



## 2022 Transportation Seminar

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THERE'S A NEW SHERIFF IN TOWN:

A NOVEL APPROACH TO SETTLING CATASTROPHIC CASES EARLY

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For years, everyone in the industry has been reading about runaway verdicts that endanger the future of the trucking business. Many groups and companies have examined this phenomenon and have presented ways to counteract these concerns. Some companies test the theories and the cases through a myriad of discovery techniques and then try to reach a resolution before trial. Others are very empathetic when an accident occurs and attempt to reach the family immediately. ATTIC, RRG has reached a middle ground- the ESP/Early Settlement Protocol.

#### **A. What is Early Settlement Protocol?**

Just like the name implies, the Early Settlement Protocol is an early settlement evaluation program that has been implemented by ATTIC. It is very intentional and proactive. The details of the program will be discussed in this paper and during the interactive session.

##### **a. History of the program**

ATTIC started using an early settlement evaluation program a few years ago. While this paper focuses on the ATTIC program, a number of other companies are now implementing a similar program. In general, a case is targeted and placed into the early settlement program.

##### **b. Case Identification Factors**

ATTIC has found that for a case to successfully be a part of the early settlement program, it must meet three very specific factors. First, ATTIC looks to see if this is a case of liability. If the case is one that is defensible or there is a significant dispute about it, the case does not go into the

protocol. Again, if the matter is one of liability, it has a potential of being placed into the protocol.

Second, the company looks to see if the case is a matter that needs to be settled. Some of the factors that would go into this category is whether the family needs immediate compensation for the injured party to obtain medical treatment. Likewise, does the case present an excess situation for the insured. These are among the factors that will be considered in examining whether a case needs to be included.

Third, and most importantly, ATTIC looks to see if it is a case ripe for settlement. Obviously, there are a number of reasons that it is timely for a case to be resolved, including those listed in factor two that would determine whether a case is ripe for settlement. In general, there may have been preliminary conversations between counsel for the parties already to determine if a case is ripe for settlement. If the plaintiff does not want to settle the case or is not interested in settling the case at this time, there is likely no reasonable amount of money that will entice them to settle that case. If, on the other hand, the plaintiff is ready to discuss the case, a reasonable settlement will likely be possible. If the three factors are met, the case goes into the protocol.

#### B. In General, How Does It Work?

Obviously, the general counsel at ATTIC is very attuned to each of these cases, particularly larger cases that would fit into the framework of the early settlement proposal. The general counsel initiates contact with its settlement counsel. Please note that settlement counsel is not the lead

attorney for the litigation on the case. Settlement counsel is not involved in the management of the file on a day-to-day basis and does not take depositions of the parties; rather, they are simply the settlement counsel. That is, they are the person who will engage the opposing attorney to try and reach a successful resolution of the case. All other responsibilities fall to the discovery and trial counsel in the respective case.

Once settlement counsel is engaged, there is a roundtable discussion involving the case to consider the ideas of all the relevant stakeholders. The claims professional involved will have thoughts regarding the case, as will the defense attorney and the individual insured. All of the relevant parties make a decision that the case is appropriate for the Early Settlement Protocol. If all of the information is consistent and the parties want to move forward with the protocol, the case is placed into the protocol.

Next, the settlement counsel then gets to work trying to reach a resolution of the case. After being engaged, the settlement counsel conducts an independent review of the case. This is done with the goal of identifying a fair value of the case that could potentially result in a resolution of the matter. The settlement counsel shares his/her view with the general counsel as well as the defense attorney and gets input from all relevant parties. Once these parties discuss the case in detail, the general counsel provides the settlement counsel with authority to resolve the case. The settlement counsel then works directly with opposing counsel to get the matter resolved.

As you can imagine, there are certain critical elements that must be in place if the case is to be a successful candidate for the Early Settlement Protocol. First, it is essential that the defense counsel, that is the lawyer running the case on the day-to-day basis in the jurisdiction, and the settlement counsel work together very closely. No turf wars or egos can be indulged or tolerated in the process. Second, the case must be evaluated fairly. An early settlement proposal is not the place to obtain a bargain basement settlement; rather, it is designed to end the case on a very fair and professional basis. But the real goal is to END the case.

### C. General Steps

Once the protocol has been established, the settlement counsel then establishes a relationship with opposing counsel. The Early Settlement Protocol is discussed in detail to give opposing counsel the opportunity to understand the benefits of the process. That counsel is then invited to participate in the process. In the initial conversation, the settlement counsel has a candid conversation of the relative strengths and weaknesses in the case and, importantly, makes a *good* offer to settle the case. Essentially, the purpose of an initial, good offer is to show opposing counsel that ATTIC “means business” about attempting to resolve the case. Once this occurs, the goal is for opposing counsel and settlement counsel to continue dialogue on the case to ultimately reach its conclusion. When an agreement is reached between opposing counsel and settlement counsel, the defense counsel concludes the case with the appropriate documents for the jurisdiction.

#### D. Specific Examples

Throughout the presentation, we will present several specific examples of cases that have been placed into the Early Settlement Protocol and how those cases have been managed throughout the process. We will consider the strengths and weaknesses of each case, and the application of the Early Settlement Protocol to the specific case will be discussed and analyzed. In general, all of the cases to be presented have followed the specific protocol that has been established in this paper.

#### E. Conclusion

ATTIC has found that the Early Settlement Protocol is an effective way to resolve the "right" case. It is not a protocol or plan for every case, but for the correct case, it works on a regular basis. In today's environment, it is truly an unexpected approach, and it results in a fair and prompt settlement almost every time. As the examples to be discussed will show, the Early Settlement Protocol provides certainty and closure to all of the parties involved.

Your questions are welcome during this interactive and timely presentation.