

## **Mediator's Tip: Improving The Plaintiff's Brief**

**By Bradley Bostick**

**A timely and persuasive brief can establish your credibility and increase file authority when it counts: before the mediation.**

**A good brief should raise or reinforce doubts about the defense case in an objective, reasoned manner. Since the defense evaluation will almost always focus on the actual record, your arguments, when possible, should be grounded in the records, reports, medical testimony, etc.**

**In addition to emphasizing case strengths, demonstrate in the brief that you are conversant with the defense arguments; then use undisputed evidence, logic, physics, common sense, even ridicule, to challenge and undermine them.**

**Pointing out credibility problems with key defense witnesses is a particularly good way to raise the threat level on the other side.**

**It is best to minimize the use of hyperbole. Every crash is not a “violent impact.” Complaints of pain are not always “severe.” Remember, your audience is a jaded defense attorney and a cynical claim rep so unsubstantiated adjectives will cost you credibility. The exception is if things like impact forces or levels of pain are described objectively in a police report, medical chart or witness testimony.**

**Every item of damages must be documented. Is your client claiming they were disabled? Provide credible proof of disability. Does your client need future medical care? Have a doctor detail in writing or by email the need for future care, residual limitations and costs. Wage loss? Make sure you include W2s and employer verification. Self employed individuals may want to use Schedule Cs or other hard documentaton. Undocumented wage loss will not be taken seriously and you risk losing credibility.**

**When discussing general damages, be specific. In addition to describing specific limitations, use what is in the record to portray your client as someone who has done everything reasonable to try to deal with their injuries. Claimed residuals should be supported by a credible medical report as well as medical and lay testimony or declarations. If there are time constraints, try to get a short descriptive email from the doctor that can support the residual and cost of future treatment claim.**

**To make sure you get the decision maker's attention, send the brief early. The decision on how much to pay is made before the mediation and is rarely altered by information submitted for the first time at the mediation. You can send a written brief, but in the era of limited attention spans, you should always send a copy by email. Request that it be forwarded to all interested decision makers.**

**In the body of the email that has the attached brief, summarize key points and/or list them in bullet point fashion. Request that the brief be forwarded to all interested decision makers. If you have photographs, email those digitally and bring high quality color reproductions to the mediation.**