

Getting Money on the Table at Mediation

Coleman Sylvan

Mark Gilbert

Andy Payne

Getting Money on the Table at Mediation

- Prepare Yourself
- Prepare Your Client
- Prepare the Defense
- Prepare the Mediator
- Strategies During the Mediation
- Examples of Easy & Economical Presentations

Prepare Yourself

■ Background

- Liens
- Evidence of Damage Elements (ie...future medical)
- Valuation
 - Trial Reports
 - Good Settlement Range
 - Never Exceed Number
- Investigate the Defense Attorney
- Investigate the Adjuster/Defendant
- Investigate the mediator (Robert Smith)

■ Prepare Presentation

- Organize and Distill Key Evidence & Themes
 - Expert Reports
 - Key Documents
 - Key Deposition Excerpts
 - Damage Information (settlement video or other presentation)
- Use As An Opportunity to Began Trial Preparation

Prepare Your Client

- Explain How Juries Value Cases
 - Elements of Damage
 - % Reductions & Bars
 - Manage Expectations
- What Settlements Mean to Them
 - Settlement Accounting
 - Net Settlement v. Net Verdict
- Explain the Process
 - It is a game
 - What not to get upset about
 - The Client is the Boss

Prepare the Defense

■ Elements of Damages

- Past Medicals
- Future Medicals—deposition or at least a narrative
- Lost wage verification from the employer
- Vocational Rehab & Economist Report for Future Meds

■ Manage Expectations

- If you are thinking \$_____; let's not waste our time
- Ask defense attorney “Will there be authority for \$_____”
- Send an offer—then we'll agree to mediate

Prepare the Defense

- Thoughts on Demands
 - Reasonable Demands With Room to Move
 - Stowers
 - Expire on the day of mediation
 - After the mediation
 - Before the mediation
- Provide Materials 30 – 45 days in advance
- When to Mediate
 - Presuit—generally useless
 - Before Key Discovery Complete—generally useless
 - Not until there is a pending trial setting

Prepare the Mediator

- Provide the Same Settlement Materials
- Call in Advance to Set Expectations
- Mediator's Opinion of the Case Can Ultimately Influence the Valuation
- Show Your Cards to the Mediator?
 - Advantages (Mark)
 - Disadvantages (Mark)
- Arm the Mediator to get more money.

Strategies During Mediation

- Start High and Stay High
- Telling the Mediator What You Want
- Walking—or at least making the threat
- Address Just Damages?
- Give Verdict Ranges
- Others?

Examples of Easy & Economical Presentations

- Powerpoint is the way to go
 - Send the settlement video in advance
 - It allows you the flexibility to interject thoughts
 - It is cheap and easy to create and use
- Settlement Brochures
- Settlement Videos