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**R**esolving a case early can benefit all of the parties involved. But one formula will not work in every case.

# Strategies for Resolving Serious Losses Within Days

Resolving a serious loss within days is important because it can be beneficial to all parties involved. An early resolution can save a defense client a substantial amount of money. The defendants can avoid spending exorbitant

funds on long, drawn-out cases or those that could result in high verdicts. It also avoids punitive damages against the defendants.

An early resolution can also be good for the injured party because he or she can receive monetary relief early. This can help the injured party to cover unexpected costs, including medical and funeral costs, early on. It can also help families who have lost a loved one have closure sooner and avoid re-living the loss through litigation.

Not all cases are appropriate for early resolution. The ideal cases are those that involve sympathetic plaintiffs with defendants who were in the wrong because these cases can result in high-verdict awards. An attorney should be attentive to which cases should be resolved quickly.

What constitutes an “early” resolve depends on the facts of the individual case. Sometimes early may be within a few

days of the incident. Other times, early is sometime before the case goes to trial. It is important for attorneys to assess how early they want to attempt resolution of their cases as soon as possible. This requires having a solid understanding of the facts of a case, the relevant case law, and potential jury verdicts, as will be explained below. Using the strategy below, it is possible to bring a case to a conclusion without litigation or even extensive discovery

## The Barratry

In any catastrophic injury case, the defense team’s goal should be to beat the barratry. In other words, beat plaintiff’s attorneys who may try to rush to the plaintiff after an injury or loss. Once a plaintiff’s attorney is involved, that attorney may want to bring the case all the way to trial because of the possibility of a large verdict. The plaintiff’s

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attorneys will try to appeal to the family's sense of anger and injustice, explaining that justice can only be served by going to trial. They may try to convince them to "destroy" the defendant for the loss.

If you are able to get to a plaintiff first, you can set the tone. Explain to the plaintiff or plaintiffs that you are willing to pay some of their initial expenses (funeral and hospital bills) to attempt to resolve the case without going through the long process of trial. Also explain to them, once they retain an attorney, that the attorney will get part of their settlement or verdict. Consider explaining to families the following: it is better to settle now so that they may keep 100 percent of the settlement, they will avoid having to testify, and they will avoid having to re-live the incident in a courtroom.

### **The Defendant's Goals**

Having a set goal and strategy in place after an accident can help get the case resolved early on. In the initial days after the incident, the defense team has several goals, described below.

### **Lighten the Burden on the Plaintiff and His or Her Family**

Explain to the plaintiff or the plaintiff's family that you can help with some of the economic strains that they are currently experiencing due to the incident. You can offer to pay for some medical bills upfront or the costs of transportation to the hospital, or simply supply some food while the family gathers. Be careful not to commit to paying all medical bills right away because, in some instances, you can get providers to waive a portion of the medical liens before settling.

### **Build Trust**

Be genuine in your concern. Just because you represent the defense, does not mean that you cannot feel badly about what happened. When the family sees that you are genuinely moved by what happened, they may soften and understand you are there to try to find a mutually agreeable solution for all parties.

### **Humanize Your Client**

Find out what you can about the driver's home and family life. Share with the plain-

tiff and his or her family that your client is upset about what happened. Your goal is to reduce the plaintiff's desire to "make the defendant pay."

### **Attempt to Get an Early Resolution**

Make your initial offer to the plaintiffs as soon as you practically can. The emotional circumstances must be right to make the initial offer. Once the offer has been made, do not bombard the plaintiffs. When the trucker's liability is questionable, offering to pay medical bills and expenses may make the initial settlement offer feel more appealing or useful to the plaintiffs.

### **Look for a Win-Win Scenario**

Reiterate to the plaintiff and his or her family that settling early is in everyone's best interest. Remind them that cases can go on for years, and during that time discovery will seek to uncover every detail about their life or their loved one's life. Sometimes these details can portray the plaintiff or their loved ones in a negative light. This can be devastating for a family to go through, especially if they have suffered a loss. For a plaintiff who is seriously injured, it can add incredible emotional pain to his or her physical pain. Explain that they can avoid all of this and instead get the money quickly. Set up a realistic timeline for how long it will take for them to receive the funds.

