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What Does “Triage” Have to do With Litigation?

In emergency medicine, triage refers to the rapid assessment of a situation to identify the most critical issues, stabilize risk, and allocate resources effectively. The goal is not to overreact. It is to act deliberately, based on early evaluation, before conditions worsen.

Litigation benefits from the same discipline.

When a lawsuit is filed, everyone understands that the most likely outcome is settlement. But the timing of the settlement often determines its value to the client: settle too early and you may be leaving substantial money on the table but if you wait too long, settlement funds may dry up or circumstances may change out of the client’s favor.

The only way to get the timing right is to know the true value of the case, its strengths and weaknesses, right from the beginning. That is why the strongest settlement positions are built by lawyers who prepare from day one as though they will be trying the case. This is what a triage mindset looks like in litigation: assessing exposure quickly, identifying the decisive legal and factual issues, and structuring the case as if it may proceed to trial — even if resolution through negotiation remains likely.

Trial Preparation Clarifies Strategy Early

Preparing for trial requires discipline and forces clarity. It requires counsel to:

- Evaluate the legal theories that would ultimately be presented to a judge or jury
- Consider the jury instructions that will define the elements of proof, an exercise that sharpens the case theory from the outset.
- Identify the evidence that must be developed to satisfy both
- Surface the weaknesses.

Discovery is guided by a cohesive narrative rather than a generalized search for information. Without that discipline, litigation loses focus. Themes become diluted. Costs increase. Leverage erodes.

Preparation Strengthens Settlement Leverage

Cases do not settle because parties hope they will.

Settlement dynamics shift when one side demonstrates a clear understanding of the record and a credible readiness to try the case if necessary. Organized evidence, developed witness outlines, retained experts, and anticipated motions practice all signal that the matter has been evaluated rigorously. Opposing counsel can usually distinguish between posturing and genuine preparedness.

Paradoxically, preparing for trial early often improves the likelihood of settlement. Preparation reveals the realistic strengths and weaknesses of the claims and defenses, allowing negotiations to proceed with fewer surprises and more informed decision-making.

Witness Preparation Cannot Be Compressed

Proactive preparation protects against avoidable credibility damage. Executives, employees, or individual litigants who are unprepared can appear uncertain, defensive, or inconsistent – even when the facts are on their side. Early preparation allows time to:

- Identify problematic testimony
- Align testimony with documentary evidence
- Prepare for cross-examination
- Address demeanor and presentation

This is particularly important when videotaped depositions may be used at trial.

Experts and Evidence Require Lead Time

Expert testimony requires lead time. Strong experts need time to review materials, test assumptions, refine opinions, and prepare reports that withstand scrutiny. Waiting until trial is imminent increases the risk of rushed conclusions or unavailable experts. Thoughtful preparation enhances both admissibility and persuasive impact.

There are also practical considerations. Trial calendars can move quickly, and pretrial deadlines often cluster tightly. Compressed preparation increases the likelihood of avoidable errors, inconsistent arguments, or overlooked evidence.

Beginning early reduces unnecessary pressure and allows litigation teams to anticipate opposing strategies rather than react to them under time constraints.

Triage Means Acting Early – Not Waiting

A triage-oriented approach does not mean every case must be tried. It means that from the outset, the case is structured so that trial readiness is not an afterthought. Even when a matter ultimately resolves through negotiation or mediation, the disciplined work of early trial preparation strengthens the outcome. Readiness clarifies risk, enhances credibility, and improves leverage in the courtroom and at the settlement table.

In complex disputes, the advantage often belongs to the party that is most prepared, from the start.