

Mediator Insights: How to Spot a Melting Ice Cube Case

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Perhaps more so than any other situation, in a melting ice cube case, the best outcome for each is a consensual outcome for all. Let me explain. Most legal disputes are over the distribution of value. The value may be inventory, mineral interests, money, equity, contract performance, cessation of activities, or something else. In melting ice cube cases, the value at the center of the dispute is diminishing over time. Sometimes rapidly. So, every tick of the clock represents a further decrease in value.

Melting ice cube cases are common in chapter 11 bankruptcy disputes, but they can arise in all forums and in many shapes and sizes. Regardless of the context, all melting ice cube cases have two things in common: (1) melting or diminishing value, and (2) the disputing parties will ultimately sink or swim together.

Melting ice cube cases are perfect candidates for mediation. Time is of the essence to maximize the value to be shared. Everyone understands the urgency. And everyone shares the risk of further degradation in value. That does not make melting ice cube cases easy to resolve, but it does mean they are well positioned for all parties to be motivated to find a path to resolution.

A good illustration of the dynamics of a melting ice cube case is Rachel Bright and Jim Field's *The Squirrels Who Squabbled*. This children's book shows the pitfalls of fighting over the melting ice cube and the benefits of working together. In this story, the ice cube is a pinecone.

The two main characters are squirrels named Spontaneous Cyril and Plan-Ahead Bruce. Winter is coming. Cyril has stored little for winter; Bruce has already stored a lot but is concerned he needs more. Each spots the very last pinecone of the season. It is wedged in the nook of a branch of a tree.

Cyril and Bruce race to seize the pinecone. As they run across the tree branch, the branch shakes and the pinecone falls. It bounces through the forest coming to a stop at the edge of a cliff. They sprint to grab it. As they each reach for the last pinecone, it falls over the cliff tumbling into the water below. They follow it and

dive into the rapids. Each is so intent on winning the pinecone that they are oblivious to the waterfall ahead. And to the bird that swoops in and flies away with the pinecone. Now, they have no pinecone and are both in danger of drowning.

After the plunge to the bottom of the waterfall, Cyril grabs a branch with one hand and grabs Bruce with the other. Cyril pulls them to safety. Grateful to be alive, they become friends and agree to share.

Lesson learned? Had Bruce and Cyril worked together from the start, then they could have ended up with their friendship, health, and the pinecone. They could have divided that pinecone in a myriad of ways. Instead, they have no pinecone and barely survived.

The same is true in a melting ice cube case. Either the parties find a way to share, or everyone risks losing it all.

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, Rachel Bright and Jim Field's "The Squirrels Who Squabbled" inspired this post.

Disclaimer: Nothing contained herein constitutes legal advice nor does anything contained herein create a professional relationship.