Industry Snapshot

Negotiating Claims In the Age of AI-Enabled Plaintiff Advocacy

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Conducted by Suite 200 Solutions

SUITE 200 SOLUTIONS

Introduction

About Our Industry Snapshots

Suite 200 Solutions has been surveying insurance industry leaders since 2011. Both our comprehensive Studies and our more informal Industry Snapshots provide insights into the current thinking of senior claim and litigation officers as they address emerging issues, threats, and opportunities.

A copy of our publicly available reports can be downloaded from www.suite200solutions.com/studies.

Background to this Snapshot

Our recent work in the developing AI arena as it relates to litigated insurance claims has been extensive. For several reasons, our work has led us to conclude that litigation defense teams are falling behind the plaintiff bar in numerous critical areas.

Almost without exception, the chief claim officers and heads of litigation with whom we discuss industry trends tell us that their settlement values are increasing. And while nuclear verdicts, social inflation, and third-party litigation funding are often mentioned in the context of the increasing pressures they face, we have concluded that the more relevant battlefield is closer to home and frankly more under our control.

That battlefield, where we believe the wins and losses really happen, is in how the litigated claim is negotiated. It is in how the narrative is framed, how case valuation is anchored, and in how one side persuades the other to accept their story, their valuation, and the risks of not reaching a negotiated settlement.

The plaintiff bar has evolved in how they frame, anchor, and persuade – mostly due to new advances in AI that enable them to do these three things inexpensively, quickly, and most importantly, effectively. Although EvenUp Law is most cited as the enabler of these advances in the plaintiff bar (EvenUp claims they increase the value of a settlement by 30%), they are in fact now just one of many such tools being adopted by personal injury attorneys.

The Focus of This Snapshot

It is in this context that we conducted this Industry Snapshot – with a focus on understanding the philosophies and practices of insurance defense teams and their leadership. We wanted to answer several core questions:

1. **STAFFING -- Who is doing the negotiation?** Who conveys the numbers and presents compelling persuasive reasons why those numbers should be accepted?

2. **SKILLS – What levels of formal negotiation training are in place?** Are these important?

3. **ANCHORING -- To what degree are we framing and anchoring cases early?** Are we making first offers?

4. **PERSUSION and ADVOCACY -- How are we conveying our negotiation position?** Is our current practice less detailed than how the plaintiff bar is doing it? Is there executive support for evidence-based, highly detailed, written documents that convey our position?

Participant Demographics

Fifty-six (56) senior claim and litigation executives participated in this Snapshot; more than 50 claim organizations are represented.

Most respondents hold titles of chief claim officer, SVP Claims, or head of litigation. Given our selective invitation list and the short duration that we left the Snapshot open for participation, this number exceeded our expectations and suggests a high level of interest in the subject.

The claim organizations represented range from smaller to very large, with mixed lines of business, TPA and carrier orientation, and widely divergent geographical concentrations, from regional to national.

Not all participants answered all questions. The percentages provided are calculated based on the number of individual responses to each question (which never fell below 93% of total participants).

Again, a big thank you to all the participants who made this Snapshot possible.

Snapshot Findings

SECTION 1 – STAFFING

Who is doing the actual negotiation? Who is conveying the actual numbers (and presumably the reasons why those are the right numbers) to opposing parties? For organizations looking to improve their negotiation function and outcomes, this is critically important to understand.

In our litigation management community, many of us were trained in an era where claim professionals did most of the file negotiation. Defense counsel executed jointly agreed-to legal strategies, but the claim professional conducted the negotiation. At a minimum, that was the goal of most claim organizations.

As the results below suggest, that may no longer be the case. And, at least half of our industry's litigation executives would like to see their claim professionals more (not less) involved in the conveyance of offers.

Question 1 -- Please estimate the percentage of offers conveyed to opposing parties by the claims professional (not defense counsel).

46%	**Average**
40%	**Median**
28.26	**Standard Deviation (Population)**

Comments

Across our industry, defense counsel convey offers more frequently than claim professionals.

Notable to us was the high standard deviation of 28.26. The answers to this question of "who is doing the negotiating" ranged from 10% to 90% for claim professionals (fairly evenly distributed), leading to this high standard deviation figure. In short, the answer to this question is highly inconsistent across the industry.

Question 2 -- Is this percentage tracked or measured formally in your organization?

