

PRESENTING THE MEDICAL EVIDENCE FOR
SETTLEMENT AND TRIAL PURPOSES

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STRATEGIES IN PRESENTING MEDICAL EVIDENCE FOR SETTLEMENT

1. PACKAGING THE DEMAND

Demonstrative evidence has a huge influence in producing successful settlement outcome. No longer can you expect favorable attention by merely sending a demand letter with a pile of medical specials and other exhibits. You have created work for the adjuster. It is certain that the adjuster will not do the same kind of effective sales presentation that you can accomplish with a well prepared settlement package - designed to convince, sell and motivate. The packaging of the demand for settlement purposes will make a difference in getting favorable attention at the onset. The content of the settlement package should also be designed for IMPACT.

Cartier, the worldwide famous jeweler, beautifully packages all of its jewelry and accessories to create anticipation in the receiver of the gift before the package is ever opened. The packaging is expensive and adds nothing to the value of the contents, yet it is an integral part of the presentation. Likewise, receiving a beautiful invitation to a party creates an expectation well in advance of arrival. The packaging of a demand is a critical component often overlooked in the presentation of a demand.

Packaging of the demand creates favorable attention before the contents are examined. It distinguishes your demand from others received by the adjuster, the insurance carrier or the settlement officer. It distinguishes you as a lawyer who believes in your case. It sends a message about your competence, your commitment and your professionalism. The packaging of demands produces results that far exceed demands that are not packaged.

I recommend for serious injury cases that the relevant materials be packaged in a black leather or leatherette book. None of the materials inside of the book should be capable of being removed. The front cover should be imprinted in gold or steel with the client's name, at a minimum, the case name, or a title, such as "DAMAGES TO..." or "THE LIFE OF..." The value of the package is that it is substantial. It cannot be overlooked or taken apart or shoved into a file. It stands alone. I have been packaging demands for many years and from personal experience, I have received hundreds of compliments from defense attorneys, adjusters and judges regarding the demand packaging. People are more receptive to the contents when packaged.

Items of demonstrative evidence that should be included in the settlement package include a summary of the medical treatment by date highlighting surgeries, important tests, procedures, therapy, etc. The point of the medical summary is to present the medical evidence in an impactful fashion. The medical summary assures that the adjuster will accept your presentation of the medical facts. Also, include a summary of medical providers, dates of

treatment and amounts of bills. The relevant medical records, reports and bills should be included under the summary of medical expenses which are appropriately tabbed for easy reference.

Medical illustrations should be included in the settlement package. If the case involves unusual or complicated injuries, a medical illustrator must be hired. However, ninety percent of the injuries and surgeries are already illustrated on CD-ROMs published by Adam Software. You can use the stock illustrations or combine several of them into one chart or you can use the precomposed charts with several images on them. You also have the ability to customize the medical illustrations by adding your client's name, date of accident and highlighting any aspect of the illustration with arrows and subtitles, etc. Considering the fact that most custom medical illustrations cost approximately \$750, you can produce these illustrations at your desk with relative ease and inexpensively. You can print them on slick stock to include in your settlement package. These illustrations can be blown up for courtroom use. The value of including medical illustrations cannot be underrated. It highlights the injuries and surgeries graphically and presents a visual understanding of future surgeries.

Life-care plans should be included in the settlement package. Since they are self-explanatory, they usually do not need to be summarized. Another important item to present is a summary of relevant verdicts and settlements from similar cases involving similar liability or injuries. You can run a CD-ROM search of Verdicts on Disk and then synthesize this research into a chart showing the name of the case, the type of case and the result. You can eliminate extreme results and focus on the results that support your demand.

Occasionally you will have a case where a series of photographs are capable of telling a story. For example, you may represent an injured person who cannot fulfill their dream of becoming a professional golfer or police officer because of the injury. Imagine the impact of a series of photographs showing the plaintiffs preparation toward his goal prior to the accident.

Whatever materials you choose, you should be guided by IMPACT. The materials in the black settlement book should have an inside title page followed by an index that makes the included materials easy to locate. The settlement book is transmitted with your demand letter or settlement brief. In the letter or brief you will set forth the basis of liability, making reference to photographs and other materials in the black book. You will also set forth a short overview of the damages with reference to the black book. The book itself contains all the demonstrative evidence except videotape presentations.

Many cases lend themselves to a settlement video or the inclusion of a day-in-the-life film or a test, re-enactment or experiment, etc. Providing a videotape with your settlement package enhances the total presentation. You can provide interviews of witnesses, experts, employers and friends or plaintiffs talents prior to the accident or how he ambulates at the present time. The possibilities are endless. Videotape evidence brings the case alive in the minds of those who make decisions about your demand and many others.

Using demonstrative evidence as an integral part of the settlement demand, presents a better opportunity to settle your case now for a higher dollar value. It is worth the time, effort

and money to package the demonstrative evidence for settlement purposes.

2. CONSEQUENCES OF INJURY

The medical aspects of an injury causing hospitalizations, surgery or treatment, and the need for future treatment are only a small part of the successful presentation of the medical aspects giving rise to value. What emanates from an injury needs to be understood in the context of the plaintiffs life. How has the injury impacted his ability to work now and in the future? How has the injury impacted plaintiffs ability to participate in recreation and socialization? How does the injury affect the plaintiff as a whole person? Once these aspects are tied to the injuries, the case value is greatly enhanced.

