

Topic for the Month:

Settlements vs. Trials

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To Settle or Not to Settle, That is the Question: At the end of the day, most cases are resolved via settlement, as opposed to a formal trial or hearing. The decision to settle or proceed to trial is one fraught with uncertainties. Everyone seems to have a friend or family member who has advice on how much a case is worth or what juries are likely to do with the case. The role of an attorney is to provide guidance, based on experience, on the likely outcome of a case. The certainty in presenting a case to a jury or judge is this - there is no certainty. Given this uncertainty, settlements offer a reasonable alternative to trial.

Settlements offer certainty and finality. For many people, these issues outweigh the risk and uncertainty associated with a jury trial. In arriving at a fair settlement figure, most attorneys factor in the credibility of the parties; liability issues (i.e. fault); legal issues and the costs which will be incurred to proceed to trial or a hearing.

Settlement Documents: Most negotiated settlements are confirmed in writing. The settlement terms are also documented in a formal Release. For example, in a personal injury claim, the person receiving compensation is required to sign a Release. The impact of most Releases is to extinguish all claims against the party being released. There are serious implications to signing a General Release. If a General Release is signed, there may be language in the Release which could defeat a claim which may exist against a party, not listed in the Release. An example is a personal injury settlement where the negligent driver's insurance is inadequate to fully compensate the victim. If the victim purchased underinsured motorist coverage (UIM), there may be an additional claim against the UIM carrier. However, if the UIM claim is not expressly preserved in the Release, it could be extinguished.

In the worker's compensation system, settlement terms are set forth in a Compromise or Limited Compromise Agreement. If claims are to be preserved for the future, specific language must be included in these Agreements. Care must be given to deal with all issues in a settlement including any claims of subrogation (i.e. payments by a health insurer). The Worker's Compensation law provides that every compromise of any claim for compensation may be reviewed and set aside, modified or confirmed by the Department of Workforce Development, within one year from the date the compromise is filed with the Department. The Department must also approve of all settlements involving a worker's compensation claim.

Alternative Dispute Resolution (ADR): The benefits of proceeding with a form of ADR are well recognized in the legal community. In civil matters, 75% of Wisconsin judges recommend the use of ADR, with mediation being the method of choice.

Mediation is a form of ADR, which involves the use of a neutral third party, typically a respected attorney or retired judge. Both sides agree to the mediator to be used. Prior to the scheduled mediation date, both sides submit documents and their position statement to the mediator. The case then proceeds to mediation. At mediation, the mediator typically meets with everyone to go over the mediation procedure. The participants are then put in separate rooms, with the mediator going back and forth in an attempt to broker a reasonable resolution. If a settlement is reached, a mediation agreement is typically signed by all participants. Mediation can occur with parties who are with or without legal representation. Most mediations are non-binding, which means that if a settlement is not reached, the litigation process continues.

The Benefits of Mediation: If the timing is right and both sides are amenable to mediation, a settlement can often be reached in less than one day. Mediation tends to be less stressful than a jury trial or a hearing. Mediation also reduces the amount of expense necessary to proceed to trial. There can also be a significant time delay to get to trial. In many counties, it takes around 12 months from the time litigation is started to the time of the trial.

Attorney Timothy Hawley is a partner in our firm. Attorney Hawley is frequently hired as a mediator in all types of cases. He has mediated cases involving personal injuries; contract disputes; land disputes; and more. Attorney Hawley is well respected in the legal community for his mediation skills.



Our firm has negotiated many settlements in all areas of law. We have a reputation of fair dealing with our clients and all involved in the litigation process. If you have any questions about a settlement issue or any other legal matter, feel free to give one of our attorneys a call. To learn more about our firm, feel free to visit our website at: **WISLAWYERS.COM**