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Musk v. Altman: When 'all in' egos litigate what mediation could have fixed

Mediation was the only alternate universe where everyone could have walked away a partial winner — but after three weeks of trial testimony, private texts from tech titans, a personal diary and less than two hours of jury deliberation, Musk lost and Altman won on a statute-of-limitations hook.

By Leonid M. Zilberman

Mediation is that confidential alternate universe we never get to see but that avoids countless courtroom battles on a weekly basis. In *Musk v. Altman*, that alternate universe was the only place where everyone could have walked away a partial winner. Instead, we got the version where a jury is forced to pick a side, and one of the world's richest people learned that his wealth and what appeared to be a compelling story can die on a simple statute of limitations hook. After three weeks of trial testimony from some of the most notable people in AI, disclosure of private text messages from tech titans, including a personal diary, and less than two hours of jury deliberation, it was all over. Musk lost and Altman won. What happened?

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When every case could settle

At a structural level, this case is "Exhibit A" of a simple idea: almost every civil dispute can be resolved through mediation, and most should be to avoid unnecessary costs, risk and negative public perception consequences. The question is never "Can this case settle?" It's "Will the parties let it settle?" Here, the raw material for settlement was in abundance: We begin with a founder-donor who felt his mission was betrayed, leaders who believed they had saved and supercharged that mission, and a pile of complex transactions that could have been rebalanced through money, governance tweaks, transparency commitments or joint initiatives on AI safety.

Like other technology disputes, there weren't many formally signed documents or contracts, but a horde of text messages and emails with varying inferences and implications. Perhaps the ultimate irony was that both sides, Musk and Altman, were not so secretly trying to control a still nascent industry seeking world domination. In mediation, those are menu items, not impossibilities, and all subject to negotiation and compromise, if only the parties are ready for resolution.

Yet the case marched to trial anyway with a daily barrage of media reports during three weeks of testimony, global headlines, protestors and even a discussion of which pillows were used by the nearly 80 people in attendance who sat on hard wooden benches in the federal courthouse. Then came the jury verdict that needed less than two hours to say, in essence, "You waited too long to sue." That's the harsh math of litigation: over two years of risk, thousands of hours of work by an army of lawyers, tens of millions in fees and the possibility that the final chapter is written not on who was "right," but on who misjudged timing, proof or how a story would land with nine strangers in an Oakland courthouse.

The winner-loser problem that juries can't fix

Every jury trial carries a simple truth that mediation doesn't: there will be a winner and a loser, and nobody gets to script what "winning" means. You might even win in the court of public opinion and lose on the verdict form. You might finally get your "day in court" only to dis-

cover that the judge has excluded the key piece of evidence you thought would make your case a slam dunk. In some fashion, those moments happened in this case, as they do in every case that goes to trial. Predictability of results is not as easy as it appears on television or in movies.

In *Musk v. Altman*, that dynamic was stark. Each side presented an existential narrative arguing that either a charity was looted of millions or a visionary nonprofit adapted to reality. But the jury verdict turned on a far narrower question: did Musk bring his claims too late, given when the donations were made and how long ago the key restructuring decisions were taken? The result is that Altman was "vindicated" on a technical defense and Musk walked away having spent enormous capital, financial and emotional, for a judgment that never engaged with the moral heart of his grievance. It seems so anticlimactic, right?

Mediation, by contrast, is the only forum where both sides can walk away with a version of the story they can live with. In mediation, the certainty is that nobody gets 100%. But nobody has to absorb 0% either. And no one is forced to treat a binary verdict as the final word on something that, in reality, is a tangled mix of money, mission, ego and regret.

How ego makes settlement impossible

So why didn't this case settle? You don't have to be a trained psychologist to suspect that the answer lies as much in personality and character as in law. On one side is Elon Musk: world's richest person, entrepreneur, disrupter, selfstyled guardian against runaway AI that will destroy humanity and a founder who appears to experience the OpenAI transformation as a personal betrayal. On the other is Sam Altman: the face of OpenAI's meteoric rise, the executive who was fired, then re-hired and has navigated the pivot from nonprofit idealism to a hybrid structure backed by billions in investment, standing on the verge of a potential trillion-dollar IPO.

Musk and Altman were friends and cohorts. But once their relationship fractured, each became the only person who could truly give the other what he wanted, as well as the least likely to do it. In that dynamic, mediation becomes emotionally dangerous, and compromise is unacceptable. To compromise is to acknowledge that maybe the other side isn't entirely faithless or predatory. To make a deal is to share authorship over the story of what this AI experiment has become. That's a big ask for two people who have built identities on being the one who sees the future more clearly than almost anyone else in the world. In short, they stood in their own way of settlement. And that's exactly why some cases get tried.

