



Settlement and the net

We have all been involved in the "litigation dance". You know the steps. Offer, counter offer, proceed a bit further, offer, counter offer and so on. Well there is another alternative: online settlement.

Credited with being secure, quick and cost effective these automated systems allows parties to a dispute to reach a monetary settlement within their limits.

How does it work?

Essentially an online settlement system provides a mechanism whereby each party can make an offer or demand.

The parties to a dispute agree to engage in a "blind" bidding process usually consisting of three rounds.

The positions of each party are not disclosed and a formula is applied automatically to each round of bidding to determine if the bids fall within the "zone of settlement".

Where the bids fall within the zone of settlement a binding agreement is reached, however, if at the end of the bidding process no agreement is reached, the parties retain all their legal rights.

The zone of settlement is different depending on the system being used.

In Australia, the formula used by Settlement Online Systems is: when an offer equals two thirds or more of the demand, the zone of settlement is reached and an average of the offer and demand produces the settlement amount (note where the offer is greater than the demand the settlement amount is the amount demanded).

For example:

Round 1:

Offer	\$10,000
Demand	\$50,000
Result	No Settlement

Round 2:

Offer	\$20,000
Demand	\$40,000
Result	No Settlement

Round 3:

Offer	\$25,000
Demand	\$30,000
Result	Settlement for \$27,500

Online settlement systems are voluntary and both parties must agree to settle their claim using the system. In addition to using the internet facility, the online settlement system can be used by telephone.

All the information provided to the settlement system provider is confidential and protected.

In terms of cost, the Settlement Online System provides for a non-refundable \$100 (plus GST) registration fee and where a settlement is reached, both parties share the fee equally depending on the quantum.

For amounts less than \$5000 the fee is \$100 each party, for amounts greater than \$5000 a fee of 2.5% of the settlement amount is payable by each party.

An obvious area where online settlement systems have the potential to make the most impact is where there is a large volume of claims such as the insurance industry.

It is in this area, amongst others, that online settlement systems have, albeit slowly, grown significantly in the volume of claims processed, however, it remains to be seen how quickly Australian firms adopt the use of these types of systems.

As always, the adoption of new technology raises questions and concerns given the potential for disruption as well as the impact on time billing.

These systems have the potential to settle claims in a matter of hours or even minutes.

As clients become more aware of these types of systems, they will expect that their lawyers are not only familiar, but suggesting these as options.

This in turn will challenge lawyers to come up with new ways to charge for their services.

Regardless of the process for settlement, the knowledge, skill and judgement of the legal practitioner is still the essential component.

Links:

www.settlementonlinesystems.com.au – Settlement Online Systems

www.cybersettle.com – Cyber Settle

www.intersettle.co.uk – Intersettle

www.theclaimroom.com – The Claimroom

Jason Schoolmeester is a senior policy analyst with Northern Territory Treasury.

Email: jason.schoolmeester@nt.gov.au

Telephone: (08) 8999 5345.