### **Examine All Cases to Determine if They Can Be Resolved**

The defense team must begin by figuring out what kind of case they are dealing with. This will allow them to determine if the case is a good candidate for an early resolution. Below is a list of different kinds of cases with some analysis of which types are good for early resolution. Of course, each case is unique, and some cases may not fit into one of these categories. In each of the categories below, there is always the possibility of resolving a case early on, even the types for which there is no liability and no measurable damages.

There are three general options for you to consider in each of the case categories listed below:

1. Do the initial investigation, preserve what needs to be preserved, and let the case die.

2. Consider making a fair offer for the circumstances of your case. The risk is for those cases for which there is no liability and little or no measurable damages, you could get a reputation for settling cases early; however, there would be closure and no risk of punitive damages.
3. Go through the initial investigation, hire an expert, get the expert out to

## **Share with the plaintiff**

and his or her family  
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the scene, preserve all evidence, attend DMV hearings, answer the lawsuit, complete discovery, and determine your chances of being successful on a summary judgment motion. As all trial attorneys know, there is a risk even with the best of facts that discovery may establish liability (even if on its face none exists), there is potential for punitive damages (you must know the law in your jurisdiction), or a judge may find an issue of fact. The benefits are getting a reputation that you do *not* settle cases for which there is no liability and little to no damages.

### **Defendant Has No Liability: No Measurable Injury or Damages**

When it appears that the defendant will have no liability, and there are no measurable damages or injury, the case is generally not a good one to settle early. If you do settle such claims early, you can get a reputation for settling as soon as there is a lawsuit, and more plaintiffs with weak cases will file lawsuits against your client. In such a case, discovery may reveal that there is no case against your client, and you can make a motion for summary judgment

to get out of the case. If there are no injuries or damages and the case went to trial, it would not result in an exuberant award for the plaintiffs.

**Defendant Has No Liability: Measureable Injury or Damages Are Not Severe**

These cases are also not ideal for early resolutions because the damages are not severe

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**If there are no measurable injuries or damages, your client will likely not be found liable and so this is not a good case for early settlement.**

and therefore will likely not bring a large award. Additionally, if it appears that the defendant has no liability, discovery could reveal that the damages are not the defendant's fault. For example, often the "injuries" were already in existence before the incident, and the defendant's actions did nothing to exacerbate them. In such a case, you could make a motion for summary judgment.

**Defendant Has No Liability: Catastrophic or Severe Injury (Multiple Parties)**

A case involving multiple parties and a catastrophic injury is more complicated. If the defendant that you represent is not liable and that is clear, you probably do not want to resolve early on. If, however, the liability is more convoluted and will not be clear to a jury, it may be smart to settle early.

**Defendant Has No Liability and Comparative Fault: No Measurable Injury or Damages**

Settling early in these cases is not ideal. However, if there was a catastrophic injury and there is no comparative fault, in other words the plaintiff cannot be found to have contributed to the accident, the plaintiff will look for someone to blame. However, if there is no evidence that your client was liable, it will be difficult for the plaintiff to

recover any money from your client. Additionally, if there are no measurable injuries or damages, your client will likely not be found liable and so this is not a good case for early settlement.

**Defendant Has No Liability and Comparative Fault: Measureable Injuries or Damages Are Not Severe**

When the defendant is not liable, and the measurable injury and damages are not severe, the case is not ideal for settlement. A jury is not likely to find your client liable if there is little to no liability. However, the plaintiff will still look for someone to blame if there is no comparative fault. These cases are still not ideal for settlement because even if such a case were to go to trial and some small amount of liability is found, damages would be low because the injuries are not severe.

**Defendant Has No Liability and Comparative Fault: Catastrophic or Severe Injury or Damages**

Anytime there is a catastrophic injury, it is important to remember that a jury may not be totally objective. Jurors can be blinded by the damages. Therefore, if your client is not liable, it is important to evaluate whether a jury will be able to decipher this. Again, the lack of comparative fault may mean that your client will get blamed. Consider whether there are other defendants and the likelihood that a jury will find them liable. Determine whether the other defendants who may be responsible are able to pay. Be aware of your jurisdiction's rules on comparative fault. Overall, these cases are not ideal for early settlement but in a few situations may be.

**Defendant Liable: No Measurable Injury or Damages**

If the defendant is liable but there is no measurable injury or damages, the case may be good for settling early if punitive damages could be involved. Punitive damages are a strong consideration for approaching a settlement.

