

# Resolving Cases Faster for Maximum Value

BY JULIA ARMENDARIZ AND ANDREW OWEN

Our primary goal as attorneys is obtaining full and fair recovery for our clients. Achieving such a recovery, however, is difficult with long, drawn-out litigation where deadlines are ever-changing because of needless motion practice, expert disputes or other discovery issues that slow our cases down. Of course, certain things that are beyond our control will necessitate extra time. But the more we pay attention to our case and aggressively work it up, the more we can minimize delay, push the case forward and achieve the best result for our clients. Efficiency should never be confused with laziness or settling for less. Just the opposite. The better we are at moving the case along and standing as firm as possible on trial deadlines, the more pressure is on defendants to pay the highest value for your client's case. As defendants are usually counting on a delay, a looming (and unmovable) trial date will always serve as the best leverage in getting defendants to pay maximum value.

Below are a few practical tips you can employ in your practice to achieve these goals in your cases:

### Written Discovery:

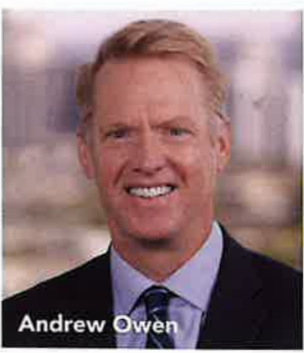
- Avoid copy and paste discovery. Find out which admissions, documents and answers you need and ask specifically for those. For your document requests,

make these as specific as possible to avoid boilerplate objections or deficient productions that will require you to move to compel thereby resulting in delay. The sooner you can get discovery out, the quicker defendants are forced to take positions on certain issues before they may have a handle on the case. This almost always works out in your favor later in the case.

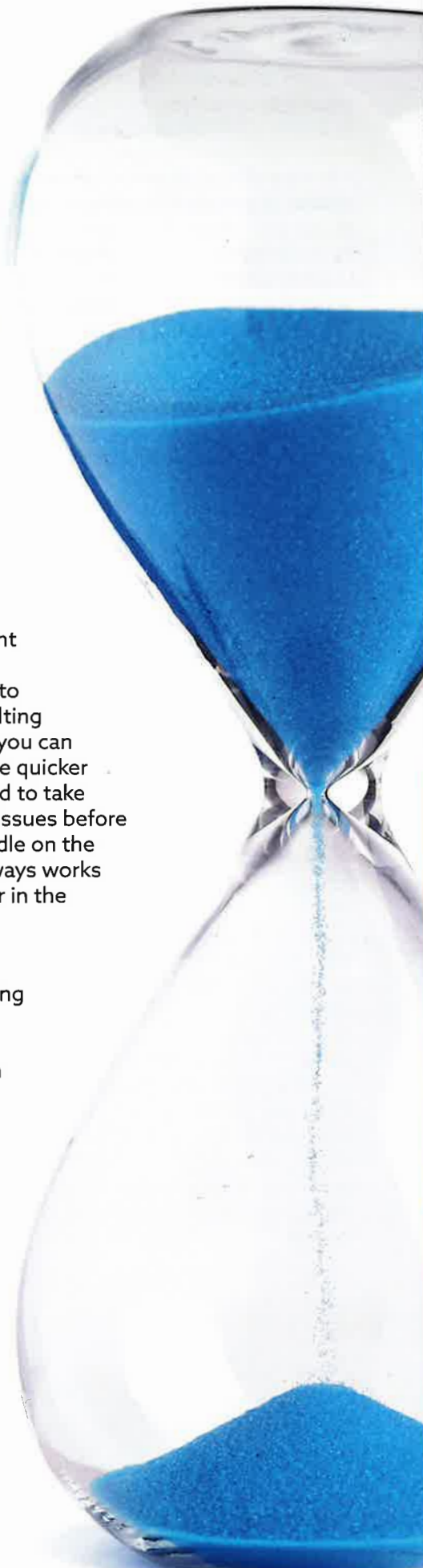
- Serve requests for admissions after taking your key liability depositions. Locking in testimony through depositions, first, followed by key admissions early on will set you up for streamlined litigation and potentially your own motion for summary judgment. Succeeding on a dispositive liability motion prior to trial will be a powerful settlement tool.



