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RUNNING WITH THE BULLS

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PART ONE: GRABBING THE BULLS BY THEIR HORNS

1: A REMINDER BEFORE THE SETTLEMENT

2: WE MUST BE ALL IN

- Commit to continuous education
- Must take the time to really get to know your clients

3: TOUGH QUESTIONS

- Are you committed to your clients?
- Are you qualified to get them the best result?
- Be kind to yourself. Don't beat yourself up for missing the mark keep striving to improve.

EXERCISE: HOW WELL DO YOU KNOW YOURSELF?

- Physical health?
 1. Where are you in terms of physical health? 1-10?
 2. Where does it fall in terms of your priorities?
 3. How is your diet?
- Mental health?
 1. What brings you joy?
 2. How can you fit more of that into your life?
 3. How are your relationships?

EXERCISE: WHAT FEARS AND BELIEFS DO YOU HAVE?

- Why did you want to become a lawyer?
- How is your practice different from what you wanted it to be?
- What scares you most when a new case or person walks through the door?
- What do you enjoy most about being a lawyer?
- What parts of being a lawyer do you hate?
- Are you afraid of trial? If so, why?
- Do medications make you nervous? Why?
- Are you a good enough attorney to make a \$50M demand in a case that truly deserves it?
- Does talking about multimillion dollar damages make you uncomfortable or insecure? Why?
- Do you do the most you can for each of your clients?
- Are you the best lawyer you know you can be? If not, what are you willing to do about it?

EXERCISE: DO YOU TRULY KNOW YOUR CLIENTS?

- How much time do you spend with your clients each week?
- Do you know the names of their parents, children, close friends?
- What were their childhoods like? Their favorite memories?
- Where did they meet their spouse? How did they fall in love?
- What do their daily lives look like? What are their hobbies and interests? Where do they find joy?
- What are your clients talents? What are they good at?
- What is their faith?
- What are their fears?
- What are their hopes and dreams for the upcoming years?
- What are their proudest moments? Biggest regrets?
- If they could get one thing out of this case, what would it be?
- How do they feel about their injuries?
- How do they view the defendants?
- How do they feel about money?

4: HOW TO VALUE THAT WHICH IS PRICELESS

- First of all, you have to get comfortable talking about money.

EXERCISE: WHAT IS YOUR RELATIONSHIP WITH MONEY?

- What is your first memory of money?
- What does money mean to your family?
- When did you realize that your family's economic status was different from that of other people?
- Have you ever felt angry or embarrassed about money?
- Have you ever been happy or excited about money?
- Have you ever placed value on people because of their lack of money or an abundance of it?

EXERCISE: THE VALUE OF WHAT WE CANNOT REPAIR OR REPLACE

- How important is your ability to think clearly? Have a good memory?
- How important is your physical healthy and well being? What would the value be on a week by week basis and why?
- Can you place a non economic value on your skills and talents because of what they mean to you personally and to your loved ones?

EXERCISE: PICK A NUMBER IF IT'S HARD (IT IS)

- How much money would you take for chronic pain in your left foot for a year?
- What about your mouth?
- Your teeth knocked out?
- Ability to walk normally for five years?
- Take away the person you love most for three years?
- Take away the hobby you love most forever? One year?
- Speak and walk for 10 years?

EXERCISE: THE VALUE OF A LIFE

- What is your earliest memory of feeling loved and having the fellowship of a loved one?
- Who is just one person you cherish and need in your life?
- What is it about this person?
- Have you ever lost the love or respect of someone? What is the value of that?
- What are the lives of those who are precious to you really worth?
- If you were dying and could give your family and friends the value of your life to them in an amount of money, what would it be?

EXERCISE: WHAT VALUE DO YOU PLACE ON THE FUTURE?

- What are three things you are looking forward to in the next 3 years? Next 20?
- Would you give those up for a certain amount of money?
- What do you envision the future for your children? Grandchildren?
- Is there an amount of money you would take to take away those opportunities from them?

