

Michael Cowen:

This is Michael Cowen and welcome to Trial Lawyer Nation.

Voiceover:

You are the leader in the courtroom and you want the jury to be looking to you for the answers. When you figure out your theory never deviate. You want the facts to be consistent, complete, incredible. The defense has no problem running out the clock. Delay is the friend of the defense. It's tough to grow a firm by trying to hold on and micromanage. You've got to front load a simple structure for jurors to be able to hold onto. What types of creative things can we do as lawyers even though we don't have a trial setting? Whatever you've got to do to make it real, you've got to do to make it real. But the person who needs convincing, is you. Welcome to the award-winning podcast, Trial Lawyer Nation, your source to win bigger verdicts, get more cases, and manage your law firm. And now here's your host, noteworthy author, sought after speaker and renowned trial lawyer, Michael Cowen.

Michael Cowen:

Welcome to Trial Lawyer Nation. This is Michael Cowen. I'm here with my partner Malorie Peacock. How you doing today, Malorie?

Malorie Peacock:

Doing good. Just getting through the day.

Michael Cowen:

Well, today we are going to talk about a topic near and dear to my heart, and that is how to value a personal injury or wrongful death case. How do we make sure that we're coming up with the right number, that we're not going to leave any money on the table, but we're also not going to be irrational and take a \$10,000 case and want a million dollars for it. Before we jump into the meat though, I want to cover a couple other things. First of all, I want to thank Law Pods. Law Pods is our producer. Law Pods makes my life so easy because all I have to do is sit here, show up and talk to people. They handle all the recording, all the editing, creating all the clips we do to market the podcast. They make my life easy. I really appreciate them. And if you're thinking about doing a podcast, I highly recommend Law Pods. The second thing is we're hiring Malorie.

Malorie Peacock:

Yes. Yeah, it's exciting. I'm always excited when we're hiring someone new just because just means we're growing and growing and growing.

Michael Cowen:

So we're looking for two lawyers, one in San Antonio, Texas, one in Albuquerque, New Mexico. So the San Antonio position, you would need to be a Texas licensed lawyer. Zero to no more than three years experience. You would be working in one of our teams with one of our... Actually two of our partners on high-end company vehicle and trucking cases, mostly in Texas but some out of state. And if you're interested in applying for that job, just dial 2 1 0 9 4 1 1 3 0 4 for instructions. That's 2 1 0 9 4 1 1 3 0 4.

My New Mexico firm also has an opening in our Albuquerque, New Mexico office. This needs to be a licensed attorney with two to five years experience. This position is helping us build out and litigate car crash cases in New Mexico. So it's more of a broader spectrum, because that's an advertising firm we

have there in New Mexico, unlike our referral only firm we have in Texas. If anyone is interested in applying for that job, you can email me personally. It's michael@nmlawgiant.com. That's November Mike law giant.com. That being said, Malorie, we got the bootcamp coming up.

Malorie Peacock:

Yes, it's almost here. I'm so excited. We have so many cool things planned this year.

Michael Cowen:

Yeah, June 16th. And so a couple things. We've got our topics out now. I don't know if they're on the website yet, hopefully they will be by the time the podcast announces. But one cool thing, the framework for my trucking book was on the method that we have developed, and we broke it down to nine steps, on how to work up a trucking case from beginning to end to make sure that you find all the big issues and you make sure you don't leave anything on the table. And I have presented a little bit on that before, but we're going to share that. We'll go into a little bit of more detail.

But the other thing I'm going to do for the first time is what I call the mini method, which is how do you apply this method to a smaller case? It's a \$50,000 case that you want to turn into 100, 100 you want to turn into 200. So you can't hire consultants, you can't do a bunch of focus groups, but there are things you can do to maximize that case, and I'm going to share what works for us. And so I'm really excited. It's June 16th here in San Antonio. If you're interested, check out bigrigbootcamp.com. That's B-I-G-R-I-G bootcamp.com and we'd love to see you here.

Malorie Peacock:

Yeah, I mean I can't wait to see all of the podcast listeners. It's one of the opportunities we get throughout the year to see the listeners and meet with them face-to-face. It's always so fun.

Michael Cowen:

So Malorie, let's go turn now to the meat of today's podcast, and that is valuing cases.

