

Pre-Suit Negotiation Strategies: Working with the Adjuster

Jennifer Maurer Lee
Fee, Smith & Sharp LLP

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What does the case entail?

- ▶ **Is this a case for early negotiations or mediation?**
- ▶ Plaintiff:
 - ▶ Is medical treatment complete?
 - ▶ Do you have a problem client that will not present well?
 - ▶ Is there a need for your client to get settlement funds sooner rather than later?
- ▶ Defendant:
 - ▶ Is there a demand?
 - ▶ Are there problems with your client that may make the damages worse?
- ▶ The Accident:
 - ▶ Is liability clear?
 - ▶ Have you done everything you can to gather the facts?



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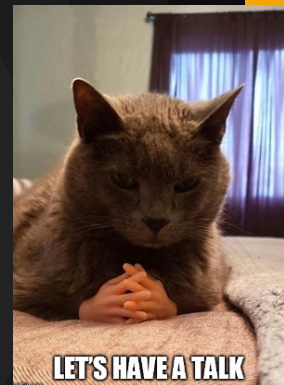
Maybe this is not the case?

- ▶ There are some cases where you will not be able to make a decision from the beginning but pretty soon the case takes form and you will know when to negotiate.
- ▶ If it is a smaller case with minimal damages, you might want to take party and witness depositions then negotiate before the expense of expert discovery is undertaken.
- ▶ Even in larger cases this can be the approach if liability or damages are clear.
- ▶ If it is a complex case that hinges on expert testimony, then early negotiations may not be fruitful if all discovery including expert discovery is not conducted. It is also important to look at the desire of the adjuster and the client to negotiate early rather than later.

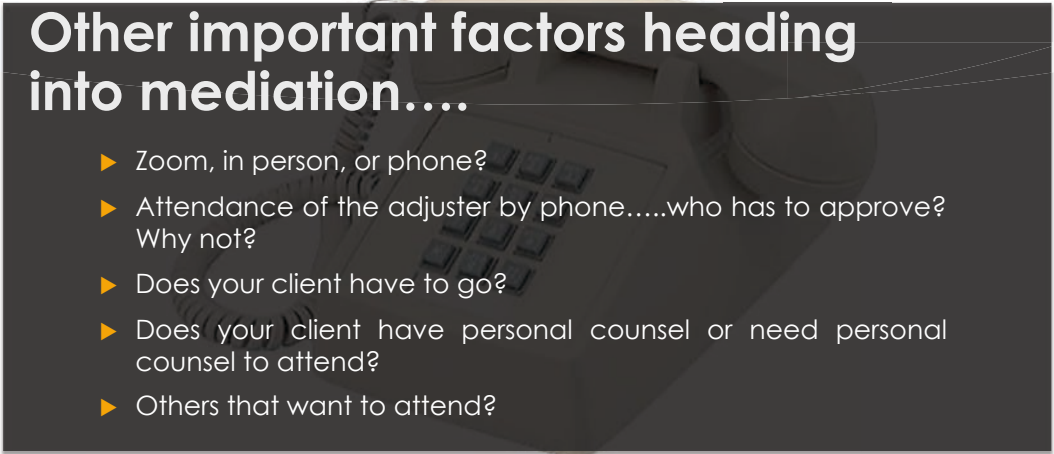
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Negotiate directly or mediate?

- ▶ Talk to counsel – maybe there is a reason for mediation.
 - ▶ Problem client? Problem adjuster?
- ▶ Who will be present at mediation?
- ▶ Who will get the job done?
 - ▶ Stay away from the mediators that ask from the get go – “Where do you want to end up?”
- ▶ Select 3 mediators – My favorite is usually the second one.....shhhhhh!
- ▶ Go with who the Plaintiff's counsel wants?



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Other important factors heading into mediation....

- ▶ Zoom, in person, or phone?
- ▶ Attendance of the adjuster by phone.....who has to approve? Why not?
- ▶ Does your client have to go?
- ▶ Does your client have personal counsel or need personal counsel to attend?
- ▶ Others that want to attend?

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Damage Claims – Economic

- ▶ Know what is claimed!
- ▶ HIPPA, IRS Authorization, Liens, Workers' Compensation Liens, Hospital Liens, Employment Records
- ▶ Contact Plaintiff's counsel to verify damages
- ▶ Are the medical bills related?
- ▶ Paid v. Incurred – CPRC 41.0105

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