

**U.S. ARBITRATION & MEDIATION
of MINNESOTA, INC.**

PREPARING FOR MEDIATION/ Claims Representatives

1. Review your files the day before the mediation.
2. Fully review your case as follows:
 - a. Identify those aspects of the claim that you believe would diminish the claimant's high evaluation, or would enable a jury to make a determination in your favor— liability, jurisdiction, injuries, past medical records, wage loss, occupation, missed work, medical determinations of the extent of the injuries-- on the outcome of the case if it goes to trial.
 - b. Identify issues of the case that could have favorable result for plaintiff—liability, jurisdiction, injuries, past medical records, wage loss, occupation, missed work, medical determinations of the extent of the injuries-- on the outcome of the case if it goes to trial.
 - c. Review the results of similar cases that have been tried in the jurisdiction where this case will be tried. Consider how this case is different from those recently tried.
 - d. Identify information over which you have control—cost of proceeding through litigation; offers before suit; your attitude when negotiating with claimant and his/her attorney.
 - e. Identify information over which you do **not** have control—costs of litigation if you send the case to outside counsel; appearance and likeability of the claimant, likelihood of extended medical treatment; Workers' Comp liens.
 - f. Estimate with your supervisor the range of offers that it would take to settle the case after all medical opinions are in.
3. **When speaking with claimant or his/her attorney**, listen to their complaints, comments and observations to try to determine their real interests.
 - a. Fear of what will happen medically in the future.
 - b. Concerns regarding returning to work.
 - c. Ongoing pain.
4. **What are your interests in the outcome of the case.**
 - a. Do you want to take these issues all the way to trial? If so, why?
 - b. What interests have been expressed by the other side (refer to the complaint, settlement demands, correspondence).

- c. Identify any hidden interests or behind-the-scenes motivations of the various parties.
5. **Develop settlement options.**
 - a. If structured settlements are an option, have various structures prepared prior to the mediation so that the claimant can see how a settlement number can grow.
 - b. Identify and list as many options (other than money) as possible, theorizing what you could do to satisfy the interests of the opposing party.
6. **Consider a negotiation strategy.** Be prepared to "test the waters" with the mediator during the negotiation session.
 - a. Identify any demands that are "on the table"--identify the current settlement positions of each party. At each step in the process, identify under what terms, if any, each party has expressed a willingness to settle.
 - b. Do you have any feel for what the other side is willing to do at this time? Speculate about terms under which s/he would be willing to settle the case.
 - c. What are you willing to do if the other side adjusts its demand? Speculate about terms under which you would be willing to settle if you saw reciprocal movement by others.
7. **Remember that it is most helpful to communicate with the plaintiff by looking at that party when speaking to her/him and acknowledging that you have heard their comments.**
 - a. Even when you disagree with her/his position, sit calmly and listen to her/his statements.
 - b. Try to keep the anxiety level and anger level at a minimum. When working with opposing counsel either by phone or during the mediation, refrain from making statements such as "that is impossible" or "our policy does not cover that"; rather, make statements such as "Let me check into that for you and get back to you when I have an answer".

Then meet with them again, and inform them that you have checked into the matter and that unfortunately, the policy does not cover the issues about which the claimant is concerned.

This gives the claimant the feeling that you are working toward negotiation and are sincerely concerned with his/her problem (even if you are not).
 - c. When the opportunity presents itself, thank the person for coming to mediation, acknowledge that the plaintiff has suffered and that you hope that you two can work toward a settlement.
 - d. Refrain from using the "tough" approach. Remember that these people are in "crisis". Your treatment of the claimant and her/his issues can make or impede settlement.