Malorie Peacock:

Yeah, so it sounds like a really lofty topic for a one-hour podcast, Michael. How are we going to teach them how to value all cases across the board?

Michael Cowen:

Well, I think what we can do is we can talk about the evolution of what we do and what works in our practice and some of the things we've seen, how it works, and then give people advice on how they can use that either within their own firms or if you're not a firm, how can you do this if you're not at a firm? So let's start with what are some of the problems or struggles you've seen both yourself or other lawyers at a firm in coming up with the right value on a case?

Malorie Peacock:

The practice of law is a practice and it's an art and not a science. And this is what I always tell clients, is there are so many things to consider when deciding how to value a case that it feels overwhelming and it feels like what is more valuable, what is less valuable, how important is this fact? How not important is this other fact? And if you're locked in your office and you're doing this by yourself, it can feel overwhelming and it can make you often second guess your strategy, which is you come up with a value

and then you think, "God, I don't know if that's right." And a mediator can make you pivot or even opposing counsel can say something that throws you off and it just makes mediation more chaotic and it makes you constantly second guessing the value that you put on a case. But I think that the biggest problem is that if you're doing it by yourself, you're not getting enough of other people's perspectives about what's important to really put a real settlement value on a case.

Michael Cowen:

Absolutely. It is tough, because it is always... They used to have formulas which I think are totally wrong, but take the medical bills, multiply by three, that's the case value. Or sometimes people say one and a half, sometimes people say five, whatever the number happens to be, just take those and come up with the value. And that's easy, but it's not necessarily what the case is worth. And then what's it worth to try it? How much money is it going to take to try it? What are your risks? What are your likelihood of winning? What's your chance of losing? Is your client down for that ride? There's so many different factors, but I think the first thing to look at when we're looking at case valuation, is a case ripe for settlement. In other words, is this the right time to talk about case value or do we need to do more work first. When do you think a case is ripe for settlement?

Malorie Peacock:

That's a tough question. It depends on the case. I have cases that we've never filed that are ripe for settlement, because we know what the insurance picture is, we know what the asset picture is, we know what the jurisdiction is and we have an insurance adjuster on the other side that sees all of their potential issues. So it's right for settlement even before we ever filed it. And then we have cases that are not ripe for settlement until we're doing closing arguments at trial. So it can be right for settlement anytime in there, and that's another really challenging thing is to identify what is the right time to open that door to negotiations and what information would be required to engage in fruitful and meaningful negotiations.

Michael Cowen:

Yeah, and I find this comes up and especially with our younger lawyers or if someone came over from the defense, the defense will follow a lawsuit. The defense say, "We want to explore early settlement." And it's like, "Well is our client finished treating, do we have their documents? Have we taken the deposition of the truck driver or corporate rep? Do we know whether we have anything in here that's going to infuriate a jury or do we know they're going to be great people the jury's going to fall in love with?" And so sometimes we don't have enough information and if we engage in settlement negotiations at that point, what we're telling them is, "We are interested at selling cheap." We don't want to do the work. We're interested in seeing what you'll pay, because they're not going to pay full value on a case unless it's such an obvious case, like we've got a wrongful death case.

It is a small family owned business with a \$100,000 insurance policy and there's no other assets and we've looked at that and that's all there's going to be. There's no shipper, no broker, nothing like that. It's just a small, let's say a flower delivery car with a mom-and-pop business and a hundred thousand dollars insurance policy. Well yeah, maybe you can settle that, but if you've got a case where you've got a million dollar policy and they're still treating, the doctor may recommend surgery, may not, or the client hasn't decided whether they want to get the surgery or not. Well no, that case isn't ready to be evaluated yet. And I think we needed to do some discovery on... If you're going to follow the lawsuit, you need to do some discovery to find out did the driver have a bad record, the driver, did they have any training? Did they have any company safety policies? Were there drugs or alcohol involved?

All those kind of things you want to look at. And then do we have all the insurance information? A lot of times on a big case, they'll produce a million dollar policy and that's all they have. The insurance defense lawyer isn't intentionally lying to you. He asked for the insurance policy, he asked the insurance adjuster. The adjuster gave them that insurance adjuster's policy, but nobody asked to see if there was an excess. Well maybe there is. And we've had cases where they've told us there's only a million dollars and when we won an affidavit before we settle it, suddenly there's more insurance.

