

When the Defense Smells Softness: Litigation Readiness as a Settlement Multiplier

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Many defense lawyers and insurance adjusters evaluate a case using a calculation that is rarely discussed openly: not simply *what are the injuries worth*, but *how likely is the plaintiff to actually try the case - and what happens if they do?*

That second question often drives settlement value more than the number written on a demand letter or proposal for settlement.

Insurance carriers do not pay verdict value. They pay risk-adjusted verdict value. Their analysis considers liability, damages, venue, and credibility, but it also weighs whether plaintiff's counsel will meaningfully advance the case through discovery, expert development, and trial preparation.

When the defense smells softness - hesitation in litigation activity, inconsistent discovery, or a pattern suggesting the case will resolve before meaningful litigation - the carrier's evaluation changes. Reserves are set conservatively. Mediation authority remains limited. The file is handled as one unlikely to reach a jury.

Conversely, when the file reflects consistent trial preparation, the defense's posture shifts. Adjusters reassess exposure earlier, supervisors become involved, and expert retention occurs sooner. The change is not emotional; it is actuarial. The carrier is pricing the probability of a jury verdict.

Several signals tend to influence that evaluation:

Purposeful Discovery

Early written discovery, targeted depositions, and timely follow-up communicate that the case is being developed rather than merely preserved. When liability and damages themes appear early, the defense loses the ability to comfortably defer valuation.

Motion Practice

Courts and defense counsel recognize the difference between routine filings and strategic litigation. Well-supported motions demonstrate preparation and force the defense to address key issues earlier than anticipated.

Expert Development

Organized engagement of treating providers and retained experts signals that the case will ultimately be presented coherently to a jury. This directly affects litigation budgeting and reserve setting.

Demonstratives and Case Presentation

Timelines, medical illustrations, reconstructions, and structured exhibits are rarely created in cases expected to settle cheaply. Their presence communicates preparation for juror comprehension and trial presentation.

Witness Preparation

Prepared clients, lay witnesses, and experts materially change deposition dynamics. Credible testimony reduces impeachment opportunities and increases the perceived risk of trial.

Collectively, these behaviors communicate a single message: the plaintiff is prepared to try the case if necessary. When that message is credible, insurance carriers frequently increase reserves and settlement authority.

Trial readiness therefore functions as a multiplier settlement. The defense is not simply evaluating the injury; it is evaluating the probability of losing before a jury.

Attorneys who have previously handled defense litigation often recognize these signals because they have seen how carriers internally evaluate exposure, litigation cost, and venue risk. Effective negotiations occur when plaintiff's counsel understands how the other side prices risk.

For firms handling matters that may require significant litigation resources, experienced trial counsel can assist in advancing the case while allowing the originating firm to maintain the client relationship. Structured co-counsel arrangements can provide additional litigation support, coordinated expert development, and courtroom presentation without disrupting client trust or case control.

Kogan & DiSalvo's litigation group includes Florida Board Certified Civil Trial Lawyers and attorneys with prior defense litigation experience. That background provides familiarity with how carriers establish reserves, select experts, evaluate venue risk, and determine mediation authority. The firm regularly prepares cases through depositions, dispositive motion practice, and trial settings rather than waiting for settlement posture to develop organically.

The objective in those partnerships is straightforward: referral counsel continues to manage the client relationship while trial counsel focuses on advancing the litigation, preparing witnesses,

organizing demonstratives, and positioning the case for mediation or trial. In many instances, meaningful settlement discussions do not occur until the defense recognizes the case is prepared to be presented to a jury.

When the defense perceives uncertainty, value contracts. When it recognizes credible trial exposure, evaluation changes. In many cases, preparation itself becomes one of the most significant drivers of outcome.