**Defendant Liable: Measurable Injury and Damages**

This case may be worthy of settling early because, even if the damages are modest,

when liability is clear, the defendant will likely have to pay something at trial. It is better to pay early, as long as you understand the value of the case and are settling at or, preferably, below, that value.

**Defendant Liable: Catastrophic or Severe Injury and Damages**

These cases are often ideal for settling early because they can potentially result in high verdicts for the plaintiff. Serious injuries or death can appeal to the jurors' sympathy and result in them giving an excessive payout to a plaintiff, especially if the defendant is clearly liable. It is better to pay a modest amount early on than to pay an exorbitant amount at trial.

**Making First Contact with the Plaintiff and the Family Early**

It is ideal to make contact with the plaintiff or the plaintiff's family as early as possible. The first impression that the family gets from the defense team is critical to building trust. Therefore, it is imperative that you send someone who is calm and compassionate and can come across as sensitive. Sending the wrong person can do more harm than good because it can set a bad impression of the defense team initially, which will make a settlement difficult in the long run. The last thing that you want is someone to alienate the family.

The person going to meet the plaintiff or his or her family should be prepared to take the brunt of their emotions. The plaintiff or the family may be angry due to the actions of the defendant and express that to the person representing him or her. It is important that the individual who you send does not get defensive, start making excuses, or point out that the plaintiff contributed to the incident. Instead, the individual sent should calmly listen to plaintiff or their family to make them feel heard.

It is also important that the person is someone willing to say that he or she is sorry, without conceding liability. General phrases such as "I am sorry this happened to you" are useful for letting the family know that you feel bad about their pain and want to help, without acknowledging that it was your client's fault.

Sometimes it can be difficult to get to the plaintiff or the family initially. If this happens, try to make contact with some-

one else in an attempt to reach them. For example, contact the mortuary, the plaintiff's employer, or other family members. Let those people know that you want to "lighten the burden" for the family and are willing to pay some expenses up front. Leave your card with that person so that he or she can pass along the message to the plaintiff or his or her family and call you.

Once you get the opportunity to speak to the family or the plaintiff, it can be difficult to know what to say. However, knowing what not to say can help to avoid alienating the family.

### What to Do Once You Are in Front of the Family

Once you get the opportunity to speak to the family or the plaintiff, it can be difficult to know what to say. However, knowing what not to say can help to avoid alienating the family. When talking to a family who has suffered a loss, you should try to avoid using clichés such as "at least he had a long life," or "at least she died quickly." Also avoid comparing the loss that the family suffered to a loss that you have suffered. This is not comforting in a time of need and can make the family feel that you are not being sensitive to their specific loss.

It can be useful to retain a psychologist, grief counselor, or similar professional to coordinate the defense team and help them do the following:

1. Stay on the same page as the plaintiff.
2. Remain sensitive.
3. Understand the grieving process.

This can be especially important if not everyone on your team is naturally sensitive to the grieving process. Investing in someone to help your team understand the plaintiff or the plaintiff's family's emotions can avoid insensitive comments that could deter settlements.

Generally, you should not make a settlement offer right away; first you need to build trust with the family. Build trust as explained above. Then explain that you want to find a solution that will benefit everyone. At this point, educate the plaintiff and the family on the fact that most cases take years to resolve, that trials can be draining, invasive, and difficult for a family who has suffered a loss, and any plaintiff's attorney who they hire will take at least a third of their settlement or verdict. Then give them a reasonable offer and time to think about it. In the meantime, do not be pushy. Give them space to think, but make your presence known in small ways such as by sending food.

### Things to Consider When Investigating the Loss

First, find out exactly what happened. Get an accident reconstruction expert to the scene as soon as possible. Listen to your driver's story. Assess his or her credibility. Ask if the driver has any photographs from the scene.

Next, get all of the information from your driver's vehicle to see how the objective evidence lines up with your driver's story. Get the black box, any radar equipment attached to the vehicle, information from the Vorad system, information from other collision avoidance systems, GPS information, and videos taken from the truck. The defense team should also send a notice of inspection so that the plaintiff is aware that he or she must preserve his or her vehicle's black box and vehicle for inspection, especially if the plaintiff has retained an attorney. Be sure to request any and all photographs that the plaintiff may have.