EXERCISE: THINK DIFFERENTLY ABOUT DAMAGES

- Go back in time. What is the worst pain, suffering or other category of damages you have personally experienced?
- Where are you physically? Inside or outside?
- What is the temperature? What does it smell like? Who is around you? What are you wearing?
- Give the damage a voice. What does it say when you ask what are you doing to me and why?
- What effect are you having on the human you are attacking?
- Go to the time when it went away. How did that feel?
- If I give you \$10M to go back to that place, but with amplified intensity of 25%, how much of your \$10M would you pay to avoid the pain completely?

5: GETTING THE MONEY

- Trying cases and learning how to get your clients paid the full amount that is due are two different things.
- It is our job to break through the noise of all the claims and make our client's claim stand out and be different from what our opponents are expecting.

- Many, when asked what a case is worth, always ask, “what are medical bills and lost wages?” We should never talk about and view a case this way.
- Grab the jury instructions on non-economic damages for your case and match them up to each case and discovery and tell the stories that illustrate the non-economic damages.
- Do not base value on past results. Treat your case as unique. Never let your case fit in the defense matrix.
- Set reserves high, right away.
 1. Usually set reserves in the first 90 days.
 2. Do what you can to have those set high in the beginning.
 3. Make a thoroughly prepared and significant demand early on and explain the damages and risk exposure.
 4. They often reset reserves at the end of the year. Take that into account.
- “Self Insured” is often not true.
- **How much are non-economic damages worth?**
 1. We have to figure out what is reasonable and then go get it.
 2. Reasonable compensation is 100% of the value of what was broken, destroyed, damaged or taken away.
 3. Settlements are better than verdicts if you can get that 100% without trial.
- Establishing a formula
 1. Find out which specific items of damages are in your state, looking to case law, jury instructions, etc.
 2. Match up these damages to what your client has experienced and suffered. These will be your compensable damages.
 3. Determine the amount of time each specific item of damage existed and will continue to exist.

6: SETTLEMENT DEMAND LETTERS THAT OPEN POLICIES

- Insurance company has a duty of good faith towards its insured
 1. Make reasonable efforts to determine their insured’s liability and financial exposure.
 2. Must inform their insured of significant developments in the case.
 3. Must communicate all settlement demands and offers.
 4. Must accept reasonable demands that are within their policy limits.

- The key to opening a policy is to send a proper demand letter.
- Nine Keys to a Demand Letter
 1. Give the opportunity to settle within policy limits.
 2. Put it in writing
 3. Set a deadline.
 4. Give the insurance company time.
 - Must be a reasonable amount of time.
 - 30 days is usually a good baseline. But really bad injuries with a small policy can reduce that number.
 - During trial, a few hours or even less than an hour may be sufficient.
 5. Remind the insurer of the obligation to communicate.
 - Must communicate the demand to the insured.
 6. Don't require the insured to take action.
 - Don't complicate acceptance of your offer.
 7. Remind counsel of conflict of interest.
 - Insurance appointed counsel is representing the insurer and the insured. Policy limits demands create conflict.
 - Remind them.
 - Should recommend that the insured hire independent bad faith counsel.
 8. Address multi claimant problems.
 - Be mindful of the problems having multiple claimants against the policy can create, whether you represent them all or not.
- 5. Accept responses only in writing.

7: TAKING A CASE FROM DEMAND TO SETTLEMENT

- The steps
 1. Make a policy limits demand.
 2. File the lawsuit.
 - Get a trial date.
 3. Send a demand for the true value of the case.
 - Make demands by email.
 - Direct the demand to "Defense Counsel and All Insurance Company Decision Makers".
 - Require that the Demand be forwarded to all insurance company decision makers.
 - Require that the demand be sent to the insured's private counsel.

- Offer to substitute the insurance company as a named defendant
 - Will dismiss individual defendant if they allow us to substitute the name of the insurance company as the defendant.
 - Make demands in writing before and after mediation.
 - Clearly spell out the ramifications of not paying the demand.
4. Work the case up...hard
 - Tell the defense who you are hiring and how much you are spending.
 5. Set up for bad faith and reinsurance
 - Always mention it in word and letter.
 6. Mediation
 - Prepare a detailed mediation letter.
 - Line out how key depositions went in your favor.
 - Pictures of client.
 - What you will ask for at trial.
 - As a condition to mediation, admit 100% fault.
 - Add in whatever else you want from them.
 7. Premediation demand
 - Make a pre-mediation demand that will expire the day of mediation.
Be clear that demand will go up after mediation starts.
 8. Prepare your client for mediation
 - Give them confidence in your position.
 - Have to tell them what to expect.
 - Have to get to know your clients.
- This stuff applies to smaller cases as well.