To learn this information the lawyer needs to spend time with the plaintiff finding out what his life was like before the accident and what his dreams and goals were. For example, a plaintiff may have momentum in their life leading to a new or different career path which has now become derailed because of the injuries. This loss could be translated into economic damages in terms of the precluded or diminished future occupation. Perhaps the injuries only affect the plaintiff in his intended occupation, rather than his present occupation. More importantly, this scenario gives rise to general damages for loss of a dream and goal which has been taken away from plaintiff due to the injuries. Dreams and goals are hardly speculative if the plaintiff had taken any steps in that direction. Dreams and goals are something that every person has, realistic or not. If a person was unable to pursue their chosen dream or goal they would suffer emotional distress from that. A corollary of loss of a dream or a goal is loss of choice. Everyone has a choice in life to be what they want to be, to go to school, to learn a trade, to change careers. If people are able to do what they have chosen to do and their choice has been taken away by the injury, this can be a devastating consequence of the injury. To present the loss of a dream or goal or choice requires medical opinion that the plaintiff is unable to do what he was intended to do. Supporting evidence includes statements from friends, relatives and co-workers about plaintiffs future intentions, documentary evidence of that intention or steps leading in that direction.

The affects of the injury need to be understood in terms of the plaintiff as a whole person. Is the plaintiff able to pursue his hobbies and activities that he was passionate about before the accident? Has this been lost because of the injury? Is the plaintiff able to interact with his family and friends the same as before the accident? You must understand the injury and its consequences on a personal level to the plaintiff in order to present it. Photographs and videotapes prior to the accident, as well as witness testimony, provide a baseline for what the plaintiff was able to do when he was physically healthy. That needs to be contrasted with what the plaintiff is unable to do or only has a limited ability to do since the injury. The understanding of these essential facts adds credibility to the general damages for pain and suffering, emotional distress and loss of ability to enjoy life.

3. PRIOR INJURIES AND MEDICAL TREATMENT

Some plaintiffs have sustained prior injuries to the same areas of the body or they were

suffering from a similar pre-existing condition prior to the current accident. Many times these facts can actually enhance the settlement value of the case for several reasons. First, a defendant has no right to demand a perfect victim. Second, the defendant must take the plaintiff as he finds him at the time of injury. Third, the law provides for compensation for aggravation of a pre-existing condition. The attorney must get all of the past medical records at the inception of the case and have them reviewed. Prior injuries or medical conditions can be distinguished from the current injury where the injury itself is different, where the pain level and disability is different, and where there has been a period of quiescence. Contrasting the prior medical treatment, prescriptions and limitations with the current situation is another way to distinguish the before and after injuries or condition. If there is an overlap, there is room for apportionment of the plaintiff's current condition and damages between both events. Plaintiff's current treating doctor or past doctor can review the records, examine the plaintiff and provide further distinctions or apportionment.

PRESENTING THE MEDICAL EVIDENCE AT TRIAL

1. USE MEDICAL ILLUSTRATIONS

Medical illustrations are a pivotal item for the jury in order to follow the doctor's testimony about the injury, surgeries and future surgeries. X-rays, CT and MRI films do not generally have impact. Medical illustrations do. As long as they accurately depict the condition the doctor can use this aid to assist his testimony. Whether or not medical illustrations are admitted into evidence is up to the judge. Usually they are admitted. Standard medical illustrations are available through lido.com, where over 10,000 medical illustrations are available for downloading and customization. Medical illustrations can also be custom made by medical illustrators. A jury is able to understand the injury and surgeries by virtue of the impact of the medical illustration. It is not important that the jury understand the medical terminology or the location of the injury in medical navigational terms. The medical aspects need to be conveyed visually for impact.

2. PRESENTING AN OVERVIEW OF THE MEDICAL TREATMENT

If there are numerous hospitalizations and surgical procedures a time line or chronology chart can be used to keep the jury on track. A chart can be made showing the name of each hospital or facility and the dates of admission or service. A chart can be made showing all the surgical procedures by date, what was done, by whom it was done, etc. Hardware that was inserted or removed from the plaintiff can be brought to court for use by the doctor. Where there is future medical care and procedures, a chart can be made outlining those procedures showing the time they are expected to occur and the present cost. The jury is then able to follow what the doctor is saying about future care.

3. PRESENTING PHOTOGRAPHS AND VIDEOTAPES TO THE JURY

Photographs and videotapes of injuries are excellent tools because they make a visual presentation that the jury can connect with. Select photographs that have the most impact.

Blowup the photographs you intend to use so that they can be presented to the jury in a large format. The photographs should be mounted on a form-core board. If there are numerous photographs several of them can be mounted on a board. You can title or subtitle the board and you can also add dates or captions.

Videotapes of the injury or consequences are very powerful. A good idea is to have a treating doctor conduct an examination of the plaintiff and videotape it so that it can be presented at the time of trial. The jury can see the kind of testing the doctor is performing and the plaintiffs response showing limited motion, pain and disability. This can also be contrasted with a video of the plaintiff before the accident when he was healthy. A day-in-the-life film is very persuasive evidence. It shows the jury what the plaintiff is left with and what he must deal with on a daily basis. The key to a successful day-in-the-life film is impact. The video should not be too long because if it is redundant it will bore the jury. Ten to fifteen minutes is a good length for a day-in-the-life film. Historical videos are also a valuable item of demonstrative evidence. They show plaintiff functioning normally before the accident, including sports and recreation, family involvement and good health.