

USE OF EXHIBITS IN ADR AND MEDIATION  
Cadillac Exhibits on a Chevrolet Budget

By Elizabeth A. Leone

**I. INTRODUCTION**

As attorneys, we should use Exhibits **whenever** we need to persuade someone to our side. We can use the polished, expensive exhibits created for us by professional artists. That is money well spent in our large damages cases. But we cannot afford to spend that type of money on our run of the mill personal injury cases. We will focus on both Mediation and Arbitration, and how to do your own exhibits “in house” in an affordable way.

**II. MEDIATION**

Why do we use Exhibits in Trial?

*Visual is more effective than verbal*

*Entertainment*

*Belief in your case*

*Shows preparation*

*You know more about the issues than the other side*

*Offers realism*

Why should we use Exhibits in Mediation?

*Visual is more effective than verbal*

*Entertainment*

*Belief in your case*

*Shows preparation*

*You know more about the issues than the other side*

*Offers realism*

Many of us are under the mistaken belief that we should only put an all out effort into our mediations for our large damages cases. Hogwash! Put on a spectacular show in your \$10,000 case to demonstrate that you are ready and you are to be taken seriously.

Straight from the horse's mouth: I once had a senior partner in a large defense firm in Raleigh tell me that he will pay more to the Plaintiff who is represented by a well-prepared attorney. If you present your case at mediation with full knowledge of the facts and belief in your cause, he will simply pay you more.

### Show Me the Money!

Who do you have to convince at mediation to get the best settlement?

Mediator: When you convince the mediator, he will twist the other side's arm harder.

Defense Attorney: Show the defense attorney you could try the case tomorrow if need be.

Adjuster: To he who controls the purse strings, impress them the way you will impress the jury.

Defendant: Encourage the defendant to demand to his company to pay up.

If you go into your mediation, and give a short presentation of your facts by:

- Fumbling through your file
- Reading from a few, hastily jotted notes on a yellow pad
- Continuously consulting your client for the correct information

. . . you will convince no one of your case, least of all yourself. By your actions, you are communicating to the other side that you are not committed and will not go the distance.

***Let your exhibits tell the story!*** The key to a successful mediation is to persuade the other side. You can do that effectively through exhibits.

Two messages to send at mediation through your exhibits:

- 1) Consider admissibility of the exhibits you use. When you prepare exhibits considering and sealing their admissibility in Court, this shows foresight into your case, and that you have such belief in your case that you are ready to try it.
- 2) If the exhibits you use are not admissible at trial, they should focus on helping the mediator, defense attorney and adjuster on understanding your issues.

### **III. EXHIBITS ON THE CHEAP SIDE!**

#### ***Expensive Exhibits are Easy!***

You can get custom made exhibits from a variety of companies.

- Custom medical illustrations
- Accident scene diagrams
- Animation videos
- Graphs and charts
- Laminated blow ups of documents

You will pay a lot for these exhibits. Custom medical illustrations can cost between \$500-\$1000 per exhibit. Video animations can cost thousands of dollars.

While these exhibits are expensive, the beauty is that you don't have to do any of the work. The professionals do it all, even consulting with your own experts to make sure the exhibits are accurate.

#### ***Cheaper Exhibits Take Time!***

Exhibits you can create in your own office (explained more fully below):

1. Mediation notebook
2. Medical chronologies
3. Flow charts of medical treatment, time out of work, pain levels
4. Photographs
5. X-rays
6. Power Pointe
7. Highlighted key documents
8. Blow ups of medicals and expenses
9. Orthopaedic appliances
10. Hardware from surgery
11. Items showing your client's activity pre-accident

12. Video Interviews
13. Accident diagrams
14. Spinal models
15. Medical Illustrations

1. Mediation Notebook: Prepare a notebook that includes all of your exhibits. Number the exhibits in the order to be viewed corresponding with your presentation. Prepare a notebook for all involved. Show courtesy to even the Defendant by having one for him. You should make a notebook for the mediator, adjuster and the defense attorney. Most importantly, create one for your client as well. This shows that your client is your team member and it impresses the hell out of your client!

Add to the Notebook such things as:

- color copies of photographs
- medical chronologies
- copies of key documents (ie, medical records, bills, out of work documentation)

A Mediation Notebook is your best bet for the smaller personal injury case. You can have a staff member do the work and the cost of color copies is minimal.

