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PERSPECTIVE

Resolving intractable cases is the mediator's dominion

By Halim Dhanidina

The behind-the-scenes negotiations between Fox News and Dominion Voting Systems ended up accomplishing far more, in terms of a final and fair result, than a televised jury trial ever could have.

The big news last month was the almost \$800 million settlement agreed to in the defamation lawsuit filed by Dominion Voting Systems against Fox News. The huge settlement appeared to take everyone by surprise, putting an end to a potentially rancorous – though likely entertaining – trial that would have put top media personalities on the witness stand and our nation's deep political divisions directly in the spotlight.

But the last-minute resolution should be no surprise to lawyers and jurists who understand the importance of working outside the judicial process. After months of intense discovery and the filing of hundreds of pages of briefs, motions and orders, it was an eleventh-hour mediation that allowed two diametrically opposed parties to put their dispute behind them and move forward.

It may not have been the scenario or result that the public had been hoping for. Many people wanted to see Fox news personalities sweating on the stand, their expletive-laden texts and emails exposed, and Rupert Murdoch's face as the judge read out a 10-figure jury verdict reflecting an official condemnation of the network's role in not just defaming Dominion, but democracy itself. In short, they wanted justice to be done.



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But justice was done. The behind-the-scenes negotiations ended up accomplishing far more, in terms of a final and fair result, than a televised jury trial ever could have. The parties' settlement should remind all of us that for any litigation — especially high-stakes, heavily publicized lawsuits — the best outcome is often outside of court.

At its core, the Dominion-Fox lawsuit was simply a dispute be-

tween two parties. Granted, those two parties appeared ready to decimate each other when they got into the courtroom. That they managed to arrive at a mutually satisfactory resolution would seem to be nothing short of a miracle, but it is exactly why mediation exists. With the support of a neutral third-party, Fox and Dominion were able to focus on what really mattered to them – not the courtroom media

circus – and come away with a result they themselves crafted, free from the uncertainty and costs of a drawn out trial and lengthy appellate process. This is precisely the outcome for which judges hope every time they commence a trial, and it is the goal toward which litigants and their counsel should strive every time they file a claim.

In my nine years on the bench, I saw more than my share of pro-

tracted, contentious, and extremely expensive lawsuits. Even when parties “win” their lawsuits, they lose – their time, their mental and emotional health, their belief in themselves and others. When I heard appeals, I saw firsthand how frustrating and at times futile the process could be for claimants who simply wanted to get back to their pre-dispute lives.

The sad truth is that our justice system is not set up to provide quick and final resolution of disputes. Court cases rarely provide satisfactory closure for litigants. Lamentably, we have all seen the erosion of public confidence in our civic institutions. Our courts have not been immune to the phenomenon, facing an unprecedented level of public distrust due to the current political climate and high-profile examples of perceived ethical failings. Judgments or verdicts are often viewed as suspect and tainted, with the losing party claiming he was treated unfairly, the system was rigged, or someone was on the take. The prevailing party at trial will come to realize that he

is still a long way from achieving the final enforcement of his hard-fought victory. Neither party has control over the ultimate outcome or confidence that justice will actually be served.

In contrast, mediation puts the ball squarely in the litigants’ court. Instead of waiting for a judge or emotionally invested jury to decide their fate, they proceed with the knowledge that any result will be of their own making. They agree to settle only when it makes sense for them to do so, focusing on those aspects of the case that are the most important. Nobody is forcing them to agree to anything; if they don’t like the final outcome they have no one but themselves to blame. Results of any settlement carry an inherent mutual credibility seldom achieved through litigation.

Big lawsuits grab headlines, but the majority of lawsuits actually settle before they ever make it to court. The Dominion-Fox mediation should serve as a reminder that courts are appropriately used as the last resort. Yes, the trial would

have been a great PR spectacle, but would it really have been worth it to the parties to risk everything for that spectacle?

We all understand that Fox was kneecapped by information that came out through discovery. Other claimants, such as Smartmatic Voting Systems, may not have such valuable crown jewels, but that should not stop them from seeking a mutual resolution of their dispute. Mediation can best provide them with the tools they need to gain something not available through the courts: a mutual, certain and final cost-effective result.

Mediators are the unsung heroes of our legal system, providing an invaluable service to both litigants and the judiciary. Because mediators actually make it possible for warring parties to resolve intractable disputes, they are an essential component of the justice system, not merely a side show. The Dominion-Fox settlement should cause everyone who truly cares about justice and fairness to applaud in appreciation for this historic resolution by consensus.

Hon. Halim Dhanidina (Ret.) heard more than 900 appeals as an associate justice for the Second District of the California Court of Appeal and presided over 70 jury trials as a judge for the Los Angeles County Superior Court. Before becoming a judge, Dhanidina was a deputy district attorney for the Los Angeles County District Attorney Major Crimes and Hardcore Gang Divisions. He is an adjunct professor of law at UCLA, UC Irvine and Chapman University and has taught judicial education courses for trial and appellate judges statewide.