Malorie Peacock:

Yeah. No, that's definitely happened before and it keeps happening. I mean it's something that happens all the time. And like Michael said, I don't know that it's people nefariously hiding something. It's just they don't ask. And there's also other avenues for insurance, other potential parties, all kinds of things that you can explore. But when is a case right... Michael, I've heard some people say you should never even send a demand in a case because it makes you look weak. What do you think of that?

Michael Cowen:

I totally disagree with that. I think there are definitely strategic times to send a demand in a case. One, if you're demanding all the money they have, then how does that make you look weak? If I'm saying, "These are all your policy limits, we want all of them." How does that make you look weak, in a big case? The other thing is if you have a case, let's say you're litigating a case, you've valued this case at let's say \$50,000, a hundred thousand, that is fair value for this injury. Luckily the client didn't get that hurt and that's all the case is worth. Does it make sense to not give it a shot of settling for that amount earlier on rather than spending a lot of the client's money and expenses making the client wait all that time for a fairly limited recovery because the defense in those cases doesn't necessarily want to engage you. They're getting paid by the hour.

So in a case like that, no I don't think that it's a good idea to never engage. Now if you've got a mega case, then there's layers and layers of insurance and you know that you're not going to scare them into paying all of them, or you want to scare them in paying all of them, but they're not just going to do it because you wrote a demand letter. Well then the thought of, "I'm getting ready for trial. I'm getting ready for trial. I'm getting for trial. Wait till they call you," that might make sense in that case, but I don't think that there should ever be a universal rule that you never ask first, because it shows weakness.

Malorie Peacock:

I agree. I agree. I've heard that at a lot of CLEs from people and every time I hear that I think, "Oh no, don't tell people that have a hundred thousand dollars case and a million dollar policy that." I mean if you're working something up for trial, you're going to eat up all your client's money and get a \$125,000 verdict and then the client gets way less than they would've if you would've just taken the hundred, engaged in negotiations at that time. So I always cringe a little bit when I hear that.

Michael Cowen:

Yeah, you know, look, there is a lot of great information shared at Sealys. There's also a lot of posturing that goes on at Sealys and people are trying to sound like, "I'm some big badass. I want to create fear in the audience so that people are too scared to do this themselves. They're going to freak out and they're going to refer me their case." I don't agree with that philosophy, but it exists. And so whenever someone's saying always and makes these extreme statements, I think sometimes you find when you actually do a case with such a person that they don't follow that always or if they do, check out their track record.

But I mean I think any lawyer that is truly really, really successful has plenty of work and should not have to feel like we have to scare people into bringing this, or intimidate people into bringing us in on their cases. I mean if it makes sense, people want to work with us, that's great, that's fun. I love working with other lawyers and that's how we make our money. But we have enough work. We don't need to pressure somebody or intimidate someone into bringing us in. That's not right and I wouldn't want anyone doing that to me.

Malorie Peacock:

Right. Right. So back to how do you value a case? So we've identified the problem, which is how do you figure out when is the right time to engage in negotiations and how do you figure out a value? I mean those are the two big issues when you're thinking about settlement negotiations, negotiations in general and making sure you're getting the right amount of money for that case and that you're not holding out unnecessarily and that you're not settling cheap.

Michael Cowen:

Too high and too low are both problems. I mean the too low problem is obvious. If you settle too low, you don't make as much money, but more importantly your client doesn't get nearly as much money and that's not right. That's not why they hired us and the defense gets a discount and they get off cheap. What are some reasons... Because I don't think... I don't know any lawyer that intentionally says I want to settle my case. It's cheap. I mean I've just never met a lawyer... Maybe there's one out there, but the lawyers I know all want to get good value for their cases, they want to do the best for the clients. I just haven't really met this alleged stereotypical lawyer that just wants to settle everything cheap and move along. So what are some reasons that cases get settled for too little money?

