



# Mediation

AHAA Spring Meeting – Baltimore  
May 2, 2023

**Harold L. Moroknek**

Marshall Dennehey, Managing Attorney  
Co-Chair, Trucking & Transportation Practice  
Group

**Carrie C. Wall**

Risk Management Consultant  
Transportation and Insurance



# What is the Purpose/Goal?

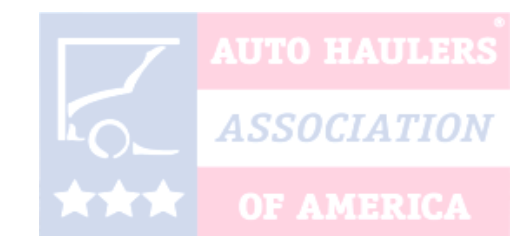
---

RESOLUTION

INSIGHT – learn  
about plaintiffs case

Timing

- If not now ....when ?
- Lets talk about when ...
- Is there a good/bad time?



# Do We Have a Demand?

---

## SHOULD WE:

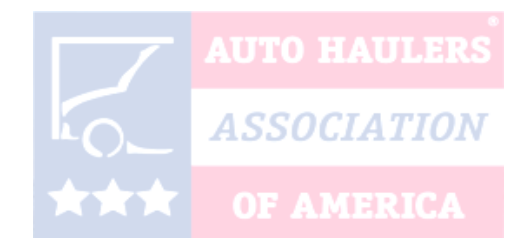
- Care
- Ask for one
- Make an offer without one



# What Need in Our Bucket Before We Agree

---

- Knowledge of facts/liability scenario
- Knowledge of damages = Case value
  - Investigation Results
  - Why need to
  - IME
  - Depositions – Do we need them?



# Should We Care if Plaintiff's Demand Is Outrageous?

---

Yes – We don't want to waste anyone's time.

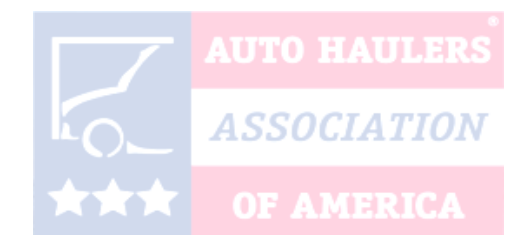


Is it an indicator of plaintiff's desire to actually get the case settled?

# Who Is Our Mediator?

---

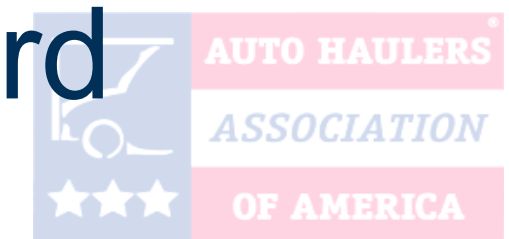
- How are we choosing him or her?
- Qualities ?
- **VETTING!**



# Mock Scenario – Facts Of Loss And Issues

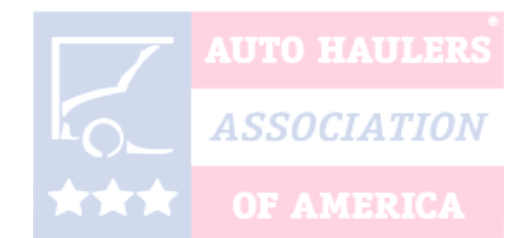
---

- Truck vs Malibu – TBI/ CERVICAL FUSION - 35 year old woman
- FLORIDA: Truck ran into the rear of the vehicle while driving on highway
- Truck driver seemed to be paying attention and alert
- Initially thought truck driver suffered medical issue
- Medical card signed – BUT!
  - Research revealed documents associated with the medical examination had driver seek attention for an issue with sleep apnea and leaky valve
  - Data contained in MD's notes in office but NOT on medical card









# At the Accident Scene

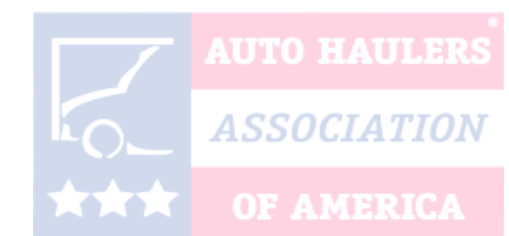
- Truck hits rear of vehicle
- Rear end of vehicle crushed
- No air bags
- P wearing seatbelt
- Claims moved back and then forward
- Claims whiplash
- Neck and back hurt immediately



# Medial Treatment - \$80,000

---

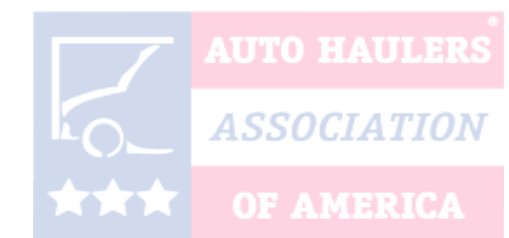
- Taken to ER via EMS - No objective diagnostic testing (e.g. MRI, X-rays)
- Treated and released without braces bandages canes or crutches
- Follows up with chiro one week after date of loss – Diagnostic films taken – positive for HD (neck and back) – And continues to treat for years
- Epidural injections / PT (nothing works) – Starts to see neuro (attorney referred)
- Surgery – Double level FUSION – One year post-MVA / C5-6 and C6-7
- Now claims permanent impairment in neck/back... and also a TBI!
- Surveillance shows her carrying packages and walking into the phone store



# Plaintiff Demand \$10 Million Dollars

---

- Argument – Failed to act reasonably; negligent in putting driver on the road
- Rear end – liability exists
- Shortage of drivers / pressured to allow this driver to operate
- Punitive damages allegation
- Plaintiffs seek drivers personnel file in discovery (shows had some violations and bumps in the roadway)
- 1 year medical card / significance?



# Additional Plaintiff Thoughts

---

Break lights on (conspicuity) – driver ignored

Significant damages to the rear

Immediate treatment



# Defendant's Thoughts – \$1 Million Policy Limits

---

- Causation
- Passenger compartment
- No notice
- Medical card signed
- No reason to believe driver anything but in good health
- Driver been driving for many years and never had medical issue / NOTICE
- EMERGENCY DEFENSE



# Additional Defendant's Thoughts

---

- Sustainable numbers from defense perspective
- Accident recon | biomech
- Medical expert



# Breakout Sessions

---

- GOALS

- Come up with BEST arguments/thoughts for position
- Plaintiff – Justify
- Defendants – Refute plaintiff's arguments & justify any defenses
- Return to discuss and make arguments and offers to the mediator



# Let's Connect!



**Harold Moroknek, Esq.**  
Defense Litigation Counsel  
Co-Chair, Trucking & Transportation



Harold L. Moroknek, Esq.  
287 Bowman Avenue | Suite 404  
Purchase, NY 10577  
914.977.7316 | [hmoroknek@mdwccg.com](mailto:hmoroknek@mdwccg.com)



**Carrie Carlotta Wall**  
Risk Management Consultant  
Transportation & Insurance



Carrie C. Wall  
434.533.5495 | [cwall@limitrisk.com](mailto:cwall@limitrisk.com)

