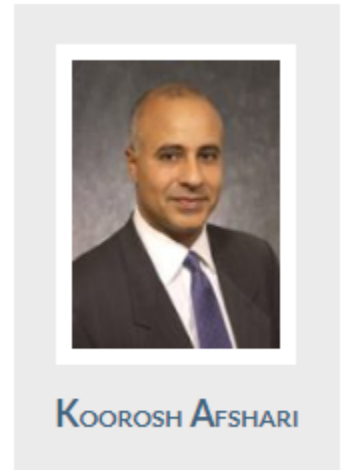


PROGRESS BY INDICATION – (REPUBLISHED FROM OCTOBER 2012)

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A large gap in the parties' respective positions is a tough challenge. One effective way to overcome the gap is by using what I call "Progress by Indication", or PBI. In Progress by Indication, once progress slows, the parties begin negotiating with two kinds of numbers. The first is the "official", unrealistic incremental number that the parties start/continue with for a variety of reasons. The second is derived from a realistic range where the case can settle. This range is determined either by express information from the parties, or by the experienced mediator accurately reading between the lines.



In PBI, the parties continue negotiating with the "official" unrealistic numbers to keep the process going and

maintain a "respectable" position, while the mediator uses the real "indication" (knowledge) of what the case can settle for, to reassure and gently guide the parties to a common range. Each party has the safe harbor of running back to their "official" numbers if negotiations collapse. The "safe harbor" allows the parties to venture out with their real positions.

For this approach to work one side or both must authorize the mediator to use the confidential knowledge of the workable range with the other side at the right time (including incrementally). Alternatively, an experienced mediator who is sufficiently confident in his or her own assessment of the situation can accurately determine where the case can settle.

PBI works, in a way, like a modified version of "bracketing" except that (1) there is no need for two "hard" numbers (the bracket) which can, to everyone's dismay, elicit back two additional hard numbers (the counter-bracket), and (2) unlike bracketing which is (usually) most effective later in the negotiations, PBI can be used earlier in the process. Indeed, once the parties get close enough, then they can even "bracket" with hard numbers to speed up the process.