Malorie Peacock:

There's a bunch of reasons, but I think one of the main ones that I see is that sometimes when you're involved in a case and you know something about the case that is causing you anxiety, you put too much focus on that one thing that ultimately if you actually presented it to someone else, they would say, "Who cares about that? What do you even care about that?" And so sometimes we discount a case because of that one thing that is just... We're hyper-focused on, which actually isn't a big deal in the case when you present it our focus group or talk to anybody else about it, they think, "Why are you even worried? What is that? I don't even know anything about that." So you are sabotaging yourself a little bit because you're keeping it all in. You're doing it all by yourself.

The other thing is that there's these, I think what you mentioned it before, is some people think that there's a formula for how to resolve cases and I don't even look at a formula when I'm valuing a case. It's not based on one and a half, three times medical bills or something like that. That's just not the way to think about how to value a case. And that's not the way that a jury thinks about how they value a case. They're not given that formula that says, "Okay, now you know what the medical bills are. Just multiply it by three and divide it out between the categories." I mean they're not told that. So I think you're sabotaging yourself sometimes by doing that and thinking there's this formula and I just have to accept what the formula says it's worth.

Michael Cowen:

Yeah, I think another thing is you don't know what you don't know. And so you might have maybe come from a firm work case, this kind of case settles for this kind of value and the people around you are selling those cases for that kind of value and you don't know that you could get more and until you see

it, until you believe it, until you've talked to other people that have done it you don't... All the time they play these games like, "We're never going to pay you more than this. We're going to put this amount of money on the table for one week or 24 hours and then we'll never pay it again and we're only going to go down from here," and all these different games they play with us to create fear and uncertainty, going to mediation with a number that's not going to be their final number, but that's the biggest number... They've already decided, "We're not going to offer more than let's say 55%, 60% of the real value of the case at mediation because we want to test them."

And then there's all this pressure at mediation to settle the case. The mediator wants to get it settled, the clients want to get it done sometimes. So the insurance companies know that, and they play us, and they're playing on our fear and the mediator will, "You could lose this case. Are you telling your client that this could happen and this money might not be there tomorrow?" And if you don't have a real good feel for the value of the case, then you know can fall prey to that and end up settling too cheap.

Let's go to the other side which is... I think we've all seen cases where a lawyer way overvalues the case, it way overworks the case for what it is. And I've done that, to be honest, earlier in my career and paid for it. Ended up trying a dog of a case or writing off a bunch of expenses so I can get my clients some money. Not taking a fee, only taking half of my expenses because I went nuts on a case and the case still sucked after all the work I did on it. So what are some of the reasons you see that people... The reasons that people would overvalue a case?

Malorie Peacock:

I think one of the most common things that I see is that people have trouble separating the injuries from the liability. So sometimes you have a client that's really, really badly hurt and you feel really badly for them. I mean they deserve a lot of money because of their injuries, but there might be a liability problem that no matter how much you work on the damages angle, it's never going to take care of that liability problem. And you have to figure out how you deal with that. So at the end of the day, if it's a 50/50 shot, if you go to trial, that affects your settlement value. And even though it doesn't affect the value of the injuries, it still affects the settlement value. And so I think sometimes it's really hard to disconnect those two things and damages are leading the path further.

The other thing I see is fear that you're going to settle too cheap. Fear of being that lawyer that settles too cheap causes you to do things that are not wise or not financially sound, because you're so afraid of settling too cheap that you eat up the cost of... You eat up those costs and then realize, "I should have just settled it when I had the opportunity and now I'm going to lose money because the case didn't get better. It was what it was."

Michael Cowen:

The other thing I've seen, it's just somebody, they want it so bad they're just trying to wish it into reality and so they want to hit a big case. It may be for like, "This is going to be my retirement case. I want to retire on this case. I'm never going to have any financial problems again." Or, "I want to buy a house" or "I'm in financial problems and this is going to get me out of them." I remember when I went to the Jerry Spence Trial Lawyers college back in 1998. Jerry told me, you can win any case. You can win every case. He gave an argument saying, "You can get a million dollars on a soft tissue case, chiropractor only... Here's how you do it." And he gave an argument and maybe he could. I found out when I got back I thought I can win every case, and I couldn't.