Consider getting the 911-call tape. First, find out who made the call. Often the plaintiff will call in and give a statement about the accident. If the facts already appear to show that your client is at fault, you do not have much to lose in getting the tape. In some cases, the 911-call tape may reveal a plaintiff's contribution to the accident. You usually have to get a court order to obtain the tape. Be sure to send a preservation letter to the 911-call center right away because centers often dispose of the tapes after a certain date. If you do get the tape, get it properly authenticated initially so that it is ready if the case does go to trial.

It is also beneficial to have an independent adjuster get to the scene as soon as possible to gather information about the scene. The adjuster should do the following:

1. Take photographs and statements of witnesses;
2. Find out who the emergency responders were;
3. Photograph all vehicles involved;
4. Obtain police photos and diagrams;
5. Comb the area for evidence of liability against either operator;
6. Find out if there is any evidence the plaintiff was conscious;
7. Have an investigator do a background check on the plaintiff or deceased, including a driving record;
8. Connect with the police, build a rapport with them, and determine what information they have;
9. Get all relevant Facebook and Google records to help determine the extent of liability at the scene;
10. Investigate your driver to help you understand what facts are or are not in your favor; and
11. Run a claims index check on the plaintiff for prior lawsuits and claims.

### Investigate Your Driver and Company

A big part of the investigation is investigating the driver and the company that he or she works for. This will help you to understand if there are any holes in your case and what kind of liability the defendant faces. Find out information about your driver's background. Run a Google and social media search on the driver.

If there is any unsavory information on a social media account, have the driver take it down immediately. Instruct him or her not to post about the accident on his or her social media accounts and to keep his or her social media posting to a minimum during the lawsuit. Tell the driver not to post anything that would make him or her seem insensitive toward the plaintiff immediately after the crash. For example, if someone died in the crash, the driver should not post photos of a family vacation or of going to the bar in the weeks after the accident. This could inflame the plaintiff and his or her family, making them less likely to settle.

Do a background search on your driver. Find out if he or she has ever had a DWI, DUI, or any kind of traffic ticket. Research

your driver's safety performance history, including whether he or she has ever had a crash outside of work. Obtain the driver's Road Test Certificate pursuant to 49 C.F.R. §391.131. Also, get the records on the driver's annual medical test pursuant to 49 C.F.R. §391.43(g). Get all of the information that you can on the driver's qualifications. Find out if he or she had any prior or written warnings.

You should also do an extensive search of the driver's employment history, especially whether he or she was let go from any truck driving companies for which the driver worked previously. You should determine whether the driver's employer conducted a proper background search before hiring the driver. When doing this research, be sure to purge the file of any unnecessary documents. Follow up on any red flags, such as the driver was fired from a prior job after working for brief period. Connect the dots to understand the red flags in your driver's past.

According to 49 C.F.R. §391.121, the driver's company should have an Employee Assistance Program (EAP) to, among other things, provide drivers with at least 60 minutes of training on the effects and consequences of controlled substances on others. Find evidence that the driver participated in this program. Get information on any and all trainings that the driver participated in.

Get information on your state's regulations and the applicable regulations. This will help you to understand what the relevant rules and guidelines are so that you can evaluate whether your driver and company met them. Review the Code of Federal Regulations Title 49, Transportation, Subchapter B, Federal Motor Carrier Safety Regulations.

Ascertain whether the driver made a statement to the police. If this statement exists, make sure that you get a copy of it. Ask the driver if he or she spoke to any insurance representatives after the incident or gave statements to anyone at all. Get copies of all of these statements.

If this was a major accident, get the driver to a hotel room and try to get his or her family there. Offer the driver counseling services. These experiences can be traumatizing for all parties involved.

Ask the driver if he or she was using a cell phone at all during or before the crash. Obtain the driver's cell phone records. See

if there is any incriminating information that may implicate the driver.

When you get information about the driver and the vehicle, lock it in a secure area. This is important because you do not want facts that implicate your driver in the wrong hands. You also do not want to lose evidence that is positive for your client.

### **What Is Needed for You to Resolve the Case Confidently**

If you decide to resolve the case, you will need to know three things in particular: (1) the law in your jurisdiction, (2) whether there will be any liens or right of subrogation, and (3) whether any third parties should be involved.

