TOP FIVE SECRETS

For Resolving Your Client’s Case At Full Value In Claims Stage

Call, email, or text me if you want to chat about any of these tips.

1.) Help your client by helping the adjusters see the value early. If you have a case that is likely to be worth the policy limits, communicate the severity of your client’s injury as soon as you can. Send them records and bills that support your evaluation as soon as you receive them. Adjusters need to check off all their boxes before than can offer the limits. They are humans too, not always unreasonable monsters that some in plaintiff’s bar make them out to be.

- Establishing value early also helps anchor the value of the case.

-Power of Anchoring: Dan Ariely and other behavioral economists have proven anchoring to be effective in how we perceive the value of things that we have no reference point for. Most of us are familiar with anchoring at trial, but I believe it applies just as importantly in pre-litigation.

- **Anchoring:** the tendency for a person to rely on the first piece of information they receive when making decisions about worth, particularly when what is being evaluated is not readily known.

- Personal injury cases are unique financial liabilities for adjusters that are not readily known. Every case is unique as a snowflake. Many different aspects to each case that make it different. Take advantage of cognitive bias to steer case to higher valuation.

- Adjusters are setting their reserves as new cases come in. It is very difficult to get an insurance company to change the original evaluation during prelitigation.
-I believe the initial valuation leads some lawyers to have to litigate or accept lesser value on certain cases while other lawyer can obtain policy limit settlements in pre-litigation on similar facts.

-Some plaintiff lawyer groups say not to send a lien letter in until you are able to fully describe your client’s injuries. They do this because they like the first communication with the adjuster to set a strong anchor.

-Practically, the most pressing concern on most client’s minds when they first call us is their property damage. Even if they have major injuries, most people care chiefly about how long it will take to get damage fixed or how to start the process of getting a new car. Many times, obtaining a lawyer to get a bodily injury recovery is not even on their radar.

My Suggestion: Earn client’s trust and establish value by setting up claim quickly. Have language in your letter of representation that allows insurance company to contact your client to discuss resolution of property damage only. Put language in lien letter stating you are unsure of severity of injury but will follow up with letter as soon you as have investigated it further. This buys you time to find out potential long-term effects of crash, which are often not known for weeks or months.

-Then send letter to insurance company describing injuries when you know AS SOON AS YOU KNOW. Describe your client as a human and state how this impacted their life. Make it brief. Don’t write a book. But take the time to say why this specific injury is hurting this specific person based on the general specifics of that person’s life, role, and occupation.

-BACK UP EVERYTHING YOU SAY with records as soon as you can.
2.) **Understand the dynamics of negotiation as it relates to your client’s case.**

-I am frustrated when I hear lawyers who occasionally dabble in PI tell me how they settle cases. They often order medical records with no intention of actually reading them. They lazily ask for an astronomical number in the original demand without seeing what the policy limits are (or even asking for it). They will then counter back and forth once or twice with the adjuster and settle for whatever that number is.

-This incorrectly leads to reliance on the amount of the medical bills as the driver of the case value.

-This is so obvious that I shouldn’t have to say it, but you must actually read your client’s medical records. Using ADOBE or other like software makes this very easy these days. Scan the text using OCR. Do a search for the relevant terms. Find the differential diagnosis. See why doctors settled on what was ultimately diagnosed.

**You don’t need to be a medical expert, but you need to be an expert on your client’s injury.**

-When you are an expert in your client’s injury, you should know how this crash took value from your client’s life. If you are able to see this, you will not be trapped by the amount of specials or stuck with the insurance company’s Colossus or other injury code-based case evaluation algorithms.

-Argue using your own well-defined understanding of your client’s loss. This comes from putting in the work of reading records and taking time to know your client. **There are no shortcuts. There are no hacks. You must put in the time.**

-You don’t need $30,000 in medical bills to settle a case for $100,000. Conversely, your case isn’t worth $100,000 because you have $30,000 in medical bills are owed.
-Your case isn’t worth “2.5 times the specials” if your client went to a lien provider that charges significantly higher than the acceptable billing rates for your area.

3.) If you ask to speak to an adjuster’s supervisor to get a better pre-lit evaluation, have an outstanding reason for it.

