

Mediation Orientation & Ground Rules[©]

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Judge Mark Schuering (Ret.) Civil Mediation schueringmediation.com

judgemark.s@gmail.com

Mobile phone: (217) 257-6662

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

a)- **Courier** (or *Transportive*)

b)- **Facilitative** (or *Mediator*)

c)- **Evaluative** (or **Hybrid*)

** Evaluative often preferred*

A fourth type - ?

d)- **Transformative** (often use such techniques)

Party driven & mediator supported conversation



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 dispute”

All legal advice is from your attorney

Jury System

(Jury Verdicts)



MYTH

- Better settle, because jury trials are *unpredictable*?
This is genuinely not true
- Such statements a disservice to the jury system.
- Juries most often reach the correct result.
- You “hear” about *unusual* cases because they are *news*, rare, aberrations.

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/we 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

Ask my QU American
Judicial Process Students-



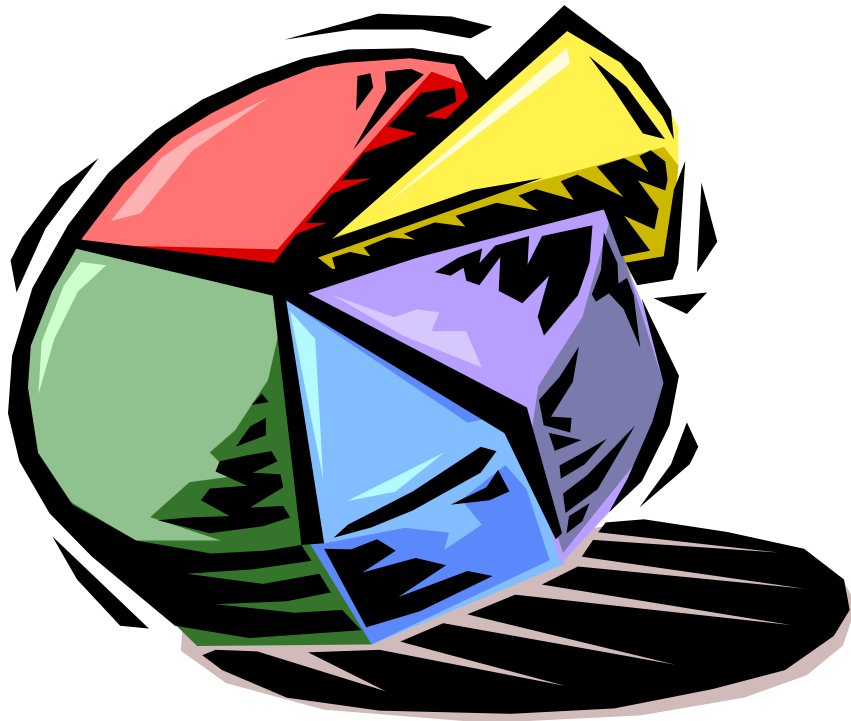
Are Plaintiffs made-

“whole”, if they win ?

- i.e., made 100% whole ?

The answer is NO, but why ?

We have the
American Rule
****Access to courts***



So client pays...

a) Court Costs

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

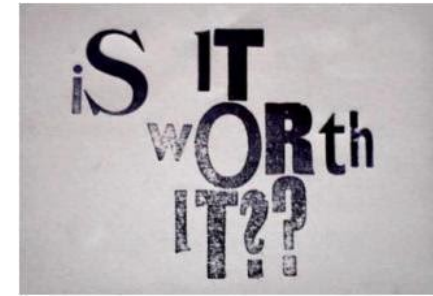
**b) Liens (medical
&...)**

c) Attorney Fees
% or hourly rate

d) \$ net to Client

versus the 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 =

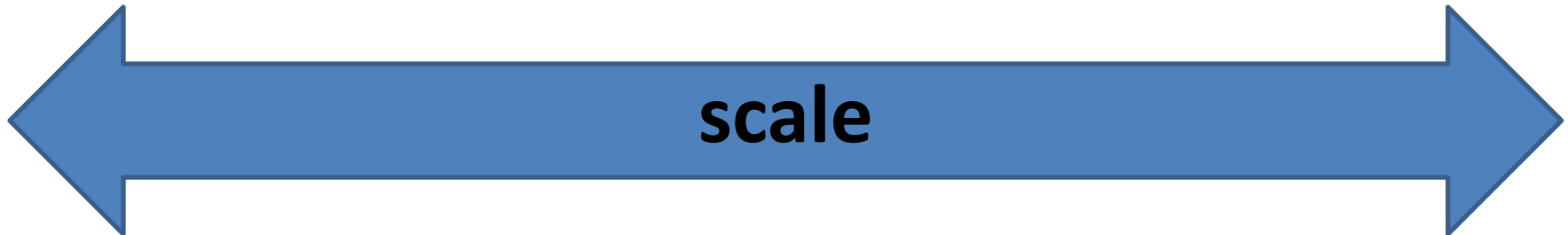
1. - expenses
2. - losing time
3. - delay in a final resolution
4. - ends uncertainty
5. - ends risk, you control your case

LIABILITY - - -



If case tried ten (10) times ?

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



DAMAGES - - -

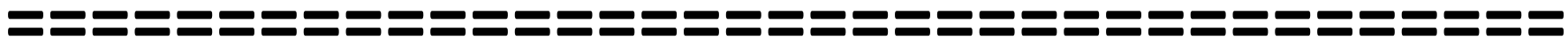


JURY

PL Demand / Def Offer /



● <u>Gross</u> #	- _____	_____	___?___
● Attorneys Fees	- _____	_____	_____
Costs (deps/experts)	- _____	_____	_____
● Lost Wages	- _____	_____	_____
Medical	- _____	_____	_____
● Liens	- _____	_____	_____



● 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 -
...anything overlooked
or clarified?**



**Opportunity for Attorneys to speak.
No opening statements, unless
attorneys special request to do so**