

ADVICE TO PLAINTIFF'S COUNSEL FOR ACHIEVING THE MAXIMUM CLIENT BENEFIT IN A MEDIATION

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1. **ALTERNATE DISPUTE RESOLUTION IS HERE TO STAY**
 - a) Cost of Litigation
 - b) Delays in court system
 - c) Prospective jurors offered by societal pressures and influences
 - d) Judges have limited exposure to more complex issues
 - e) Certainty of settlement

2. **PREPARE FOR MEDIATION AS IF YOU ARE PREPARING FOR LITIGATION**
 - a) Focus of a claims representative remains, "what is my company's exposure on this file?"
 - b) Company's exposure equals what it can lose at trial.
 - c) What can be lost at trial is in turn affected by many factors:
 1. Cost of proceeding for all parties;
 2. Key factual disputes;
 3. Discovery to illustrate strengths / problems for all parties;
 4. Strength of analysis of case and ability to proceed; and
 5. Likely jury verdict in your locale — factoring all the above.
 - d) The credibility of the attorney and client is of paramount importance

3. **CLAIMS DECISIONS ARE MADE IN ADVANCE OF MEDIATION**
 - a) Well in advance of your mediation the insurance company has
 - (1) staffed the case,
 - (2) set its reserve, and
 - (3) instructed its claims representative.
 - b) Elaborate pre-mediation statements will not change reserve.
 - c) Defense attorney recommendation may represent posturing for insurance client; limited offer.
 - d) Claims representatives are often on limited authority, or "short leash" in mediation proceedings, i.e., "I can't get another \$3,000."
 - e) "Give the devil his due," or maybe the other side has a point.

4. **STEPS YOU CAN TAKE TO GUARANTEE BOTH A LOW CLAIMS RESERVE AND AN UNSATISFACTORY MEDIATION**
 - a) Make it difficult for the claims representative to obtain medical records and employment records of your client.
 - b) Deny the existence of any pre-existing factors which may complicate your client's case.
 - c) Always exaggerate your client's wage loss claim; use such arguments as "my business was just about to turn the corner"
 - d) Make an outrageous settlement demand in order to give yourself some "wiggle room".
 - e) Never tell your client that your settlement proposal is not the final word on settlement.
 - f) Always invite to your mediation your client's son/daughter (in-laws also) who know nothing about the case but have ready opinions — never prepare these people in advance of your mediation.
 - g) Always give the mediator ultimatums and exaggerated demands, while insisting that you want to keep the process going.
 - h) After you have lost all credibility with the claims representative, defense attorney, the mediator and your client, settle for what is offered and "blame the system".