And Jerry's brought me back down to earth pretty quickly after that. Not saying we haven't won plenty of cases but not all of them. And I've yet to get a million dollars on a soft tissue chiropractor only case. I'm not saying people haven't done it, but I haven't. So I don't value a chiropractor only \$3,000 medical

bill, six weeks of treatment and got better case a million dollars. That's just what it is. But I think there is the... When I've seen people fall in love with their case, this is their one big case, this is their hopes, this is their dreams. You can have what I call irrational exuberance. You can just think it's worth more than it really is. Overwork it, not settle it and then end up in a big mess at the end.

So there's lots of ways that people can try to do to value their case. I mean you can do a bunch of expensive research that frankly not every case merits in looking at other trial reporters, every case is different. It's really hard to do it that way. What have we started doing at our firm to try to make sure we get the right value on cases?

Malorie Peacock:

The biggest thing that we started doing, I think has it been a year? Maybe. I don't know. Maybe longer.

Michael Cowen:

It's been longer.

Malorie Peacock:

Probably longer than that, but for a while now. Some amount of time we've been doing this. I don't know, it's been a while, but we have a weekly, what we call the case valuation roundtable, where we roundtable every single case at this firm before a demand ascent and before a settlement is agreed to. So some cases come back multiple times depending on different stages of negotiations they end up in, but the rule at the firm is that every case, before you send a demand, you must round table it. And the round round table is all the attorneys that are available for that Tuesday lunch. And it's usually most of us, I mean we try to keep it free so that everybody can participate because the more input we get, the better. And then before we put a value on it, a final value, which is what we call the walkaway value, which is if they don't offer at least this much, we'll just go try it.

So before we put that walkaway value on it, you have to bring it to the round table. So sometimes it all happens at the same stage of the process because you're about to go to mediation and so you need to do it all at once and sometimes it's at separate points. So sometimes you want to send a demand but for strategic reasons you're not really negotiating yet. And so later on that's when you're putting the walkaway value on it. But we do it every Tuesday. It's a lot of fun. It's one of my favorite parts of the week, because it's fun to hear people present their cases and we have a format for how to present it.

Michael Cowen:

Yeah, it is one of the hardest things I have to do every week. Not because I have any trouble putting a value on a case, but because one of the things I'm trying to develop within the firm is other people's skill at putting a value on the case. So unless I'm just in a bad mood and trying... And I should not do this, and I'm just trying to get it done more quickly, I try to speak last and let everyone else and ask other lawyer... And it start with the more junior lawyers, so they don't just defer to the senior lawyers and ask people what they think the value is and what their rationale is and make them explain why it is. And one other thing, whoever's going to submit their case has to submit certain information about the case to the group so that people can read it first and they're not just being ambushed with it, they can look something up in the file if they need to. That way we have a good group discussion. I will say that since we started doing this, our settlements have gone up.

Malorie Peacock:

Yeah. Yeah, why do you think that is?

Michael Cowen:

Well there's a few things. One, we've identified a number of cases where someone brought it in, they wanted to try to resolve the case and we said, "No, this case is not ready. You need to do these things to see if you can add value to the case." And people have gone back and done those things, added value to the case or someone said, "We looked. We looked, it's not there." Okay, well no you've looked. But most of the time it does add value to the case. And so I think we've done that. And two, I think there's been a real competitive spirit when the group says the case is worth X, then our lawyers always want to beat that and hold out for more than that because everybody wants to come in and say, "Yeah, you all said it was worth 500,000 but I got 750 or 800,000 on it. That's happened even more than that before and I proved you all wrong, which is really cool when that happens. And so both those things, when people just were undervaluing cases.

Another thing it has been good for is when someone has totally overvalued a case and not realized all the like, "No, look you've got some big problems here." And sometimes it's not even on their sheet. We start asking questions about things and... I did this yesterday on, well actually on undervalue, and I had a case and I asked some hard questions and said, "Go back. This case is not ready to settle yet. And from what I think, I think it's worth twice what you think it's worth," and hopefully I'm right. But that is a real good use for it. So I think it's been a great thing that we've... A great experience for us. Even though it's hard for me to sit there and keep my mouth shut and let everyone else talk first instead of just saying, "Okay, that's worth this, that's worth this, that's worth this."

