

# **HOW TO NEGOTIATE THE BEST DEAL FOR YOUR CLIENT**

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## **A. FAQs**

1. Do I start the conversation about settlement or does that appear too eager?
2. When do I start that conversation?
3. Should the demand be in writing or verbal at first?
4. Should I set a time limit to the demand?
5. How do I respond to:
  - a. “We just see the case differently than you do.”
  - b. “That demand will just alienate my client, the insurance company. You should bring it down into a reasonable range.”
  - c. “Where are you going with this demand?”
  - d. “We will never pay \$X”.

Silence, no response after the time limit in the demand expires.

6. Should I suggest that we split the difference between where they are and where we are?
7. Do I present everything in the demand letter?

## **B. The Basics**

1. For every strong point, take discovery, preserve testimony, retain the experts, etc. Take action to be able to put on that evidence at trial. Know thy case.
2. For every weak point, address it through discovery with the other side, through your client, through outside investigation, through research. Do your “follow ups”.
3. Demand letters. Describe the case with the actions and conduct of the Defense first. Rule of primacy. Describe the choices of the Defendant. Describe what the Def did in response to prior similar incidents. Describe what def. did after this incident. (Any different?).
4. Go for the jugular. Repeat the weakness of the Defendant in every communication about the case, including in emails even if it is only in the subject line. Yes, be the principle whiner. But know what the Defendant’s weaknesses are.
5. In demand letter and at mediation, address the factors you know that the defense, and probably the jury by the end of trial, will look for. Surgery. Medical expenses. Other economic damages. Prior problems/complaints/injuries/accidents. Impact. Plaintiff is a good person/witness (or a liar); Defense witnesses are good people/witnesses or liars.
6. Take into account whether your client wants to settle right now (at an early stage of the litigation) or will go the distance. The plaintiff with resolve goes to and does well in trial. The plaintiff with stubbornness does not.
7. Choose your initial demand number wisely. After that, look 3 or more steps ahead. Will the defense ever just “split the difference”?
8. Supply an explanation as to why the client cannot go close to the number they are offering.
9. Supply an explanation as to why this is not a windfall for the client. “My client keeps telling me that this is for the rest of her life. What do I say to that?”.
10. Get the defense arguments and ammunition in an objective way. “Tell me why that is”. “Give me the surveillance now and I will pass it along to my client.” But then tell them why it doesn’t matter.
11. Admit a weakness. Tell them and that is why we are not demanding ten times more.
12. Act enthusiastic about your case.
13. Act stoic about whether you settle.
14. Don’t be afraid to start and to continue the conversation about settlement.

15. You can be friendly to the other side but don't be a clown. Be as serious as a heart attack when you need to be and when talking about the case. OK, "be yourself" if you have to be.
16. Keep the heat on. Keep setting and taking depositions and sending out other discovery during the negotiation process, but prepare and do it well to score points and prepare the case.
17. Don't move too fast and why I yell at the TV when people negotiate with Rick Harrison on Pawn Stars. There is always time to go down. Once you go down, you can't go back up, with some exceptions.
18. Publicity. Do it or don't do it.
19. Words matter. Do say: "Here is our demand." Don't say: "Would you pay \$X".
20. The demand letter. What do the Defendants and insurance companies look for and when do they look for it?
  - a. Date of incident.
  - b. Names of parties.
  - c. Names of the insureds.
  - d. Age, height, weight, education, and occupation of the Plaintiff.
  - e. Liability.
  - f. Damages. Economic and non economic.
21. Timing is everything. Give them time to evaluate. The one thing insurance companies can't react to: surprises