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WHEN AND HOW ARE YOU ASKING THE PLAINTIFF ABOUT MONEY?
***Considerations For Approaching The Other Side About Resolution Of Truck
Accident Cases***

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WHEN AND HOW ARE YOU ASKING THE PLAINTIFF ABOUT MONEY? *Considerations for Approaching The Other Side About Resolution Of Truck Accident Cases*

Sounds simple enough. You have money – the other side wants money. However, in order to achieve the best result for your company and client, the timing of when and how to discuss money depends on a myriad of factors, some of which will be explored in more detail below and in our real life case scenarios that we will discuss.

A. Do You Have A Dance Partner?

The first question that needs to be addressed is whether the case is ripe for settlement.

You have identified the issues, the solutions, and believe you have a the case evaluated fairly. You have the authority and are ready to go!

But to negotiate from a position of strength you have to know and address where the other side is:

- Is the plaintiff and/or opposing attorney motivated?
 - o Is the plaintiff still *too emotionally invested* in the claim or litigation?
 - o Has the event taken over his/her life? Frequent social media posts, victim mentality, etc.;
 - o If it is too hard to “let go”, you will not get a fair resolution;
- Know your audience – what is the style and reputation of opposing counsel?
 - o Blustery talk ... but then caves?
 - o Or can counsel walk the talk and has shown the ability to get large verdicts in disputed liability / causation cases?

B. Where Are You In The Information Gathering Process?

Truck accident claims and litigation can impact every part of a company - from operations and finances, to the company's reputation. Having clear steps laid out allows you to better plan, keep stakeholders informed, and focus on what is needed to protect the business/client at every stage.

- Rapid Response

- When a claim arises, the single most important action to take is rapid response;
- Have a protocol with clear steps laid out and follow it.
 - When and why to engage counsel, independent adjusters, accident recons, preserve evidence;
 - Comply with regulations and company policies (Ex: drug / alcohol testing, log review, preservation of evidence and records);

- Do you have the facts/information to properly evaluate the case?

- "ROI" - Have you evaluated the time and expense necessary to obtain additional information with the potential return of the additional information on the value of the case?
 - Experts – are liability and causation experts going to significantly effect the outcome of the case?
 - Demonstrative videos / animations – do they clearly and effectively support your position?
 - Better to have evidence you did not create by paying someone - EX: Video from truck or local area surveillance cameras, comments in medical records.

c. Pre-suit v. Litigation

The timing of settlement negotiations in terms of the likelihood of success, is critically important. The process of information gathering and support for your defenses, and the time and expense required to obtain this information, play a huge role in the success of negotiations.

But, litigation is expensive, time consuming, juries are unpredictable, and you lose control over the outcome. Is there critical information that can only be obtained through the litigation and discovery process?

- Prior medical records [Practice Pointer – can always ask counsel to provide such records pre-suit ... all they can say is “no”!];
- Don’t forget other methods to obtain information – ISO, background reports, surveillance, court records, Open Records Requests / FOIA, social media presence;
- What is the ROI of additional discovery and information compared with additional time, money, and risks of litigation?
- *Is information and evidence developed through litigation the only way to get the case resolved fairly?* The answer may be “yes”!

D. PRACTICAL TIPS FOR SUCCESSFUL NEGOTIATIONS

The ability to succeed at trial is built on a foundation of careful preparation – the same is true of the ability to obtain a fair and favorable settlement result.

- Negotiate Towards A Specific Goal

At trial, we make opening statements, put on evidence, and make legal arguments, all as part of an effort to persuade the jury. You need to follow this approach during settlement negotiations and not just be engaged in a series of offers and counter-offers. Settlement negotiations are not a ping pong match! Whether through a mediator or with opposing counsel, the process must include time to explain and support your position. Being able to present reasoned arguments supporting your position establishes that your settlement offers are legitimate.

- Be A Problem Solver

The best negotiators realize that the case can only be resolved fairly when the issues and solutions are clearly identified. Recognize that sometimes you are dealing with folks who are hostile, irrational, and emotional. In those situations you have to be the adult and the problem solver for both sides in order to guide the process to a successful result.

- Identify Shared Interests

Find and verbalize common interests, even in the most contentious cases. For example - “We all agree that Ms. Plaintiff and Mr. Defendant did not set out to have an accident and both were out trying to make a living for their families.”; “The best people to resolve this case are here in this room, instead of letting 12 strangers decide our fate.” The process of identifying common interests turns down the temperature and lays a foundation of trust.

- You Must Put The Other Side At Risk

Cases do not resolve short of a jury verdict unless the parties are put at risk. Make a list of what your side and the other side have to lose in the absence of a negotiated settlement. This will help determine any leverage you have in the negotiations and help you identify the “bottom line” that the other side is likely willing to take short of trial.

REAL WORLD FACT PATTERNS FOR DISCUSSION

1. Catastrophic Accident / Clear Liability



- Truck driver entered construction zone on highway with “Reduced Speed” warnings;
- Driver crests a hill at 65 mph and traffic is backed up;
- Rear-ends passenger vehicle at high speed resulting in the death of 17-year old female driver;
- A+ lawyer involved for plaintiff.

2. Serious Accident / Serious Injuries / Disputed Liability



- Plaintiff turns left in front of approaching truck with a green light;
- Truck going 55 mph in 45 mph zone and truck driver on cellphone;
- Defense says Plaintiff failed to yield and video is clear; Plaintiff says truck speeding and driver distraction caused accident;
- Plaintiff is a 35-year old mechanic with several broken bones, surgeries, head injury, likely unable to return to job;
- Past special damages >\$1 million with likely large future damages.

3. Fender Bender / Clear Liability / Inflated Damages



- Truck turning left at low speed into parking lot, clips mirror and rear fender of plaintiffs stopped vehicle;
- No complaints of injury at scene; truck driver gets a ticket;
- Claims of neck and back injuries, with multiple injections and a “micro-discectomy” surgery in lumbar spine;
- \$200k in medicals – all on lien with well-known PI doctors;
- Appears plaintiff has prior accident and claims history;
- Time-limit \$1 million demand pre-suit from large, but able, advertising law firm.