

# Why Mediation?

Taking Advantage of the Lawsuit Marketplace

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Why Mediation?

GUY KORNBLUM &  
ASSOCIATES  
ATTORNEYS



*“Discourage litigation.  
Persuade your neighbors to  
compromise whenever you  
can...”*

The Collected Works of Abraham Lincoln: Notes for a Law Lecture, Vol. 2, 81 (Roy B. Basler ed., Rutgers 1953)



*“Point out to them how the nominal winner is often the real loser – in fees, expenses and waste of time...”*

The Collected Works of Abraham Lincoln: Notes for a Law Lecture, Vol. 2, 81 (Roy B. Basler ed., Rutgers 1953)



*“As a peacemaker the lawyer has the superior opportunity of being a good man. There will still be plenty of business.”*

The Collected Works of Abraham Lincoln: Notes for a Law Lecture, Vol. 2, 81 (Roy B. Basler ed., Rutgers 1953)

Find the case that is suitable for  
Mediation and then find a way to get  
it there - sooner rather than later!

**“Let’s Not Make A Deal:  
An Empirical Study of the  
Decision Making in  
Unsuccessful Settlement Negotiations”**

Journal of Empirical Legal Studies, Vol. 5, No. 30, pp. 451-491 (September 2008)

# Previous Studies

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- **Gross/Syverud (90-91) - Plaintiffs make more mistakes in refusing to settle**



# Previous Studies

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- Rachlinski (1996)
  - Plaintiff had higher percentage of error (56.1%)
  - Defendants had a lower percentage of error (23%) but greater risk of bad result (\$354,000)

# The Recent Study: What You Need to Know

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Comparing the actual trial results to rejected settlement offers, the study found that 61% of the plaintiffs obtained a result that was not economically better than the settlement offer, i.e. it was either the same or worse than what was offered;

# The Recent Study: What You Need to Know

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- When the plaintiffs rejected an offer and did better (39%), it was not that much better
- Does not factor in time and cost of trial
  - Win? Loss?

# The Recent Study: What You Need to Know

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- In contrast, 76% of defendants did better

- However, when the defendants rejected the last demand and went to trial, and did worse (24%),

*it was much worse -*

# The Recent Study: What You Need to Know

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*So...*

- *Plaintiffs* experienced adverse trial outcomes more frequently than defendants
- BUT cost to defendants of “decisional errors” were *significantly higher* than plaintiffs’ costs

# The Recent Study: What You Need to Know

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- Mean cost of error to plaintiffs: **\$43,100**
- Mean cost of error to defendants: **\$1,140,000!**
- **BIG DIFFERENCE**: Expected cost of error is greater for defendants by a **multiple of 26!**

# Examples: Cases Suitable for Mediation

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- Clear liability: Only \$\$ in dispute
- One side needs education - may not be a case
  - Parties have \$\$ reasons to resolve, long protracted expensive process ahead
- Parties agree there is dispute - “buy peace”

# Examples: Cases Suitable for Mediation

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- Nature of matter is confidential - parties want protection
- One side or other will not gain by publicity of dispute
- Financial pressures compel early resolution
- Parties need to be creative about how to resolve - complexities need ironing out



# Examples: Cases Suitable for Mediation

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- An intermediary needs to be involved to bring rationality to the negotiations
- Parties have an ongoing relationship
  - Need to involve insurance carriers
    - THE COURT ORDERS IT!!!

# Examples: Cases Suitable for Mediation

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## Bottom Line:

It just makes economic sense for the parties to resolve before protracted litigation, consumption of financial and personnel resources and energy

# The Three “C’s” of Negotiation

- Candor
- Communication
- Confidentiality

# Decision Making Is With The Parties

Candor

Communication

Confidentiality

- The three “C’s” “advance the policy that the decision-making authority in the [negotiation] process rests with the parties....”

