

WIN²

A WIN-WIN ALTERNATIVE
TO TRADITIONAL LITIGATION



G A R V E Y S C H U B E R T B A R E R



WHAT IS WIN²?

WIN² — A Better Alternative to Litigation

Litigation can be costly, time-consuming and disruptive, which is why Garvey Schubert Barer developed WIN². WIN² is a unique process based on a collaborative discussion model. Designed to cut through much of the formal legal process, WIN² allows parties to collect the information necessary to evaluate and, when appropriate, resolve disputes amicably and cost-effectively soon after a claim is made. In addition to minimizing the emotional and administrative toll of traditional litigation, WIN² helps our clients control legal fees and related costs.

LOWER COSTS

Priority #1 for General Counsel is cost control. WIN² offers significant savings compared to traditional litigation.

◀ How does WIN² differ from traditional mediation?

Mediation usually does not take place until substantial discovery has been completed. By that time, the parties are often polarized and have spent significant sums on attorneys' fees and related costs. In addition, mediation is often a rushed one-day event with no true opportunity for dialogue, reflection or adequate information exchange.

A structured framework for early resolution.

WIN² occurs at the early stage of litigation — when productive dialogue may still be possible. It provides for a structured framework of respectful, professional communication to take place over a period of time. This communication enhances the possibility of a mutually agreed-upon resolution. Also, WIN² usually does not require the involvement of a third-party neutral (mediator), so less cost is incurred.

◀ Why does WIN² make sense for plaintiffs?

Pursuing litigation is financially as well as emotionally draining. WIN² is designed to minimize the emotional and financial toll of a dispute.

Often the outcomes plaintiffs seek — an apology, institutional reforms, having their position truly heard and respected — are not the outcomes the adversarial process produces. In contrast, WIN² encourages creative and more meaningful solutions. It also can be difficult for a plaintiff's attorney to evaluate the strengths of a client's claims before filing. By providing access to the other side's perspective, WIN² allows a prompt evaluation of a claim's strengths and weaknesses before too much attorney and client time is devoted to a dispute.

With traditional litigation, plaintiffs must wait a year or longer for an uncertain outcome. WIN² usually facilitates a resolution within two months.

LESS DISRUPTIVE

Cases resolve much earlier, saving time and avoiding the typically protracted and disruptive discovery process.

◀ Why does WIN² make sense for defendants?

WIN² allows defendants to make informed decisions before incurring substantial defense costs and disruption. It also provides defendants with an opportunity to educate plaintiffs and their attorneys about the weaknesses of their claims, again before substantial attorney time is expended. Defendants also have an opportunity to learn of possible process improvements through a constructive dialogue.

WIN² allows defendants to make informed decisions before incurring substantial defense costs.

Plaintiffs' attorneys often recover most or all of their fees in settlement. As a case progresses and fees become larger, they can act as an impediment to reasonable resolution. Given that a large percentage of cases settle before trial (over 95% in some legal areas), a system that facilitates early resolution should save defendants considerable expense.

◀ Won't my participation be perceived as weakness by the other side?

No. Rather than a sign of weakness, participation in WIN² signals a commitment to open communication and recognition that each side can learn important and relevant information from the other side. A party may believe strongly that a claim is without merit when the process begins, and WIN² may or may not change that perception.

WIN² is becoming quite familiar to the plaintiffs' bar, particularly in the employment area where we first tested it. These attorneys know that WIN² is an option that we generally discuss with our litigation clients.

WIN² minimizes the administrative and emotional toll of disputes by exploring creative, more satisfying solutions.

◀ WIN² sounds like a good idea, but why do I need Garvey Schubert Barer to represent me?

While the basic WIN² concept is simple, achieving a successful result with WIN² takes skill and experience with the process. The initial tendency of many attorneys is to focus on fighting a sustained court battle. Convincing plaintiffs and their attorneys to look instead for a meaningful and early resolution is one of the most difficult aspects of the WIN² process. Our lawyers understand how to work with plaintiffs and their counsel to achieve this critical objective.

“ I was somewhat skeptical whether the WIN² program could truly streamline the litigation process to resolve cases in a cost-effective, compassionate manner and in less time. After my experience with the first test case I was surprised and very pleased with both the approach and the results. We are very open to using WIN² whenever possible in the future. It is a valuable and workable alternative to the traditional litigation process.”

Ryan Dudley
CEO/President
Grange Insurance

Using WIN² most effectively also requires defense counsel who understand the particular advantages presented by the WIN² process. WIN² combines several techniques into a unique, proven structure that enables the parties

WIN² was developed with input from plaintiffs' attorneys to ensure built-in benefits for both sides and provide incentives for them to participate in the process.

to avoid traps that can prevent successful communication. While many attorneys encourage early settlement discussions, often they do so without the pre-conditions required for success. In addition, many are most comfortable handling cases using traditional expensive and time-consuming litigation tools. Our lawyers – who have had years to refine the WIN² process – know how to effectively use WIN² to achieve positive results.

**When a case did not settle,
Garvey Schubert Barer won the case
outright nine out of ten times.**

Because we developed WIN² in collaboration with the plaintiffs' bar, these attorneys know that Garvey Schubert Barer approaches the process openly, reasonably and in good faith. Plaintiffs' attorneys also know that our litigators have been enormously successful. Recently we compiled five-year statistics for our labor and employment litigators; when a case did not settle, Garvey Schubert Barer won the case outright nine out of ten times. And in an area of law where summary judgments are notoriously hard to achieve, we obtained summary dismissal in a large percentage of the cases. These results provide a strong incentive for plaintiffs to resolve disputes early. Even if WIN² does not produce a result you are willing to accept, as a defendant you will have a strong litigation team on your side when you do go to court.

