

**Mediator Insights**  
**Click Clack Quack: Drafting Mediated Settlement Agreements**

By: Sylvia Mayer

You go to mediation. You work hard all day culminating in an agreement. Now you need to document that agreement. Easy-peasy? Not really, because the devil is always in the details.

To illustrate, I'm going to re-visit a children's book that I explored previously: Doreen Cronin's *Click Clack Moo: Cows That Type*. In this story, Farmer Brown has a farm with dairy cows, chickens, and ducks. The cows find his typewriter and send him demands seeking electric blankets for the barn animals. The barn animals go on strike when their demands are unmet. Ultimately, Duck steps in to act as a neutral. With Duck's assistance, an agreement is reached: the cows and hens get electric blankets, while Farmer Brown gets milk, eggs, and his typewriter.

When I explored this story last time, I mentioned there is a plot twist at the end and here it is. The parties agree that Farmer Brown will first leave the electric blankets outside the barn door, then the cows will give Duck the typewriter to deliver to Farmer Brown and the cows and hens will resume producing milk and eggs. Farmer Brown does his part, and the cows and hens do their part. But Duck? Duck seizes the typewriter and uses it to demand a diving board for the duck pond.

Unfortunately for Farmer Brown, nothing in his agreement with the cows and hens bound Duck. The devil is in the details. This story is an extreme example, but it highlights an important point. When parties are negotiating the terms of their mediated settlement agreement, they need to think beyond what each is giving or getting under the agreement. How will the agreement be effectuated? What happens if there is a default? If a third party is needed, then how are they selected and paid? If court or regulatory approval is required, then who is responsible for seeking it? And what happens if denied?

A myriad of issues can arise after the parties have reached an agreement. While the mediator can assist the parties in drafting the agreement and spotting issues, only the parties really understand the dynamics and execution risks.



So, here's the moral of the story. To avoid being Farmer Brown, who had to install a diving board at the duck pond to get his typewriter back, parties to a mediated settlement agreement need to think through implementation, execution, default, and enforcement as they are documenting their settlement.

*Author's Note: As a mediator, I am a "forever student" always seeking new ways to help people find a path to resolution in mediation. As a parent, I have spent a gazillion hours reading books to my children. Oftentimes, these books teach me new ways to approach conflict resolution. In this case, Doreen Cronin's "Click Clack Moo: Cows That Type" inspired this post.*