2. Medical chronologies: Most defense attorneys and adjusters will probably ignore a medical chronology unless there are complicated medical issues. However, they are invaluable in helping the mediator understand the case and a mediator who doesn't understand, has a hard time arguing to the other side why they should pay up. They are also helpful in helping you to understand your medical issues; they force you to understand the chronology of your client's treatment.
3. Flowcharts: Flow charts are abbreviated information to help understand chronologies of events, volume of events or pattern of events. You can use flowcharts to show your client's medical treatment rather than a comprehensive chronology. Along the same lines, you can also use a calendar flow chart to show pattern of medical visits (ie, inpatient stays, physical therapy, etc).
4. Photographs: Use photographs of the vehicle damage and accident scene. You can blow these photographs up to an 8 ½ x 11 fairly cheaply and mount on foam board (price \$3.00). You can provide color copies in each participant's Mediation Notebook (\$1.29 per copy). If you have a client whose lifestyle is obviously affected from the injuries, show photographs of activities your client did before the accident.

5. X-rays: If you have a clearly obvious injury on x-rays, you can make a copy of the x-ray and show it for impact value at mediation. If you don't have an x-ray light box, tape your x-ray to a window with light shining through. Take a digital picture of the x-ray. Import it into your computer and edit as necessary. Print on high gloss paper and mount.
6. Power Pointe: This program is probably the most effective way to present your case at mediation. You get the benefit of having something visual to look at through the entire presentation. You can import photographs and x-rays into the presentation. With the right equipment, you can show video clips. Most importantly, it lets you effectively structure your presentation and by making your spoken presentation from the slides, you can speak without needing to refer to notes.
7. Highlighted Key Documents: If you have a medical record or other written document that is beneficial to your case, highlight it and present it as an exhibit. You can either do that in a Mediation Notebook, or import it into your Power Pointe presentation. You will want to do this with any statements from the doctor stating causation, giving an impairment rating or explaining future medical needs. These are the same medical opinions you will get from the doctor on the stand. You may want to highlight key deposition testimony or helpful statements from the investigating officer on the accident report (although make sure you can overcome evidentiary objections).
8. Blow Ups: I am sometimes hesitant to use blow ups in mediation, because often you have limited space within which to set up and present these blow ups. If you are in a spacious enough conference room, you may want to consider using a blow up. Otherwise, I would stick to putting copies of your exhibits in a Mediation Notebook or using Power Pointe to show the exhibits.
9. Orthopaedic Applicances: If your client had to use crutches, wear a neck brace, use knee support or any other type of orthopaedic device or appliance, bring it to the mediation and talk about it.
10. Hardware: A more stunning exhibit is showing the hardware that was once inside your client's body. Make sure you tell you client to ask the doctor for the hardware when they remove it.
11. Items Showing Your Client's Pre-Accident Activity: If you had a client that was a very active individual, show physical items that represented such lifestyle. If your client quilted, have her bring in quilts to show what she used to do. If your client built his own house, bring in the photos that showed the progress of the work he did before the accident. Such items will have a clear impact on a jury, so you know an adjuster and defense attorney will take it serious at mediation.

12. Video Interviews: Interview family and friends on video to have them talk about how the accident has affected your client. If the circumstances warrant, pay your client's doctor for 10 minutes of his time and video his opinions. Have your reconstructionist talk on video as to his opinions. Take video of the accident scene. Take video of your client's hunting trophy room to show how active he was before. If you really bash the defendant's expert in deposition, show parts of the video so they know what a waste of money he is.
13. Accident Diagrams: You have the tools with most word processing programs to create your own accident diagrams. With Microsoft Word's drawing program, you can do fairly detailed accident diagrams.
14. Spinal Models: Show the other side that you know your medical and you know what you are talking about. You can buy spinal models which can be used over and over again in your cases. Or, if you want, go to your local chiropractor and ask to borrow his.
15. Medical Illustrations: Many of us have some type of medical library. Use medical illustrations to show what your case is about. Borrow from other attorneys if need be. The internet can be a useful tool in finding illustrations.

#### **IV. ARBITRATION**

All of the above advice on Mediations applies to Arbitrations. But the difference in arbitration is that you are trying to impress the Arbitrator rather than the defense attorney and adjuster. Keep that in mind when preparing your case. Remember to prepare as you would a trial. And while in most arbitrations, the Rules of Evidence are relaxed, be prepared to address objections to admissibility that you would not get in a mediation.

Many arbitrators will want to make a decision the day of the arbitration. As such, they may not look through all of medical documentation (ie, if you were to submit a Notebook with all of the exhibits). Try to show most of your exhibits throughout the hearing rather than depend upon the arbitrators to "read it later". Again, I suggest Power Pointe.

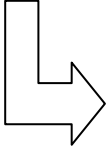
## **V. SUMMARY**

1. Don't do shoddy work. Even though you can do exhibits on the cheap side, they still need to look professional. Don't throw stuff together but take the time to make it look good.
2. Use Power Pointe if possible. If you don't own the equipment necessary (ie, laptop, projector, screen.... Rent It!)
3. Prepare for the Mediation as if you would a trial. Develop your theme, address your all your major points, clear up your weak points, and back up what you say through the use of Exhibits.
4. Go snazzy on the small cases. It shows commitment to your cause and that this case is important to you. By taking the time to prepare exhibits, you are conveying a strong message to the other side.
5. If you are not creative, or don't think you have the ability to do these things, find that creative staff member and have them do it. If you don't have anyone creative in your office, find someone on the outside who is and get them to do it.

