

TABLE OF CONTENTS

| | | |
|-----|--|---|
| I. | INTRODUCTION | 1 |
| A. | THOROUGH TRIAL PREPARATION | |
| | IS KEY TO SUCCESSFUL SETTLEMENT NEGOTIATIONS | 1 |
| B. | TWO GENERAL RULES OF THUMB | 1 |
| C. | WHY SETTLE? | 1 |
| D. | ADAPT YOUR PERSONAL STYLE | |
| | TO THE CLIENT'S CASE AND THE TRIANGLE OF PROOFS | 2 |
| E. | WILLINGNESS TO LITIGATE | 2 |
| II. | HOW TO EVALUATE A CASE - PLAINTIFF'S PERSPECTIVE | 2 |
| A. | WHO GOES FIRST? | 2 |
| B. | WHEN IS THE TIME RIPE? | 2 |
| C. | WHEN IS THE CLIENT'S INFORMED CONSENT OBTAINED? | 3 |
| D. | WHAT ARE THE STAKES? | 4 |
| E. | WHEN TO EXPEND COSTS? | 4 |
| F. | CASE EVALUATION: WEIGHING A STEER IN OKLAHOMA | 5 |
| G. | SEGMENTAL EVALUATION AND PROOF OF DAMAGES | 5 |
| 1. | Plaintiff's testimony | 5 |
| 2. | Lay witnesses | 5 |
| 3. | Expert witnesses | 5 |
| 4. | Documentary evidence | 5 |
| 5. | Demonstrative evidence | 6 |
| 6. | Pleadings | 6 |
| H. | THE METHOD OF UTILIZING THE SEGMENTAL APPROACH | 6 |
| 1. | Pre-impact terror | 6 |
| 2. | Instant of impact-occurrence | 6 |
| 3. | Post impact-unassisted | 6 |
| 4. | Period of peril | 7 |
| 5. | During rescue | 7 |
| 6. | At the scene-first aid | 7 |
| 7. | At the scene-professional aid | 7 |
| 8. | During transportation | 7 |
| 9. | Emergency room care | 8 |
| 10. | Time to first relief | 8 |
| 11. | Differential diagnosis | 8 |
| 12. | Major vs. minor injuries | 8 |
| 13. | Treatment-therapy | 8 |
| 14. | Between therapy treatments | 9 |
| 15. | Patient decision-making | 9 |
| 16. | Informed consent | 9 |
| 17. | Preoperative testing | 9 |
| 18. | Surgery | 9 |
| 19. | Post operative recovery | 9 |

| | | |
|-------------|---|----|
| 20. | Prosthetic frustration. | 9 |
| 21. | Rehabilitation process - physical therapy. | 9 |
| 22. | Rehabilitation process-vocational rehabilitation. | 10 |
| 23. | Return home - duties. | 10 |
| 24. | Recreation - physical disability. | 10 |
| 25. | Return to workplace. | 10 |
| 26. | Future damages. | 10 |
| I. | METHOD OF EVALUATION | 10 |
| 1. | Quantify proof of each element. | 10 |
| 2. | Other factors to consider. | 11 |
| 3. | Comparables. | 11 |
| 4. | Per diem evaluation. | 11 |
| 5. | Verdict potential range. | 11 |
| J. | HOW MUCH TO DEMAND? | 11 |
| K. | WHEN AND WHAT DO YOU TELL THE CLIENT? | 12 |
| L. | WHAT TO REMEMBER? A DOZEN MEANINGFUL DETAILS | 12 |
| 1. | Nature of Liability | 12 |
| 2. | Injury and Resultant Loss | 12 |
| 3. | Economic Versus Human Losses | 12 |
| 4. | Quality of the Litigants | 13 |
| 5. | Quality of Expert Opinion | 13 |
| 6. | Venue Delays and Controls of Verdicts | 13 |
| 7. | Trial Judge | 13 |
| 8. | Attorneys | 13 |
| 9. | Evidential and Legal Questions | 13 |
| 10. | Deflationary or Inflationary Issues | 14 |
| 11. | Practical Considerations | 14 |
| 12. | The \$64,000 Question | 14 |
| III. | SETTLEMENT CONSIDERATIONS FROM INSURANCE COMPANY | |
| | VIEWPOINT | 14 |
| A. | UNDERLYING PRINCIPLES OF NEGOTIATION | 14 |
| 1. | The first proposition is that insurance companies want to settle cases. | 14 |
| 2. | The second proposition is that insurance company representatives generally do not become emotionally involved in their settlement negotiations. | 14 |
| 3. | The third proposition is that the higher up the hierarchical ladder you go at an insurance company, the easier it becomes to achieve a settlement. | 15 |
| 4. | The fourth and most significant proposition is that in settlement negotiations you must deal directly with the person who has the authority to settle your claim. | 15 |
| B. | UNDERSTANDING AND UTILIZING INSURANCE COMPANY FEARS | 15 |
| 1. | Closed Claim Review | 15 |
| 2. | Inadequate Reserves | 15 |
| 3. | Excess Liability | 16 |
| 4. | Bad Faith Pressure Points | 16 |