For mediators, this is the familiar "noreturn road" problem. If each side has spent years publicly staking out the moral high ground, doubling down on their narrative and casting the other as reckless, irresponsible, fraudulent, manipulative or disloyal (all terms that made the news during the trial), the psychic cost of backing down in a confidential caucus can feel higher than the financial cost of going to trial. When ego and identity are fully intertwined with the conflict, the parties start to need the judgment almost as a character reference: *I was right. They were wrong*. This time Altman prevailed, and Musk lost.

Mispricing the risk of losing

The other thing ego is very bad at is risk pricing. After all, confirmation bias is a very difficult bias to overcome. It is rooted in the brain's natural drive for cognitive efficiency and psychological self-protection (e.g., "I'm smart, therefore I'm right.")

Every litigator has seen it: sophisticated parties who understand complex capital structures and technical product risks, but who dramatically misjudge their litigation exposure. They fall in love with their own story. They underestimate how strippeddown the trial version will be and how unforgiving procedural defenses can be when a jury is instructed on them.

This case is a master class in that error. No matter how emotionally satisfying it felt to frame the lawsuit as a fight for the moral high ground, the soul of AI and broken promises, the legal claims still had to clear statutes of limitation, and proof that specific donations came with concrete strings attached. Those are not cinematic questions. They are cold, documentdriven, instructionbound questions — the kind juries are surprisingly good at answering efficiently.

Mediation is where those risks are supposed to be stresstested honestly. It's where someone neutral can ask, "What if the jury never gets to hear half the story you're most invested in?" and "What if the judge frames this for them as a timing case, not a morality play?" A party that refuses to sit with those questions or who treats them as an affront to principle is a party that is likely mispricing the downside of losing.

Sometimes, when the verdict comes in, the harsh reality is that the "loss" wasn't inevitable. A better outcome, either financially, reputationally or emotionally, was available months or years earlier in a conference room with a mediator. It just wasn't acceptable to the part of each person that wanted a public, binary answer and to be proven they were right. When I was a young lawyer, an old mentor of mine used to often tell me, "Lawyers who need to be right lose more cases than lawyers who don't."

Why every case should aim for mediation

Every case will not settle at mediation. There will always be cases where parties truly need precedent, transparency or a public record that involves a regulatory fight, a key contract interpretation or a bet-the-company IP dispute. And there will always be personalities who simply cannot compromise and will need to hear a verdict.

But "cannot" and "will not" are different things. The working assumption for both inhouse counsel and litigators should be that virtually every dispute is *capable* of a mediated resolution that is, on average, better than the expected value of a jury verdict once you price in legal spend, distraction and binary risk. From there, the question becomes: what would it take, in this particular conflict, to get the human beings involved to see that through a skilled mediator?

Sometimes that means bringing in a mediator early, before public positions harden. Sometimes it means having a brutally candid internal conversation about what "losing" looks like, not just in dollars but in reputational terms. And sometimes, it means looking your own client in the eye and saying, "You can be right, or you can be done. You probably can't be both."

The cautionary tale for in-house counsel and trial lawyers alike

For general counsel watching *Musk v. Altman* from afar, the lesson is not that one side was perfectly righteous and the other hopelessly cynical. It's that even at the very top of the business and technology world, the same human forces that drive far smaller disputes such as ego, identity, hurt and fear of looking weak can also overwhelm sober risk analysis.

Every time a potential case crosses your desk, you're standing at a fork in the road. Down one path lies mediation: controlled risk, imperfect but mutual compromise, and the chance to design a solution that reflects money, mission and relationship in a nuanced way. Down the other lies litigation: years of expense and distraction, public theatrics and the inevitability that when the music stops, someone will be holding the "loser" card. Often, that result has little to do with the moral weight of their story and something nobody had predicted or even envisioned at the beginning of the case, such as a statute of limitations problem.

If this case shows anything, it's that there is a world in which the same people, with the same history, could have walked out of a mediation with a result that was self-tailored, forwardlooking and, if not a "win-win," at least a value-driven, acceptable compromise, where both were able to save face. Instead, we got a verdict that made one side "right" and the other "wrong" in the narrowest possible way. While a jury and the law can tell you who wins. Mediation is still the only place where everyone has a chance to walk away not feeling like they lost.

Leonid M. Zilberman *is a partner at Wilson Turner Kosmo LLP, where he practices employment law and mediation. The views and opinions expressed within this article are solely the author's and do not reflect the opinions of the firm.*