4%	**Yes**	**We formally track this number.**
56%	**No**	**It's not formally tracked, but I have a pretty good sense for this number.**
40%	**No**	**It's not formally tracked. The number I provided is a guestimate.**

Comments

More than nine out of 10 organizations (96%) say that they do not track who extends offers during negotiation. Across all respondents, four of 10 (40%) said that their estimate of claim professional offers is a guestimate.

Question 3 -- Is this percentage what you would like it to be?

50%	**No**	**It's too low. Our people need to be doing more direct negotiation.**
48%	**Yes**	**It's ok. I think we have a nice balance between us and defense counsel.**
2%	**No**	**It's too high. I wish defense counsel did more of our negotiation.**

Comments

Most executives (50%) feel that their claim professionals need to be doing more direct negotiation. The remainder are comfortable with the current split; one respondent wishes that defense counsel did more of the negotiation.

Question 4 -- Assume that you want 100% of negotiation offers to be made by the claim professional (even if you don't). What are the primary challenges to hitting that goal? (Check all that apply)

27%	**Many of our claim professionals lack the confidence to do this.**
22%	**There are no challenges. We could do this if we wanted to.**
20%	**Our claim professionals are simply too busy to keep up and make all offers.**
18%	**We lack experienced claims professionals who know what to offer.**
14%	**It takes too much time to put together a compelling argument for each offer.**

ADDITIONAL CHALLENGES CITED	
Defense attorneys push back on adjusters making offers.	Coordination with Defense Counsel takes time
I think adjusters take the path of least resistance and let others do the talking.	Often opposing counsel refuse to negotiate with adjusters.
Certain Plaintiff Attorneys will only communicate with Defense Attorneys. In some cases, Plaintiff and Defense Counsel have strong relationships, so better suited to handle negotiations.	Defense counsel is taken more seriously

We have poor data on the tactics that have worked and the plaintiffs we face	Some Defense Counsel can discourage it.
We found defense counsel has an established rapport with plaintiffs and can be more effective. Also defense counsel can use deps and court appearances as an opportunity to open negotiations.	There are instances where plaintiff counsel's efforts to "open the limits" will warrant defense counsel to take the lead to prevent EC exposures.
Sometimes DC has a standing relationship with PC where it makes sense for DC to present a negotiation offer. We still never "hand off" our settlement authority to counsel, but in these cases they present the offers.	We involve counsel early on for these types of cases. Hence it's general our counsel to their counsel. The lack of experience was the best box, but it is more due to utilizing TPA desk adjusters. It is difficult to delegate the appropriate authority in these types of cases.
Some plaintiff attorneys refuse to negotiate with claims professionals	Deference to def counsel - many def attys don't like this practice
not a challenge but sometimes counsel has a relationship with opposing counsel and we can choose on a claim-by-claim basis if it is more appropriate for counsel to convey the number	There are certain TT firms in NYC who simply will not deal with adjusters. Even when we explain we have the money, not defense, these holier than thou [attorneys] will not dirty their hands dealing with an adjuster
Our claims professionals handle both non-litigated and litigated claims. My estimates are related only to litigated files. In litigation, our claims professionals have an overreliance on DC to make offers.	Some lines of business are so attorney driven (financial lines, professional lines) that the adjuster would have to step outside of the usual way that claims are handled and that can be difficult.
I'd like to think it's claim specific and what makes the most sense for who should negotiate. We have had a lot of turn-over so some folks lack confident--not in the number but in speaking with their adversary	I only have one experienced adjuster I can trust to thoroughly analyze cases and have the confidence to talk with plaintiff attorneys. The others a what I would consider lazy and hide behind emails making lowball offers which typically generate suit that I reassign to that one adjuster I can trust
We have longstanding relationships with counsel and in some cases they have a relationship with opposing counsel that helps. We still control the amount of each offer.	Our 10 percent is based on strategic decisions made where we determine it would be better for defense counsel to make the offer.
There are some cases (due to merits or risks) defense counsel handles, but these are exceptions and we discuss these.	It could be done but I don't think that would be an effective strategy overall for outcome..
Really depends on multiple factors- type of case, relationship DC was with OC, experience of the claim professional	

Comments

Of the available canned responses to this question, the most popular was that claim professionals lack the confidence to negotiate and extend offers directly. Being too busy, a lack of experience, and lack of required time to put together compelling offer arguments were reasons also cited.

Executives provided further insight with their free-form comments, highlighting that defense counsel often enjoys a better working relationship with opposing counsel, and expressed a belief that plaintiff attorneys may be reluctant to negotiate directly with claim professionals. Several also mentioned that defense counsel may actively discourage direct negotiation by claim professionals.

