me, but I just can't see how I can agree to settle this case. If I settle, I may never get insurance again."

The judge, sensing defeat, thanked the doctor and asked him to leave the room, then asked O'Brien to call Mandel back inside.

"Well, gentlemen," said the judge, "I guess I'm losing my touch."

"Judge, I'm sure you did all that was possible," said Mandel.

"I second that sentiment," said O'Brien.

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"I didn't break his arm, did I?" said the judge, looking at O'Brien.

"You were very gentle," said the lawyer.

With that, the lawyers left the robing room and resumed their places at the counsel table. A few minutes later, the judge took the bench, and the jury was brought in to hear the judge's preliminary instructions and the lawyer's opening statements.

Then, due to the deteriorating condition of the plaintiff, who was undergoing treatment at a hospital, Mandel read the transcript of the plaintiff's deposition to the jury instead of calling him as a witness.

The reading was long and tedious, but detailed the relationship of the plaintiff to the doctor, the initial visit, succeeding visits, the later biopsy, and the plaintiff's worsening condition.

When the reading was concluded, Mandel called Weinstein as the next witness. He walked briskly to the witness chair and took the oath. The initial questioning addressed his college and medical school education and his affiliations with learned societies. Then the tenor of the questions took on a more ominous tone.

"Now, doctor," said Mandel, his back toward the witness while pacing a few feet away from the jury. "Are you board-certified?"

"I'm board-eligible, and I am also a member of the International Society of Dermatologists, sir."

"Dr. Weinstein, let me ask the question again. Perhaps you didn't hear me. Are you now board-certified in the field of dermatology?"

"I'm board-eligible and. . ."

"Doctor," yelled Mandel. "I asked you a simple question. Can't you give me a simple answer?"

"Objection," said the defendant's attorney. "My adversary is badgering the witness."

"Judge, can't I get a simple answer to a simple question?" said Mandel.

"If you're having a problem with a witness, ask for my intercession," said the judge. "You're not the judge, last time I looked. Just ask the question again."

"OK, judge. Doctor, for the third time, I ask you: Are you board-certified, I'll say it again, board-certified, in the field of dermatology? Just answer yes or no."

The witness looked to his attorney sitting at the counsel's table for some help, but O'Brien was gazing away.

"No," said the doctor.

"You are not board-certified, are you, doctor?" said Mandel.

"I just said I'm not," said the doctor defiantly.

"And by the way, doctor, what does it mean to be board-certified?"

"Well," said the doctor, "it means that you have taken and completed a residency in your field of medical interest and additionally that you've passed a written examination in that field."

"And, let's see, doctor. You've completed a residency in dermatology, haven't you?"

"Yes."

"And, doctor, have you passed the written examination in the discipline of dermatology in order to become board-certified in that field?"

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"No, sir, I have not passed the examination."

"And, doctor," continued Mandel. "How many times have you taken this written examination in dermatology?"

"Twice."

"Doctor, let me get this straight. You have flunked the written examination in dermatology two times."

"Yes."

"Yet they still let you practice medicine?" said Mandel.

"Objection," roared O'Brien. "My adversary knows very well that a physician may practice medicine without being board-certified."

"Yeah, but he can't hold himself out as a specialist if he can't even pass an exam in his own field," countered Mandel.

"I'm board-eligible," piped up the doctor to no one in particular.

At that point, the judge looked up at the clock in the courtroom and noticed it was about a quarter to one, an appropriate time to break for lunch. Just as the judge was walking from his bench to the robing room, he beckoned to O'Brien. "Bring your client in for a minute."

Weinstein and O'Brien were ushered into the judge's robing room, where the atmosphere now was considerably more subdued. The doctor sat quickly, and O'Brien took the chair next to his. The judge slouched in his chair at the head of the table with one leg draped over the edge of the table.

"Dr. Weinstein, I want to ask you a question, and I hope you will not take it the wrong way."

"OK," said Weinstein.

"Doctor, uh, are you Jewish?"

"Yes, I am," said Weinstein. "What's that have to do with this?"

"Well, it means that you might know a little Yiddish, right?"

"I guess so."

"Good. Doctor, do you know what the word *schmuck* means?"

"Uh, yes, but what does that have to do with this case?"

"Look, doctor, let me be blunt, and I'm doing this for your own good. With what you just testified to, you'll be working to pay the plaintiff the rest of your life."

"I don't understand," said the doctor.

"Doctor, maybe I'm wrong, but didn't I hear you say you've flunked the written part of the boards twice?"

"Yes," said the defendant, "but that doesn't mean I can't practice medicine or even dermatology."