8: SETTLING FOR TOO LITTLE IS INJUSTICE

- If we take a case with the expectation that it will settle, we will resent the universe when it doesn't.
- It is important to take every case with the commitment to go the distance, then we will see top dollar settlements.
- Either do what it takes or get someone involved in the case who will.
- Rules to follow to get the best result:
 1. #1: Commit to not settling quickly or cheaply.
 - Only if you are getting all available policy limits.

- Force disclosure of all available policies.
- 6. Make demands for policy limits promptly and get the reserves set high.
- 7. Don't take cases you are not willing to take to trial.
 - Are you proud of every case you have?
 - Do not take a case for the money...take it because you are proud of the cause you are fighting for.
- 8. Make your name known for being a feared colleague.
- 9. Do not believe what you are told.
 - Assume the defense is lying to you outright, misleading you, or only telling you part of the truth.
 - Hold them to the fire. Everything in writing, hold deadlines, document everything.
- 10. No cookie cutter approaches
 - Show them how your case is different.
- 11. Don't always agree to mediation.
 - Only mediate cases on your terms.
 - Get them to come with a hard offer of a certain amount.
- 12. Never depend on a settlement
 - Can't be dependent on it, have to be financially secure to make the right decisions.

9: THE TRIANGLE OF PROMISE

- Every case, there are three position points that exist
 - The insurance company
 - The plaintiff
 - The defendant
- There are only two human points to the triangle.
- In a lawsuit, three things are always clear:
 1. Nobody wants to be sued.
 2. Nobody wants to be a plaintiff.
 3. Insurance companies choose to be in this business for money.
- So you have two humans that don't want to be there with an insurance company calling the shots.
- The insurance industry is full of conflicts of interest that no one ever talks about.
- Insurance profits are based on how cheaply they can defend, deny, or limit indemnification and compensation.

- That is in conflict with the best interests of policyholders.
- Educate the insured defendant.
 - Directly, and after representation, through counsel.
 - Line out conflicts in the letter.
 - Ask defendants if they have seen those letters in their deposition.
- Document the evolution of the case the insured will have against the insurer.
- Mediation should have a hard money written offer and there must be a specifically identified goal set in advance.
 - The goal might be convincing the other side that their policy is open because they rejected a limits demand.
 - There might be other goals for mediation, but don't miss the opportunity to be purposeful.

10: ADDRESSING SETTLEMENT DEMANDS

Case outcomes are affected by who we specifically direct our communications to.

- Communicate with the insured policyholder.
 - Want to make sure they know who they are, what they are about, and that the common enemy is their insurance company.
 - Don't depend on the insurer to communicate with the insured.
 - "Please accept this as clear and unequivocal time-sensitive settlement communication to be immediately forwarded to Mr. Robert Jones and his personal counsel and any and all insurance representatives or other money decision makers."
- Communicate to increase pressure. Establish the consequences of not settling.
- See sample letters.
- Always does it via email.

11: INSURANCE BAD FAITH

- Defendants are human, and believe it or not, they are on our side.
- Real people . .
- Defense arguments
 1. Tender of policy limits
 - Main question is whether they did it in a timely manner.
 2. The insured will file bankruptcy
 - Get this communication in writing.

- Bankruptcy has many long term effects on a person for years.
- Actually increases their claim for bad faith against their insurance company.
- Join forces with bankruptcy trustee.
- 3. The insured defendant didn't cooperate
 - Every insurance policy has a cooperation clause.
- 4. There are multiple injured parties
 - Get all injured parties on board and submit a global settlement demand.
 - If you can't, get insurance company to interplead the money.
- Request the production of the insurance policies
 - Before taking policy limits, ask for copies of all policies.
 - See p. 231 for list of all things to ask for.