However, overall, executives reinforced that organizations can achieve a 100% claim professional negotiation rate if they want to. This is encouraging.

In our view, they should want this. Fundamentally, on any specific individual file, claim organizations are competing against the plaintiff attorney's other files. By adopting an advocacy mindset, by negotiating with compelling arguments and evidence, claim professionals make it clear to the plaintiff attorney that this specific case won't be quite as easy as the attorney's other cases, increasing the likelihood that the plaintiff attorney will move on to easier files where there is no advocacy mindset.

SECTION 2 – NEGOTIATION SKILLS

We frequently observe that our property and casualty claims community operates the single largest negotiation network in the world. Tens of thousands of claim professionals are assigning roughly 800,000 litigated files (and many other files too) to tens of thousands of defense attorneys a year – 98 to 99% of which will settle through a negotiation.

How are our negotiators trained? Do they need more training? Is training important? These are some of the questions we touch on in this section.

Question 5 -- In the 2024 CLM Defense Counsel Study, only 8% of defense attorneys reported having taken any formal courses, classes, or certifications in negotiation. Please share your reaction.

57%	**This is a surprisingly low number.**
31%	**This feels about right to me.**
11%	**I'm surprised it's that high.**

Comments

Almost six of 10 executives (57%) categorize the rate of formal negotiation training among defense counsel as "surprisingly low."

Question 6 -- How do you feel the percentage of formal negotiation training and skills development compares between defense counsel and claim professionals?

70%	**Claim professionals have MORE formal negotiation training than defense counsel.**
19%	**I think it's probably about the SAME in both groups.**
11%	**Claim professionals have LESS formal training than defense counsel.**

Comments

A full seven of 10 respondents (70%) expressed their belief that claim professionals have more negotiation training than defense counsel.

That said, a full 30% feel that only 8% of claim professionals, or less, have received any formal negotiation training.

Question 7 -- Do claim professionals need more formal negotiation training and development?

80%	**Yes**	**I think this is critically important.**
17%	**Yes**	**I view this as more of a "nice to have" though, and not critically important.**
4%	**No**	**For the most part, they have been adequately trained and educated.**

Comments

80% believe that claim professionals need more – and described that need as "critically important." One out of 6 (17%) view this as a "nice to have." Only 4% feel that claim professionals have been adequately trained and educated.

SECTION 3 -- ANCHORING

The concept of anchoring in negotiations has existed for more than 50 years. As early as the 1970s, researchers recognized that first-offers (or demands) in a negotiation could significantly influence negotiation outcomes.

Anchoring is a particularly complex, powerful, and insidious process because it operates largely outside of conscious awareness. It subtly shapes decisions even when people believe they are thinking rationally. This has been proven in many studies in which people are explicitly told about the anchoring bias and are instructed to avoid it – only to still be influenced by the anchor.

Even early studies suggest that "going first" in a negotiation is usually more effective than responding. Counter-offers are frequently less effective as anchors because they are made in the context already framed, shaped, and formed by the initial offer. Plaintiff attorneys understand this very well, which is precisely why most claim professionals are often appalled by the initial crazy number they are presented with (but find it difficult to avoid comparing the final result with that number when the case settles).

This section examines some concepts related to "going first" (anchoring) in negotiations.

Question 8 -- In the 2024 CLM Defense Counsel Study, the first most popular philosophy among associates was that "the defense should always wait for plaintiff's counsel to make a demand before making an offer." Please describe your reaction to this finding.

17%	**I'm very surprised. It runs contrary to well established social science studies in the negotiation field.**
78%	**It doesn't surprise me. This is a very traditional view of negotiation.**
6%	**It doesn't surprise me. I share this view that the defense should always wait for plaintiff's counsel to make a demand before making an offer.**

Comments

Roughly eight of 10 respondents were not surprised that defense counsel associates' first and most popular philosophy is never to make a first offer. They feel this is a very traditional view of negotiation.

At the same time, one out of six executives (17%) find this posture to be very surprising, as it runs contrary to well-established negotiation best practices in the areas of framing, anchoring, and expectation setting.

Question 9 -- Think of your litigated files. How common is it that the defense (either claim professional or defense counsel) makes a "first-offer?" Please estimate the percentage of files on which the defense makes a first offer.

28%	**Average**
25%	**Median**
18.89	**Standard Deviation (Population)**

Comments

Responses suggest that in roughly one quarter of files (25-28%), the defense makes a first offer.