"Of course not," said the judge, "but to me, you sounded very defensive about it. How do you think it sounded to the jury?"

"This has been very difficult for me, your honor. I'm really not used to this."

"I know, I know," said the judge. "But listen, doctor, you seem like a nice guy; and you are a young man, too. Why not give yourself some perspective? Ask someone -- a friend or somebody else if what I'm trying to say to you isn't reasonable. Doctor,

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I think I've emphasized this before. If they recover a verdict, it's going to be a lot more than a million, your policy limit. Think it over, doctor. That's all."

"So, you'd settle if you were me, wouldn't you?" said the doctor to the judge.

"Doctor," said the judge, "I'm not clairvoyant, but I've seen so many strange things go on with juries that I'm inclined to urge you to give your consent to a settlement."

"Thank you, your honor." And with that the doctor and his lawyer left the robing room.

No more than two minutes had elapsed when the judge was disturbed again by a pounding on the robing room door.

"Your honor," said the court officer, as he poked his head through, "Mr. O'Brien would like a word with you."

"OK, bring him in."

"Judge, I don't know what your secret is, but you did it. He gave us his consent to settle."

"Terrific," said the judge, his face suddenly flushed with excitement. "You and Mandel, be here at 2 p.m. sharp. Now we can really get to work."

"Thank you, your honor. See you after lunch."

After lunch, the judge invited both sides into the robing room to begin the next part of the settlement process.

"OK, Julie, what'll it take to wrap this up?" the judge asked.

"I already told you, judge, the number is \$ 750,000."

"Whaddya have on the file?" said the judge turning to O'Brien.

"Your honor, as I told you before, I believe this is a defensible case."

"Come on, judge," said Mandel. "If he's gonna continue his bullshit, let me go back inside and destroy that little piece of shit."

"Julie, you're really out of line," said the judge.

"And, judge," said O'Brien. "I'm not going to listen to this abuse anymore. Everything with this guy is personal. If that's the way he wants it, let's try the case."

"Listen, both of you, I'm trying to settle this case, and it's only your stupid ego, Julie, that's keeping me from doing it. Now you too, O'Brien, let's stop the posturing. What have you got?"

"If you gave me a chance, judge, I was going to report to you on the nature of my conversation with the carrier."

"Mr. O'Brien," said the judge, "why must everything with you be a speech? Just tell me. How much do you have?"

"Your honor, I have \$ 500,000."

"Judge, we're just wasting time," said Mandel. "I gave you a figure. It's very reasonable. This guy is way off. I'm ready to go back and try this case."

"Julie, step out for a moment, will you?"

After Mandel left the room, the judge turned to O'Brien. "You know that \$ 500,000 won't settle this case, don't you?"

"Judge, I resent your attitude toward me. Why don't you lean on the plaintiff a little? If you directed as much effort toward his unreasonable demand as you have toward me, this case would be settled."



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"Hey, listen, my friend, don't tell me how to do my business," said the judge. "I've been listening to your bullshit all day. I'm going upstairs where I can get some work done."

And with that, the judge quickly left the robing room, slamming the door and leaving the startled defense counsel to think about the error of his ways.

About an hour later, the judge decided it was time to resume settlement efforts so he phoned his clerk to see if there had been any movement between the parties.

"Well, judge," said the clerk, "they're both sitting at the counsel table, and they seem to be laughing at something."

"That's good," said the judge. "Put them in the robing room, and I'll be down in a moment."

A few minutes later, the judge walked into the robing room. Both counsel were laughing over an old war story being told by O'Brien.

"Your honor," said O'Brien. "I want you to know that if I misspoke before, I apologize. I think this case may be getting to me a bit."

"It's getting to all of us," said the judge. "No offense taken. Now let's see if we can get rid of this one. Julie, what's your bottom line?"

"Judge," said Mandel wearily, "I can't bargain against myself. You know what I need; tell O'Brien to get it."

"Judge," responded O'Brien. "I told you I had \$ 500,000 and that I thought I could get more, but you know how carriers work."

"Well, look," said the judge. "It's 3:30 now, Mr. O'Brien; why don't you go back to your people and try to solidify things?"

"Whatever you say, judge," said O'Brien.

"And one last thing, fellas. I think I ought to put a recommendation on this case. I think \$ 700,000 is the right number."

"Judge, I hear you," said Mandel, "but I don't think my client will take \$ 700,000."

"And I don't have \$ 700,000," chimed in O'Brien.

At the next morning's conference, the judge renewed the negotiations by looking first to Mandel.

"So, where are we, Julie?"

