5 Tips for Plaintiff Attorneys to Move Their Case Towards a Quicker Resolution

By Robert Glassman and Jonathan Davidi

As plaintiff lawyers, we all know the three things defense lawyers absolutely love to do: delay, delay, and delay. Indeed, they have all the incentive in the world to prolong the case and drag things out. The more time they spend spinning their wheels, the more hours they can bill to their clients. As Brian Panish likes to say, "they get paid per hour, we get paid perhaps." For us, on the other hand, we owe it to our clients to be not only zealous advocates but also to be as efficient as we can in moving their case towards a successful outcome through settlement or trial. Here are five tips we have found to be highly effective in achieving quicker results for our clients. Although each tip may not apply to every case, we have found that when applied to the right case, these tips, either alone or in conjunction with each other, will certainly move the case along and add pressure to the defense.

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1. Do not continue your trial date unless you absolutely must

Deadlines spur action. The one thing that will motivate the defense and the adjuster to settle a case is a pending trial date. So, when your case gets set for trial, take that date seriously. With courts generally setting trial dates 18-24 months out, you have plenty of time to conduct necessary discovery and prepare the case for trial.

Nothing will increase settlement offers faster than a trial date. Continuing your trial may show the defense that you are not serious about taking the case to trial, and could ultimately affect the total value of your case. In general, in the 30 or so days before trial, defense counsel starts to engage more in settlement discussions. Around the Final Status Conference, they tend to get more aggressive about settling the case. And in the days leading up to trial, the settlement offers will typically become more reasonable.

So, how can we initiate those settlement discussions as trial gets closer. As we all know, some cases just will not settle until the case gets closer to trial. In cases like these, it's even more important to maintain pressure and continue your efforts to maximize the result. As we mentioned above, as your trial date approaches, do not continue it unless you must. Even if the defense lawyers try to butter you up. We've all heard them say "why don't we push trial out a couple of months and see if we can get this case done?" Well, Mr. Defense Lawyer, the only way this case is going to get done is if there is a trial date around the corner. So, with trial approaching, make the first move so that the defense knows you are serious about keeping the trial as scheduled and taking the case all the way. The simplest way to do this it to send a meet and confer letter or email regarding motions in limine. Once you send that correspondence, the case seemingly automatically shifts from dead-end litigation to trial preparation. You may even see the defense firm bring on a new lawyer – the one who is actually going to try the case and has real authority to get things done.

2. Send discovery, but save some for later

As a general practice, we like to send our form interrogatories and requests for production of documents right away, as in, within 30 days of serving the defendant. These sets of discovery are fairly standard, and we'll often use the same set for a typical auto accident, slip and fall, or dog bite case. With more nuanced cases, carve out an hour or two of time to specially draft requests for production of documents for key documents that will help you take the defendant's deposition. Right off the bat, we've shown the defense that we're serious about this case and we are aggressively going to push towards trial.

While it's nice to sprint out of the gate, it's a good idea to save some discovery for a time when you feel like your case is lagging. When we feel like we are at a time when nothing is happening on the case,

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the depositions have already been taken, medical records have been subpoenaed, the plaintiff has been examined, and the defense is just sitting on their hands, that's when we will send out a set of requests for admissions. By this point in litigation, the defense cannot, in good faith, say that they do not have enough information to admit or deny the requests. And by serving these requests, the case is no longer in a lull. There is now something that the defense lawyer has to do, something he has to talk to the adjuster about. You want your case to be top of mind, as much as possible, for both the defense lawyer and adjuster. *[Editor's Note: A particularly useful way to maximize the utility of requests for admission is to use them to obtain admissions as to the genuineness of documents. If the defense will admit that they are genuine, it makes trial more efficient; if they won't it alerts you to the fact that you may have an evidentiary fight in your future and gives you a chance to prepare to plug that hole in trial.]*

While we're on the topic of discovery, do your best to never ask for a discovery extension, unless it is absolutely necessary. If you don't ask for extensions, it is much more likely that the defense won't either. Voila, the parties have exchanged written discovery and the case is moving along. Sometimes, we will even respond to discovery before the 30-day deadline to do so. Just because the code allows 30 days, doesn't mean you need to take all 30.

And, if you still feel like things are in a lull, consider deposing a treating doctor or two, if the case warrants it. This will help show how significant your client's damages really are. The treating doctor is going to be more unbiased (in the eyes of a juror, and maybe an adjuster) than your retained expert. So, showing the adjuster that your client's actual doctors are going to say that the client's injuries and treatment are reasonable, necessary, and related to the subject incident can get more money on the table for you. After a good treating doctor deposition, feel free to make another demand.