Again, we were struck by the high level of inconsistency across different organizations in this regard, with a population standard deviation of almost 19. While a more moderate standard deviation than our question about whether offers are being made by the claims professional or defense counsel (see above), it still reflects a high level of inconsistency.

Question 10 -- Is the percentage of "first offers" tracked or measured formally in your organization?

8%	**Yes**	**We formally track this number.**
53%	**No**	**It's not formally tracked, but I have a pretty good sense for this number.**
40%	**No**	**It's not formally tracked. The number I provided is a guestimate.**

Comments

For 92% of these executives, the number of defense team first-offers is not tracked. 40% said that the number they provided is a guestimate. .

Question 11 -- Generally speaking, do you wish the percentage of first offers was higher than the percentage you provided?

79%	**Yes**	**Generally, I think we'd benefit from making first-offers more often.**
21%	**No**	**I think we're generally about at the right percentage.**
0%	**No**	**I actually wish the percentage of first-offers was lower.**

Comments

Overwhelmingly (eight out of 10; 79%), participants expressed their belief that they would benefit from making first-offers more often.

SECTION 4 – PERSUASION and ADVOCACY

Studies show that when an anchor is accompanied by a compelling rationale, it is more likely to be perceived as fair and reasonable. Anchor numbers that are supported by credible, logical, or data-driven reasons are more persuasive and harder to dismiss. They increase the likelihood that the other party will accept your anchor as a legitimate starting point.

This is precisely why plaintiff attorneys don't just send a number, and instead send incredibly detailed justifications for their number, supplemented with medical bill details and other economic data. They do this to build their credibility and to not have their (always high) number been seen as arbitrary. This is why they often cite verdict values or prior settlement amounts for "similar" cases.

The power of this approach is also why companies like EvenUp Law (and others) are so popular across the plaintiff bar. Recipients of these demand packages know full well they are being anchored; but the inclusion of the detail, and the reasons, and the data, makes the demand numbers more persuasive and simply harder to dismiss.

This section explores some topics related to how defense teams present their counter-offers, their numbers, and the degree to which these are accompanied by compelling, persuasive, evidence.

Question 12 -- Generally, do you agree that Demand Packages from plaintiff attorneys tend to be more detailed, more evidence-based, and more detailed (sic) than Offers from the defense?

69%	**Yes**	**I think this is generally accurate.**
15%	**Yes**	**However, I don't think it makes any difference in the ultimate outcome.**
17%	**No**	**I think both sides provide a similar level of detail when making demands and offers.**

Comments

Approximately 70% of executives agree that plaintiff demands tend to be more detailed and more evidence-based than offers from the defense.

Question 13 -- Assuming cost and bandwidth (time) were not obstacles at all, do you believe that the defense would benefit from providing more detailed, evidence-based, and persuasive information to accompany offers?

67%	**Yes**	**I think it would provide significant benefit. It stands to reason that more persuasion would help to "sell the offer" more effectively.**
31%	**Yes**	**I think it would provide some benefit, but not very much.**
2%	**No**	**I don't think it would move the needle on negotiations at all.**

Comments

Big picture, a full 98% of executives believe that it would be beneficial if the defense were to increase the level with which they accompany offer numbers with more detailed, evidence-based, and persuasive information.

Roughly 70% of participants feel that it would provide "significant benefit." 31% feel that the benefit would not "be very much."

Question 14 -- Please share your reaction to the concept of sharing more information (rather than less) when making offers:

56%	**Generally, I support sharing more information. It helps the other side know where I'm coming from.**
44%	**Generally, I support sharing more information; however, I still want to hold some information back.**
0%	**Generally, I don't support sharing more information. I don't see the upside for me.**

Comments

A full 100% of respondents see the benefit in sharing more information, not less, when providing offer numbers. That said, roughly four of 10 executives (44%) want to hold back some information rather than share everything.

This question of how much to share during negotiation is an interesting dilemma in our industry. We believe much of this philosophy stems from training in timeframes where 99% of all cases weren't being settled. (This was certainly the case for this author, who was trained in the 1980s).

We find this so interesting that we recently wrote an article about it: "We're Losing Billions – Before We Ever Get to Court." We hope you find the article to be interesting and hopefully thought-provoking.

Questions and More Information

We extend our gratitude to those who participated in this Snapshot. Frankly, these initiatives and this data would not be possible with their generous donation of time.

The goal of these Snapshots is to provide discussion points for dialogues that makes our industry better. Please use these findings with that purpose in mind, as you think about how to maximize the performance of your own litigation teams.