"Well, judge, I was just on the phone with the attorney of record, and they've been in contact with my client's family."

"Listen, Julie, any movement from the \$ 750,000 number?"

"Well, judge, that's something I want to talk to you about. Can I talk to you privately?"

"OK with me," said O'Brien, and left the room.

"Listen, judge," said Mandel, "there's been some snafu. The attorney of record told me this morning that they need \$ 800,000 to settle the case."

"Julie, what kind of shit is this? You told me \$ 750,000."

"That's true, judge, and I had Steve's agreement on this figure. It wasn't easy. But he's undergoing an operation today, and his parents are calling the shots."

"Listen, Julie, I want to speak to the attorney of record. Get him on the phone."

"Anything you say, your honor."

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In a moment, the judge was engaged in a heated conversation with the attorney of record, who was trying to explain the series of last-minute events that resulted in the apparent miscommunication between the parties. Mandel stood by on the other receiver.

"I want to tell you one thing," said the judge. "Your trial counsel speaks for you. I communicated his demand, and that's the demand, period. You're not going to screw this up for me."

"Your honor," replied the attorney of record. "You know we have the greatest respect for you, but our client is adamant at \$ 800,000."

"You didn't hear me," said the judge. "Don't lose sight of the fact that I'm still the judge trying this case. Do you get me?"

"Your honor, I read you loud and clear. I'll speak to my client, but I'm not overly hopeful."

"You can always reduce your fee," snarled the judge.

"Judge, can I get back to you in a moment?" said the attorney of record.

"Go ahead," said the judge in disgust, as he hung up. He motioned Mandel out of the room and sat quietly in the robing room drinking a cup of cold coffee and leafing through a day-old newspaper. The prospect of continuing a trial that would last at least another three weeks depressed him.

Twenty minutes later, the clerk knocked on the outer door and advised the judge that Mandel wanted a word with him.

"Send him in," sighed the judge.

"Judge, can I call the attorney of record from here? I think I may have some news for you."

"Go ahead."

Mandel dialed the number. "Ted, the judge is on the other line. Please tell him what you just told me a couple of moments ago."

"Judge, I'm sorry to be bothering you, but my partner and I read the riot act to our clients, and I am happy to report that the figure Julie mentioned to you is the one they'll go with."

"\$ 750,000?" said the judge.

"Yes. And, judge, it is only because of our great respect for you that we put this effort in with these people."

The judge motioned for Mandel to end his call and get O'Brien into the room. Soon both lawyers were once again sitting across from each other in the robing room. The judge looked at Mandel and said, for O'Brien's benefit, "\$ 750,000, that's the number, right?"

"OK," said the judge to Mandel. "Please leave the room," and the judge and O'Brien were left face-to-face.

"So," said the judge. "You said you had more."

"I do, your honor, but you yourself said \$ 700,000. They're showing no flexibility. You know, I really believe I have a defensible case."

"Listen, we're way past that now. Go get more money, and get back to me right away." In a few minutes, O'Brien was back with the judge.

"What's the story?" said the judge.

"Judge, out of the great respect my carrier has for you, they have authorized me to offer the figure you recommended -- \$ 700,000."

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The judge frowned and called in Mandel.

"Can we put it away for \$ 700,000?"

"I don't think so, but I'll make a call, judge," said Mandel and left the room. In a minute or so he was back.

"No luck, your honor, \$ 750,000 is the number. They won't budge. After what their son has been through, they feel it's the least that they can receive."

"Let me talk to O'Brien alone for a moment," said the judge. Mandel shut the door.

"Listen, O'Brien, I've tried. Don't make me try this case over \$ 50,000. You'll use that up in experts."

"Judge, I'll make another call."

Once again, the judge was left alone in the robing room to contemplate the ups and downs of the settlement process.

O'Brien was back with the judge a few minutes later.

"I've got the 50."

"Great," replied the judge.

"But, judge, can you do me a favor -- save me something? Twenty-five, maybe?"

"O'Brien, I realize I've been a little hard on you. Let me see what I can do."

With that, the judge buzzed his clerk to bring Mandel back in.

"Julie, \$ 725,000, that's it. \$ 725,000 settles the case."

"Your honor, I hear you, but my clients told me they wanted \$ 750,000. I'm only a messenger."

"Julie, tell them for me. Don't make me try this case for nickels and dimes. You understand?"

"I got you, judge. Let me make a call to the attorney of record."

"You want to call from here?" asked the judge.

"No, your honor. I still have a quarter left."

Within minutes, Mandel strode through the door to the robing room and addressed the judge and his adversary.

