

MEETING THE CHALLENGES IN MODERN PERSONAL INJURY
MEDIATIONS

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BASED ON THE ATTACHED FACT SITUATION:

- I. Plaintiff makes a demand (policy limits or otherwise) and has communicated to defendant that it will not take a penny less.
- A. Defense counsel: should you invite plaintiff to mediate?
 - B. Plaintiff counsel, if invited should you go?
 - C. What are the considerations for both sides?
 1. Credibility of plaintiff attorney
 2. Changed circumstances or desire
 3. New information that may be learned at the mediation(Remember that the defense will not be able to evaluate and/or value new information because of 4 below)
 4. Defense has to document their file
 5. Who bears the cost
 6. Should you solicit an offer/demand and respond with an offer/demand before the mediation
- II. Plaintiff doesn't want to "leave money on the table." Defense wants to pay less than its authority.
- A. What can Plaintiff do to increase the likelihood it is getting full authority?
 - B. What can Defense do to save money?
- III. Counsel for one side tells mediator they have evidence that will be extremely detrimental to the adversary's case. They ask mediator to tell adversary that there is very damaging information but that the mediator is not authorized to disclose it.
- A. Counsel, Do you actually share the information with the mediator?
 - B. Mediators, how do you handle that? Are you being manipulated?
 - C. Counsel on the receiving end, how do you handle that?
- IV. Are there ever reasons to walk out of a mediation (other than a settlement)? What are they?
- V. Counsel, how do you deal with clients over whom you have little or no control and whom you think are unreasonable?
- A. How and when should you (or not) request the mediator's assistance in dealing with the client?

B. Mediators, what is your approach to this request from Counsel? If you intervene, to what extent are you "advocating" for settlement?

VI. When do you invite the claims person to speak directly with the plaintiff?

A. What do you need to consider in answering this ?

B. If the answer is yes, how should you orchestrate the conversation?

VII. When should you suggest that you speak directly to opposing counsel?

VIII. When should you speak to lien holders about negotiating their liens?

IX. How does mediation strategy change or stay the same in a first vs. third party case?