-My dad was not a lawyer. He would have been a heck of a lawyer. He could talk to anyone. He knew how to relate to people, how to find common ground, and when it came time to make his ask, have that ask appear reasonable. This is a skill that must be combined with persistence. If you have these two skills, you can successfully raise your case up the organizational totem pole.

-You must keep in mind that these are people. They make mistakes like the rest of us and might be sensitive to it. Also consider that supervisors generally do not want to overstep the boundaries of their employees and generally prefer to give deference to the lower level adjuster’s decisions. You will not go anywhere by being combative or bombastic. Overly aggressive lawyers that do this lose out in the long run.

-If you want a better offer in pre-litigation, play the talk to supervisor card sparingly. Only use it when you know that a fact has been overlooked by the current adjuster and are reasonably certainly this overlooked fact will result in a higher evaluation than what is on the table.

-This strategy can avoid the time and expense of a lawsuit when you have a good case with a lazy adjuster. Many adjusters are overworked and get defensive if you imply they missed something. A supervisor can change all of that for you, but you have to be correct when you do it. Otherwise you will make the process unnecessarily personal. You aren’t trying to get someone fired, you are trying to get fair offer for your client as quickly as your skills allow.
4.) Treat all medical providers as lienholders. Pay all their pro rata share. This typically saves a good amount of money for clients.

*This one does not apply to every case! It can only be used in certain cases when the financials of the case allow it. You may only do this if you have your client’s permission and after you have gone over the risks/rewards of the strategy. Do not ever attempt to lessen the amount that would go to a child support lien or a federal subrogation interest from ERISA health plan using this method.

-I like to treat all medical providers as lienholders if the case allows for it on smaller, less complex cases. It can work out well to maximize the net total your client will receive, even when the gross settlement amount isn’t particularly high.

-Calculate the non-lien holder’s interest using the Missouri lien law and pay each a pro rata percentage of the amount available to lienholders.

-Use this strategy when you can pay all medical providers a fair amount (>65% of their total bill, generally), while saving your client money. Everyone can win here. You will have happier clients that don’t have to worry about paying any medical bills with the final check you give them.

-I have not had an issue with this strategy yet. Lienholders are happy to see a higher amount of their bill getting paid. The non-lien medical providers are happy to actually get paid. From the non-lien medical provider perspective, it is better to get something from the settlement, even if not payment in full, rather than pursue the patient individually.

-I inform the client about the pros and cons of this before I do it. I make certain they are aware of the risks.

-When reducing any type of medical bills, it is easier to ask forgiveness than to ask for permission. But don’t be reckless.
-**Here’s how to do it:** Send each non-lien holder a check with a letter explaining that the proffered payment is full and final settlement. Include a check that has the account number and full and final settlement written in the memo line. Advise that by cashing this check, they are accepting full and final payment on a disputed account. If that provider cashes and takes no action for 90 days, they can’t come after your client for balance.

-This is an effective accord and satisfaction under Missouri law. Research the law and know it well before attempting to use.

-My experience is that medical providers will accept 50-60% of their bill as full and final the vast majority of the time. I would not use this method if you are only able to pay 15% of the bill unless you 1.) only have lienholders, and 2.) are fully backed up by the Missouri lien law math.

5. Help Your Client Find Treatment

-Your client may not know what doctor is best for their type of injury. Many smaller car accident cases involve the use of chiropractors or physical therapists. You should be able to help your client find one that is close to their home or work. Close proximity will allow them to make appointments without hassle, which becomes important if many appointments are necessary.

-Utilize medical providers that treat on lien basis if your client does not have health insurance. Find out what type of doctor your client may need and figure out where to send them. If you do not know a doctor that treats on a lien for the type of injury you need, ask around. Odds are great that another lawyer has encountered this same problem. Check with MATA. Ask me. Ask Gary.

-If your client really needs treatment, has no health insurance, and no doctors treat on a lien: Use Oasis Legal Finance or similar type company to get medical treatment advance funding. They will pay the doctor costs up front, and will put a
lien on the case, essentially serving as a middleman. This can be useful for neurologists, i.e.

-I am always hesitant to advise clients to use funding, but on certain cases it can really be a difference maker. It helps your client get the treatment that they need and helps build your case.