

Roberts v. Gomez

Common Knowledge for Both Sides

This is a negotiation between two lawyers in a personal injury case. Mary Roberts sued Alfred Gomez as a result of a serious auto collision 18 months ago. On a Saturday night, Roberts was driving home from a party and abruptly switched lanes, veering from the right lane of an interstate into the left lane (going in the same direction). Gomez was driving in the left lane, 20 miles over the speed limit, and hit Roberts' car as she switched lanes. She had been drinking that evening and her blood alcohol content (BAC) level was .15, substantially over the legal limit. Gomez was also legally intoxicated, with a BAC of .12, and both drivers were eventually ticketed by the police.

Roberts, 42, worked as a dental hygienist but has been unemployed since the collision. Her legs were seriously injured and she gets around in a wheelchair. She cannot find work as a hygienist because most dentists' offices cannot accommodate wheelchairs. She hasn't found other work using her dental training or medical knowledge. She was getting treatment for depression before the collision. Her therapist testified in a deposition that Roberts' depression was aggravated by the collision and the aftermath.

Gomez is represented by his insurance company and the full amount of any settlement in this case is within the policy limits. The case is governed by a pure comparative fault law, where the amount of the plaintiff's damages is reduced in proportion to her fault.

Discovery has been completed and the lawyers will try to settle this case without trial. The following table summarizes the different positions of the parties. There have been no offers by either side before the negotiation. The negotiation will be solely between the lawyers, without parties or insurance representatives. The negotiation takes place shortly before trial and there will be little chance to settle if they don't resolve this today.

	Plaintiff's Position	Defendant's Position
Percentage of plaintiff's fault	25%	80%
Additional depression caused by incident	substantial	small proportion
Loss of prior earnings	\$60,000	\$60,000
Loss of future earning capacity	\$500,000	\$200,000
Past medical expenses	\$100,000	\$100,000
Future medical expenses	\$500,000	\$200,000
Pain and suffering	\$1,000,000	\$200,000
Total (undiscounted)	\$2,160,000	\$760,000

Confidential Information for Roberts's Lawyer

You have had several cases with defense counsel and have found him/her to be very professional. S/he represented his/her clients' interests as you would expect. You know that insurance companies usually are stingy and try to pay as little as possible and pressure their lawyers to resist paying any penny they can avoid. Even so, you have found your counterpart to be fairly knowledgeable and honest – at least compared with most defense counsel.

Although you will “talk a good game” about expecting a favorable result at trial, both sides know that this case is a crapshoot if you go to trial and you really want to settle to avoid the risk of a bad result. You think that the most likely verdict would be between \$500,000 and \$1 million, you know that you could get a lot less than that – and possibly a defense verdict.

Your opening demand will be \$2 million. You expect that the defense counsel will start with a lowball number. You may squawk but you won't walk. You would like if you can get \$1 million but you are authorized to accept as little as \$400,000. For the purpose of this simulation, don't worry about factoring in deductions for your attorney's fees and costs.

Confidential Information for Gomez's Lawyer

You have had several cases with plaintiff's counsel and have found him/her to be very professional. S/he represented his/her clients' interests as you would expect. You know that plaintiff's lawyers are often greedy and try to get every penny they can. Even so, you have found your counterpart to be fairly knowledgeable and honest – at least compared with most plaintiff's counsel.

Although you will “talk a good game” about expecting a favorable result at trial, both sides know that this case is a crapshoot if you go to trial and you really want to settle to avoid the risk of a bad result. You think that the most likely verdict would be between \$50,000 and \$250,000, you know that you could get a hit for a \$1-2 million verdict and maybe more.

Your opening offer will be \$150,000. You expect that the plaintiff's counsel will start by asking for the moon. You may squawk but you won't walk. You would like to get off with paying as little as \$250,000 but you are authorized to pay as much as \$500,000. For the purpose of this simulation, don't worry about factoring in deductions for attorney's fees and costs on either side.