

Psychic Income

By Amy Lieberman

In court, what do you ask the jury for? Justice, or compensation, in the form of money. But money doesn't always address every need. Often, clients have a need for "psychic income," too.

What is Psychic Income?

Psychic income is that non-monetary aspect of settlement that adds value because it brings peace. It addresses an emotional or psychological need that money can't meet.

Psychic income can break an impasse, allowing a plaintiff to come to terms with a financial resolution that might not be what he wanted. And, psychic income to a defendant can offset the financial "outgo" of money paid in settlement.

Psychic income has value in mediation. But how do you measure it? Consider the following examples.

Case #1: A Genuine Apology Can Mean Less Money

An African American woman had been offered a position as a dental assistant, leaving a good job that she had held for years, for a position closer to home. She gave two weeks' notice, and trained her replacement. When she got home from her last day of work, she found an email from her new employer, telling her they had decided to go in another direction, instead hiring a person who spoke Spanish.

The woman now had no job. She sent a nasty email back to her would-be employer, and then filed an EEOC charge for race discrimination.

At mediation, the woman explained that she interviewed for ten positions, but it took her many months to find a job. She had to move in with her sister, as she could not afford her bills or feed her son, and her entire family pitched in to pay her share of the rent. She said she was a good worker in the past, and only missed one day of work in ten years. She also apologized for the tone of her email, but said she was upset.

Listening to the story, the owner of the dental practice began to cry. She was so overcome she had trouble speaking. After she collected herself, she said, "I had no idea of the impact of our action on you. I did not actually hire someone, I instead brought another employee of ours who had young children from part-time to full-time, because she needed the money and I felt a loyalty. I told you she spoke Spanish, which is true, but that was not the reason. I just felt I owed it to her. But what we did to you

was not fair. I am truly, truly sorry."

It was time to break into separate session for the negotiations. Before departing the room, the owner got up, walked around the table and hugged the woman who had filed a charge against her.

As you might imagine, the case quickly resolved. Here is the psychic income part:

The woman had about \$10,000 in lost wages, and was willing to forego any push for compensatory damages. We discussed negotiating, and on her behalf, I requested \$17,000.

In separate session, the employer said, "We did not discriminate. But we want to resolve this. We are willing to pay \$13,000, but let's start with \$10,000."

I presented the \$10,000.00 offer to the woman. She nodded, and said, "I will take it." I said, "You can do that. You can also counter, to see if they would pay more." "No," she said. "Even if they would pay more, I don't want it. I did want more, but her attitude made me feel differently. It was her character, and her personality. Her apology was genuine, and I don't need more." "Are you sure?" I asked. "Definitely," she said.

This case was a true example of the value of psychic income. The employer obtained a lower settlement - \$3000.00 less, to be precise - because of the psychic value that came with true empathy and a genuine expression of apology.

Case #2: The Significance of "Six Figures"

"This is not a six-figure case." "We are not paying six figures." "I am not taking less than six figures on this case."

How often have you heard that? How often have you said it?

The "six-figure" statement does two things.

1. It sets expectations for negotiation, and
2. It conveys the speaker's perception of significance.

If it is a "six figure case," it means there is "significant exposure." When the demand includes compensatory damages, it conveys the belief that there was significant emotional or physical impact to the plaintiff. (Of course, this same discussion applies to the "seven-figure case.")

Conversely, the statement that this is "not a six-figure case" conveys that the defendant's exposure is valued at the low end, or that the plaintiff was not harmed that badly.

Why do so many negotiations end right at or just under \$100,000? Does it really matter if the case settles at \$89,500.00,

or \$110,500? It does matter, because the party – individual or corporate – needs that psychic income in the form of *acknowledgement* that the harm that compensated by settlement was, or was not, “significant.”

Case #3: Peace from Privacy

Defendants typically evaluate their risk of loss, and, if it seems small, and the plaintiff’s demands are too high, they will instead choose to defend. In a recent mediation, a potential defendant knew that the claims put forth in a demand letter were extremely weak, and it would almost certainly prevail in a motion for summary judgment dismissing the case. However, a lawsuit would be public, and there would be hugely negative press if suit was filed, with devastating consequences. The company did not want the nightmare that would come with the suit, and so paid a generous amount to resolve the claim, and make it go away.

While this can be viewed, in a way, as a form of legal blackmail, the settlement brought a valuable sense of *peace from confidentiality*. This reassurance provided the company the psychic income it needed to be able to “balance the books” on the amount it was paying, and move on.

Conclusion

Think creatively. Ask the question, “How can we provide some psychic income for the other side?” In wrongful death cases, consider offering to plant a tree in the name of deceased, making a large donation to a charity, or even establishing a charitable foundation in the name of the plaintiff. Offer to draft a policy, or to provide training to prevent future negligent actions. Search for that non-monetary olive branch, and bring the peace that comes with resolution.



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