

# CHAPTER 7 - ROLE PLAYS

## *Key elements of a successful role play*

### **Conciliators**

- Act and think like a conciliator - mixed process
- Talk about contested issues, settlement options, trial preparation
- Follow conferencer's goals
- Respond to the parties' concerns - probe interests
- Improvise in keeping with the ethics of conciliation
- Respond to your coaches' suggestions
- Have fun
- Remember! We learn from our mistakes. Take risks!

### **Parties**

- Get into your role - follow one page summary of feelings/interests
- Clarify concerns about roles with coach and other parties
- Improvise within the context of your role
- Stay in touch with your feelings
- Avoid trying to "stump the conciliator"
- Respond to suggestions from coaches

### **Observers**

- Use the handout, questions for observers
- What worked well?
- What actions seemed to open up the parties to process?
- What actions seemed counterproductive?
- What would you suggest?
- Did the conciliator engage parties about the strengths and weaknesses of their case?
- Provide your insights to the group at the end or during the role play

### **Coaches**

- Help set up the role play
- Help each parties interpret roles
- Improvise changes in roles as necessary
- Help keep role play on a productive course
- Provide guidance as needed
- Use the role play check list
- Facilitate discussion at the end or during the role play
- Be the time keeper - 1 hour per role play, switch roles every 15minutes!

**Fishbowl Demo – Conciliation Role Play  
(Business Divorce Case)**

**General Information**

Pat and Sam formed a dental practice 7 years ago in Newton after graduating from the same dental school. Although the practice was a success, tensions eventually developed between the two partners as to how to operate the business. A year ago, they dissolved their partnership, and Pat purchased the business. Pat is now running the practice himself in Newton and Sam has joined an established dentistry practice in Boston.

An outstanding issue has arisen between Pat and Sam regarding the distribution of profits from an educational brochure that they developed for their dental school. This item was not addressed in the partnership dissolution. The partners had donated the rights to the brochure to the school, but since then, the school has sold the brochure to a non-profit group and has passed along a share of the proceeds to Pat and Sam (\$15,000). Pat received the check and did not give any of these funds to Sam. The partnership agreement provides that all assets of the partnership be divided 50/50 between the partners, with the exception of personal work-product from books, articles and other publications. The dissolution agreement provides that as of this dissolution date, Pat is entitled to all profits from the business.

Sam has sued Pat in District Court claiming rights to the full \$15,000. Sam is being represented by her/his brother-in-law/sister-in-law who is a lawyer. Pat is pro se. The matter has been assigned by the court for conciliation through the local county bar association.

## QUESTIONS FOR OBSERVERS

1. Did the conciliator show that s/he was listening and trying to understand each parties position?

Yes                  No

2. Were the phrases and questions used by the conciliator neutral and non-judgmental?

Yes                  No

Like what?

3. Did the conciliator encourage the parties to think about different options?

Yes                  No

How?

4. Did the conciliator transmit information about the case that was helpful toward settlement discussions?

Yes                  No

Like what?

5. Write down questions that you thought the conciliator posed that were helpful

6. In your opinion, what worked well?

7. Other comments

## LESSONS FROM GEESE

*“Lessons from Geese: is from on a speech given by Angeles Arren at the 1991 Organizational Development Network and was based on the work of Milton Olson. It has been circulated to Outward Bound staff throughout the United States. We share it here with the hope that we can all learn these lessons.*

**FACT 1:** As each goose flaps its wings it creates an “uplift” for the birds that follow. By flying in a “V” formation, the whole flock adds 71% greater flying range than if each bird flew alone.

**LESSON 1:** People who share a common direction and sense of community can get where they are going quicker and easier because they are traveling on the thrust of one another.

**FACT 2:** When a goose falls out of formation, it suddenly feels the drag and resistance of flying alone. It quickly moves back into formation to take advantage of the lifting power of the bird immediately in front of it.

**LESSON 2:** If we have as much sense as a goose we stay in formation with those headed where we want to go. We are willing to accept their help and give our help to others.

**FACT 3:** When the lead goose tires, it rotates back into the formation and another goose flies to the point position.

**LESSON 3:** It pays to take turns doing the hard tasks and sharing leadership. As with geese, people are interdependent on each other's skills, capabilities and unique arrangements of gifts, talents, and resources.

**FACT 4:** The geese flying in formation honk to encourage those up front to keep up their speed.

**LESSON 4:** We need to make sure our honking is encouraging. In groups where there is encouragement, the production is much greater. The power of encouragement (to stand by one's hear or core values and encourage the heart and core of others) is the quality of honking we seek.

**FACT 5:** When a goose gets sick, wounded, or shot down, two geese drop out of formation and follow it down to help and protect it. They stay with it until it dies or is able to fly again. Then, they launch out with another formation or catch up with the flock.

**LESSON 5:** If we have as much sense as geese, we will stand by each other in difficult times as well as when are strong.

***HONK!!!! HONK!!!!!!***

## Conciliation Role Play – Consumer Case

### GENERAL INFORMATION

Mr./Ms. Greenberg purchased carpet for the living room, dining room, bedroom, loft, and hall two months ago. BC Carpet sold and installed the wall-to-wall 600 square feet of carpet for a total price of **\$12,600** (\$21/sq.yd.).

Now, the Greenbergs contend that the carpet has developed bulges in all of the rooms and that there is excessive “flattening” of the carpet in high traffic areas.

BC Carpet inspected the carpet when they were notified of the problem one month ago, and they claim that there are only minor problems with bulges, which can be corrected by tightening the carpet at one edge.

According to BC, the “flattening” is normal and not easily visible. BC Carpet owner Mr./Ms. Johnson was awaiting a call from the Greenbergs to arrange a time to tighten the carpet when s/he got notice for the lawsuit filed in Lowell District Court.

**The claim is for \$12,600, the full purchase of the carpet and installation.**

**Conciliation Role Play – Consumer Case**

**PLAINTIFF MR./MS. GREENBERG**

**Confidential Information for Mr./Ms. Greenberg**

You are **upset about the quality of the rug.**

**You thought** you had purchased a high quality carpet from a reputable dealer and experienced installer and **instead** you have a substandard defective rug!

The flattened areas look horrible! Also, **you have been tripping on the carpet** where there are bulges, and you almost have fallen.

The high traffic areas in the hallway and living room are the worst areas (about 25% of the total carpet).

**You want the carpet totally replaced in these areas** with a better grade of carpet (\$25/sq. yd.) at no cost to you. If you had to purchase this on your own, it would cost **\$4,125**. In addition, you want the carpet tightened to take care of the bulges.

The reason you filed suit was because you were getting **“the runaround”** and now believe they sold you **“knock off”** carpet.

It was **never** your understanding that BC Carpet was willing to tighten the carpet for you.

**You and the owner of BC Carpet have exchanged words** on several occasions about your claim of being **defrauded**. You are not sure you can trust them and aren't sure that you want them to do the work.

**You came in today wanting cash so that you could hire someone else to replace the carpet.**

**Your spouse** had originally wanted a higher quality of carpet, **but you said no!** It was **too expensive.**

**You feel bad** because you should have listened and bought a better carpet.

You are open to settlement ideas as it relates to getting the carpet replaced for **free.**

You are **representing yourself** and **want this case resolved** short of trial.

## Conciliation Role Play – Consumer Case

**DEFENDANT MR./MS. Johnson – Owner of BC Carpet**

### Confidential Information for Mr./Ms. Johnson

You are the **owner** of BC Carpet and have been in business for 10 years. **Business has been slow recently.**

When you received the call from the Greenbergs, you went immediately to their home to inspect the carpet. **You had warned the customer that when s/he picked the cheaper carpet that bulging may happen.**

You found **mild wear** in the high traffic areas which is **not abnormal** for this price of carpet.

You **never heard back from the Greenbergs** after telling them you would tighten the carpets and that they needed to schedule a time for you to come in to do so. You are always willing to address a customer's complaint and **pride yourself on your customer services.**

You were **shocked** when you received notice of the lawsuit. **Due to your current cash flow problems, you have no money to offer a cash settlement.**

You do not have the better grade of carpet in stock and would have to purchase it from the distributor. **Your cost to replace the carpet for the high traffic areas would be \$1,650; it retails for \$4,125.**

You are **willing to compromise** on some sort of settlement, **which doesn't include you paying any cash to anyone.**

**Your bottom line is** selling the new carpet to the Greenbergs at your cost (**\$1,650**) and providing free installation.

You do not want the Greenbergs to know about your financial problems. You have a contract in the works with a big developer which may have lead to improvement in your business in 3 months, but you're trying to hang on until then. If they can wait for 3 months, you are willing to negotiate a monetary settlement.

You have heard from a few people that the Greenbergs have been **badmouthing** your business around town saying **that you are selling "knock off carpet at premium rates."**

Your attorney has served Mr./Ms. Greenberg with a **defamation countersuit** today, before the conciliation.

**Conciliation Role Play – Consumer Case**

**COUNSEL FOR DEFENDANT JOHNSON d/b/a BC CARPET**

**Confidential Information Defendant's Counsel**

You are a **friend** of Mr./Ms. Johnson.

You know that BC Carpet is having financial difficulties and have agreed to **file an appearance in this case for the conciliation only** in exchange for a free carpet installation for your daughter's bedroom.

You think the Greenbergs are way out of line in suing for the full purchase and installation price. **The carpet is perfectly fine and may only need a tuck here or there.**

You believe that this case should be settled out of court, but you know that Mr./Ms. Johnson does not currently have money to pay out any settlement, and that the parties have not been communicating with each other.

You have **discussed** with Mr./Ms. Johnson and his/her brother the option of **selling replacement** carpet at **your cost** to the Greenbergs and providing a **free installation** to resolve this matter.

BC Carpet is willing to do this, but they are extremely upset that they are being badmouthed around town by the Greenbergs. **They want this to stop, and they want an apology.**

Before the Conciliation, you served Mr./Ms. Greenberg with a **defamation counterclaim.**

## Conciliation Role Play - Consumer Case

### CONCILIATOR

#### Contested Issue:

1. Liability: is the carpet defective, or not fit for the particular purpose?
2. Damages: what is the cost to tighten the bulging? What is the value of BC Carpet's services to date?
3. Negotiation History: the plaintiff feels BC Carpet may have sold them defective or "knock off carpet" and the defendant feels the plaintiff did not cooperate with his offer to fix it and is now bad mouthing BC Carpet.
4. Issues for Trial: counterclaim and need to prove defect or breach of warranty.

#### Conciliator's Goals:

- A. To facilitate a settlement of the case where the plaintiff gets new carpet; OR
- B. To help the parties agree on the following:
  1. How to consolidate the issues for trial,
  2. A trial date,
  3. That they will consider scheduling a mediation session before trial.

## Conciliation Role Play - Tort Case

### GENERAL INFORMATION

This case involves a car accident in a rotary between Sandra Small and Gerry Jerome. Ms. Small was driving home from work when she entered the rotary, and on her way out of the rotary, she was struck from behind by the defendant's car. Ms. Small was sent to the emergency room, where she was diagnosed with neck and lower back injuries.

A police report was filed which states that the defendant may have been traveling at an excessive speed, but no citation was issued at the scene. The left front section of the defendant's car hit the rear of the plaintiff's car. The police report lists one eye-witness named Bill Waters, who was sitting in his car at a gas station just off the rotary at the time of the accident.

**Plaintiff** claims that the defendant was operating his car negligently at the time of the accident because he was speeding and failed to yield to her in the rotary.

**Defendant** is contesting both liability and damages. His position on liability is that the plaintiff was entering the rotary and he had the right of way. As to damages, the defendant contends that the plaintiff suffered only a soft tissue injury at best, and had only a very short period of disability.

## Conciliation Role Play - Tort Case

### PLAINTIFF'S COUNSEL

You represent the Plaintiff, a **77-year-old** Sandra Small. Ms. Small filed suit against Defendant Gerry Jerome, the driver of a car that hit her while she was driving in a rotary.

On the day of the accident, Ms. Small was driving home from her part-time job at Lowell General Hospital. She entered the rotary, and on her way out of the rotary, she was struck from behind by the defendant's car. Ms. Small was sent to the emergency room, where she was **diagnosed with neck and lower back strain** and elevated blood pressure. A chiropractor treated her for over one year.

Ms. Small incurred **\$5,170** in **medical expenses** and **was out of work for 5 weeks**. She was **partially disabled** for an additional **46 weeks** per her primary care physician. Her primary care physician has causally related the treatment and disability to the accident. **Her lost wages total \$1,600**. PIP has paid \$4,000 to her.

**You claim that the defendant was operating his car negligently** at the time of the accident because he was **speeding and failed to yield** to her in the rotary.

**Your position at the conciliation conference is that liability is clear and her damages are significant.**

The depositions of both Sandra Small and Gerry Jerome have been taken, and you have provided defense counsel with all relevant medical records.

**You want a trial date as soon as possible**, preferably within the coming months because Ms. Small is elderly and in poor overall health. As her counsel, you are concerned that she will not be able to testify at trial if it is not scheduled soon.

**Your demand at the conciliation conference is \$15,000**. You are **frustrated** by the lack of attention this case has received by the defendant's insurer United Insurance Companies, Inc.

You believe that this case is going to have to be tried.

**You are willing to settle the case and are open to the idea of mediation, but it would have to take place ASAP!**

Your client has **authorized** you to **settle** the case at conciliation for **\$10,000**.

## Conciliation Role Play - Tort Case

### PLAINTIFF SANDRA SMALL

Plaintiff Sandra Small is a **77-year old** woman. You are a widow and live with your sister.

You have experienced back and neck pains for over one year since the accident. You have been receiving treatment from a chiropractor and **your treatment has just ended.**

Prior to the accident, you worked 10 hours per week for \$8.50 per hour. (\$85 weekly). After the accident, you were out of work for 5 weeks. You then returned to work but could only work 3 hours per week (one afternoon) for almost a year. You could not return to your full schedule sooner due to the back pain which prevented you from being able to stand on your feet for a long time.

**You have recently returned to work at your regular schedule. But, you are worried about your blood pressure and your overall health.**

You want this case to be over with already. **You cannot understand why the insurance company does not take your injuries seriously.**

**You have been in other car accidents over the years, but none that have caused you this much pain and suffering.**

You have discussed settling the case with your attorney for less than \$15,000.

You have **agreed** that if the defense **offers** anything close to **\$10,000**, you would take it just to have the case over with so you can move on with your life.

## Conciliation Role Play - Tort Case

### DEFENDANT'S COUNSEL

You represent the Defendant, Gerry Jerome.

**The defense is contesting both liability and damages.** Your position is the plaintiff was not in the rotary for as long as she claimed, and thus your client had the right of way.

There was **very minor damage to defendant's car**, and since there were no photographs of the plaintiff's car, you assume her damage was also minor.

**Contrary to the plaintiff's assertions**, the police report states that the defendant was in the rotary before the plaintiff, so the plaintiff had the obligation to yield. However, the report also notes that neither car had used caution in the rotary.

**The police report lists one eye-witness** named Bill Waters, who was sitting in his car at a gas station just off the rotary at the time the accident occurred.

On the issue of damages, you contend that the **plaintiff suffered soft tissue injury** at best, and that the records show prior car accidents.

According to your IME (independent medical exam), Ms. Small received **excessive treatment** and that **any disability** from this accident was just **one week**.

You are **frustrated** that you **just received** Ms. Small's **medical records** just last week, despite numerous requests and a pending motion to compel production of documents. **This is why you have yet to respond to the Plaintiff's offer.**

After contacting and speaking with the witness, Bill Waters, you have determined that **his testimony may be helpful** in proving your client had the right of way, so you need to depose him and call him as a witness at trial.

**Mr. Waters** told you that he **may be moving out of state** within the next six months. You have not discussed this with opposing counsel.

You have arranged for the insurance adjuster to be available by telephone during the conciliation.

**You have authority to offer \$6,500 at the conciliation.**

You **can call** the adjuster for **more authority** if the negotiations get into the **\$7,000 - \$11,000** range.

The insurer would agree to go to **mediation**.

## Conciliation Role Play - Tort Case

### CONCILIATOR

#### Contested Issue:

1. Liability: who was in the rotary first? Who had the obligation to yield?
2. Damages: was plaintiff's treatment reasonable and necessary or was it excessive?
3. Negotiation History: the plaintiff feels case not taken seriously and the defendant feels the plaintiff did not cooperate with providing medical records because she has something to hide.
4. Timing of Trial: the plaintiff wants trial right away due to condition of client and defendant may want a delay to depose the eye-witness.

#### Conciliator's Goals:

- A. To facilitate a settlement of the case between \$7,000 and \$11,000; OR
- B. To help the parties agree on the following:
  1. A deadline to depose the eye witness,
  2. A trial date,
  3. That they will consider scheduling a mediation session before trial.