Settlement Barriers . . . and Solutions

1. Lawyers have differing interpretations of law
   - Trying to move the lawyer from positions to interests, explaining we are in a different context
   - If they still resist, ask the lawyers to tell their vision of what would happen in court
   - Get a neutral specialist to provide a prediction
2. Helping the client understand the change they are going through, and orienting the client to the future
   - Educate the client
   - Ask the client about his/her values and what was at stake (underlying interests)
   - Using a coach who is a mental health professional can help
3. Fear of losing face in front of third parties (lawyers AND clients)
   - Lawyers need to work on their training to get over this problem
   - For the clients, the lawyers need to help them understand that they should learn to make their own decisions
   - If this doesn't work, bring the third party into the negotiation (if everyone agrees)
4. Incapacity to see other points of view
   - We should help the client realize that understanding is different from agreement
   - We try to address the client's more rational part so that it can see that with understanding, agreement might be possible

- The other party's signature on the agreement is essential, and so antagonizing them is counter-productive
- But clients are emotional!!!
- So even if they might understand, it's hard for the clients to stay at the table and struggle for understanding (especially when they don't feel understood themselves)
- Role reversal can help in the discussion, if the parties are balanced with regard to the fairness of the situation
- At first, perhaps they should just vent.
- If the lawyers are the obstacles, it is often because they accept 100% the point of view of the clients – the lawyers over-identify with the clients

5. Lawyers' lack of training and skill in negotiation
   - In non-collaborative cases, listen actively and attentively to the lawyers to see what the lawyers' interests or needs are
   - Try to build the relationship with the other lawyer
   - And, of course, try to understand the other party's interests too
   - Try to explain to your own client that you have to form a connection with the other party in order to foster agreement
   - Educated your client to talk with the other party, who can educate his or her lawyer
6. Fear of sharing information and fear of being exploited
   - In a non-collaborative case, first, work on the relationship to create empathy between the parties, which may have to happen first between the lawyers – and then they can educate their clients about the value of sharing information

- Once the clients become aware of their fear, the discussion can focus on how the lack of information is blocking the negotiation
- Small steps need to be reciprocated, so that larger steps can taken later
- In order to create trust, look for common interests

7. Miscommunication (misunderstanding based on intent and impact)
   - Help the parties understand the specific content of what is being said
   - Looping enables the parties to do this
   - Help the other party that s/he is trustworthy
   - Lawyers have to help their clients trust the other side by understanding what they other side intended – this kind of reciprocal recognition can help
   - Look for small agreements, one at a time to create momentum and trust
8. Anger, feelings of betrayal, and desire for revenge
   - Help the parties to vent their story with all of its negativity
   - Then the parties can be more productive
   - Remind the parties about the positive emotion from the early years of their marriage
   - “Wedding Crashers” – Vince Vaughn and Owen Wilson