If you'd like more information about our work at Suite 200 Solutions, and especially our work with AI in the risk assessment and effective negotiation realm, please don't hesitate to reach out to me.

Taylor

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APPENDIX A – ADDITIONAL COMMENTS

Question 15 -- What have we not asked you that you believe is important to the defense industry's ability to respond to the plaintiff bar's practices? This can be anything you believe is important.

FREE FORM COMMENTS
I am a firm believer in making the first offer. It's a philosophy we promote since I joined the organization. It's also critical defense counsel understand this philosophy and not work to undercut it. This can happen when they urge plaintiff to make a demand. It is also problematic when defense counsel floats their own view of the value with plaintiff counsel without any coordination with the adjuster. This undercuts the value of offers made by the adjuster and hurts negotiations. Partnership in negotiations is critical.
I think it's important that we don't need to go through all of discovery to make an offer. If there is some negligence and you have enough information start negotiating. What will you gain from discovery? If you are confident early in your case set the tone by making an offer to show your confidence in the defense of the case. Too much time and money is wasted on going through discovery.
Pragmatism. I think big carriers often fall in love with defense positions and hold on to those positions until it is nearly too late, often to the detriment of a global resolution.
We practice negotiating from the verdict form backwards to make sure we realize how the allocations to all parties affect our exposure.
The defense bar needs to network better and share information. The Plaintiff bar networks extensively, and this gives them a distinct advantage.
Acquiring as much evidence as possible and negotiate in good faith while always preparing for trial.
Probably an entirely separate topic but time limited policy limit demands on negotiations, particularly in certain jurisdictions.
Many of the suits we receive are frivolous. That makes it hard to attempt to negotiate a claim we do not owe contractually.

As formal carrier claim training programs have all but vanished, basic skills are being lost. All claim handlers who negotiate claims, even seasoned, experienced ones should be trained on key basics such as not asking for demands, making reasoned initial settlement offers, not relying on counsel to negotiate in all but the most unique situations. Strong coverage analysis, investigation, risk transfer, case assessment, reserving and action planning are key. Negotiate before the other side has fully invested in time and money in the case.
More formally seeking to identify early resolution opportunities and making this a regular part of initial case reports, and every subsequent case update. Trying to better identify plaintiff motivations toward settling vs. litigating.
I believe the most important ingredient the industry has lost in active negotiations is actually “speaking” over the phone with a plaintiffs attorney. First of all they are difficult to get to considering they have paralegals taking calls. However the one adjuster I have is so good at convincing that front line we must speak directly with the attorney and a rapport is immediately established. It is an awful time now for our industry. We are losing and carriers continue to sending the same old school people to events like CLM. They are not there to learn. They are there to have a free get away. CLM must get carriers on board with sending their young ones to events. When I speak I am shocked at the average age of the people on the room! We will continue to lose of this continues. I am tired of speaking to a room full of people who already know this stuff. Some is us are passionate about training the young. We are a dying breed. How many Executives who came to the recent CLM event in Dallas actually went back and shared what the volunteer speakers discussed? My guess is none. I could go on and on about this topic. When I started I had to go to claims school for months. Carriers are no longer invested in their youth. It makes me sad
How do historical dealings between parties factor in on negotiations and outcomes. Does frequency on negotiation discussions during the life of a matter make a difference.
One part of the current problem is that certain plaintiff firms (especially large ones) won't negotiate until a certain point or time frame (part of their "process". I think an important part of this area is how carriers can be more successful at getting plaintiff firms to engage earlier to enhance the chance of success for true early resolutions (along with better negotiation skills & resources)
Creating a negotiation plan is critical. You have to know your starting point, your steps to slowly increase towards your targeted settlement value and the negotiation points which you intend to make at each offer. It's also important not to bid against yourself. I would ask the

