

# The Defense's and Plaintiff's Perspective on Early Settlement of Birth Injury Cases



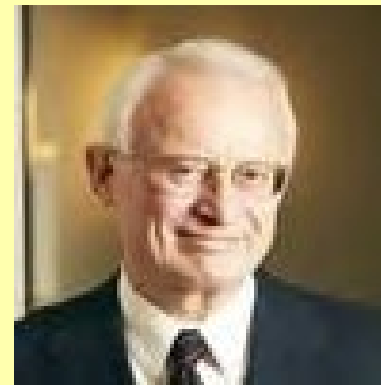
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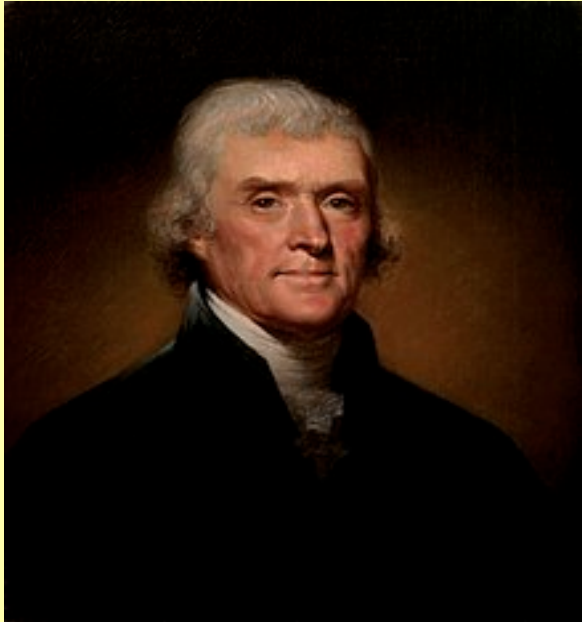


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**What advice would you give to plaintiff & defense attorneys on the best approach to successful early resolution negotiations, and how and why that may differ from settlement discussions on a case approaching trial?**



**Father of the US Constitution  
Co-author of Federalist Papers  
4<sup>th</sup> US President**



**Star of the Apprentice  
Twitter of Public Policy  
45<sup>th</sup> US President**

**What are the inherent challenges in putting a value on a birth injury case in the pre-suit process?**



**Does the defendant having 3<sup>rd</sup> party insurance versus being a SIR (self-insured retention) affect presuit discussions?**

- Advantages/disadvantages of hospital in house counsel negotiating presuit settlement with plaintiff counsel versus retained defense counsel.**
- Is it more difficult for insurance carriers to engage in early discussions and settlement rather than self-insureds?**

## **The two formats for early presuit settlement discussions:**

- 1. Traditional presuit discussion (usually in strong liability cases) and**
- 2. Conversion Resolution Programs (CRPs)**

**What are the differences in these two approaches?**

**What effect does the fact that the injury is allegedly from HIE have on the early resolution process?**

**What effect does HIE followed by “cooling” have on the early process?**



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**Is there a difference in the objectivity that a self-insured institution brings to the table in early discussions verses an insurance carrier and why?**



**“Good news! Our doctors say you’re ready to go back to work.”**

**Are early settlement discussions more successful in states with tort reform and caps on noneconomic damages and why?**





# Mediation vs. direct discussions with opposing counsel, what works best?



**What about the Michigan Model's policy; if we do not settle in our presuit conversations and meetings, we try the case – no settlement thereafter? Good or bad idea and why or why not?**



**Advice to plaintiff and defense attorneys as to the best approach to successful negotiations in early resolution.**