Uniform Mediation Act, Approved by the ABA, Philadelphia, Pa. February 4, 2002

# Top 10 Reasons Cases Don't Settle at Mediation

No.10

You are not ready

10. You are not ready

# Top 10 Reasons Cases Don't Settle at Mediation

No.9

Your client is not  
prepared

9. Your client is not prepared

10. You are not ready

# Top 10 Reasons Cases Don't Settle at Mediation

No.8

Your opposition is  
not prepared, or  
does not understand  
**your case**

Tip: Need Strong Mediator  
Intervention Here

8. Opposition is not prepared
9. Your client is not prepared
10. You are not ready

# Top 10 Reasons Cases Don't Settle at Mediation

7. Mediator is not prepared
8. Opposition is not prepared
9. Your client is not prepared
10. You are not ready

No.7

The Mediator is not  
prepared or is  
ineffective

Tip: Back off, cut the day short  
or have a “heart to heart” with  
Mediator



# Top 10 Reasons Cases Don't Settle at Mediation

6. Emotions, parties or Counsel
7. Mediator is not prepared
8. Opposition is not prepared
9. Your client is not prepared
10. You are not ready

**No.6**

**Emotions of the parties or their counsel interfere with the process**

**Tip: The Mediator must intervene**

# Top 10 Reasons Cases Don't Settle at Mediation

5. Understand case economics
6. Emotions, parties or Counsel
7. Mediator is not prepared
8. Opposition is not prepared
9. Your client is not prepared
10. You are not ready

**No.5**

**The parties do not  
understand the  
economics of the  
case**

**Tip: An impartial expert  
selected by mediator**

# Top 10 Reasons Cases Don't Settle at Mediation

4. The parties lack credibility
5. Understand case economics
6. Emotions, parties or Counsel
7. Mediator is not prepared
8. Opposition is not prepared
9. Your client is not prepared
10. You are not ready

No.4

**The parties lack  
credibility**

Tip: Mediator needs to  
assess HOW to overcome

# Top 10 Reasons Cases Don't Settle at Mediation

3. Parties are not candid
4. The parties lack credibility
5. Understand case economics
6. Emotions, parties or Counsel
7. Mediator is not prepared
8. Opposition is not prepared
9. Your client is not prepared
10. You are not ready

No.3

**The parties are not  
candid with each  
other and the  
Mediator**

**Tip: The Mediator  
must intervene**

# Top 10 Reasons Cases Don't Settle at Mediation

2. High client expectation
3. Parties are not candid
4. The parties lack credibility
5. Understand case economics
6. Emotions, parties or Counsel
7. Mediator is not prepared
8. Opposition is not prepared
9. Your client is not prepared
10. You are not ready

**No.2**

**Client expectations  
are too high**

**Tip: Mediator must bring client  
and Counsel to a realistic position**

# Top 10 Reasons Cases Don't Settle at Mediation

1. Unable to control client
2. High client expectation
3. Parties are not candid
4. The parties lack credibility
5. Understand case economics
6. Emotions, parties or Counsel
7. Mediator is not prepared
8. Opposition is not prepared
9. Your client is not prepared
10. You are not ready

**No.1**

**Counsel is unable to  
control client**

**Tip: Confer with mediator as to  
whether there is potential to  
overcome this situation**

# The Profile for Selection - *Plaintiff*

- Your client's emotional state
- Your client's financial circumstances - NOW
  - Liability picture -  
What are the chances of recovery
  - Consider "proof" on damages
- The Presence (or absence) of insurance

