

DEAL OR NO DEAL: IS SETTling BETTER THAN GOING TO TRIAL?¹

Most lawsuits settle – some lawyers say 90% – before trial. During a mediation, the parties may have to decide whether to accept a proposed offer or try to do better by going to trial. A long-term study shows that *parties who decide to go to trial frequently make the wrong decision.*

The study, which analyzed over 2000 lawsuits that went to trial in California, found that plaintiffs who decided to pass up a settlement offer and went to trial ended up getting less money than if they had taken that offer. In fact, *plaintiffs were wrong 61% of the time!*

Defendants made the wrong decision by going to trial far less often but *defendants were wrong in 24 percent of cases.*

In just 15 percent of cases, both sides were right to go to trial — meaning that the defendant paid less at trial than the plaintiff had wanted but the plaintiff got more than the defendant had offered.

According to the study, *getting it wrong cost plaintiffs about \$43,000* on average. Although defendants were less often wrong about going to trial, the cost was much greater: *getting it wrong cost defendants an average of \$1.1 million.*

¹ Excerpted from “Study Finds Settling Is Better Than Going to Trial”, by Jonathan Glater *New York Times*, August 8, 2008. The study may be found at *Journal of Empirical Legal Studies*, Volume 5, Issue 3, 551-591, September 2008.