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Remember The Anchor

First offers have a psychological effect on how people react to the negotiation process. Recognizing this phenomenon is useful for crafting a demand that will lead to fruitful negotiations.

We all have reference points for the “value” of a case. They might be the status quo, a party’s opening demand, a statutory cap on damages, a settlement, or a jury verdict reached in a similar case. Creating or altering the other side’s frame of reference is called “anchoring,” because it creates a point to which the other side is tied. Anchors are values that influence our thinking about possible outcomes, similar to reference points.

A relevant opening offer acts as an anchor, as it can pull our judgment of the offer’s value towards that number. Negotiators are often influenced by an anchor that they know, or should know, to be irrelevant, such as an outrageously high or low offer. Even experts are not immune to the anchoring effect.

Law professors Chris Guthrie and Jeffrey Rachlinski and U.S. Magistrate Judge Andrew J. Wistrich, tested for the effect of anchoring on federal magistrates, by providing them with a description of a serious personal injury suit in which liability was clear but the amount of damages was in dispute.¹ Half of the judges were asked to indicate what they thought an appropriate damage award would be in light of the plaintiff’s extensive injuries. The other half of the judges were asked the same question, but not until after they ruled on a motion to dismiss the case on the ground that the plaintiff failed to meet the \$75,000 jurisdictional minimum for a diversity case. The motion had no merit, but the study found that the motion had an effect on the judges’ damage awards.

The judges who did not rule on the motion awarded, on average, \$1,249,000. The judges who did rule on the motion awarded, on average, only \$882,000. The frivolous motion to dismiss, which forced the judges to consider whether the case was worth more than \$75,000, lowered damage awards by 29 percent. These results indicate that judges are affected by anchors, even those that seem unrelated to the likely value of the case.

When making a first offer, remember to use the anchor to keep stormy negotiations on course.

¹ Guthrie, Rachlinski and Wistrich, *Inside the Judicial Mind*, 86 *Cornell Law Review* 777 (2001).