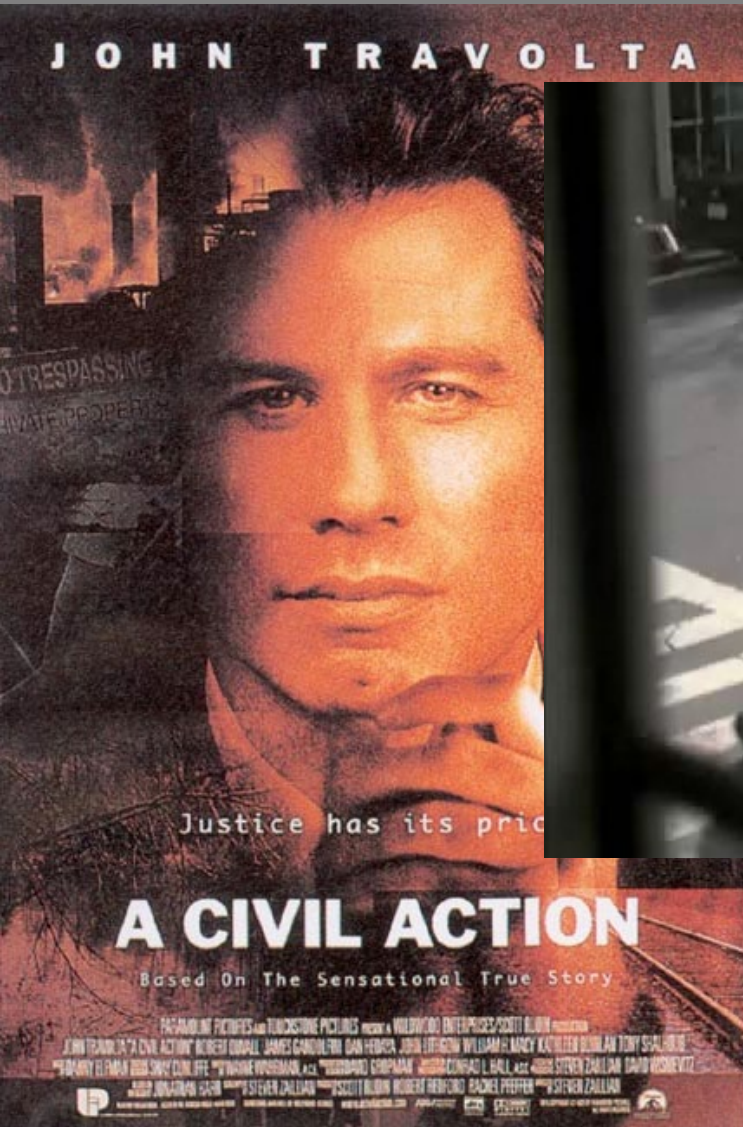
# The Profile for Selection - *FOR ALL!*

- Consider the economics for proceeding to trial,  
**DO THE MATH EARLY, NOT LATER**

This is a consideration for ALL parties!



# Lawyer Jan Schlichtman, “A Civil Action”

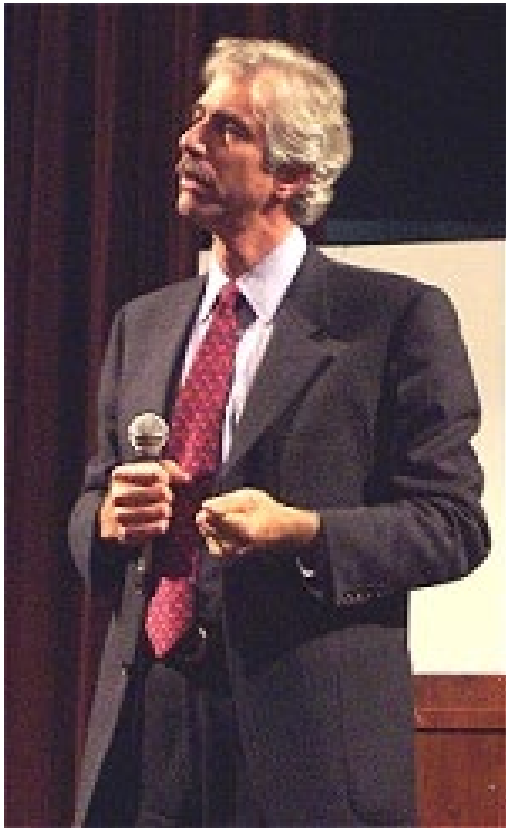


*“The odds of a plaintiff’s lawyer winning in civil court are 2 to 1 against” ...*

Why Mediation?

