



**Coping with an Insulting Offer
(Negotiation, 2011)**

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I deal with legal disputes and would like to find reasonable solutions without wasting years in court. But my opponents seem to feel compelled to make extreme—actually, insulting—opening offers. How should I respond?

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Disputes are different from business transactions. If deals are like prenup agreements, lawsuits are more like divorces. Unfortunately, insulting offers are endemic to settlement discussions. To turn the conversation in a more productive direction, the first question to ask is this: What is motivating the offer? Here are a few possibilities:

Signals and anchors. Remember that all offers are signals. By taking an extreme position, a negotiator is telling you that she expects an outcome skewed in her favor. If you don't object, you have arguably agreed to play on a tilted field.

Extreme offers produce unconscious effects on the recipient as well. They can “anchor” your views about what a fair outcome would be. An insulting offer also sets up a contrast: your counterpart's later, less-extreme offer will seem reasonable by comparison, and you may feel obliged to reciprocate with a concession.

Strong emotions. Tough offers can also be motivated by strong emotions. In legal disputes, making one can give a litigant the momentary feeling of winning: “*This* is what my claim is worth!” or “*I spit* on your demand!”

Misevaluation. Negotiators sometimes make bad offers because they don't understand the situation. A lawyer who misunderstands his client's case or a patent holder with an inflated view of her invention may make demands that don't correspond to reality.

What can you do in response to an insulting offer? Consider these four strategies:

1. Ask, don't offer. Novice negotiators often feel obligated to immediately respond with a counteroffer. Savvy bargainers don't; instead, they change the subject, asking about facts or

principles—such as the full impact of not settling a lawsuit—or about nonmonetary issues. Next, they give their own perspective on what should drive the discussion. Keep in mind that choosing not to answer an unreasonable offer is an implied rejection. Talking about relevant facts, principles, and interests will expose the offer's flaws and often lead to progress.

2. Keep the ball in play. When someone is being unreasonable, it's important to keep the discussion going, especially if he is in the grip of strong emotions—even if that means taking a break. After a few hours, upset bargainers will often regain their balance. If an offer is simply a negotiating ploy, the passage of time will help it fade into the background.

3. Respond reasonably. When you make a counteroffer, do so reasonably, and explain your rationale. “You're asking for the most you could get at trial,” a defendant's attorney might say to the plaintiff's representative. “Meanwhile, my side's best outcome is zero. Our offer recognizes the risk involved.”

You'll then need to structure your concessions to point to your desired outcome. Be ready for opponents to claim they are making larger moves than you. That's true, you might note, but only because they started further away from a reasonable solution.

4. Drop a counteranchor. If all else fails, you can respond to an unreasonable offer in kind. But if you do, be careful to explain why: “Since you're at 100% of your claim, we're going to have to do the same. This case will cost us \$15,000 to litigate assuming we win our motion to dismiss, so that's our offer.” You might also note that other approaches would save time for both sides.

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