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Rates Matter! Using the Tactics of Negotiation to Obtain Reasonable Rates for Defense Counsel

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Heather Habes, Kilpatrick Townsend Attorney, recently presented **"Rates Matter!: Using the Tactics of Negotiation to Obtain Reasonable Rates for Defense Counsel,"** as a part of the ABA Insurance Coverage Litigation Committee CLE Seminar in Tucson, Arizona.

5 Key takeaways from the presentation, include:

Share Information and Develop Rapport

Taking a guarded approach to negotiation could be a mistake. People tend to follow the norm of reciprocity, responding in kind to the treatment they receive. Consider disclosing expertise of desired counsel, prior relationship, unique elements of litigation, merits of case, and proposed resolution to foster an open relationship. However, to the extent the insurer is reserving its rights on certain exclusions, use caution in characterizing the underlying dispute.

Rank Order Your Priorities

Rather than putting a single issue on the table as the most important, put all issues on the table and rank them; this allows both parties greater flexibility in the negotiation. For instance, address not only the relevant defense counsel rate, but expertise, experience, and geographic location. Having all of these different factors on the table could keep negotiations moving.

Know the Facts

Conduct research before negotiation so that your positions on rates are based on facts. That includes understanding what relevant expertise is possessed by the insurer-recommended counsel, as well as the insured's right to independent counsel.

Make the First Offer

Contrary to conventional wisdom, studies show that the party who makes the first offer has the unique advantage of anchoring the discussion. Consider proposing an initial discount on rates or a blended rate.

Counteroffers Make Both Parties More Satisfied

Anticipate that there will be back and forth with the insurer on rates. The discussion on rates is rarely a situation

where the first ofer is accepted.