#### **Know the Law in Your Jurisdiction**

To resolve your case confidently, you should know what the relevant and applicable laws are. Some jurisdictions allow joint and several liability, which means that the plaintiff can recover all of the damages against any party regardless of the amount of fault apportioned to each defendant. This means that if your driver was only found 15 percent liable, he or she could still be held responsible for 100 percent of the damages. If another defendant is likely to be found to have been significantly more at fault than your client but does not have the money to pay, it may be beneficial to settle early for your portion of the damages so that your client does not pay for another defendant's actions later. For example, in New York, N.Y. C.P.L.R. Section 1601 limits the liability of defendants who are jointly liable. A defendant who is less than 50 percent liable cannot be held responsible under New York law for the other defendant's share of non-economic loss. Likewise, if your client is likely to be found more than 50 percent at fault, your client may be held responsible for another defendant's share. This can affect how and when the defense team decides to settle. When joint and several liability applies, be sure to consider

- Joint and several liability for owner and operator;
- Joint and several liability for owner of trailer; and
- The potential liability of the broker.

A few states, Alabama, Maryland, North Carolina, and Virginia, are pure contributory negligence states, which means that a

plaintiff who is found one percent liable for an accident will recover nothing. Therefore, in these states, it is not a good idea to settle until you are sure that the plaintiff did not contribute to the accident. Other states have pure comparative fault statutes, and others use a combination of the two. The bottom line is to know the law in the jurisdiction of your case.

**If this was a major accident, get the driver to a hotel room and try to get his or her family there. Offer the driver counseling services. These experiences can be traumatizing for all parties involved.**

Some other states, including New York, have a release or covenant not to sue that is incorporated into settlements. This means that after you settle with a plaintiff, the plaintiff cannot sue your client again, and your client cannot be sued by any other tortfeasor in relation to the case. New York's relevant statute is N.Y. Gen. Oblig. Section 15-108. Be sure to find out if your state has a similar law on point.

#### **Loss Transfer**

Some states have a loss transfer statute, including New York, under which if a vehicle is over a certain weight, the owner must pay for any property damage. If you represent the trucking company, this is not in your favor. However, if you represent the driver or a smaller truck that is involved, you may be able to get funds from the owner of the large truck.

#### **Determine Whether There Will Be Any Liens or Right of Subrogation**

It is important to be aware of any liens that may be processed against the plaintiff's settlement and which loans are negotiable.

It is important to be aware of the relevant liens so that you can make an informed decision regarding the appropriate amount that is needed for a settlement. If the plaintiff does not have any relevant liens, the settlement may be lower than it would be if there were liens that the plaintiff needed to pay with the settlement money. Below are some of the relevant liens to consider.

**Whenever there are multiple vehicles involved in an accident, it is a good idea to bring in other parties if they could have contributed to the accident.**

#### **Medicare**

Some defense teams are under the false impression that only the plaintiff's attorney needs to be aware of liens. However, defense attorneys have a legal responsibility to ensure that Medicare liens are taken care of. This is important because defense attorneys can face fines if they do not comply with ensuring that Medicare liens are accounted for. These liens are generally not negotiable, so the plaintiff will need to pay off the amount listed.

#### **Medicaid and State Liens**

Medicaid may also assert a lien on a plaintiff's award. These liens can be negotiated. This means that if the plaintiff who is injured in a trucking accident has a \$60,000 Medicaid lien and you are offering a \$60,000 settlement, the plaintiff's attorney can call Medicaid to try to get the lien reduced so that the entire settlement will not go to Medicaid. Know your state's law on Medicaid concerning whether Medicaid needs to file a lien before a settlement is valid.

#### **Hospital and Medical Bills**

Any place that a plaintiff has received treatment and not paid may assert a lien. This is more important for the plaintiff's attorney

to be aware of, but it is also important for you to know when deciding on a fair settlement amount that the plaintiff will be likely to accept.

#### **Excess No Fault**

Always be sure to check if there is PIP (no-fault) in your jurisdiction and is there APIP (additional personal injury protection) in your case. This is additional insurance coverage for medical expenses, some lost wages, and other incidental basics. If the parties have it, you may be able to use it to reduce the plaintiff's costs. If there is APIP, there may be a lien.

#### **Determine Whether There Are Third Parties That Should Be Involved**

As the defendant in a case, it is important to determine whether there are others that could be liable for the harm caused and to bring them in. The plaintiff will be more likely to settle with you if he or she knows that he or she can also recover from others who caused the plaintiff harm. For example, if you are representing a trucking company whose vehicle was involved in the accident but the brakes also failed, you may be able to bring a third-party claim against the mechanic or company that inspected them, or a products liability claim against the manufacturer of the truck or brakes, or combinations of these. The same could be true for the plaintiff's vehicle.