12: WHEN POLICY LIMITS ARE LOW

- Chapter on how to educate someone to write their own demand letter.

13: EVERY SETTLEMENT DEMAND IS AN OUTLIER

- Take the position that economic damages do not define your case.
- To make each case an outlier, you have to learn the human story.
- Writing a demand letter:

1. Address the demand to the entire defense team.
 - All parties in interest, all decision makers.
2. Make a demand for policy limits
3. Set a deadline
4. Open the policy.
5. Tell the human story.
 - Brief case facts, injuries and medical treatment.
6. Show the defense what witnesses are going to say.
 - Before/after witnesses.
7. Warn them about what will happen at trial.
 - What you are going to ask for.
8. Remind them of their obligation to the insurance company and defendants.
9. Reiterate the demand of the policy limits
10. Expose the conflict with the defendant and create chaos.

11. Provide support for our claims
 12. Set up the claim for a bad faith case.
 13. Set the reserves
 14. Reemphasize the inherent conflict between the defendant, insurance company, and defense counsel.
 15. Stay polite and helpful and offer to further explain.
- Keep striking while the iron is hot
 - Send discovery out to find out insurance coverage.
 - Keep spending time getting to know your client.
 - Keep sending demands.
 - Every time you learn something new.
 - Don't follow BS thinking that you are giving away case strategy.

14: A DAY IN THE LIFE VIDEOS

- Don't go the usual route.
- Show the happy moments, show the beauty of this person. Stories of hope are much more powerful than stories of doom and gloom.
- Break into short 1-3 minute clips.
- Spend a day with your client if possible. From when they wake up to when they go to bed, so that you can see their struggle.
- You will use these videos in settlement negotiations and at trial.
- If you are going to use at trial, must understand that the unedited version is going to be discoverable. So be very careful.
- Be purposeful before shooting.
- Lay the foundation
 - With an expert witness
 - Ask if it will help illustrate their opinions
 - With a lay witness
 - Ask if the video depicts what they view regularly.
 - Ask them to explain what is happening on the video.
- For settlement, you can get more creative with the video.
 - Possibly make video available online for a limited time

- See a day in the life video checklist p. 278

15: THE POWER OF "NO"

- When you set deadlines and consequences, have to be prepared to live by them.
- If you cave, you will lose the respect of the opposing counsel.

16: ASSOCIATING WITH TRIAL COUNSEL

- How often does referral counsel go to trial?
- Mentality for trial attorneys...the minute you decide to go to trial and do it, you have won. Regardless of the outcome. You have won by taking the case to trial. That is what they tell their attorneys.

PART TWO: A WORD FROM OUR FRIENDS

17: TRUCKING AND AUTO DEFECT LITIGATION

- Taking the case
 - The investigation begins
 - Auto defect cases: If you don't have the vehicle, you don't have a case.
 - Move them to a professional evidence storage facility.
 - Preservation of evidence letters.
 - Mobilize your experts.
 - Get official reports
 - Go to the scene.
- Depose everyone. First responders, support personnel, witnesses, etc. Everyone!
- Have to leverage focus groups.

18: CHILD SEX ABUSE CASES

- How to handle them.
- Have to meticulously screen these.
- Takes personal, honest and direct approach with 3P witnesses.
- Leave no stone unturned.

- Write out each witnesses story after you meet with them.

19: MEDIATION

- Bean counters vs. people.
 - Insurance companies are bean counters.
 - Evaluate cases like this:
 - Liability
 - Damages
 - Comparative fault
 - Spit out a number.
- Use fear as your friend.
- Have to be ready to leave.
- Make a post mediation demand.

20: CHRONIC PAIN CASES

- Get help from a specialist
- They are going through a lot, be patient with them.
- Go through the client's day with them.
- Build trust with your client.
- Have to get an official diagnosis.

21: HOW TO WORK UP AND SETTLE PREMISES CASES

- Case selection
 - Try to avoid "blind claims"
 - Person tell you they were injured on someone's property, but the owner of the property has no idea they were injured.