

## SUCCESSFUL MEDIATION TACTICS

By W. David Falcon, Jr.

### I. PRIOR TO MEDIATION

- A. Manage client expectations: begins from initial intake.  
*Does client have realistic expectations? What can be done to bring client's expectations in line with the actual value of the case? Does client want their day in court? Do they need to hear the value of their case from a mediator?*
- B. Stay informed regarding client's treatment, work status  
*What type of treatment will client require in the future? Will he be able to return to his preinjury duties? Will the treating physician prepare an estimate of future medical expenses? If not, does the case warrant a medical cost analysis?*
- C. Get case to an attorney  
*Does the carrier believe the case is ripe for settlement? Will referring the case to the docket bring it to the carrier's attention? Is the case stagnant such that referral to an attorney would move it along?*

### II. MAKING THE DEMAND

- A. Be realistic-Not every case is a 500 week case. What are the factors that could diminish the value of your claim?
- B. Learn and understand present value-Carriers and the Commission use PV. Be able to calculate and explain PV to your client.
- C. Don't be blindsided by Social Security/Medicare-Routinely inquire about SSDI and Medicare; advise carrier of status at demand time.
- D. Indemnity only settlements-More and more carriers are settling cases with open medicals. Find out how much carrier is willing to offer to settle only the wage loss and permanency.
- E. Specify what medical treatment will be covered-Are there disputed medical charges? Who is responsible for paying these? Which medical providers are authorized?
- F. Lien waiver/reduction-What is the value of the third party claim? Is carrier devaluing the comp case because of the probability of recovery in the third party case?

### III. NEGOTIATION

- A. "Blanket" authority vs. specific authority: *Do what you think is best vs. I'll take no less than \$25,000*
- B. Resist the urge to be arrogant or overconfident when negotiating: *Always negotiate in good faith. How does attacking the other side's position help you reach an amicable resolution?*
- C. Never overstep your authority: offer to make a recommendation: *I don't have authority to accept that but I'm willing to recommend it to my client.*

#### IV. CLOSING THE DEAL

- A. Resignation: *When does the resignation become effective. If immediate, is an advance appropriate to offset lost income? What are the terms of the resignation?*
- B. General or "blanket" releases: *What rights are being waived by the claimant? What additional consideration is being given?*
- C. Settlement advances: *How much is being advanced? When will client receive the advance?*
- D. Bifurcated settlements: *Allocate a portion of the proceeds to the medical settlement so that client has an incentive to resolve the second portion of the claim.*
- E. Open/extended medical coverage: *How long will medicals remain open? What body parts will be covered? Which providers will be authorized?*