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David B. Mankuta, attorney at Atkinson, Diner, Stone, Mankuta & Ploucha, P.A.,

MARK FREERKS

notes that financial issues play a huge role in the decision to take a case to trial or settle it.

Matthew Mandel has a simple philosophy about whether to take a case to trial.

"The mindset is always that we're going to trial," said Mandel, partner and chairman of the litigation division at Weiss Serota Helfman Pastoriza Cole & Boniske, which has offices in Fort Lauderdale and Coral Gables.

Regardless of whether the hope is to settle, and save significant time and money in the process, Mandel approaches each case "as to how we're going to try the case," he said. "We think of ways to seek to dismiss it if we're the defendant, or get a summary judgment if we're the plaintiff."

Trials can be time-consuming, expensive and fraught with issues, complexities and personalities. Settlement negotiations can reduce time and financial burden – that is, if both parties agree to take a seat at the table.

The problem is, sometimes the sides are too far apart. One side feels sufficiently aggrieved to let it go. Or, as Mandel said, "the sides are so divergent that there is no middle ground."

In that case, Mandel's strategy – getting the case "into trial-ready posture to get leverage on a settlement and, if we don't settle, the client is ready in mind to go to trial" – leaves him prepared for court.

The process will have begun with a frank discussion between client and counsel about the

Trial or settlement? Attorneys weigh in



Mandel

merits of the case. Mandel isn't focused on the fee, but how the outcome will affect the client, he said. For example, when Mandel represents a city,

settling a case may invite future claims, he said. Going to trial will show that the city is serious about its defense.

FINANCIAL ISSUES PLAY BIG ROLE

Financial issues must play a role in the decision, said David Mankuta, a commercial litigator and shareholder with Atkinson, Diner, Stone, Mankuta & Ploucha, P.A. in Fort Lauderdale. Many of his clients are develop-

ers and others in construction. They're on tight margins and are forced to weigh the costs and benefits of going to trial versus seeking settlement.

"Going to trial is a time consuming and expensive process," he said. "Jury cases and trials are all-consuming, and you're putting your fate in the hands of six strangers."

Few hard-and-fast rules apply when deciding whether to take a case to trial, except that each case is different, said Dan Casey, administrative partner with K&L Gates in Miami. Like other attorneys, Casey always prepares his case as if it is headed to trial. And he always keeps the client's informed best interests center to his strategy.

"There are times when cases should settle that don't," he said. "I try not to get frustrated because it's part of the process."

CONSIDER BUSINESS ISSUES

Jeff Pheterson weighs many issues before recommending a client take a case to trial. If the client is in a niche industry, will the individuals or companies meet each other frequently down the road? Has the client focused on "striking back" in response to some affront or threat? Even if a suit is filed and the sides enter into pre-suit mediation, are the sides unwilling to budge?

"We just spend the time in the beginning discussing the underlying business situation,

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Dan Casey | K&L Gates

the players, and the emotions," said Pheterson, managing partner with Ward, Damon, Posner, Pheterson and Bleau, P.L. in West Palm Beach.

He'll discuss BATNA (the best alternative to a negotiated agreement) – raising the issue that, if the sides cannot settle and trial seems certain, what's the best outcome that can be expected. He's also given clients a copy of "Getting to Yes: Negotiating Agreement Without Giving In," the book by Roger Fisher and William Ury from the Harvard Negotiation Project.

"Reading it can help separate the people from the problem," he said. "War and peace have a price. But peace is something that businesses need."