3. Make a demand, and make your client available

Early on in litigation, often right when the defense attorney files an answer, we send a demand letter. It doesn't have to be anything fancy, and can be as simple as an email explaining the accident, injuries, and medical specials. We'll add a Dropbox link with our client's medical records and give them 30 days to respond. To get ahead of the inevitable "it's too early to evaluate" line, we'll write in the demand that we will waive statutory notice and they can take our client's deposition and medical exam whenever they want.

Calling opposing counsel about your demand will go a long way towards getting things resolved. Introduce yourself. Say hello. See if you can casually get a gauge of what the defense is thinking on this case. Of course, take everything with a grain of salt. They will almost never give you their unfiltered thoughts, but it is always a good idea to see if you can get a feel for how intensely litigated your case will need to be. Are they going to concede liability? Do they accept responsibility for one injury but not the other? Getting informal answers to these questions may help shape your strategy moving forward. If you get the impression that opposing counsel is motivated to get the case done but is having trouble with client control, ask the lawyer what they need from you to help get the case done while the demand is pending. Maybe it's a set of discovery, or a specific deposition. Whatever it is, identifying that need and acting quickly on it will put you in a better position to get your case resolved. Of course, developing a good relationship with opposing counsel may also help you get more money on the case. If they like you and your client, they might fight a little harder to squeeze more out of the adjuster to get the case done.

Does this quick, early, and time-limited demand always resolve the case within the first 30 days? No. But, it makes things move a lot faster than they would if you didn't apply this type of pressure. And on cases that really should have settled for the policy limits pre-litigation, a lot of times you'll notice that the defense attorney will try to get it done for you before litigation really begins, and will be appreciative of your early demand. On their end, it could have been a misevaluation by the pre-litigation adjuster, and the new litigation adjuster and defense attorney are on the same page about getting it done, but need a demand to settle the case.

And, if your demand does not get the case done, at the very least it is another

piece of evidence you can use in your subsequent bad faith case if you are dealing with a potentially open policy.

4. Move for trial preference

One of the most valuable and under-utilized tools in the Code of Civil Procedure is the ability to get a trial date within 120 days. Under C.C.P. section 36, if a party is over 70 years old or under 14 years old, that party has a right to have their case adjudicated within 120 days. Under subsection (f), only one continuance of 15 days is allowed. Even better, California case law has held that the court has no discretion to delay the trial setting, and the defense's favorite "we won't have enough time to prepare" excuse is insufficient. (See *Vinokur v. Superior Court (Azevedo)* (1988) 198 Cal.App.3d 500, 502-503; *Swaithes v. Superior Court (Hunter)* (1989) 212 Cal. App.3d 1082, 1086.)

We move for preference on almost all of our cases that are eligible for it. It forces the defense's hand into getting all of the information they need and offering up money sooner than they usually would. Again, deadlines spur action. The sooner the trial date, the sooner you will get to real settlement discussions.

5. Propose mediation

This tip may buck conventional wisdom, and on a lot of cases it's probably best not to indicate you want to settle so quickly. But on the right case, proposing mediation early could mean that the case actually gets done faster. For example, in an auto accident spine surgery case with admitted liability and a big commercial policy, that case probably won't settle without at least trying mediation. So, rather than waiting 8 months for the defense to propose mediation, then another 3 months because the mediator you agree to is booked, why not just propose mediation early on? Get a date on calendar 4-6 months out, and the defense will know that they need to get their ducks in a row before the mediation so that they have all relevant information to their adjuster with time to get authority. This will, hopefully, light a flame for the defense to start really digging into the case and completing their evaluation.

Conclusion

Every case is different, and every case will take a different strategy to achieve ultimate resolution. We have all been in situations where a case we thought should settle quickly goes to trial, and a case that we may have expected to take longer to settle, gets resolved quickly. These five tips, used in conjunction with each other, will help you stay on track no matter the case. As the defense will always try to slow things down and get paid "per hour," we need to be diligent, use all the tools in our tool box, and push things forward efficiently and effectively so that our clients can get their justice and move forward with their lives. Remember, for a lot of our clients, this is their first time doing something like this, and litigation is stressful, anxiety inducing, and often uncomfortable. The sooner we close things out, for the right price, the better off we leave our clients, which is always our ultimate goal. ■