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Want a better settlement? Play nice, win big

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When a plaintiff's attorney works cooperatively with an insurance company, they create an atmosphere of transparency and open communication directly or through a mediator.

Given the adversarial nature of our legal system, it is not unusual for attorneys to view cooperation with the opposite side as a sign of weakness. This becomes even more pronounced for plaintiffs' attorneys dealing with insurance companies and defense counsel. Many plaintiffs' attorneys see the insurance company and their defense counsel as the "enemies," with whom there should be little to no cooperation. In many cases, this viewpoint carries over to the case's mediation.

However, as a former plaintiffs' attorney, a former insurance defense attorney, and now a mediator, I have found that the results are more favorable when plaintiffs' attorneys cooperate with the defense.

When a plaintiff's attorney demonstrates a professional and reasonable approach to the case before and during the mediation session, it can make the insurance company more willing

to offer a fair settlement. Attorneys who engage in cooperative negotiations, instead of adversarial or combative tactics, tend to foster a more positive working relationship with the insurance company. Insurers who deal with many claims may be more inclined to offer a fair settlement to plaintiffs who have shown they are reasonable and willing to work through the process without unnecessary conflict.

Furthermore, cooperation can lead to a better understanding of the plaintiff's position. Insurance companies are motivated to minimize their financial exposure but are also keen to avoid expensive trials. Attorneys who engage in good-faith negotiations and offer reasonable solutions are less likely to face the long, costly trial process that insurance companies want to avoid. This makes insurance companies more inclined to offer a settlement that aligns with the case's true value, rather than attempt-

ing to settle for an amount that is too low.

To accept this premise, one must understand how most insurance companies evaluate claims and the layers involved in getting to an evaluation. These layers usually consist of pre-litigation, litigation, and defense counsel. Regardless of the claim stage, an insurance adjuster or a defense counsel cannot evaluate a claim in a vacuum. They need information, e.g., what happened (to determine liability), injuries being claimed, treatment provided for the injuries, and any pre-existing conditions. In a litigated case, the insurance company may also need the plaintiff's deposition testimony and a medical examination to evaluate the claim fully. Without this basic information, the insurance company cannot set proper reserves.

Communication is at the heart of successful settlements. When a plaintiff's attorney works cooperatively with an insurance

company, they create an atmosphere of transparency and open communication directly or through a mediator. This relationship can encourage both sides to share relevant information more efficiently, speeding up the negotiation process and reducing the chances of costly delays or disputes.

Timing is also critical. The sooner the information gets to the insurance company, the



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better they can assign a more appropriate value to the case and be prepared to resolve it at mediation. This, again, is where the different layers of claim adjustment play a role. The insurance company needs time to analyze the information received. They may need to summarize the information and draft a report for their higher-ups to obtain the authority for claim resolution. This is the process that an insurance defense attorney also goes through. These steps take time for each case. Multiply that by the volume of cases they must deal with, and you understand why it is imperative to send information to the insurance company and/or their defense counsel as soon as possible.

Nothing is more frustrating for an insurance company (and the mediator involved) than learning new information regarding

liability, injuries, or treatment on the date of the mediation session. Such late disclosures rarely result in a proper resolution of the case because of the discussion above, i.e., there is no time for the insurance company to analyze and summarize the information and seek appropriate settlement authority. They need such information at least 2-3 weeks before the mediation date.

Insurance companies will often be more inclined to offer a higher settlement if they believe the plaintiff has a strong case with substantial evidence supporting their claims. By collaborating with the insurer and ensuring that all necessary documentation is presented clearly, the plaintiff's attorney can significantly increase the likelihood of a higher settlement at mediation.

Also, a plaintiff's attorney who is open to cooperation creates a more conducive environment for negotiation. By understanding the insurance company's priorities and constraints, the attorney can craft a strategy that addresses both the plaintiff's needs and the insurer's concerns. This collaborative approach helps to create a win-win scenario in which both parties feel they have reached a fair and reasonable resolution.

Rather than approaching negotiations in a mediation with a hardline stance, which can lead to deadlock and costly trial preparation, a plaintiff's attorney who maintains a cooperative stance can help move the negotiations forward, even when there are differences in opinion about the case's value. This willingness to negotiate in good faith can often lead to a more favorable out-

come than a combative approach, allowing both sides to compromise and reach an agreement that both can live with.

Both plaintiffs and insurance companies are motivated to avoid the uncertainties of a trial, hence the motivation to mediate. A settlement provides both sides with greater control over the outcome, while litigation introduces the risk of an unpredictable verdict, lengthy delays, and additional legal costs.

To give the settlement a reasonable chance at mediation, I suggest providing the defense with as much information about the case as possible and as early as possible. Having done this, the insurance company will have little to no excuse for refusing a fair settlement at mediation.