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- Avoid meet and confers and motion practice with written discovery where possible (pick your battles), especially when you can get evidence and testimony in real time with depositions.

- Review discovery responses soon after they are served. If a motion to compel is required, move quickly to get your meet and confer on calendar and get the motion filed. Reviewing discovery quickly allows you to identify withheld discovery, new documents you may need to subpoena or new parties that need to be added to this case. This information is critical to move on early to avoid delay.

- Stay current and informed of your client's medical care and continue supplementing your disclosure of medical records to avoid a race to disclose at the end, which invariably creates arguments from defendants that records were not timely disclosed and that the trial should be continued as a result.

#### **Depositions:**

- Conduct party depositions early in the case where possible and always include document requests with the deposition notice. At some point during the deposition, go through your document requests to identify (1) whether the witness even saw the requests, (2) whether such responsive documents even exist, (3) whether they even looked for responsive documents and (4) if such documents do exist, why they refused to produce them at or before the deposition. If there was a failure or refusal to produce responsive documents, meet and confer on the record to save the time and hassle of writing a meet and confer email or letter. For documents that you learn of during the deposition that were not specifically requested, serve a document request or subpoena immediately after the deposition while it is still fresh in your mind.

- Draft a deposition outline. We all like to believe we can take great depositions on the fly, but the reality is a diligent and thoughtful outline will force you to focus on the testimony and evidence that really matter to your case. Clear, concise deposition admissions are powerful and will help you resolve your case. Quoting important admissions or concessions in a mediation brief can add significant value to your case.

- If the case value warrants it, get drafts of medical illustrations done early. Then, depose treating doctors and surgeons and show them these illustrations. This allows treaters to help lay the foundation for your experts and the illustrations at trial.

#### **Updates to Opposing Counsel (Help them help themselves):**

- Defense counsel is busy. Send them regular letters and emails when something significant in the case has happened. Not only does this create a great paper trail for offers of judgment, mediation and opening policy arguments, it allows them to regularly inform their carrier without forcing them to write the summary. In many cases, the carrier is not fully informed of the risk involved in your case because defense counsel may have dropped the ball on sending regular updates. Help them make this process easier.

#### **Post-Settlement Miscellaneous Tips:**

- Do not put off your lien reduction requests. Ensure your lien reduction requests are submitted immediately after the case settles and give the provider's office a hard deadline on their response. Have template emails ready to go with reminders as the deadline approaches.

- Ask for the insurance lien as soon as possible, even if your client is still treating. This will help you at least get an initial estimate of your client's past medical expenses. Do not wait until the case has settled unless the client is receiving regular treatment through insurance. Receiving and negotiating this lien at the end of the case can be one of the biggest hold ups when trying to pay your client.

- Determine if a Medicare set aside is necessary prior to the case settling. If your client receives Medicare, there are many third-party companies that are available to help you determine if a Medicare set aside is necessary based on your client's treatment records. They can determine this before the case settles if your client has finished treating. If your client does require a set-aside, advise them in writing of its necessity, how it works and how it will impact their net recovery.

- If a minor is involved, ensure the petition for minor's compromise is drafted as soon as possible. If there is a

structured settlement involved, with a time-sensitive funding deadline, file it on order shortening time and request the court issue a decision quickly in order to meet this deadline so your client's structured recovery is not negatively impacted by lowered rates.

- Reach out to all experts and treaters within days of the case settling and request all outstanding invoices be sent immediately in order to finalize costs.

**A quick note about pre-litigation cases:**

- If you've given the adjuster the evidence and information that support your settlement demand, set a deadline on your offer and stick to it. Adjusters have hundreds of cases to respond to and they will prioritize the ones that they are forced to prioritize, including one that has evidence that allows them to fully and fairly evaluate liability and damages.

- Follow up weekly. Be persistent. Let the adjuster know you are focused on your case and ready to file, serve and litigate if they do not provide an appropriate offer. You will always be taken more seriously when the adjuster knows you are paying attention and committed to the case.

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