

From Preparation to Resolution: Strategic Pre- and Post- Mediation Tactics

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1 Hour General CLE Credit

Program Objectives



- Understand how to prepare cases for effective mediation
- Identify key pre-mediation strategies
- Learn practical valuation approaches
- Explore post-mediation follow-up techniques

Pre-Mediation



Why Preparation Matters

Mediation success begins before the session

Preparation builds credibility with mediator and opposing counsel

Early issue identification promotes realistic expectations

Resolution Readiness

- Is the case factually and emotionally ready?
- Have key discovery gaps been addressed?
- Are decision makers available and informed?



“Resolution Readiness is descriptive of a state of being in a civil dispute where the attorneys have client buy-in and a sufficient understanding of the facts and law underlying a dispute such that the parties can engage in meaningful, productive settlement discussions with the mediator or settlement judge. Resolution Readiness does not occur on a fixed schedule based on the court’s scheduling requirements, nor is it necessarily tied to the trial date. Having sufficient knowledge about one’s case –including the underlying facts, the applicable law, insurance and/or insurance coverage issues, and client buy-in and/or control– all are factors to be included in the Resolution Readiness calculus.

To a considerable extent, Resolution Readiness is a timing issue that governs when a settlement conference or mediation may be held with maximum effect. Lawyers must always ask themselves the critical question: is this case ready for settlement, and if not, what facts, evidence or other information must be developed or acquired before settlement can be attempted in earnest?”



Exchange of Briefs

01

Share briefs with all parties when appropriate

02

Promotes transparency and productive dialogue

03

Clarify confidentiality expectations

Effective Mediation Briefs

- Be concise and focused on key issues
- Explain strengths and risks candidly
- Provide practical settlement frameworks
- Attachments, good or bad?



What the Mediator Needs to Know

- Core factual disputes
- Legal pressure points
- Settlement history
- Client dynamics



Pre-Mediation Calls

- Align expectations with mediator
- Discuss process and logistics
- Identify potential obstacles
- Give the parties opportunity to ask questions and suggest strategies



Managing Relationships

01

Importance of
counsel-to-counsel
rapport

02

Prepare clients for
tone and process

03

Assess emotional
readiness when
appropriate

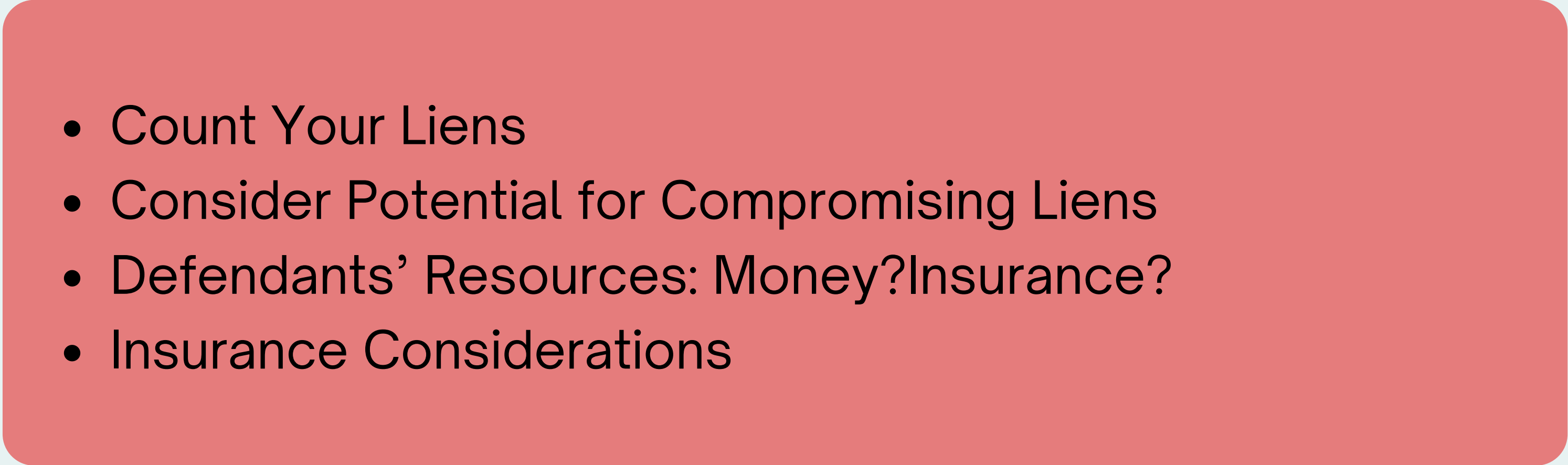
Use mediator to manage emotions on both sides

Mandatory Pre-Litigation Mediation



- Exchange key information informally
- Encourage voluntary exchange of discovery
- Assign 'homework' when needed

Pre-Mediation Case Evaluation

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- Count Your Liens
 - Consider Potential for Compromising Liens
 - Defendants' Resources: Money? Insurance?
 - Insurance Considerations



Valuing the Case

- Not Verdict Value
 - Databases can be helpful
 - How to interpret the data
 - Use with caution
- Sunk Costs/Future Costs
- Precedent
- Actuarial Value
- Non-monetary demands – can I have an apology, or my job back?
- The emotional aspect and satisfaction



Post-Mediation



Mediator's Proposals

- Types of Mediators Proposals
 - Numbers vs narrative approaches
 - Follow up - timing
 - When are mediator's proposals appropriate?
- Confidentiality considerations
- Ethical considerations
 - ABA Formal Opinion 518

Post-Mediation Follow-Up

- Timing is critical
- Keep dialogue open
- Use mediator as ongoing resource



Ethical Considerations

- Maintain confidentiality
- How to be an effective resource once the mediation is over
- Ensure informed client consent



Thank You!



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