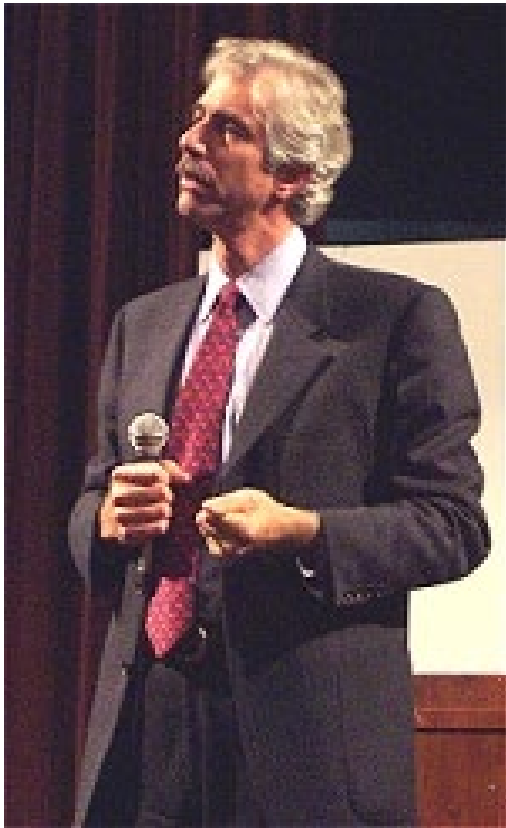
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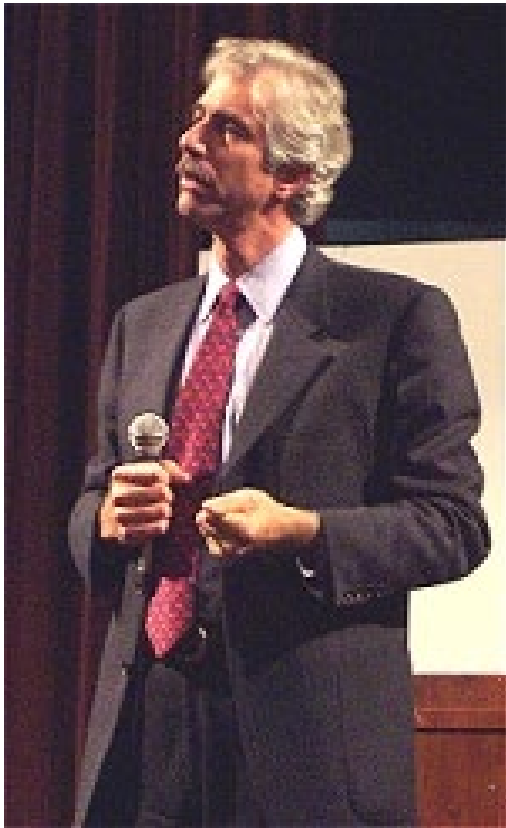
*“The odds of a plaintiff’s lawyer winning in civil court are 2 to 1 against. Think about that for a second. Your odds of surviving a game of Russian roulette are better than winning a case at trial. 12 times better...”*

# Lawyer Jan Schlichtman, “A Civil Action”



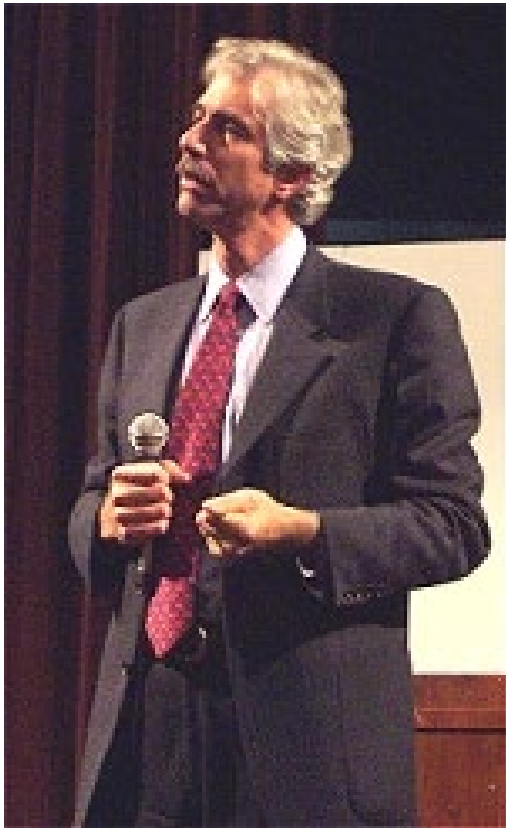
*“So why does anyone do it? They don’t. They settle. Out of the 780,000, only 12,000 or one and a half percent ever reach a verdict...”*

