

# ADVANCED DEMAND & NEGOTIATION TRICKS

Successful Strategies to Obtain Great Settlements

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# Demand Letters - Strategic considerations

- ▶ Settling cases is how law firms make money - so get demands out quickly!
- ▶ You can drastically add value to any case depending on the quality of the demand letter.
- ▶ Pre-litigation demands are your opportunity to favorably present your claim *before* any negative info can come out in discovery.
- ▶ You likely won't get an offer without one.

# Highlight the Positive and Leave Out the Negative - Don't Overly Rely on Templates

- ▶ Include graphic photos of car damage and say car was totaled
- ▶ Include graphic photos of injuries and mention surgery in 1<sup>st</sup> sentence
- ▶ Describe good MRI results in detail
- ▶ Headache, aka Traumatic Brain Injury?
- ▶ Reference highway speeds
- ▶ Reference commercial vehicle, semi-truck
- ▶ Point out if client is young with no prior injuries
- ▶ Include estimates of future care, lost wages, and future lost wages
- ▶ Defendant ticketed, good police report info, taken by ambulance
- ▶ Exclude photos of negligible property damage
- ▶ Mention that MRIs or X-rays “were taken” without describing bad results
- ▶ Gloss over gaps in treatment (Ex: “subsequently she treated with” instead of exact dates months apart)
- ▶ Avoid mentioning “parking lots” or 10 mph speeds
- ▶ Avoid saying your client is 90 years old and leave out medical descriptions of prior injuries

# Example: \$90,000 Car Accident Settlement with only \$4,552 in specials

We excluded the photo with minimal property damage, emphasized client’s labral tear, increased his medical specials from \$4,552 to \$52,719.43 by including the cost of a “future” shoulder surgery, calculated 3-6 months of future lost wages (even though he might not ever have the surgery), and highlighted it happened at highway speeds.



Mr. Johnson’s past and estimate future medical costs are set forth below:

<u>Provider</u>	<u>Amount</u>
Concentra	\$215.00
Athletico Physical Therapy	\$1,440.00
Family Health	\$130.00
Washington University Physicians	\$2,767.00
Future Arthroscopic Labral Repair	\$27,171.00
Future Anesthesia for Surgery	\$5,424.00
Post-Surgical Physical Therapy	\$15,572.43
<b>TOTAL:</b>	<b>\$52,719.43</b>

# Example: Head Injury Cases

- ▶ If your client ever complained of headaches, explore possibility of a concussion.
- ▶ Concussions, or “traumatic brain injuries” can dramatically increase settlement value if emphasized and handled strategically
- ▶ Adjusters tend to initially make low offers on head injury cases because often there is no objective evidence of injury, treatment is sparse, bills are low, and insurance adjusters disregard client’s subjective complaints of memory loss
- ▶ If concussion is suspected, have client see a neurologist for an official diagnosis, to obtain cognitive rehabilitation, validate client’s subjective complaints, and increase medical specials.
- ▶ Emphasize in demand how tragedies involving players with head injuries in the NFL have shed light on the severity of concussions and their case value. Thus far, the NFL has already paid out nearly *one billion dollars* to eligible players.
- ▶ Spend extra time personalizing these demands with the impact the injury has had on everyday life.

# Make sure you (or your paralegal) obtains all of the medical charges

- ▶ The higher the bills, the higher the settlement, so make sure you get everything. Plus, you don't want you or your client on the hook for unknown outstanding balances or liens.
- ▶ It seems obvious, but it is easier said than done. You can't rely on clients to know all of their treaters, and billing for facilities, physicians, imaging, and anesthesiology is often outsourced separately.
- ▶ Request updated billing itemizations from Optum, Medicare, EOBs, MedPay reports, liens and client documents and then **cross-reference** them before drafting demand.
- ▶ Actually READ the bills. Do they cover all dates of treatment? Include injections and MRIs? Do they seem right?
- ▶ BUT, don't let one missing bill hold up sending out the demand.
- ▶ Tip: Quickly find out what the charges are by getting your client's EOBs, calling the provider, looking at client-copy bills, or other insurance itemizations. Use these numbers if you are still waiting on official bills
- ▶ Tip: Look for references to other treaters in the records you DO have

## Balance efficiency with detail depending on each case's circumstances

- ▶ Don't let perfect be the enemy of good.
- ▶ All cases are important, but you don't want to unnecessarily spend days drafting a demand on a smaller case without significant medical
- ▶ Generally, prepare more detailed demands for bigger cases to emphasize extent of injuries, length of treatment, and pain and suffering, and less detailed demands for smaller cases
- ▶ Typically prepare quick, short, demands in easy policy limits cases.

# Quick Policy Limits Demands

- ▶ If there are significant injuries and not a lot of coverage, do a quick demand and send any evidence of the charges you have, even if the client is still treating or the bills are not “official.”
- ▶ Again, don’t let a missing bill hold up the whole demand, especially under these circumstances. Your client could be treating for years.
- ▶ Example: If your client fractured something, needs surgery, has one huge bill, or has significant findings on imaging, send a short, quick and simple demand for policy limits even if your client is still treating or you are still waiting on records. You can always supplement if necessary.
- ▶ Communicate with your paralegal or legal assistant about this.