#### **Multiple-Party Accident**

Whenever there are multiple vehicles involved in an accident, it is a good idea to bring in other parties if they could have contributed to the accident. This way, your client is not the only one that could be held responsible for the loss. Talk with your driver and other witnesses to determine whether there are other potential parties involved in the accident.

#### **Are the Tractor and the Trailer Owned by Different Companies?**

Sometimes the tractor and trailer are each owned by different companies. When this happens, consider whether you should bring the other party in, especially if there could be something wrong with the trailer (or brakes). Also, know the law in your jurisdiction. The owner of the trailer may also be jointly and severally liable.

#### **Broker**

Research whether a broker exists, and if so, find out who the broker is and consider adding the broker as a party. In some jurisdictions, a broker can be brought in. Again, know the case law in your jurisdiction.

#### **Are the Owner and the Operator of the Tractor Different Companies?**

The owner and operator of the tractor could also be different companies. Make sure that they are both insured.

#### **Are the Owner and the Operator of the Plaintiff's Vehicle Different?**

Similarly, the owner and the operator of the plaintiff's vehicle could be different. For example, the owner of the vehicle could be a rental car company. Other times, the owner of the vehicle is the plaintiff's employer. These owners may also be responsible or liable for damages associated with the accident.

#### **Maintenance Company**

If there was a problem with the truck, and the truck recently had maintenance performed, you may be able to bring in the maintenance company as a party. If the maintenance company failed to complete its work with due diligence or damaged the truck in the work, and this contributed to the accident, the maintenance company may also be held liable.

#### **Municipalities**

In certain cases, when there is an issue with the road, a street sign, or the speed limit, among other things, the municipality may be included in the suit. For example, if a truck's breaks allegedly failed while going down a steep hill, you may be able to bring the municipality in as a party for failing to warn of the steep hill with appropriate signs. Be sure to consider the action against the municipality early on because the statute of limitations for a municipality is substantially shorter. For example, according to N.Y. Gen. Mun. Section 50-e, New York requires a notice of claim to be served within 90 days after the date of the accident.

#### **Investigate and Do Research to Determine the Value of the Case and How It Can Be Resolved**

First you need to know the facts of your

case. Then you need to know the relevant case law.

### **Know the Facts of Your Case**

Once you have all of the facts from your case, you can start researching to determine the value. Look at all of the relevant facts to determine the damages that the plaintiff can claim. Knowing the facts can also help you to understand the percentage of liability that your insured will likely be responsible for.

Then look at the medical situation. Determine whether the plaintiff was conscious after impact, and if so, for how long. Ask the witnesses and look at the ambulance reports to help determine this. The amount of time that someone experienced conscious pain and suffering can significantly alter the value of a case. You may need to retain a doctor to determine the pain associated with the kinds of injuries suffered.

It is also important to know whether there was any pre-impact terror, and if so, for how long. Pre-impact terror is essentially how long before the impact the plaintiff realized that he or she would be injured. Pre-impact terror can increase the value of the case. Skid marks can be used as evidence of pre-impact terror. The black box can also be used to determine how long the plaintiff was aware of the danger. Any evidence that the plaintiff screamed or yelled is also relevant here.

Knowing whether your case will involve a wrongful death claim can also help you to assess its value. Wrongful death cases are brought by the surviving family members to compensate them for lost services, guidance, or wages, among other things. If a deceased plaintiff had young children, this award can be high. To determine the extent of the wrongful death case, create a family tree based on what you know about the plaintiff. It is also useful to get the plaintiff's employment history to determine how much money he or she would have made. Look for evidence that the plaintiff's earnings were going down, such as nearing retirement or cutting full-time work to part time.

Likewise, determine whether the plaintiff can make an argument that their earnings were going up. For example, if the plaintiff was going back to school or had recently received a raise, the plaintiff

could try to argue that he or she or the family is entitled to more money based on each year that the plaintiff could no longer work.

### **Research the Relevant Case Law to Get an Idea of the Value of the Case**

Once you know the facts of your case, you can start examining similar cases to find out the value. Do a case law search using Lexis or West Law to see what awards plaintiffs with similar facts and circumstances received. If you are an adjuster, have an attorney do this step for you. Relevant details here are the age of the plaintiff, the employment of the plaintiff, the plaintiff's family (whether the plaintiff is married or has children), any evidence of pre-impact terror that the plaintiff suffered, and any conscious pain and suffering. Find as many cases as you can on point in your jurisdiction. Then make a list of each case with amounts ranging from high to low.

It is also important to evaluate the general likability of the plaintiff or his or her family. This will go a long way with a jury. If the plaintiff is not very likable or sympathetic, it lowers the value of the case. If the plaintiff is someone who the jury will connect with and like, the plaintiff is likely to get a higher award.

### **Consider Structures**

Structures are companies that take a plaintiff's settlement and spread it out over time. Often the plaintiff will receive a larger award if it is spread out over time. Some plaintiffs may be more likely to settle if they can settle on a slightly larger award paid out over time. However, if you use a structure, be sure to use companies with an A+ rating only so that you do not violate any fiduciary obligations.

### **If There Are Several Parties and the Case Is Not Able to Be Quickly Resolved, Consider Getting Everyone Involved**

When you have a case that is not being resolved, consider grabbing the bull by the horns and getting everyone involved to help sort out who is and is not responsible. This is sometimes necessary in a personal injury case with multiple deaths. In that case, consider doing the following: Identify every potential party.

1. Put all potential parties on notice of the accident and have them preserve their relevant file information or risk spoliation.
2. Notify them of the ability to inspect the vehicles before they are disposed of.
3. If you need to examine one or both of the vehicles before they are released by the police, bring a motion and get them all involved.
4. Attempt to get all potential parties to the mediation.
5. Remember, in the catastrophic scenario, they, too, are looking for a win-win scenario.

The more parties are invested, the more individuals will help bring light to the situation and contribute to resolving the case. Getting all of the parties involved also allows you to have a better chance of settling because the plaintiff does not need to look solely to your client for compensation.

### **Mediation**

Mediation can be a very effective tool for resolving a case relatively early. Generally, mediation does not occur until all the facts are clear and some discovery has occurred. So while it may not happen "within days," mediation is an effective tool for a relatively quick settlement.

### **Choosing the Right Mediator**

Choose a neutral party that both sides are comfortable with. If you can find someone with a defense background, that is always ideal. However, it is most important to have someone who listens to both sides, knows and understands insurance coverage issues, and is fair. If you have never done mediation, or do not know the local mediators, talk to other attorneys and find out who might be a good mediator for your case. Then suggest those names to the plaintiff. Also, find out who you do not want mediating your case.

### **Know Your Case, and Perform the Research as to Its Value**

Before you go to mediation, make sure that you have a solid understanding of what the high, low, and average values are for the case at hand. Differentiate the high-value cases and find reasons that the low-value cases are more akin to your case. This

research will pay off in mediation when you go back and forth with the other side on what the case is worth.

**Know Where the Money Will Come from (Can We Get Anything from the Potential Third Parties?)**

Know which defendants will have to and be able to pay out. Sometimes you can even have mediation with multiple defendants. The more defendants you have involved in mediation, the better. It will decrease the likelihood that you will pay a substantial amount because you will be more likely to share the costs. Again, have a structure company run different scenarios on the value of the case.

If the facts are relatively clear, suggest mediating before discovery is complete. While this is somewhat unconventional, it can help bring resolution early on because a mediator can help speed up the negotiation process. Having a neutral third party can help the plaintiff feel more comfortable coming to an agreement. Of course, what constitutes “early” depends on the facts of your case. Do not be afraid to suggest mediation to the plaintiff and other defendants if you think that you have all of the facts that you need. The plaintiff providing a demand may be a sign that your case is ripe for mediation.

In preparing for mediation, always prepare a thorough brief. It may be a good idea to have one binder that is for the mediator’s eyes only, with information that you do not want to disclose to the other side, and one that the plaintiff can see. This brief should include the relevant facts, law, similar cases, relevant jury verdicts and settlements, and an analysis section stating why your case is worth what you think it is worth.

**Conclusion**

Resolving a case early can be beneficial to all of the parties involved. However, one formula does not work in every case. You must tailor your decisions about how to move forward to each individual claim. Know the facts of your case inside and out to make the best possible decisions for your client. 