

## THE TEN COMMANDMENTS OF MEDIATION

1. Thou shall set a target settlement range prior to mediation<sup>1</sup>.
2. Thou shall analyze in advance your risk versus concession points<sup>2</sup>.
3. Thou shall prepare an effective mediation brief.
4. Thou shall prepare your client for the mediation.
5. Thou shall ensure the presence of the decision makers.
6. Thou shall show respect for other parties.
7. Thou shall be willing to listen.
8. Thou shall remain flexible.
9. Thou shall not hold onto unreasonable expectations.
10. Thou shall close the deal.

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<sup>1</sup> Your settlement range should be analyzed by considering what is your best alternative to a negotiated agreement (BATNA). Your BATNA " is the standard against which any proposed agreement should be measured. This is the only standard which can protect you both from accepting terms that are too unfavorable and from rejecting terms it would be in your best interest to accept. ( Robert Fisher & William Ury, *Getting to Yes: Negotiating Agreements Without Giving In* ( Penguin Books 1991).

<sup>2</sup> You should consider at what point do the risks of trial outweigh the concessions you must give to reach a resolution of the dispute. This is your **ROCR** point ( **Risks Outweigh Concessions for Resolution** ), and its confluence leads to settlements.

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