But I know that once I talk other than you and Sonya, most people are just going to agree with me, and I don't always get it right. I mean often I'm the lowest value in the room. Often other people brought up points that I missed and I say, "Yeah, you guys are right," and we go with... And so I'm glad that I speak last, but also, part of what we're doing is not just coming up with the value for the cases, but we're teaching the less experienced lawyers how we value cases so they can develop their own skills and they can learn how to value cases.

Malorie Peacock:

Yeah, I mean I think it's important to... We have 11 lawyers at this firm and everybody participates, from the most junior associate to Michael Cowen, and we all get to say our opinion about it. And there's no judgment about if you're wrong or you're right or... As long as you have a reason for saying what you said, we don't necessarily put the final number what the most junior associate said or even what Michael Cowen said. Sometimes we disagree, but the debate is healthy and it helps identify what are some of the real issues, what are some of the risks.

But by the end of it, we've all agreed what the plan moving forward is. So if we agree that it's not ready for a negotiations or ready for a demand or even if we disagreed on the number, we come to a conclusion, so the person who presented the case can walk away saying, "Okay, this is what the round table thought." They don't have to say, "Okay, well this is what Michael thought, but this is what Malorie thought and then this is what someone else thought" and then try to figure it out themselves. We don't leave it up in the air like that, because then it serves no value. It serves no purpose to them except to cause even more confusion.

Voiceover:

Each year the law firm of Cowen Rodriguez Peacock pays millions of dollars in co-counsel fees to attorneys nationwide on trucking and commercial vehicle cases. If you have an injury case involving



death or catastrophic injuries and would like to partner with our firm, please contact us by calling 2 1 0 9 4 1 13 0 1 to discuss the case in detail and see where we can add value in a partnership. And now back to the show.

Michael Cowen:

Yeah, and I will say that the... I do feel like there's an ethical thing I need to point out, which is under the rules of professional responsibility for every state in this country, the client does make the final call.

Malorie Peacock:

Yes.

Michael Cowen:

And so at the end of the day, if the client wants to take the money, we can try to talk them out of it, but it's their decision. At the same time, at the end of the day, if we say this case is worth X, they're offering one and a half times X, you really ought take it's a great deal, and the client says, "No, I want to go to trial," then we can't force that client. So this is what this is really doing is this is giving us the... How to advise our client and 99% of the time the client's going to follow our advice.

But I will say, what I've heard people coming back to me with, is one of the powerful things for the round table is they'll be at mediation. The mediator will say, "Well look, people settle this kind of case for less money all the time," or "You have this risk." Or the client will say, "I don't know, that's a lot of money they're offering me." And you can say, "Look, I've round tabled it. All the lawyers at my firm have looked at it, we've debated it and we think this is what it's worth." And there's just a confidence that comes with that. And at the end of the day, the insurance company doesn't really know what it's worth either. They don't have any magic formula. They don't have a crystal ball. And if it's a good case and you hold out for more, you usually get it.

Now a mediocre case you don't, and the expenses that you generate, that can sometimes militate against selling earlier. But on the bigger cases, I mean a lot of times I'll tell to my lawyers like, "Look, this is what I think it's worth, but it ain't selling mediation. Just to let you know that. Until you picked that jury and we've given our opening and we're three or four witnesses in, you're not going to know what their top number is." Now that's only when you have multiple layers of insurance and you have big policies and big injuries or a death. But sometimes that has to be the plan. Like, "Okay, we're doing this to establish that number. We know we're not going to get that number. Now we know we're not going to get next month or the month after that," but it gives us the confidence to hold out when they're playing all those games with us, because they do that to us all the time. "We've round tabled the case, that's all it's worth. That's all we're ever going to pay." That's fine. So have we.

Malorie Peacock:

Right. And I think it's something that comes out of it, which I think this can't be discounted, is that we'll come up with a value but also we'll have the confidence to say someone else at the firm will say, "Well I just settled a case that had similar injuries for X." So when I go to mediation, I can confidently say, "Our firm settles these cases for that much. Not making this up. We have actually settled cases for that number that are very similar to this." So when a mediator says, "We never see any kind of settlement that looks anything like this," we can call him out on it directly and say, "No, no, no, it wasn't me, but Sarah Neal or Sonya or someone else just settled a case that was very similar for X amount of money, so I feel confident walking away from this."

