



International Mediation Symposium

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***How Lawyers Should Best
Prepare for U.S Mediation:
A View From the Trenches***

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1: Know your case

2: Select *right* mediator

- Budget
- Research
- Experience
 - Style
- Opposing party

3 Timing is everything

When to mediate:

Not too Early

Not too Late

4 : Be prepared to share

- ✓ Mediation brief: YES!!!
- ✓ Experts identities and/or opinions?
 - ✓ Focus group results ?
- ✓ Research on value of case?

Sharing mediation brief

- **Art of footnotes & exhibits:**
 - ✓ Full brief for mediator
 - ✓ Limited brief for opposition
- ✓ Psychological effect of omissions in party's brief
 - **Contents of brief:**
 - ✓ Not a legal treatise
 - ✓ Inform and persuade

5 All *necessary* parties physically present

- To succeed need...
all decision makers
- Insurance or corporate rep *with sufficient authority*
- Authority sign settlement agreement or memo of understanding

6 Use demonstrative evidence: *A Picture Speaks Thousand Words*



7 Evaluate the case

- “Comps”
- Assessing risk
- Comparative fault
- Cost of litigation
- Confirm liens in *ADVANCE*
- Torts: Future wrongful death included?
- Confidentiality tax consequences

Amos v. Commissioner, 2003 Tax Ct
. Memo LEXIS 330

8: Be open to *Creative* solution

- Bracketing
- Mediator's Proposal
- Structured Settlements
(If "present cash value"ok)
- Apologies

9

Be prepared to go to trial....

10 ... Know When to *Walk*

You've got to know when to hold 'em
Know when to fold 'em
Know when to walk away
And know when to run
You never count your money
When you're sittin' at the table
There'll be time enough for counting
When the dealin's done

Every gambler knows
That the secret to survivin'
Is knowin' what to throw away
And knowin' what to keep
'Cause every hand's a winner
And every hand's a loser....