# Lawyer Jan Schlichtman, “A Civil Action”



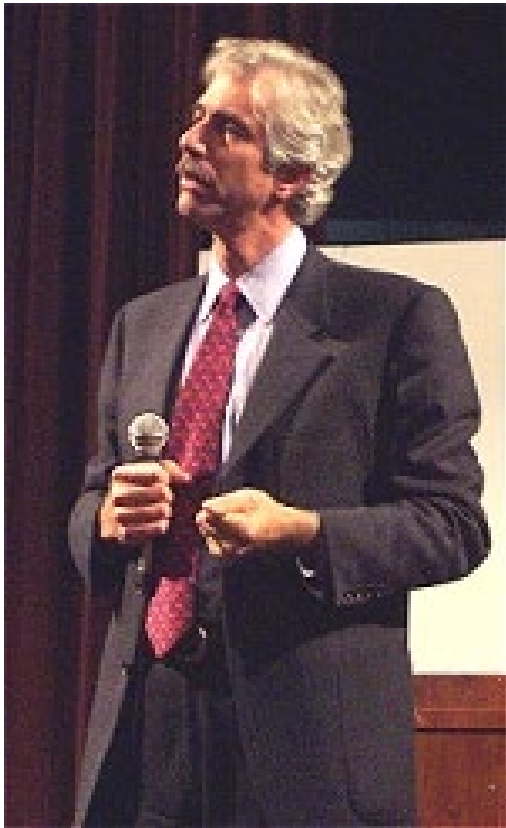
*“The whole idea of lawsuits is to settle, to compel the other side to settle...”*

# Lawyer Jan Schlichtman, “A Civil Action”



*“...And you do that by spending more money than you should, which forces them to spend more money than they should, and whoever comes to their senses first loses...”*

# Lawyer Jan Schlichtman, “A Civil Action”



*“...Trials are a corruption of the entire process, and only fools who have something to prove end up ensnared in them. Now when I say prove, I don’t mean about the case, I mean about themselves...”*

# Some Realities About Mediation

## Reality:

Mediators do very little before the mediation day to insure the parties are ready. They rely on counsel to prepare what is needed by the Mediator

# Some Realities About Mediation

So the question is...

What do YOU need to do as a  
**Mediation Advocate** to get the  
case ready for a timely resolution?



# Good Results Come from 10 Basic Principles

## Mediation is...

- A key to successful resolution
  - A way to test your case
- A way to fulfill professional obligations
  - A Win|Win
- A part of the *Litigation Management Plan*

# Good Results Come from 10 Basic Principles

## What is Litigation Management?

# Good Results Come from 10 Basic Principles

## What is Litigation Management?

The effective planning, organization, delegation and supervision of litigated matters so as to gain the advantage crucial to achieving an *acceptable and timely* resolution of the dispute

# Mediation As A Part of the Litigation Management Plan

- Use the tools to get you there
  - Gain the advantage
    - Get LEVERAGE
    - Show confidence
- Focus on getting to a “PLATEAU” of evaluation for all parties

# Good Results Come from 10 Basic Principles

Ten principles that will guide you  
through pursuit of *timely* settlements

# Good Results Come from 10 Basic Principles

## 1. Understand Mediation Theatre

### Principle No.1 Understand the Mediation Theatre

Mediation is a forum for  
discussion

# Good Results Come from 10 Basic Principles

## 1. Understand Mediation Theatre

# Principle No.1 Understand the Mediation Theatre

Mediation is compromise

# Good Results Come from 10 Basic Principles

## 1. Understand Mediation Theatre

### Principle No.1 Understand the Mediation Theatre

Always be positive;  
don't get discouraged -  
process needs to play out



# Good Results Come from 10 Basic Principles

## 1. Understand Mediation Theatre

### Principle No.1 Understand the Mediation Theatre

You will ALWAYS learn  
something valuable

# Good Results Come from 10 Basic Principles

## 1. Understand Mediation Theatre

# Principle No.1 Understand the Mediation Theatre

### Basic Rules:

- Show Patience
- Listen Carefully
- Stay the Course
- Keep Talking

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client

## Principle No.2 Prepare Your Client

This is a foreign forum  
to your client

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client

## Principle No.2 Prepare Your Client

Some clients expect to “testify” and win by the strength of their emotions and story