"Judge, out of my clients' great respect for you and their desire not to tie up your part, they have reluctantly agreed to consent to a \$ 725,000 settlement."

"Settled!" said the judge emphatically. "Good. It's 4:15. Will you have anyone from the boy's family in here for the allocation?"

"Yes, judge. I think the father can be here tomorrow morning."

"OK," said the judge. "See you tomorrow."

Next morning, the judge sat in his robing room, reading and drinking a cup of coffee. The clerk told him that everyone was outside and the reporter was ready.

"Terrific," said the judge. "Bring them in."

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The clerk opened the door, peered into the courtroom, and motioned them inside. O'Brien was first, followed by Mandel and the plaintiff's father. The judge motioned everyone to be seated.

"Judge," said Mandel. "I'd like to introduce you to Mr. Parker, Steve's father."

The judge rose from his seat and reached over to shake hands with the father.

"I'm terribly sorry we have to meet under these circumstances."

"Thank you," responded the father.

"How's Steve today?" inquired the judge.

"It looks very bad. He was operated on yesterday and I really don't think he's gonna make it for more than a day or two."

"I'm sorry. Well, look," said the judge, "we have an offer of \$ 725,000 that I understand settles the case. Right?"

Mandel raised his arms in a shrug and said, pointing to the father, "He's the boss."

"Look, Julie, I thought this was resolved. I'm not opening this thing up again," said the judge. He turned to the plaintiff's father. "What do you say, Mr. Parker? The number is \$ 725,000. Is that acceptable?"

"Well, your honor, originally I had requested \$ 800,000 and after discussion with my lawyers, I had lowered my demand to \$ 750,000, which I think was very reasonable."

The judge fidgeted with a pen, becoming increasingly angry at this new predicament. His eyes fixed for an instant on O'Brien's face, but before he could open his mouth to invite him to engage in one further conversation, O'Brien slowly but unmistakably, shook his head back and forth.

The judge's attention again became fixed upon the father.

"Listen," said the judge, looking at Parker. "Your lawyer agreed on your behalf to \$ 725,000 yesterday. Do you know that?"

"I did say that, judge," interrupted Mandel.

"Do you know the effort I went through for your benefit, to get this money on the table? Do you know," said the judge to the father, his voice quickly rising, "that when this case began, the defendants were prepared to defend this case all the way and hadn't offered a cent? Do you know that?"

"Judge, my family has the greatest respect for you, but we think we have been very reasonable in our demands."

"Your honor," said Mandel, "can I speak to my client's father for a moment alone?"

"Sure," said the judge, and the father and the lawyer left the room.

A moment later, Mandel and Parker came back through the door.

"Your honor, you've beaten us all up," said Mandel. "I've lowered my fee. Settled, \$ 725,000."

"Good, let's get it on the record," said the judge.

The court reporter reviewed the appearances he had obtained for the record, and the clerk administered the oath to Parker.

"You ready to do the allocution, Julie?" said the judge.

"Ready," said Mandel.

"Should we get Dr. Weinstein in here?" said the judge.

Anatomy of a Settlement: Jockeying for Position

"Uh, I don't think so," said O'Brien. "I think it's better that both sides be kept apart. I have complete authority, and I think, well, let's leave well enough alone."

"Suits me," said Mandel.

For the next few minutes, Mandel questioned his client concerning his understanding of and agreement with the terms of the settlement.

"Mr. Parker, you know, don't you, that out of the principal amount of recovery there will be deducted an amount representing disbursements incurred in connection with this case and the counsel fee agreed to as part of the written retainer statement signed by your son? Correct?"

"I was just thinking," said the father. "Maybe Steve had a special deal with the law firm, you know, some percentage that was less than the standard ones lawyers use."

"Mr. Parker, I can assure you," smirked Mandel, "that these particular lawyers don't give deals to their own families."

"I see," said Parker.

"Fine," said the judge, "put the stip on the record."

O'Brien made a few minor alterations. Parker stated his reluctant assent, and the judge thanked them all for their cooperation.

"It couldn't have been done without your honor's help," chorused the lawyers.

Then the judge walked the lawyers and Parker to the door of his robing room and shook hands again with Parker.

"I hope we meet again under better circumstances," said the judge.

"Yes, Mr. Parker," said O'Brien, as he reached over to shake his hand. "Godspeed to you and your boy."

The judge returned to the robing room and sat for a while thinking about the poor young man in the hospital who would probably be dead in a day or so. And his thoughts turned also to the boy's father and mother who were now about \$ 500,000 richer and he wondered how they might spend the money.

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