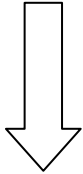
**I. MEDICAL FLOW CHART FOR RACHEL DAVIS**

October, 1998

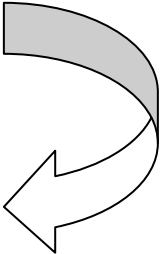
- Fall on right knee, patellar dislocation
- History of patellar dislocations



- Treatment with Dr. Obremskey
- Physical Therapy
- Surgery – lateral release late December, 1999

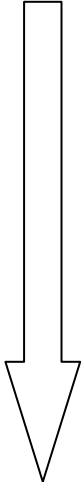


- Released from hospital on 1/1/99
- Goes to Food Lion for groceries; slip and fall injuring right knee



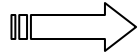
1/1/99 Wake Med Center Emergency Room

- Transported by Wake Med EMS
- Right Knee Pain
- X-rays negative for fracture
- FU with Dr. Obremskey

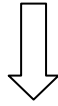
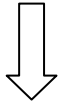


**DR. OBREMSKEY**

1/12/99 – C/o recent slip and fall; positive effusion (fluid around the joint), increased pain

 referral for MRI

1/25/99 MRI: Torn anterior cruciate ligament, chronic. Meniscus deformities



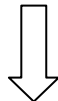
*Physical Therapy*  
2/2/99-3/31/99

**Referral Dr. Garrett**  
4/30/99  
Recommends Surgery

*Surgery*  
6/22/99  
Anterior cruciate ligament reconstruction, arthroscopic lateral release, complete medial meniscectomy

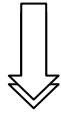
*July, 1999 Rehabilitation*

Physical Therapy – difficulty due to pain, guarded rehab potential, discontinued for manipulation under anesthesia



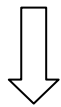
**8/2/99-8/4/99 In Patient Stay Wake Med**  
Manipulation under anesthesia, right knee

**8/7/99 – 10/27/99 Home Health Care**



**August – December, 1999**  
**Dr. Obremskey**

Continued follow up; continued pain



**11/10/99 – 12/2/99 Wake Med**

Physical Therapy

## *Medical Records Summary for Rachel Davis*

***Doctor***

***Date of Treatment***

***Description of Diagnosis***

***Description of Treatment***

Wake Med Center  
MR

Right Knee pain (S/P Knee surgery). Fell and hit right knee on floor.  
Ms. Davis presented to Emergency Room after falling on wet floor. She was walking

X-ray taken of right knee revealed negative for fracture or dislocation or knee effusion. As subtle mottled pattern which was not definitely present previously and may represent osteopenia.

**1/1/99-1/1/99**

Walking with crutches in supermarket.  
Ms. Davis said she heard something pop in my right knee knee.  
Feel and hurt knee; had patellar realignment last week. Fell and hit the right knee on the floor.  
R Knee pain (s/p recent surgery)  
Pt said heard something pop when she fell

MRI could be indicated; fu with Dr. Obremskey

WakeMed Rehab  
Outpatient

Services  
**1/5/99**

Physical, Occupational and Speech  
Therapy Progress Note:  
Sx 12/21/98; hospital 4 days. At home, has been elevating it only NWB R. No other ex. Went to ER Sat evening 1/2/99 after fall in a store. Crutch slipped out from wet floor, pt put full weight on R leg.  
  
Pt with severely limited ROM and tolerance for therapy intervention s/p surgery. Primary problem is pain. Pt has fair rehab potential.

Wake Med Center  
MR

**1/12/99**

Wake AHEC Orthopaedics:  
  
Ambulatory Clinic History and Progress Notes: C/o recent slip and fall with increased pain. Something ripped loose and feels loose piece in knee. Severe pain. + Effusion, sensory okay, wounds dry. Flexion 45 degrees with no subluxation.  
  
Dx: S/P patellar realignment with recent fall with increased pain and questionable loose body.  
  
X-Ray R Knee: Examination performed out of the external brace; compared with 1/1/99 shows significant resolution of the thickening in the area of the quadriceps tendon above the patella. No acute joint effusion or intra-articular fracture or loose bodies currently seen.

Plan:  
Send for MRI R Knee  
Prescription for Percocet

# MEDICAL TREATMENT PETER CAMBRIDGE

**KEY:**

- A = Accident**
- P = Physical Therapy**
- S = Surgery**
- F = Family Doctor**
- O = Orthopaedic Doctor**
- H = Home Exercise**

<b>DAYS OF THE MONTH</b>
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**SOZ-IOZ**

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