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client

## Principle No.2 Prepare Your Client

Some clients are  
intimidated, scared and  
anxious

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client

## Principle No.2 Prepare Your Client

Mediation is an opportunity for:

- Your client to have  
“a day in court”
- Client storytelling without  
the restrictions of trial rules

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client

## Principle No.2 Prepare Your Client

Help your client:

- Be comfortable
- Understand the process
- Emotionally cope

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client

## Prepare Your Client for the Economics of Settlement

- Documentation
- Mutual Releases
  - Confidentiality
    - Payment
- Structures, if any



# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client

## Checklist to Prepare Your Client

- Advise that Mediation is “non-binding”
- Advise what to expect from start to finish
- Advise what happens if case fails to settle

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client

## Checklist to Prepare Your Client

- Outline what you expect of your client
  - Outline what your client must avoid
    - Outline how a Mediation proceeds

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client

## Checklist to Prepare Your Client

*Nothing positive until  
2:30PM!*

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client

## Checklist to Prepare Your Client

- Discuss both weak and strong points
- Outline how Mediation can help meet Client's long-term goals
- Prepare your Client for “give and take”

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client

## Checklist to Prepare Your Client

- Be realistic about compensatory claim
- Assess expectations of damages
- Be realistic as to results

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points

## Principle No.3 Find Pressure Points

Use Discovery devices:  
RFA's, Depo Notices,  
RFP's, Interrogatories

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points

## Principle No.3 Find Pressure Points

Whatever it takes to gain  
the advantage,  
obtain “LEVERAGE”

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need

## Principle No.4 Get the Information You Need

Do a careful evaluation of  
the real damages -  
dollars and cents!



# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need

## Principle No.4 Get the Information You Need

- Assess what you need -  
efficiently get it
- Streamline discovery  
and investigation

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need

## Principle No.4 Get the Information You Need

Show good faith

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need

## Principle No.4 Get the Information You Need

Consider offering up your client for interview or deposition, perhaps just a first session (let them see and hear your Client)

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need

## Principle No.4 Get the Information You Need

If they don't want to see  
the witnesses, then  
consider providing video  
interviews

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need

## Principle No.4 Get the Information You Need

Shove the good stuff  
down their throat!

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On

## Principle No.5 Keep the Pressure On

Select cases that are  
“ripe” for early Mediation  
and PUSH

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On

## Principle No.5

### Keep the Pressure On

- Don't get frustrated by opposing party's stalling
- Move reasonably swiftly to the goal of a *timely* resolution

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts

## Principle No.6 Use Your Experts

- Engage them early
- Choose the correct ones
  - Be efficient



# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts

## Principle No.6 Use Your Experts

- Pick a “quarterback”
  - Consider hiring a consultant
- Confidential review of your case

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts

## Principle No.6 Use Your Experts

- Run interference for you
  - Efficient use of resources

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator

## Principle No.7 Choose the Appropriate Mediator

For Plaintiffs:  
Consider former  
“defense” lawyers -  
the defense loves it!

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator

## Principle No.7 Choose the Appropriate Mediator

Use “specialty”  
mediators!

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator

## Principle No.7 Choose the Appropriate Mediator

Research who they are  
and what they have done,  
talk to colleagues

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator

## Principle No.7 Choose the Appropriate Mediator

Choose a mediator who  
will have the ear of the  
other side

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator

## Principle No.7 Choose the Appropriate Mediator

- If the other side wants to pick - consider it
- The other side will listen to its choice

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator

## Principle No.7 Choose the Appropriate Mediator

Choose a “closer”



# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator
8. Prepare the Mediator

## Principle No.8 Prepare the Mediator

Your job should be 95%  
done when you walk in  
the Mediator's door

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator
8. Prepare the Mediator

## Principle No.8 Prepare the Mediator

Be prepared to help  
the Mediator through  
the day to negotiate  
for YOUR Client

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator
8. Prepare the Mediator

## Principle No.8 Prepare the Mediator

- Bring out the weak points in private sessions
- Discuss with Mediator how to handle

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator
8. Prepare the Mediator

## Principle No.8 Prepare the Mediator

Use the “private letter” -  
IT WORKS!

