A MORNING IN THE LIFE: RESPONDING TO PLAINTIFFS’ DAY-IN-THE-LIFE VIDEOS IN MEDIATION

Duke Highfield
Moderator
YOUNG CLEMENT RIVERS, LLP
Charleston, South Carolina
dhighfield@ycrlaw.com

Carolyn Ramos
BUTT THORNTON & BAEHR
Albuquerque, New Mexico
scramos@btblaw.com
A ROLLING STONE GATHERS NO MOSS

CURRENT TOPICS IN A FAST MOVING INDUSTRY

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Defense Plan for Mediation

- Highlight benefits of mediation
- Highlight benefits of settlement
- Break into groups without inflaming Plaintiff
Trial Expectations
But then… A Day in the Life?
Plaintiff’s Day in the Life Strategy

- Bolster credibility of damages claim
- Influence mediator and appeal to emotions of adjuster
- Accentuate degree of injuries
- Increase value of consortium claims
- Demonstrate preparedness
- Invite defense to “show hand”
Day in the Life:
Behind the Scenes: Just how accurate is the information in a day-in-the-life video??
Day in the Life: Behind the Scenes
And what kind of coaching goes on behind the scenes?
Combating the Bias at Mediation

- Focuses solely on strongest aspects of plaintiff’s damages claim
- Video is not evidence
- Damages described may not be recoverable
- Cannot settle without compromise
Need for Live Testimony
Because this is what they present…
Need for Live Testimony
And this is what happens on cross...
Admissible at Trial?

• Edited and choreographed to incite sympathy and emotion
• Hearsay
• Due process
• Cumulative Evidence
Plan of Action for Unsuccessful Mediation

Briefcase justice…

• Request all source material and communications

• Don’t take assertion of privilege at face value

• Be prepared for last minute attempt to waive privilege