# Find Out the Policy Limits as Soon as Possible

- ▶ Uninsured Motorist Stacking: multiple vehicles = multiple coverages (includes motorcycles!)
- ▶ Find out the insurance policy limits and ask for the declaration page as soon as possible so you know what you are working with.
- ▶ If the insurance company won't tell you the limits, tell them you likely have a UIM claim and will need UIM approval and the underlying declaration page before you could ever settle with them.
- ▶ If they still won't tell you the limits, and you know your case is worth more than the minimum coverage, sometimes you just have to demand \$1 million dollars...or threaten suit.



# Example: Dog Bite Case



- ▶ Client was attacked by a Bullmastiff and underwent facial plastic surgery.
- ▶ Client had \$73,2934.52 in charges with \$17,906.00 paid/owed.
- ▶ Adjuster refused to divulge policy limits, so I told him I would demand \$1 million dollars.
- ▶ I sent written demand for \$1 million (But discussed with my client in detail that her case was not worth anything near this to manage expectations)
- ▶ The \$1 million demand escalated the case to an adjuster with higher settlement authority and enlarged settlement reserves.
- ▶ Because this was potentially “a million dollar case,” the insurance company suggested *pre-litigation* mediation.
- ▶ Case settled for over \$300,000.00 at the pre-litigation mediation
- ▶ Tip: I copied/pasted graphic photos of the client’s fresh facial wounds in the body of the demand letter. She ended up having an amazing recovery with a barely noticeable scar. I asked that we not mediate face-to-face so the adjuster would not see it.

# Bad faith settlement demands in Missouri: RSMO §537.058

- ▶ An insurance company operates in bad faith when it fails to pay a legitimate first party claim made by an insured person without a reasonable basis.
- ▶ Insurance companies can face liability beyond the limits of the insurance policies they issue if they operate in bad faith.
- ▶ Insurance companies are very afraid of this, which you can use to your advantage when making settlement demands and negotiating

# RSMO. §537.058 Bad Faith Requirements

The Missouri Legislature issued the following statutory requirements for a written demand *to be put into evidence* in a bad faith case.

- ▶ Written
- ▶ Reference RSMO. §537.058
- ▶ Send certified mail, return-receipt requested to the tort-feasor's liability insurer
- ▶ At least a 90-day deadline
- ▶ List the amount of monetary payment requested - request policy limits
- ▶ Date and location of the loss
- ▶ Claim number, if known

## Rsmo. §537.058 Requirements (pt. 2)

- ▶ Description of all known injuries sustained by claimant
- ▶ Party or Parties to be released if time-limited demand is accepted
- ▶ Description of claims to be released if demand is accepted
- ▶ Offer of unconditional release for the liability insurer's insured from all future and present liability
- ▶ List of names and addresses of health care providers providing treatment and enclose HIPAA compliant authorizations
- ▶ If seeking lost wages, list of the names and addresses of claimant's employers and enclose authorization to obtain employment records

# Bad Faith Demands

**Put all of the statutory requirements in the beginning of your demand letter at the top:**

Claimant:	Jane Doe
Insured:	John Doe
Claim No.:	IFR2244
Demand Amount:	\$50,000.00 (Insurance Policy Limits)
Time Limit for Response:	90 Days
Date of Loss:	June 21, 2019
Location of Loss:	St. Louis County, Missouri
Party to Be Released:	John Doe
Known Injuries:	Head, neck, back, shoulders
Claims to Be Released:	Bodily Injury and Wage Loss Claims
Re:	Demand Pursuant to RSMo. § 537.058

# Using Bad Faith Demands

- ▶ Describe liability, injuries, and treatment like you otherwise would.
- ▶ “This is a demand pursuant to RSMO. 537.058. This is an offer of unconditional release of liability for Allstate from all present and future liability for this case, as described by RSMO. 537.058”
- ▶ “This demand is made with the understanding that Mr. Doe has \$50,000 in liability coverage. If this is incorrect and there is additional coverage available, please advise immediately.”
- ▶ “We believe, because of the clear liability and our client’s extensive injuries, it would be bad faith for your client to not settle this case for the policy limits. If you need any further information or documents to evaluate this claim, or have any questions, please let me know.”
- ▶ To be admissible as *evidence*, must include authorizations and be sent certified. I have gotten great results using the template to settle an underlying claim even without authorizations, but there are risks with that.

# Negotiation

- ▶ There is no need for a “Covid discount.” Adjusters have not used the pandemic to lower offers.
- ▶ The adjuster’s first “final top offer” is never really their top offer.
- ▶ Use bad initial offers to help manage client’s expectations.
- ▶ When you get to an impasse, but your client doesn’t want to file suit or it’s a smaller case, sending a “fake” Petition with a legitimate bottom line demand and one week deadline to respond seems to work more often than not.
- ▶ Use mediation as an alternative to trials
- ▶ Trials are returning



# Reassess early. Is this still a good case?

Me: Unfortunately I can't take your case  
but I can refer you to some attorneys  
who might.

The Attorneys:

