
HAPLESS HARVEST

MEDIATION

PLAINTIFF CLIENT PREPARATION FOR MEDIATION SESSION

Information for Plaintiff Jan Hapless

[You are assumed to be familiar with the document titled: “General and Confidential Information for Plaintiff Jan Hapless.” Please review it if necessary.]

You have been pleased with your lawyer so far, from the first interview and through all of the depositions and the rest of what you now know is called “litigation discovery.” You knew he is with a well-respected firm specializing in plaintiff’s work, but you did not know he would be so personable and encouraging. (You have never been in a lawsuit before and have never worked directly with a lawyer.) When you signed the agreement that he would take your case on a 33% contingency fee basis, you were relieved not to have to pay unless you recover anything. In your mind, that meant the lawyer had confidence that your case was a good one, or he wouldn’t have agreed to do it. You understand that, at the end of the day, you will also be responsible for any expenses advanced by the firm during the litigation (such as expert fees, court costs, etc.).

You were pleased to read the complaint the lawyer filed on your behalf. Point by point, it described what happened to you at Harvest Plenty and its impact and, plus the legal reasons Harvest Plenty was responsible. You were pleased that, at the end of the complaint, it asked for a nice round \$1million in damages. You understand the \$1million was intended to scare Harvest Plenty. The lawyer had explained to you that, if everything broke your way in the case, a jury might award you about \$250,000.

A long time ago, your lawyer briefly raised the idea of settlement. You explained that you were eager to have your day in court, but if you could get the \$250,000, you would seriously consider it. That amount of money would certainly teach Harvest Plenty a lesson, and it would be a great help to you, even though it would never bring your physical condition before falling in their store.

Recently, your lawyer contacted you and explained that he and the opposing lawyer had made an initial attempt at settlement negotiations but made absolutely no progress. When he explained that the other lawyer was arrogant and stubborn and refused to make any dollar offer, you were not surprised. You found him arrogant and insulting in your deposition: he tried to suggest that you were careless, that you might have seen the carrot juice (as if you fell on purpose?!). Then he started asking you about any time you had ever had a back muscle twinge in your entire life. When you testified that your back hadn’t been a problem for years, and you had been working out and lifting weights, he began to accuse you of causing the back injury at the gym. Just when you thought he couldn’t be any more ridiculous, he started questioning whether the surgery was “a choice... elective surgery” and then whether you could have gone back to work sooner. The nerve. Who in their right mind would undergo back surgery if it wasn’t necessary? And how would he know how

painful the recovery is, and the dangers of being too active post-surgery before the healing process is done? He is just a hired gun trying to intimidate you. That's not going to happen.

Your lawyer did say that he and the other lawyer agreed that it would be worth trying mediation to settle the case. You asked your lawyer why he seemed so keen on settlement instead of going to trial? After all, you want to punish Harvest Plenty, and you want to be able to tell your story so people will know they are not a nice little grocery store, and they don't care about their customers. You shopped there all of the time, knew half the cashiers and produce managers by name. No one from the store ever called to see how you were doing; no one apologized except the young guy who had failed to clean up the spill.

Your lawyer suggested that you meet to review his analysis of the case. Apparently, even though you were seriously injured, there may be some legal problems and he wants to go over them with you.

The lawyer also explained that, even in mediation, no one can force you to settle for any amount of money, if you choose not to. The mediator may be helpful in convincing Harvest Plenty – really its insurer – to pay a reasonable amount. And the mediator may also be able to find way to meet your interests as part of a mediated settlement.

Of course, it's also important to meet with your lawyer to prepare a joint approach to mediation – what the lawyer will say, what you will say, and how you both will negotiate. Because you've never been in a mediation before, you need to understand how the process works.

Your lawyer did ask that, in preparation for meeting with him, you think about what are your important interests: what do you want to see happen because of this case? And on the dollars front: how much of what you've been asking for is to cover what these injuries have cost you and how much is intended to teach Harvest Plenty a lesson? What would have to be part of an agreement in mediation for you to feel good about it? Why? Why are those things important to you?

Get ready for your meeting with your lawyer, in preparation for the mediation.