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator
8. Prepare the Mediator

## Principle No.8 Prepare the Mediator

Use Videos -  
**THEY WORK!**

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator
8. Prepare the Mediator
9. Be Diplomatic

## Principle No.9 Be Diplomatic

Work to gain the respect  
of everyone involved

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator
8. Prepare the Mediator
9. Be Diplomatic

## Principle No.9 Be Diplomatic

Put your Client's and your  
best feet forward

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator
8. Prepare the Mediator
9. Be Diplomatic

## Principle No.9 Be Diplomatic

Be gracious  
(if it's natural to do so)



# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator
8. Prepare the Mediator
9. Be Diplomatic

## Principle No.9 Be Diplomatic

**PROFESSIONALISM**  
at all times

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator
8. Prepare the Mediator
9. Be Diplomatic

## Principle No.9 Be Diplomatic

- No hostility
- No anger
- No venting  
(except privately)
- Avoid confrontation

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator
8. Prepare the Mediator
9. Be Diplomatic

## Principle No.9 Be Diplomatic

Anything to  
reduce tension

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator
8. Prepare the Mediator
9. Be Diplomatic

## Principle No.9 Be Diplomatic

- Consider whether or not an “Opening Statement” should be given
- How will it be delivered?

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator
8. Prepare the Mediator
9. Be Diplomatic

## Principle No.9 Be Diplomatic

If you give an “opening”,  
take the “high road”

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator
8. Prepare the Mediator
9. Be Diplomatic

## Principle No.9 Be Diplomatic

Prepare your Client for  
the difference between  
your role at Mediation  
and at Trial -  
“different hats”

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator
8. Prepare the Mediator
9. Be Diplomatic

## Principle No.9 Be Diplomatic

Advocacy in the  
Mediation forum is  
different from advocacy  
in the courtroom, so...  
be sure your Client  
understands that

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator
8. Prepare the Mediator
9. Be Diplomatic

## Principle No.9 Be Diplomatic

### DIPLMACY WINS!

- Credibility wins
- Honesty Wins
- Set the bar high



# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator
8. Prepare the Mediator
9. Be Diplomatic
10. Know the Numbers

## Principle No.10 Know The Numbers

Outline settlement vs.  
trial scenarios

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator
8. Prepare the Mediator
9. Be Diplomatic
10. Know the Numbers

## Principle No.10 Know The Numbers

Be prepared to recognize  
when the best deal is on  
the table

# Good Results Come from 10 Basic Principles

1. Understand Mediation Theatre
2. Prepare Your Client
3. Find Pressure Points
4. Get the Information You Need
5. Keep the Pressure On
6. Use Your Experts
7. Choose Appropriate Mediator
8. Prepare the Mediator
9. Be Diplomatic
10. Know the Numbers

## Principle No.10 Know The Numbers

Be prepared to  
“massage” an  
offer/demand that  
is not quite “there”

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## Principle No.10 Know The Numbers

Remember, this is a  
**COMPROMISE,**  
not a battle zone

# VICTORY: A Settlement...

...that “works” for your Client

# VICTORY: A Settlement...

...that advances your  
Client's goals  
(be sure you know them!)

# VICTORY: A Settlement...

...that works with the  
economics of further litigation

# VICTORY: A Settlement...

...that truly buys “peace”



# VICTORY: A Settlement...

...that meets the personal  
and economic expectations  
of your Client

# VICTORY: A Settlement...

And the winner is...

# VICTORY: A Settlement...



Why Mediation?

GUY KORNBLUM &  
ASSOCIATES  
ATTORNEYS