Michael Cowen:

Absolutely. And that helps so much. And we know it works because we got to hang out with a mediator last weekend at a concert and he told us like we're getting more money than other people on cases. So in vino veritas, when you have alcohol you get truth. So it's always good to find out some of these settlements are confidential. It's always good to get some clue as to how you're doing compared to everyone else in it. It's nice to know that it really is working. Now this works great at our firm because we've got a lot of lawyers and we have a lot of experienced lawyers at the firm. They can come up with a value. But I know a lot of our listeners either are on their own or they're at one or two lawyer shops. What can they do to try to take advantage of this process of getting a round table to help come up with the case.

Malorie Peacock:

So even just talking to one other person can make a huge difference in your perspective of the case and how you value it and what other people might think about it. So even if you aren't talking to another lawyer that has experience with how much other people are getting for this case, they can at least talk you through whether something is a big deal or it's not a big deal or it's important to them or it's not important to them to give you some perspective to get you closer to your valuation. So the issue that I described earlier, which was, you have these huge injuries so you think it's worth billions of dollars but you have this huge liability to dispute that you can't get passed or it's going to be a 50/50 shot, talking to a lay person about that is still valuable.

And getting that perspective, just someone else to give you some input I think can really help. But you know, have to be careful, because if you're presenting the case the way that you can... We're all lawyers, we can get the answer we want. We know how to do this. So you really have to make an effort to try to present it neutrally in order for it to be effective, because if you're just presenting the case that you want and you want to get the answer that you already have, then that's not useful to you.

Michael Cowen:

Those out there, that are at solos or small firms I'm really encouraging you to just create your own mastermind group. I mean find other lawyers that you can get together and you can do this for each other. So offer to buy lunch, "I want to talk to you all about a case. I don't have room for you to bring you in on the case, but let's go have lunch. I'll buy you lunch, I want to talk to you about my case, see what you all think it's worth. And if you want to bring a case, we'll talk about your case." And if you get three, four, five lawyers together, make it a monthly meeting. You guys will get to know... I say guys, I'm not trying to be gender specific, but you all will get to know each other better. You will help each other, you will learn from each other and it's a great networking opportunity and it's just a great way to mutually benefit each other.

If you can find an experienced lawyer too, that you can trust that will give you the advice and not just say, "Well you need to bring me on the case because I can get more than you did." But if you can find that person that's got enough confidence and humility that they can talk to you without trying to take your business. A lot of us are willing to do that. I mean, if I have time... Now, I don't always have time to do it unfortunately, but if I have time, I'd love to go have lunch or have a beer with a lawyer and talk about their case and brainstorm and give them what my thoughts on it.

It's fun for me and I don't mind doing that. And find those people in your community, find your group, you can even do it by Zoom. You meet people at conferences and try to set up a Zoom call and go over each other's cases. So I really encourage people to create your own groups if you're not at a big firm so that you could really take advantage of the fact that nobody's as smart as everybody. I mean, just get as

many good minds in there helping you and you will get more money on your cases and you will avoid the mistake of putting a lot of money and time into case that doesn't really merit it.

Malorie Peacock:

Yeah, and I think too, even if you have not yet created this group of people, there is value in sitting down and writing out your reason for your value on the case to try to identify whether you really are being realistic or you're not or you're undervaluing your overvaluing. And so we have a form that we actually use, which of course we're happy to share with people, but we have a form that we use here that asks for specific information and we carefully curated this form because this is the kind of information that switches the value one way or another.

So for example, the jurisdiction, so we put it on the form, we write it down. When is the trial date? Is it coming up in the next month? Is it coming up two years from now? Right. That makes a difference. Who's the defense counsel and where are they from? What are your liability facts? What are your aggravated liability facts? What are your injuries? Is there any contribution from your plaintiff that the jury's going to hear about? And then so writing it all down and putting it pen to paper just for your own self can help you identify those areas. So even if you don't have your group, that exercise is still really valuable.

