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Litigation at Sunrise  
Meadowlands 2016  
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REPLY TO TEANECK

**Zeus –v- Colossus  
How to Value an Injury Case**

Hopefully, there comes a time in every personal injury case where an attorney is called upon to make a demand and ultimately negotiate a settlement favorable to his or her client. Inexperienced injury lawyers and recent law school graduates have no training in attaching a value to a personal injury claim; and in fact, even experienced trial lawyers may struggle with formulating a demand. Too often, demands are just pulled “out of the thin air,” or “shot from the hip” without any logic or thought process. Demands may be limited because of insufficient insurance coverage. But where there is sufficient coverage, a well thought out demand will increase the ultimate settlement value of a claim.

Several insurance companies use software to assist in pricing out a claim. Insurance adjusters will tell you that they are limited by their computer program, Colossus which uses hundreds of variables in arriving at value. If

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they tell you that, let them know that you use “Zeus,” and Zeus is stronger and more powerful than Colossus! But the good news is that there is an art and a science to making demands and negotiating a favorable settlement. But, that still does not solve the problem or how much money to demand and ultimately, what is the case worth to your client.

Personal injury lawyers are often asked the simple question,

*Question:* Hey Lawyer, “what’s my case worth?” This is what this particular lawyer advises a client:

*Answer:* That is a fair question. Our experience tells us that at the beginning stages, it is way too early to put a value on any case. Factors to consider include the nature and extent of any injury, out of pocket losses, prior medical conditions, your own actions that may have contributed to the accident, the amount of insurance coverage available, and even the county where the case will be filed. No reputable lawyer can put a value on a case until all of the facts from both sides are known. That being said, here are some of the factors to be considered:

1. The quality of the lawyer you hire.
  2. The nature of the accident and whether there is any comparative negligence on your part.
  3. The nature and extent of your permanent injuries.
  4. The threshold you selected and whether or not your injuries break that threshold.
  5. The amount of available insurance coverage.
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6. Your economic losses, including your past and future lost wages.
7. Your medical treatment. Your medical test results, the extent and continuity of your treatment.
8. The quality of the opinions of your treating doctors as well as their reputation and availability to testify on your behalf.
9. Whether or not you have any visible scars.
10. Whether or not future surgery is foreseeable. Surgery often increases a claim's value.
11. The nature and extent of your inability to engage in your usual and customary activities and recreational activities.
12. The severity of the property damage to the cars involved in the collision.
13. The county in which your case can be brought, the demographic nature of the potential jurors in that county, as well as that county's jury verdict history.
14. Your ability to articulate yourself in a deposition or on the witness stand during a trial.
15. Whether or not you follow the guidance and instructions given to you by your lawyer.
16. The amount of out of pocket liens to be repaid including ERISA liens, Medicare, Medicaid and charity liens, and whether or not the amount of such liens are admissible into evidence at the time of trial.

17. Whether or not you had past injuries or claims to the same body parts.
18. The quality and interpretation of your MRI films.
19. The judge assigned to your particular case and whether or not he or she has a bias to either plaintiffs or defendants.
20. The amount of time that has passed since your accident.
21. Your age and future economic losses.
22. Economic losses and loss of services suffered by your spouse.
23. The quality of the testimony of your lay witnesses, your friends, and family.
24. Whether or not the defendants continue to stay financially solvent and remain in business.

Since there are no books or charts to which a lawyer can refer in order to come up with a case value, it's basically experience and skill that determine the value of a case for settlement purposes.

A claim not to be overlooked involves the past, present and future hardship that an injury places on a spouse. This derivative claim, also known as a "*per quod*" claim, is for loss of consortium, society, and companionship and may include personal losses such as a loss of physical intimacy between the couple. Not to be overlooked is the emotional impact an injury has upon a marriage or the spouse. Normally, if a case is settled, this case is merged into the entire settlement benefiting the injured person. However, if the case does

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go to trial, the jury will be asked to award separate damages to the aggrieved spouse.

### **“What do I demand?”**

If you believe that your client’s case is worth the insurance policy proceeds, demand that and stick with it. If there is adequate coverage then I suggest that an attorney carefully price out a case. All cases are unique, and personal in nature. That’s one of the reasons it’s called a personal injury. Unlike worker’s compensation claims, there are no charts to guide an attorney. So, here is my take:

1. Demand the full extent of all of your client’s damages. Past, present and future pain and suffering and economic losses are all included.
2. Do not aggregate injuries, price them out individually. Price out the case “a la carte.”
3. There is no discount for multiple injuries such as two herniations for the price of one. Multiple injuries do not increase a case’s value merely incrementally, but perhaps exponentially.
4. Consider future medical care as well as the prospect of future surgery or joint replacement.
5. Pre-existing conditions that were previously asymptotic increase value. Degenerative Disc Disease should add value to your case.
6. A person’s work limitations serve to enhance damages.
7. Don’t fall in love with your case nor be derailed by mere defenses.

Every case has its warts.

8. Don't forget about ALL of the Plaintiff's economic damages.
9. Don't crawl on your belly by harassing a carrier for an offer. Make your demand and allow the case to progress. If you or your firm develop a reputation for settling claims for low values, the insurance companies will only give you low offers.
10. No discounts on the date of trial. Stick to your guns and don't be afraid to try your case. You did all the work and the carrier had all the opportunity to settle prior to trial.

### **Conclusion**

Use logic and reasoning to formulate your demand. Be prepared to try your case. If you do, you will need to prove each injury separately, so why not price out your demand for each injury accordingly. Often, insurance carriers will increase an offer provided that a logical argument is made justifying an increase. So, don't be afraid to try your case before a jury.

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