

MEDIATION SCRIPT

MEDIATOR: Good afternoon. My name is George Brewster. I am going to try to help you resolve this case today. I'm not planning to make any judgments, but instead I will try to facilitate your discussions with each other. Now, Ms. Sahhar, I understand you represent the plaintiff. Mr. Todd, I understand you represent the defendant, the County. Have there been previous demands and offers?

PLAINTIFF: We demanded the policy limit, \$1 million.

DEFENDANT: In response, we have offered \$110,000.

MEDIATOR: Okay, well that's a start. Let's hear briefly from the plaintiff concerning the case, then I'll turn it over to the defendant, and we will go back and forth from there.

PLAINTIFF: Thank you, Mr. Brewster. To put it bluntly, we aren't going to be here very long today unless the County gets real realistic, real fast. This is a case about dangers to community safety, namely our children and we are serious in our stance to move forward. As you know, we would not have even shown up if the County was here without its risk manager.

There have been some serious errors in judgment by the County in our negotiations to date, and we truly fear for the risk manager's ability to keep her job. As you know from our brief, the County refused to negotiate pre-filing, thus we had to bring this action.

After we sent out Requests for Admissions, which the risk manager denied under oath, we were forced to take seven depositions in order to build our case. We've been put to a lot of expense, but I'm quite glad we have, because now we are ready to go to trial and have a jury hear how the County's roadway has put the citizens of our community at risk, how their failure to follow safety rules jeopardizes community safety. And believe me, we would much rather go to trial than to consider such a paltry settlement offer of \$110,000. That's all we need to say for now – except that we're glad the \$1 million policy is now open.

DEFENDANT: Thank you, Mr. Brewster, counsel. First off, we have no reason to fear taking this case to trial. After our complete investigation and discovery, we determined this action does not arise from any County negligence. Only because of the severity of the outcome of

this accident have we decided to offer up to a maximum of \$110,000. But we expect the County to prevail – truly. This roadway is properly designed. It has all required warning signs and a reduced speed limit for when children are present. The plaintiff and Mr. Clueless are the only ones to blame here. We will likely stand on our offer, or at the very most, we will just incrementally increase it by the end of today. Plaintiff can walk away from good money – who are we to stop them?

PLAINTIFF:

WE REALLY DON'T NEED TO BE HERE. THE COUNTY HAS EVIDENCED ITS UNWILLINGNESS TO CARE ABOUT THE SAFETY OF THE CHILDREN IN OUR COMMUNITY. WE ARE 100% READY TO TAKE THIS TO A JURY. WE ARE READY TO WALK OUT!

MEDIATOR:

Look, we are just a few minutes into this and no one should threaten that they are walking. Let's make good, constructive use of the time here. It's really in no one's best interest to go to trial.

PLAINTIFF:

[Angrily]: It's in the best interest of my client and of the community! We've got the lid off a million dollar policy! And we expect and foresee a verdict substantially over one million dollars.

MEDIATOR:

All right, let's keep cool heads here; in a calm manner, Ms. Sahhar, tell us the facts which justify more than a million dollars in damages, and explain your view on why liability is certain.

PLAINTIFF:

1. The County must ensure roadways operate safely. The County is charged with protecting our children, by designing safe roadways. This is of utmost importance in protecting community safety.
2. With evidence of just one collision, the County's Director of Public Works agrees that he might consider the accident location dangerous.
3. By virtue of the signage at this location – 25 miles per hour when kids are present – the County recognizes that kids need extra protection when it comes to traffic safety.
4. Traffic engineers are not allowed to needlessly endanger pedestrians.
5. The Director of Public Works himself agreed, without question, that there is a need for an extra layer of protection when it comes to safety of kids adjacent to the roadway.

6. There were several violations of recognized safety rules and principles here which the County decided not to undertake:

- Flashing overheads
- Street embedded flashers
- Speed bumps
- Stop sign at immediately preceding intersection

7. The Director of Public Works acknowledged that its traffic engineers are sometimes faced with these types of choices for its roadway design.

8. The Director of Public Works acknowledged that the traffic engineer has to avoid making the dangerous choice.

9. Making the dangerous choice would violate the standard of care.

10. The standard of care should not allow needless danger.

11. Needless danger, is exactly what happened here and is a violation of the standard of care. Broken safety rules=a dead child.

12. In just this country alone, 3500 kids are killed each year in auto/pedestrian accidents.

13. The decedent has smart parents, was off to a great start in school, was an All Star in both soccer and Little League – he had unlimited potential which was just starting to be realized. His economic worth had the potential to be \$10 million over his lifetime and we will prove that at trial, and collect it post-judgment.

MEDIATOR:

Okay, thank you. Mr. Todd, any response?

DEFENDANT:

Yes, thank you.

1. There's an 80% less likely chance of accidents at reduced speed limit school zones.

2. All signage and design consideration for the roadway met all applicable standards.

3. The Director of Public Works and the County's Traffic Engineers receive annual training in the latest road design improvements.
4. Since the time of Director of Public Works deposition, we've determined there have just been two accidents here in the last five years.
5. The real cause of the accident here was the driver, not the County. This is just a tragic accident. The County protects the community with safety rules. The safety rules in place here are good rules and the county followed them. No rules were broken by the County, and the County could not have prevented this accident with any more "layers" of rules.
6. Roadways must be designed with safety considerations for all users – drivers, pedestrians, parked cars, bicyclists, young people, old people. We must balance the risks of all engineering options available!! Therefore, there is no liability.
7. Even if there is a smidgen of potential liability, plaintiff's damage case is wildly speculative since the decedent was just 12 years old.
8. We're willing to stand on our offer of \$110,000.

PLAINTIFF:

Like I said before, we're walking! And, the risk manager will be in grave danger of losing her job, going down with the Department of Public Works when this verdict goes south! If we don't see something with seven figures – now – we will just see you at trial!