Michael Cowen:

Absolutely. If anyone wants a copy of our form, just send me an email, michael@cowenlaw.com. That's Michael at C-O-W-E-N-L-A-W.com. And my assistant Reagan will be happy to send you the form. She's really great at responding to emails for me when it's just a request for stuff. So feel free, we believe in sharing everything we have and we'll be happy to share that form or any other resource we have at our firm with you.

Malorie Peacock:

Yeah, and the other thing that I think is important, when you're thinking about valuation is thinking about your strategies for negotiation, which is something that we contemplate at all of these round tables, but also within our form, is not only what are you demanding at this minute, what is your written demand, but what do you think the actual settlement value is?

So sometimes your demand is a serious demand and the demand is what the value is, but sometimes there's wiggle room, sometimes there's room to negotiate, and what is that room to negotiate and have you thought about that and how you're going to get to your final number? And who is your opposing counsel? Who's your mediator? Who's your insurance adjuster? Are they really going to take your first demand seriously? And if you know they're not well then don't be demanding your real demand. But if they are and you do have that relationship with them, then crafting your real demand and sticking to it has a lot of value too. So you got to know all of those things when you're thinking about strategies for how to negotiate and how to get the most value of your case because you don't want to have negotiated yourself into a hole that you can't get out of.

Michael Cowen:

I think that's one of the biggest issues I've had with younger lawyers, is that their final number is fine, but their initial number is way too low. And we have to say, "Look, when you send a demand for this, they're going to think this is what you really want," which would be half or a third of that usually. So you know, need to start big or you're never going to get there. And the other thing is, sometimes the other side overvalues a case or they know something that you don't and they're worried you're going to find

out about it and you always want to leave the other side room to overpay you if they want to overpay you.

So I don't think there's... Unless you're saying, "Give me all your money," I don't think there's ever a reason to demand it for your final number just to say, "Well I'm just, I don't negotiate, I don't come off my number. I tell you what I think it's worth." And there's just so much pressure to come off that number and the judge gets so mad at you if they find out you do that even though that's a perfectly morally legitimate way to do things, to say, "I want to tell you what I think it's worth and if you pay it, that's fine. If not, go away." And I hear lawyers say they do that, but I've never seen anyone really do it.

Malorie Peacock:

Yeah, and on the opposite end too, you can over demand a case. So if your case is worth \$10,000 and you send a demand for a million dollars, no one's ever going to take you seriously and negotiate with you and you'll never get the value on your case, because people think you're insane. You don't negotiate with terrorists. We're not going to engage with crazy. So I mean, you got to be careful on the other end too. I mean, you don't want to be outrageous either.

Michael Cowen:

And I do want to give fair credit, I got the idea for the valuation committee from Tim McKey at Vista Consulting. I think he got it from Dudley and Bosier, Louisiana law firm that he did a lot of work with and I think Chad Dudley was one of the founders of Vista originally. So it works great. We're doing it, we're sharing it, but I also want to give credit where credit is due. We didn't come up with it. Most of the ideas that have made us a lot of money, they weren't our ideas, but somebody else was nice enough to share them and we've run with them and we're really happy that we did. And I just say that because this culture of sharing we have in the plaintiff's bar really benefits everybody. And so we're going to continue to share here. We encourage everyone else, pay it forward and continue to share and we all help each other and we all... Hopefully we'll end up with a better life.

Malorie Peacock:

Well great. Well, I hope this was helpful to people and like Michael said, we're happy to share our form with you and if ever you want to call and chat with any of us to round table your case with one of us, you can and for free. All of us love to do it. So it's a fun... For us, it's fun. And honestly, the Tuesday lunches where we do this are some of the most productive and fun lunches that we have at the firm for attorneys.

Michael Cowen:

And to clarify before you call, please send an email and make sure we're available that day and set up a time when we can all do it and send us and your stuff. But we do love doing this and we will make time for you if you do send it in. So please reach out if that is something that you think would help you. But if not, form your own groups. Do this either at your firm or create your own network of colleagues to do this with. Rising tide lifts all boats. Let's keep going. Thank you all for tuning in today. Again, I hope that you guys join us at our big rig bootcamp on June 16th in San Antonio. You can sign up at [bigrigbootcamp.com](http://bigrigbootcamp.com). I hope you tune into our next episode. In the meantime, I hope you have incredible prosperity and happiness in your life.

Voiceover:

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