

Learning The Art Of Negotiation

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The Plaintiff's Perspective

In general, the goal of negotiations is to get someone to give you and your client something they have and that you and your client both want. In a personal injury case, that is usually getting the insurance company to give your client money for damages and losses. From a personal injury standpoint you need to present the best possible case to either the insurance adjuster or the defense lawyer, or sometimes both.

There is no true tested method to accomplish this goal but these are some ideas and suggestions on how to accomplish the goal of getting the insurance company to give you the money you want for your client.

Remember that the insurance adjuster and defense lawyer are the connection to the money. They are the people most responsible for evaluating the case. If they do not believe your client should be compensated then you will not be able to negotiate a good settlement. However, if you can get the defense lawyer, and especially the insurance adjuster, in line with your thinking of the value of the case, then you are in a good position to negotiate a settlement.

What does the insurance adjuster want?

Start off by knowing what motivates an insurance adjuster. The adjuster usually has no motivation to keep a claim open. In fact, many of the adjuster's performances are evaluated on claims closed. So the motivation for the adjuster is obviously to try and save the insurance company money BUT also to get the file closed.

When you are dealing solely with the adjuster keep in mind that there are three things which help an adjuster and they are (1) keep the file up to date; (2) be able to easily justify the money paid; and (3) get the file closed. You should keep these things in your head when negotiating with an adjuster.

What does the insurance adjuster NOT want?

The adjuster is doing a job. They do not want to be treated rudely or in a hostile manner, no matter how upset you are by an offer. They also do not want to keep calling for updates so they can diary a file and not be called back or receive any information. For the most part, they are doing a job and want to adjust the claim.

What does the defense lawyer want?

The defense lawyer usually has the best connection for you to the adjuster and ultimately the money to amicably resolve your client's case. The lawyer usually has tons of other cases so if you can convince him or her that your client's case has merit and value they will usually try to settle the case.

The defense lawyer usually wants to get paid but also wants to look good in front of the insurance company and adjuster and not run the risk of a huge verdict. They are typically repeat representatives for the company so they want to keep their business. Two ways to do that are not having a huge verdict and also if they look good to the company.

What does the defense lawyer NOT want?

Generally, a defense lawyer does not want to defeat you. All they want to do is his or her job. They usually would rather settle the case as opposed to going to trial. Not only does a trial run the risk of a huge verdict which makes the defense lawyer (and adjuster) look bad, but it takes the lawyer out of the office for entire days instead of working on other files.

Present the case to the adjuster or lawyer how you would want to view the case if you were the other side. Basically, when negotiating, try to anticipate what the other side's response will be to your argument. Also, if you have weaknesses, do not be afraid to admit them. It shows that you know and understand your case.

Learn to think like the adjuster or defense lawyer. Read the police reports and medical records with that in mind.

Also, do not consider the defense lawyer an adversary. In fact, in most cases the adjuster and defense lawyer are your tools to obtaining the maximum amount of monies for your client. A

person is more likely to try and go get you what you want if not only it is reasonable but they like you, or at least do not despise you.

How do you discuss settlement with the adjuster or defense lawyer?

Do not start with threatening letters. Ultimatums generally do not work and most people do not stick to them so *avoid threats or ultimatums*.

Start with *commiserating* about the case instead of bragging about how their witness is terrible. Try to make a joke or use humor now and then.

Even if you are doing well in the case, *do not gloat*. People do not like that and it will negatively impact your value, or people will remember it.

Persistence is important. Keep providing information, if you can. This will help them to re-evaluate the case and hopefully get you what you want.

Patience helps. Sometimes you need to wait for the call back and not seem so eager to settle. It is a skill learned over years.

Explain that *you will try the case*. Many plaintiff lawyers do not try cases. Some just refer cases and others file the case and if it gets to the end they will settle it rather than try it. Do not let the defense know that you will not try the case.

Do your job and do not be lazy. Unfortunately, many lawyers are simply lazy. People can see this and will not give you maximum value if they know this.

If necessary, *teach the adjuster and lawyer*. Sometimes you have a legal issue and the other side is plainly wrong. If that is the case do not be afraid to explain and teach. However, you must also do so in a fair and collegial manner.

Admit your faults. If you have a problem in the case or made a mistake do not be afraid to admit it.

Love your profession. Many people do not find auto insurance fun and exciting. However, if you do and the other side knows it, then they know you will approach the case with vigor and sincerity. Also, you will know your stuff.

Above all, *be ethical, honest and trustworthy*. You will see the defense lawyer and adjuster a lot. The case you presently have will not be the only case, most of the time. If you gain a bad reputation for honesty and integrity, then they will remember.

How do you reach the number you want?

Experience – other cases, venue, specials, policy limits

Ask other lawyers in your firm

Ask other lawyers in town

Ask other adjusters

Ask list serve mates

What to do with the unrealistic client?

In person meeting

Sign special acknowledgement

Take for a ride to the venue to show where jurors lives

Nonbinding mediation

Settlement conference with judge

The Settlement Conference

Two of the most important items to stress BEFORE you even attend the settlement conference is that your client is present (or available by phone) and that the adjuster who is writing the check will also be present (or available by phone). Without these two criteria being met, there is generally not much that can be accomplished. However, usually the judge will by Order or verbally mandate that this happen.

Leading up to the settlement conference, know the real value of your case. Know the minimum value of it before additional costs and fees are incurred and try to know the history of settlements in the jurisdiction.

If not familiar with the court and/or judge, contact local attorneys and maybe even ask one to attend with you. Try to know the judge's style and preferences.

Also, prepare a settlement conference memorandum with admissible exhibits for the judge and defense lawyer, unless the judge instructs NOT to file them or that they should be confidential. The memorandum can give the judge and the other side the strengths and weaknesses of your case, especially the judge.

The memorandum should usually include the current procedural history of the case, summary of facts and injuries, summary of special damages, important legal issues, summaries or demands and offers, rulings in the case, history of similar cases, and anything else pertinent to the case.

Meet, or at least talk to, your client ahead of time. Make sure the value you have on the case is in sync with their perceived value.

Explain the process of what will generally happen, if the client will be present. If the client will need to be available by phone, make sure you have confirmed numbers to reach them.

Know your case and be able to admit weaknesses.

Stress to the judge the areas both sides agree on. Many times most of the issues are agreed upon and then the judge can focus on the very few issues that are not agreed upon.

Remember the ethical rules apply in settlement conferences with the court.

Avoid ultimatums.

If there is an agreement, make sure everything is spelled out before you leave the conference, and if necessary, put in writing.