Dealing with lack of authority

This story is for you if . . .

- You suddenly find there is a lack of authority at mediation;
- You have negotiated to a point of no return;
- You are asked by the mediator to take what they have or go through additional company roundtables and/or depositions.

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The myth:

Defendants say they have authority to deal.

Why it’s misleading:

Authority is limited because real decision makers are rarely at the defense table.

What to do

Fully expect that the final decision maker will not be at the negotiation table—and don’t be afraid of it. This is the way corporate decision making occurs and has proven to be a very effective way for bureaucrats to assess risk. Demonstrating frustration at the other side will only throw fuel on the fire.

Instead, use the mediator to gather intelligence early about the ability of the company representative to close the case in a range that makes sense. The mediator will be in a position to determine whether the company representative can make a phone call that day, if necessary, and obtain additional authority. This is important for the mediator to do early on and before the company representative reveals their last number. The reason it is important is that it allows you to collaborate with the mediator in order to define the negotiation process. In so doing, it provides you with a game plan as to how aggressively to negotiate. So, if the company representative has the ability to make a phone call, you are more likely in a position to obtain closure on that day and can be more aggressive in your efforts to settle. If the company representative does not have any further authority, the mediator can give you several other alternatives, including:

- Accepting the amount that is available on that date;
- Keeping the negotiation open for a period of days so that the mediator can follow up with the decision makers;
- Allowing the mediator to make a recommendation in a range that both sides can find appealing.

In short, don’t get angry at the defendant for using the higher-authority tactic. It can be reversed and utilized properly, provided that it is identified and recognized early on and that you use the mediator to gather intelligence.