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Matt Williams on settling the monster case

Some trial lawyers live in a "Jurassic Park" where handling giant beasts is their daily work. Trial lawyer Matt Williams of Salvi, Schostok & Pritchard P.C. is one of them.

Recently, he shared four tips with me on settling the monster case.

First, make sure you have leverage. Obviously, if they think your T. rex is an iguana, not much is going to happen before trial.

"You have to establish that there's significant risk to the defense if they go to trial," Matt said.

It starts with trying to get admissions from the defendants and experts using important policies and procedures, medication package inserts, literature and Joint Commission standards.

Get guidance from your consultants. Try to create inconsistencies with the defendants and experts. Value gets maximized when the defendant and defense experts are not all on the same page, he noted.

"That can be troubling to a jury," Matt said. "Because if they can't agree on their theory, then it's less likely that the jury is going to rely on one or the other."

Timing is important. Unless it's a slam dunk, a lot has to happen before a case with high value is in a position to be mediated or negotiated. Usually, both sides need to have made their expert disclosures.

Before then, you're likely to hear, "Well, they have this doctor who is going to say this and another who's going to say that."

Leverage doesn't yet exist, because their position is based on something you can't prove or disprove. Once you have deposed them, then you know. Otherwise you may just have to wait and see.

Some successful plaintiff attorneys decline to depose defense experts, thinking depositions primarily educate experts. Matt finds value in discovery, especially video depositions.

For a jury to actually see a prior deposition when the witness is on the stand can be very compelling.

Look for concessions and inconsistencies, he advises, but don't

necessarily confront the defense expert when you spot an error or inconsistent statement.

"You don't have to show all your cards," he said.

For example, Matt described one case where the defense expert got a small but crucial detail plain wrong.

"I just let it go," he said, imagining how the defense might either try to correct it at trial or not spot the inconsistency. "Either way, the expert loses some credibility."

Getting closer to trial may motivate hospitals and doctors to look more closely at the case. The real decision-makers are more likely to get involved and become more aggressive in trying to resolve the case.

Matt's second tip: Determine if the defendant is motivated to settle. Generally, he'll have a candid discussion with the defense attorney. Matt does not require an initial offer to come to the table. He'll mediate if he thinks the defense is there in good faith with full authority and there is a reasonable chance the case could resolve for a fair number.

While he has walked out of a mediation early, he generally advises flexibility and openness to a mediator's suggestions.

His third tip was to prepare a well-crafted demand letter. In many cases, the decision-makers have only the information the defense attorney provides them. The lawyers walk a fine line between accurately assessing risk and looking defensive.

No one goes into Jurassic Park with a guide they think is afraid.

"The demand letter allows the plaintiff's attorney to communicate directly with those same decision-makers and to influence how they evaluate the case."

This is the plaintiff's shot to persuade them the danger is real.

The figure demanded is key.

"I look at my demand as being a number that isn't going to stifle negotiations but isn't too low that they think, 'Oh, wow, we were expecting a lot more, maybe we can get it done for X instead of Y,'" he said.

The number comes from prior cases, prior verdicts and settle-

MEDIATION CIRCUS

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ments, whether the jury is going to connect with your client, the likelihood of winning, past and future economic damages, permanency, degree of disability, pain and suffering and life expectancy.

What is the trial testimony going to be? On its best day, what is the case worth?

Finally, and crucially, Matt advised taking the time to educate your client about fair settlement ranges. Matt takes very seriously the ethical obligation not to settle the case without the express authority and approval of the client.

This can be a hard conversation. There's no purpose in getting a client's hopes up if it's not leading to anything. But, as he said, "I think it's our job to tell them, is it full and fair compensation? And if it's not, you should tell them that, right?"

Usually clients leave it to Matt.

However, sometimes they say, "Well, I read on your website and I saw that you settled the case for this amount and I think my case is worth much more than that."

Sometimes, he'll explain they may have settled a case well below a fortunate verdict had a reasonable offer been made. Sometimes he'll show them cases that resulted in similar verdicts.

Structured settlements also help plaintiffs see the real value of a substantial offer. A lot depends on whether he thinks the offer is

final. If he does, he explains the risks.

"People don't want to be told what to do," he said. "They want to talk about options and come up with their own game plan."

That can be one of the challenges. His job is not just to prosecute the case but also to help clients understand the risks of settling or not. "I can't think of any cases where my clients were so unreasonable during negotiations that it resulted in the case going to trial," he said.

What about the reverse: The client wants the money, but Matt doesn't think it's enough? A guest new to Jurassic Park likely thinks the first dinosaur looks enormous. How do you explain there's a bigger one coming?

Matt advised something along the lines of "We don't believe this is a fair and reasonable offer. Yes, it's a lot of money. However, we think that we'll do better at trial. There's no guarantee, but we think that if we do our job during trial, either that offer will be increased during trial or the jury will find in our favor for more."

Going deeper into the park is not for everyone.

Some say, "Matt, I understand what you're saying, I appreciate your assessment of the value. However, this is going to make a big difference in our lives. I don't want to put it at risk." For a passionate lawyer dedicated to prosecuting a case and having put their heart and soul into it, this can be a moment of truth. Some would press hard. Not every lawyer gets many trips to Jurassic Park. Many have never seen a dinosaur. It's very tough to give up when you're so close.

But the park is where Matt lives. There's usually another monster coming along.

So if the client wants the offer, he said, "That's perfectly fine with me because I understand why they would want to do that. They want it to be done. It will provide some degree of financial security. And it's over. There's a lot of value to that. I wouldn't begrudge them or be angry. There are no guarantees in this business."