% of times claims professionals have an articulated negotiation plan, and the % of times they make two or more successive offers without a demand.
The question on first offers was a little confusing to me. Completely support making a first offer--even without waiting for a demand package. The reality is we often don't have enough information to make that offer without getting the demand first. But if we do, we 100% advocate getting an offer out and not waiting.
We know that pltf's counsel is using AI to craft demand packages, what technologies have defense counsel used effectively to respond to demand packages or review investigation information (medical records, expert reports, etc)? Have the technologies assisted in creating a better negotiation strategy? Of those that have taken formal negotiations training, what was it and do they recommend it to others?
What tools/strategies have you found most effective in negotiations both within mediation and outside of mediation.
I think both insurance companies and DC need to get better at making offers based on our data and not the data of each case. What I mean by that is simply, we know that when a claim comes in and we look at the complaint and/or demand packages that X case should settle between Y-Z from the get go. We should go ahead and make those offers. We don't need to turn over every rock and look in every nook and cranny to find the magic bullet to go ahead and get offers out on the table. I also think we have to stop playing games at mediation. If the claim is reasonably valued at $1,000,000.00 - the Plaintiff can start at whatever number they want - $100,000,000.00. In response, 99% of claims and DC professionals will start at $1,000.00 in response to such a outlandish demand - but all that does is create hospitality and make settlement that much more difficult. We should always look like the fair and reasonable money and I can stop at $700,000.00 and walk away if they don't get reasonable. Finally, I think its important to provide rationality to why we are offering what we are offering and identifying true mediators who will help shape the conversation and not just pass numbers back and forth.
need for increased collaboration and sharing of info re: successful tactics for dealing with certain firms/attys.
Clearly the TT's bar has joined together to take advantage of AI. The defense side- since carriers cannot band together in any sort of united front- are fragmented and in various stages- mostly infancy- in their use of AI. Right now the TT's bar has the upper hand and the defense side needs to level the playing field.

We didn't talk about who performs "better" at negotiation (claims professional vs attorney) whether making the first offer or not. We also didn't talk about whether more detailed offer packages to attorneys would help get them off their number versus offer packages to, say, a mediator.
You didn't ask why plaintiffs usually make the first offer. Many times, represented claimants hold back their medicals records and claimed injuries until the time of the first demand. This makes it nearly impossible for defense to make the first move in a negotiation as they don't have the relevant information to do so.
The last few questions were tough as I think the response is more nuanced then I could answer. I work with some attorneys that are excellent negotiators, but as a whole I think most defense attorneys (and it has been admitted to by some of them) are not well-schooled in negotiations. I think that demand packages by OC are typically longer and more detailed, but generally rely on alternative facts. We do not do a good job (as a a rule) in getting our view of the facts in front of the insured.
Claim professionals should have foundational understanding of behavioral economics as ancillary subject matter to negotiation training.
Expanding on 16 - I think you share information as you work through the process to reach the settlement. I think you need to strategically decide what you share and when as part of the negotiation plan..
Most items tie into training...Counter-anchoring, establishing credibility, having better information or data. I think you've covered it.
Adjusters rely too much on defense counsel for value of a case. I want my adjusters to do their own analysis which may be different from defense counsel but that's okay. Then you have a discussion. I see this as just as big a problem as letting defense do the negotiations.
I think you have hit on everything that concerns me. The lack of formal negotation training within defense firms is a concern, as is the reluctance of defense firms to make first offers in order to attempt to anchor in that number range.
All of these questions will be answered differently for litigated medical malpractice claims than for any other kind of casualty (or property) claims.

Re question 15- I don't think that Plaintiff Attorneys will care about our detailed offer letter. I do think there is value in this presentation for a mediator or in a ADR setting. Generally, I have no issue with DC negotiating the file, but it is my belief that the adjuster is more aware of the details and nuance of the file on any given day. When DC has their full attention on the file, they are well prepared, but I don't think that's the case if they were to receive a call unexpectedly on a file from their adversary. I think this is the result of fragmented Defense work, with multiple attorneys performing work on files.
We use to sit down over the table and address resolution now we need formal mediations to do what we were successful at many years ago. Alternative dispute resolution has grown exponentially over the past 20 years driving the cost of litigation up. We can control costs we cannot control verdicts.
You have not addressed the overwhelming trend toward on-line mediations. In my opinion, they place far too much power in the hands of the mediator to control the negotiations when it is the parties themselves who have their interests at stake. I'd like to know how my peers see the issue and their take on the business case for on-line mediations versus in person.
Pooling information to be able to compare and benchmark offers.
I believe there needs to be better benchmarks for defense performance so that plaintiffs understand the boundaries of likely outcomes.
Talented negotiators carried more weight in the past. Today, we fight social inflation with the threat of nuclear verdicts (think GA), vs discussing the merits (pros and cons) of the case at hand. Unfortunately, the legal system (even with good legislation being passed) will typically have judges letting a jury decide, driving up risk and costs, with the potential for a catastrophic verdict on a relatively low "value" often supported by unscrupulous medical providers. How do we combat this now-common scenario?