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## Producing and Directing Your Way to Settlement

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*Of the Legal Staff*

In order to get the best result for our clients, whether by settlement or verdict, we need to reduce our cases down to their essence, simplifying themes and presenting compelling arguments on the evidence. As trial lawyers, we try to control every part of the case from opening to closing - all the witnesses, questions, answers and every piece of evidence presented - striving to eliminate all surprises and to keep the jury focused on our theme. Putting a case together has a lot of similarities to producing a television program. Think about those TV courtroom dramas - the directors, producers and actors working from a script, knowing in advance everything that is going to happen and using professional filming and studio editing techniques to dramatically tell the story. Did you ever wish you could communicate your client's story as effectively and dramatically as it's done on TV? With a good video settlement brochure you can.

### **VIDEO SETTLEMENT VERSUS SETTLEMENT BINDER**

The traditional settlement binder contains a settlement memorandum, followed by supporting exhibits, including accident and investigation reports, deposition segments, reports and photographs from liability experts, applicable medical records, life care plans and vocational and economic loss reports. A settlement binder can be several inches thick and may take the reader a couple of hours to review. Although we try in the memorandum to present our case with as much drama and impact as possible, it's not likely that the defense counsel, adjuster, mediator or judge will actually look forward to reviewing all of your written materials or that they will be significantly impacted by that review. On the other hand, a high-quality video settlement brochure can be incredibly

effective in drawing attention to your case, creating the appropriate drama and emotional impact.

Settlement videos are constructed utilizing short segments of professional filming of lay witnesses and expert witnesses done *ex parte* in the studio or in the witnesses' workplaces or homes. The witnesses are more comfortable and more relaxed than in a deposition or courtroom setting and, accordingly, both the substance and appearance of the film are vastly superior. Exploring losses suffered with the victim and the victim's family in the familiarity of their home often produces a stunningly genuine, intimate, graphic and compelling narrative that would likely not be produced in the formal courtroom setting. Videotaped segments from defendants' depositions, often containing devastating admissions, are juxtaposed with the best segments from your witnesses. Professional filming, editing and other Hollywood techniques are utilized; however, the witnesses are always real, and the testimony is honest. The "story" of the accident or injury is told through alternating segments from different witnesses, which are paced to create tension and drama.

While the focus in filming a settlement brochure is to place your case in a favorable light, it is critical to fairly represent your client and witnesses. Done right, the carrier, defense counsel, risk manager, mediator and judge will get a realistic preview of how the witness will appear before the jury. Any attempt to distort the facts or use inadmissible evidence will serve as a distraction and, more importantly, will likely result in the video being given little credibility. An often overlooked benefit of doing a video settlement brochure is that both plaintiff and defense counsel can use it when evaluating the case before focus groups. Using the same video before multiple groups of people gives you the ability to evaluate feedback and the impact of your case. After cases settle, we often learn from defense counsel that not only

did they and the adjusters and risk managers review the video settlement brochure but so did their staff and their family members.

### **EXAMPLES OF EFFECTIVE VIDEO SETTLEMENT BROCHURES**

- **Pedestrian death.** In a pedestrian motor vehicle death case, the defendant claimed that as he left the roadway where the impact with the pedestrians occurred, he thought he hit a mailbox or a large box. As he was testifying on videotape, we used a series of police photographs showing the extensive damage to the car, including windshield damage and pieces of the car scattered along the roadway, to show the ridiculousness of his testimony. The surviving spouse, who was also struck, had extensive leg fractures and was lying on the roadway. We told the story of the accident by using alternating segments from the husband, an independent witness, the defendant and the medical examiner. As we came closer and closer to the actual impact, the length of the segments became shorter and shorter, adding drama. The defendant fled the scene and the independent witness who observed him was filmed stating that it was the worst thing any individual could do - leaving someone injured on the roadway. The surviving spouse could not get up due to his injuries and, as it was dark, could not see his wife's body. He recalled his agony, not knowing where his wife was, whether she was alive or dead until finally a bystander told him, "Oh man, she's dead."
- **Construction accident.** In a construction accident case, a 26-year-old worker fell at a job site and was rendered a quadriplegic. After meeting with all the family members and filming them in the studio, it became apparent that the most compelling was the victim's 73-year-old grandmother. At the filming in the studio, I heard her say with a cracking voice and tears welling in her eyes that she mourned for her grandson, the way he was and the way he is now. The testimony was so genuine and moving, I knew that

everyone who heard it would be as affected as I had been.