◀ Will an employer's participation in WIN² encourage more claims from other employees?

Garvey Schubert Barer has used this process for several years, primarily in the employment area. There has been no increase in claims against our employer clients who have participated.

MORE CONSTRUCTIVE

DEMONSTRATED SUCCESS

Productive dialogue maximizes the chances of both sides learning something from the process.

Our firm has already resolved a substantial number of cases with WIN². The results have been less expensive, less time-consuming and more humane than with traditional litigation.

◀ **What assurances does WIN² provide that a party is not “hiding” key damaging information?**

Any limited discovery process can give rise to these concerns. However, WIN² has several safeguards to prevent this result. Under WIN²'s standard voluntary disclosure process, each side is expected to identify the documents it would find relevant to evaluating the case. Since each side has an incentive in providing what the other side feels is “key” to evaluating the case, such key documents generally will be produced. If a specific category of documents is requested and produced, any party can request binding assurance that the production is complete.

As a prerequisite to starting the WIN² process, the parties and their attorneys must commit in writing to certain principles.

◀ **What is to keep a party from not fully cooperating with WIN², and instead using it to obtain insight for strategic advantage?**

In our experience, this problem has been virtually non-existent. As a prerequisite to starting the WIN² process, the parties and their attorneys must commit in writing to certain principles. Parties reluctant to make these commitments are discouraged from participating. Even if plaintiffs' attorneys try to gain an unfair strategic advantage with WIN², they would learn no more than they would through traditional discovery, only this would have happened earlier in the litigation process and at less expense. At most, the parties may lose some of the ability to “surprise” the other side at a deposition. If at any time during the WIN² process either party feels the other is not proceeding in good faith, the process can be

terminated, provided the withdrawing client and counsel meet with the other party and counsel to discuss the reasons for the withdrawal.

◀ **Won't WIN² require the parties to investigate matters and obtain documents earlier than they might otherwise do so?**

Yes. Both sides will be forced to educate themselves about their cases early in the matter and to obtain the documents needed to do so. For example, defendant's counsel will likely need to obtain documents from its client concerning the decisions at issue and applicable policies and records, and plaintiffs' counsel will also have to obtain and review relevant records. The intent, however, is to require only a limited exchange of documents during the WIN² process.

◀ **Where can I obtain more information about WIN²?**

WIN² information is provided solely to Garvey Schubert Barer clients, prospective clients and members of the plaintiffs' employment bar who are actual or potential participants in the process. For additional information, please contact Anne Preston at 206-464-3939 or apreston@gsblaw.com, or visit our website at www.gsblaw.com.

Labor and Employment Litigation

Controlling Costs and Promoting Collaboration Through the Use of



Recent litigation studies indicate that labor and employment cases are the second most frequent types of lawsuits faced by in-house counsel. The studies also confirm that neither plaintiffs nor defendants are satisfied with traditional litigation for resolving employment disputes. Employment cases often take more time to resolve than other disputes. Plus, as with any claim that ends up in court, costs are difficult to estimate and control. With WIN², cost and time can be managed much more predictably and efficiently. WIN² provides a better way.

The participation from members of the labor and employment plaintiffs' bar in developing the program is a testament to the credibility and fairness of the WIN² process.

"Having participated in the WIN² program, I've seen firsthand how efficiently and effectively this process works. Bringing parties to the table early on facilitates frank and honest discussion. That leads to a better understanding of the dynamics giving rise to the dispute and a greater willingness to resolve issues fairly and quickly. Parties reach closure faster and in a more enduring way, and they avoid the high costs and risks of litigation."

Marilyn J. Endriss
Sound Conflict Solutions LLC

"I have represented individuals in employment issues for almost thirty years. I typically counsel clients who are contemplating litigation to consider the three types of investments they will make: their time; their money and their energy. The first and last elements can greatly interfere with their ability to find and succeed in subsequent employment. WIN² seems to be a real effort to evaluate and resolve claims outside of the traditional litigation process."

Kelby D. Fletcher
Partner
The Law Firm of Peterson Young Putra

Results:

For several years, Garvey Schubert Barer's Labor and Employment Group has been developing and refining the WIN² system. We have used it in a large number of cases, representing the full range of employment disputes handled by the group. This includes threatened wage and discrimination class actions, discrimination and harassment cases, non-competition enforcement and wage and hour claims. To give you a sense of its success rate, all but one of the first forty cases were successfully resolved using WIN², some through voluntary dismissals with no money changing hands.

With WIN², results have been uniformly better for our clients than the typical results achieved through traditional litigation. Without exception, WIN² produced significant cost savings and greater efficiencies. And participants in WIN² expressed greater satisfaction with the process than with traditional litigation.

For every litigation matter, our goal is to maximize results for clients while minimizing costs. WIN² takes this approach to a new level. The following table (based on our first 40 WIN² cases) compares the average costs, including attorneys' fees and settlement costs, of WIN² and non-WIN² cases as well as the typical length of each process. The striking differences between the two types of dispute resolution demonstrate the significant impact WIN² can have in reducing legal fees and related costs.

	WIN ²	Traditional Litigation
Average attorneys' fees per case (a case may involve multiple claimants)	\$16,760	\$63,323
Average attorneys' fees per claimant	\$9,059	\$43,372
Typical length of litigation	1 – 3 months	3 – 9 months

Although difficult to compare cases, the average WIN² settlement was 52% lower than the traditional litigation settlement.

Compare these to traditional litigation results and consider WIN². It is a better (win-win) alternative.



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