| | | |
|-----|--|----|
| IV. | SETTLEMENT NEGOTIATIONS | 16 |
| A. | PREPARE FOR TRIAL AND NOT SETTLEMENT | 16 |
| B. | AVOID MISUNDERSTANDINGS | 17 |
| C. | BE PROFESSIONAL | 17 |
| D. | MY PLACE OR YOURS? | 18 |
| E. | SHOULD YOU PLAY OUT YOUR HAND? | 18 |
| F. | NEGOTIATION SKILLS | 18 |
| G. | TEN COMMANDMENTS | 18 |
| H. | ELEVEN GENERAL ORDERS | 19 |
| 1. | Semper Fidelis: Always Be Faithful and Honorable | 19 |
| 2. | Semper Paratus: Always Be Prepared | 19 |
| 3. | Serve No Demand Before Its Time | 19 |
| 4. | Don't Be a Phony | 19 |
| 5. | Loose Lips Sink Ships | 19 |
| 6. | Nothing is "Off the Record" | 19 |
| 7. | Beware of the "Stonewall" | 19 |
| 8. | Corraggio! Be Courageous | 19 |
| 9. | Never Appear in an Unauthorized Position | 20 |
| 10. | Know Your Adversary | 20 |
| 11. | Be Decisive | 20 |
| V. | USING AND ATTACKING THE ANNUITIST | 20 |
| A. | THE ADVENT OF THE ANNUITIST | 20 |
| B. | WHAT IS AN ANNUITIST? | 20 |
| C. | ANNUITISTS FOR THE DEFENSE | 20 |
| 1. | Motion In Limine | 20 |
| a. | Lack of Qualifications. | 21 |
| b. | Facts Not in Evidence. | 21 |
| c. | Irrelevance. | 21 |
| d. | Confusing. | 21 |
| e. | Statutory Discount (required in some states). | 21 |
| 2. | Cross-Examination | 21 |
| a. | Taxability. | 21 |
| b. | Reversionary. | 22 |
| c. | Rated Age. 20 | |
| d. | Guarantee Funds. | 22 |
| e. | Time Frame of Price Quoted. | 22 |
| f. | Risk Tolerance. | 22 |
| D. | ANNUITIST FOR THE PLAINTIFF | 22 |
| 1. | When to Consider Using an Annuitist | 22 |
| 2. | Effective Utilization of an Annuitist's Assistance | 22 |
| a. | When Determining Settlement Value. | 22 |
| b. | Composing a Demand Letter in Terms of a Structured Settlement. | 22 |
| c. | Negotiating a Settlement. | 22 |

| | | |
|-------------------------------|---|----|
| d. | Establishing a Meaningful Present Value of Future Damages at Trial. | 23 |
| e. | Refuting the Defense's Annuitist's Testimony. | 23 |
| f. | Cross-Examination Assistance. | 23 |
| 3. | Qualifications Helpful in Assisting Plaintiff | 23 |
| a. | Market Knowledge. | 23 |
| b. | Actuarial Knowledge. | 23 |
| c. | Legal Knowledge. | 23 |
| d. | Research Ability. | 23 |
| e. | Identify with Plaintiff and His Needs. | 23 |
| E. | PITFALLS TO AVOID | 23 |
| 1. | Confusing the Annuitist's and the Economist's Jobs | 23 |
| 2. | Rated Age vs. Maximum Length Guaranteed Payments | 23 |
| 3. | Structured Settlement Annuities vs. Post Judgment Annuities | 24 |
| 4. | Confusion of Assumptions | 24 |
| F. | CONCLUSIONS | 24 |
| VI. | PREPARING A SETTLEMENT DEMAND | 24 |
| A. | INTRODUCTION | 25 |
| B. | SYNOPSIS OF FACTS | 25 |
| C. | DAMAGES | 26 |
| D. | EVALUATION AND DEMAND | 26 |
| E. | THE APPENDIX | 26 |
| F. | VIDEOTAPING A SETTLEMENT PRESENTATION | 26 |
| VII. | CONCLUSION | 27 |
| APPENDIX | | 28 |
| SAMPLE SETTLEMENT DEMAND | | 28 |
| ENDNOTES | | 42 |