

Mediation Orientation & Ground Rules[©]

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1. * Everything is strictly confidential;
2. * What is said cannot be used in any respect, trial, or any other instance;
3. * Settlement letters, records, shredded;
4. * **Effort is worth it**, good use of resources;
5. * Everyone here prefers the loss, this injury or situation had never happened.

Put yourself in
THEIR
shoes



Your promise ?



- 1)- Participate in *Good Faith*;**
- 2)- With intent to resolve;**
- 3)- To keep an open mind;**

Types of Mediation (ADR)

a)- Courier (or *Transportive*)

b)- Facilitative (or *Mediator*)

c)- Evaluative (or *Hybrid)

* *Evaluative* mostly preferred

A fourth type - ?

d)- Transformative (often use such techniques)



Party driven & mediator supported conversation

* I have facilitated direct exchanges with attorneys with/without parties

Evaluative (hybrid) approach

- ***I do not have a crystal ball, but -***

Years of experience =

- a) **24 years on the bench;**
- b) **Certified Mediator** (NJC/2007);
- c) **Numerous civil trials;**
- d) **Countless mediations & settlement conferences** (Judge:1986-2010; Mediator: 2010 to present)



- **Yes, the Midwest is conservative**



Mediator's Role

- **Neutral** (*I do not advocate for either side)
- **Jury decides facts...**
- **Judge decides law...**(black robe)
- **As a judge I used to say-**



“I have no dog [interest] in this fight”

All legal advice is from your attorney

Jury System

(Jury Verdicts)



MYTH

- Better settle, because jury trials are *like* gambling.
NOT TRUE!
- Such comparisons do a disservice to the juror system.
- Juries most often do a great job, reach the correct result.
- Don't think that the unusual /odd cases reported by the news media are the norm.
- They are often “newsworthy” because they were unusual.

REALITY

Juries do a good job!

- If this were baseball, **batting average of .950 to .975**
- We never said juries were *perfect*.
- Those 12 people do an excellent job hearing the evidence & deciding cases fairly.

No Arm Twisting



- Any settlement/resolution -
Must Be Voluntary
- **No Arm Twisting** (*for many reasons):
 - Public image of the courts;
 - I don't want YOU, in 6 hours, 6 days, 6 months, or 6 years to say that you wish you'd had a jury decide your case... that is your right !
 - IN THE END -

This is your decision

I used to ask my
QU Pre-Law Students =



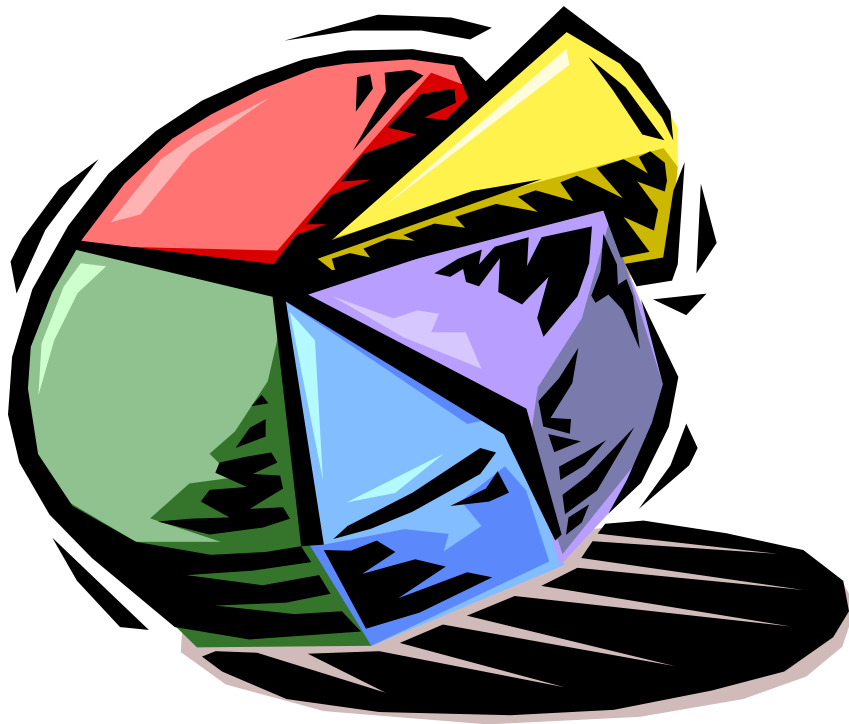
Are Plaintiffs made

“whole”, if they win ?

- i.e., made 100% whole ?

Answer is NO, but why ?

We have the *American Rule*



Client pays...

a) **Court Costs**

(filing fees, experts, depositions, travel, copies, etc.)

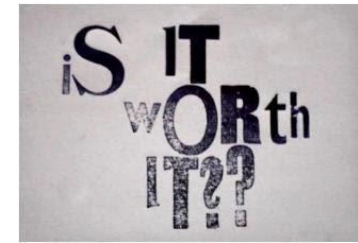
b) **Liens (medical &...)**

c) **Attorney Fees** % or hourly rate

d) **\$ net to Client**

[vs. English Rule, loser pays]

Mediation



Detriments

Any apply in this case?

1. -delay trial ? waste time ?
No, minimal time, swift
2. -get less in settlement?
Yes, possible, BUT look at net
3. -divulge information?
Perry Mason? **No...!**
5. - matter of principle?

I understand & appreciate

Benefits

Avoids =

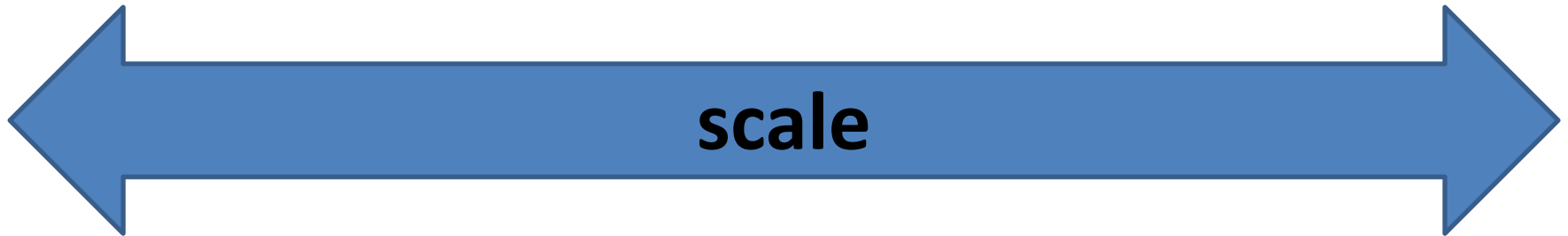
1. - expenses
2. - losing time
3. - delay in a final resolution
4. - ends uncertainty
5. - ends risk, you control your case

LIABILITY - - -



If case tried ten (10) times ?

1 — 2 — 3 — 4 — 5 — 6 — 7 — 8 — 9 — 10xs



DAMAGES - - -



PL Demand / Def Offer / JURY

- Gross #
- Attorneys Fees
Costs (deps/experts)
- Lost Wages
Medical
- Liens

-	<u>high</u>		<u>low</u>	<u>?</u>
-	_____		_____	_____
-	_____		_____	_____
-	_____		_____	_____
-	_____		_____	_____
-	_____		_____	_____

=====

• Net to Plaintiff - ? ? ?



No case is **so good**
it cannot be lost
and
No case is **so bad**
it can't be won

Before we get started is there anything that I have missed, overlooked, misstated ?



**Opportunity for Attorneys to speak.
I seldom ask for opening statements,
unless attorneys request to do so.**