She described how physically active her grandson had been, working out at a gym, swinging a golf club, casting a fishing rod, riding a bicycle and making things with his hands. We filmed the plaintiff in the rehab facility demonstrating his total dependence on others, from bed to wheelchair transfers, dressing, physical therapy and even brushing his teeth. In the video settlement brochure, the rehab film was used and timed precisely so that as the grandmother was describing what her grandson liked to do before the accident, his present inability to move his arms or legs or to care for himself was depicted simultaneously.

- **Products liability.** In a products liability case, a malfunctioning baseboard heater caused a non-flame retardant foam-filled couch to rapidly ignite, killing a mother and her daughters in a house fire. Her husband and 18-year-old son survived the fire. The husband was quiet, reserved, had a checkered past and made a poor witness. The defendants took the position that the husband was their best witness and the biggest reason not to consider paying significant dollars. In the video settlement brochure, we did not use the husband at all. Instead, the “story” was told by the surviving son who had lost the closest people in the world to him, his mother and sisters. We know that deaths in fires are particularly painful and horrific, and the video settlement brochure was the perfect way to graphically demonstrate that.

The medical examiner explained the process whereby noxious fumes enter the lungs, searing them as the temperature increases, and causing uncontrollable coughing. The 911 recording was obtained and captured the mother speaking with the 911 operator. In a matter of seconds the mother’s voice changes, becoming slurred and almost child-like as her disorientation increases followed by her agonized screaming, “I can’t breathe.” As the 911 recording played, we used a series of still photos of the fire getting progressively worse until the entire house was engulfed in flames.

- **Medical malpractice.** In a medical malpractice case, a 25-year-old woman who was given an epidural during the birth of her child developed an epidural abscess that resulted in permanent paralysis. The theory in the case was that the nurse, new resident and attending physician recorded symptoms indicative of developing neurological injury

but failed to take action.

In the video settlement brochure, while the plaintiff talked about how her symptoms progressed, highlighted notes from the hospital records were displayed corroborating the plaintiff’s version of the events. We took videotaped depositions of the nurse, resident and attending physician, knowing that ultimately a video settlement brochure would be produced. The attending physician testified that he told the resident to order an emergency MRI if the symptoms persisted. The resident contradicted the attending, testifying that he had never instructed her to do so, and she admitted she didn’t know the significance of these worsening symptoms. The nurse testified at her videotaped deposition that she had specifically advised the attending physician of the worsening symptoms, and the attending did not seem concerned. In the studio, we filmed our expert liability witness and obtained short powerful segments summarizing the breach in the standard of care and highlighting the inconsistent testimony among the defendants. In less than 10 minutes, the plaintiff’s entire case on liability was presented dramatically, the defendants were cast in a terrible light and sympathy and compassion were created for the victim.

## ADVICE FROM THE FILMMAKER

David Rackow, president of Rackow & Associates in Elkins Park, Pa., is a professional filmmaker and has been instrumental in filming, editing and structuring many of our firm’s video settlement brochures. Rackow recommends gathering as many still photographs and photo albums as possible, as well as any film or videos of the victim and the family. “Old home photos and videos are essential in establishing what has been lost as a result of the catastrophic injury,” says Rackow. He also stresses that while the attorney is not a filmmaker and may not be attuned to film production techniques, it is essential for him/her to be involved in the process to make certain that the “story-telling” does not cloud or diminish important legal points supporting the case. Additionally, he cautions that honesty and genuineness always come across in film and overly emotional or gimmicky videos do a disservice to the client and the cause.

## REWARDING RESULTS

Over the last several years, our firm has created more than a dozen video settlement brochures, costing anywhere between

\$20,000 to \$55,000 and contributing to gross settlements approaching \$50 million.

After reviewing the video settlement brochure, clients and their families have thanked our firm for telling their story with compassion and dignity. Some of our most emotionally rewarding experiences as trial lawyers include the time spent working with victims and their families to prepare these brochures.

If a picture is worth a thousand words, a video settlement brochure is priceless. The best-written memo or most impassioned speech can never be as persuasive as a good video settlement brochure. Examples of these brochures used in the cases described above can be found at [www.anapolschwartz.com/](http://www.anapolschwartz.com/). •

**Joel D. Feldman** is managing partner at Anapol Schwartz Weiss Cohan Feldman & Smalley and advocates for victims in cases ranging from dramshop, nursing home abuse, premises, products liability and medical negligence. He also coordinates the law firm’s production of video settlement brochures.