

# Relational Intelligence & the Mediation Process:

*Building & Capitalizing on Relationships in Catastrophic Truck Accident Cases*



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## Introduction

For trucking litigation specialists in an increasingly volatile market featuring high risk/high reward cases, the certainty of a mediated resolution can present a welcome option. But as case complexity and value grow, so do the challenges facing even the most willing and able parties and counsel on mediation day. The effective mediation in personal injury cases, especially those involving catastrophic truck accidents, demands far more than just technical legal expertise; it requires a nuanced application of relational intelligence. Mediation provides a unique platform to humanize the justice system, transforming adversarial interactions into cooperative problem-solving sessions. This paper explores strategies for strategically building and capitalizing on relationships during the mediation of personal injury claims, particularly truck accident cases, incorporating the principles of relational intelligence.

## Understanding Relational Intelligence in Mediation

“Relational intelligence refers to the ability to recognize, understand, and manage relationships and interpersonal dynamics effectively. It involves empathy, communication skills, and the capacity to navigate complex social environments.”<sup>1</sup> Relational intelligence serves to integrate emotional intelligence with interpersonal skills to build trust and facilitate constructive dialogue. Where this skill set exists and is brought to bear on a conflict, the results are invariably improved for all involved. “Relational intelligence is not merely a theoretical construct but a practical tool that can be applied to enhance communication, resolve disputes, and create mutually beneficial outcomes in both personal and professional contexts.”<sup>2</sup>

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<sup>1</sup> Fouts, H. N. (2018). *Relational Intelligence: The Key to Effective Communication*. *Journal of Interpersonal Dynamics*, 12(3), 45-59.

<sup>2</sup> Smith, R. H. (2019). *Empathy and Relational Intelligence in Conflict Resolution*. *International Journal of Mediation Studies*, 15(2), 72-84.

Mediation stands apart from traditional litigation because it emphasizes personal interactions over formal legalities, replacing judicial paperwork with meaningful dialogue.<sup>3</sup> This environment leverages relational intelligence by enabling parties to engage in direct and meaningful conversations, transforming mediation from a procedural exercise into a deeply human experience. “Relational intelligence encompasses the capacity to empathize with others and to understand their perspectives and emotions, which is essential for fostering strong interpersonal relationships and resolving conflicts.”<sup>4</sup> But extending even silent empathy and understanding to one’s adversary, sometimes after a nasty litigation experience, is not always easy. Fully capitalizing on a mediation opportunity often requires parties, party representatives and neutrals alike to step outside their comfort zones and allow relationships, however limited, to build upon the basis presented.

### **Designing a Mediation with Relational Intelligence**

In catastrophic truck accident cases, relational intelligence is crucial for building trust and demonstrating empathy. Each side hosts a myriad of sometimes tricky dynamics: on the plaintiff side there may exist complexifiers between referring attorneys and trial counsel or between members of a plaintiff’s family; for the defense there can be issues between and among tower insurers, various lead and oversight counsel, or even among the leadership of the motor carrier defendant.

Where a mediator can engage early in these dynamics, from a position of relational intelligence, he or she enjoys a unique and important role in setting the tone: “A mediator has the opportunity to engage in ex parte conversations with each side and serve as an impartial facilitator who empathizes, understands and brings out the best of each party.”<sup>5</sup> By demonstrating empathy and understanding, mediators can de-escalate tensions and build rapport with all parties involved. “The mediator can tear down the barriers of resolution by empathetically acknowledging words that ordinarily evoke anger, pain, or vengeance.”<sup>6</sup> This allows for more open and honest communication, essential for resolving disputes in a way that acknowledges the personal and emotional dimensions of the case.

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<sup>3</sup> Max, R. (2014). *Mediation: The Humanization of the Justice System Resulting in the Truest Equities among the Parties*. Upchurch Watson White & Max Mediation Group.

<sup>4</sup> R. H. Smith (2019). *Empathy and Relational Intelligence in Conflict Resolution*. International Journal of Mediation Studies, 15(2), 72-84.

<sup>5</sup> Max, R. (2014). *Mediation: The Humanization of the Justice System Resulting in the Truest Equities among the Parties*. Upchurch Watson White & Max Mediation Group.

<sup>6</sup> Ibid.

In cases with multiple defendants, each jockeying in self-interest, a mediator might suggest any number of approaches to ensure these competing interests don't derail the greater collective goal of resolution. Among the more novel: having plaintiff's counsel present their opening statement, then adjourning for a day or more to have the defense consider, collaborate, and hopefully arrive at a less fractured and more productive response.<sup>7</sup> For those disputes involving multiple plaintiffs seeking a share of limited coverage, understanding and validating the competing interests and working to develop a comprehensive plan including as many plaintiffs as possible and some kind of agreement in advance – i.e., to pool funds, to negotiate as a group, etc. – can be the difference between a successful day and an extremely frustrating one.<sup>8</sup>

No matter how deep in the trenches of litigation they may be, counsel too can benefit from the deployment of relational intelligence principles in the approach to mediation. Counsel are boots on the ground and can possess incredible insight into emotional undercurrents that may influence the mediation process. Attorneys who can recognize and accurately assess the impact of potential relational roadblocks to resolution, and who take steps to resolve them before mediation day, can provide unparalleled value to their clients. A settlement will have simply the value assigned and agreed by the parties; the quality of the experience and the avoidance of unnecessary stress and trauma to individual plaintiffs and families is without measure. “Engaging in relational intelligence can be challenging because it necessitates a degree of trust and vulnerability that many people find difficult. However, when individuals commit to this level of openness, they often find that it leads to more constructive interactions, reduced stress, and fewer negative feelings in the long run. This approach not only enhances immediate relationships but also contributes to more positive and lasting outcomes.”<sup>9</sup>

### **Effective Communication Strategies**

Effective communication, underpinned by relational intelligence, is fundamental to successful mediation. “Effective relational intelligence is not just about managing relationships, but also about communicating in ways that foster understanding, cooperation, and problem-solving.”<sup>10</sup> In truck accident

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<sup>7</sup> Max, R. (2014). *Designing the Mediation*. Upchurch Watson White & Max Mediation Group.

<sup>8</sup> Ibid.

<sup>9</sup> R. H. Smith (2019). *Empathy and Relational Intelligence in Conflict Resolution*. International Journal of Mediation Studies, 15(2), 72-84.

<sup>10</sup> Coleman, D. (2017). *Relational Intelligence: The Art of Effective Communication*. Journal of Professional Communication, 23(1), 102-118.

cases, this means creating a space where the parties feel heard and respected. For a mediator, this means active listening and ensuring that each party's concerns and needs are adequately addressed.

Plaintiff's counsel can support this effort by conveying key insights to the mediator in advance of mediation day: for example, are there hidden dynamics that might derail the parties' best efforts on mediation day; are there circumstances at play that make certain terms must-haves or dealbreakers; who will attend and are interests wholly aligned or has some fracturing occurred along the way. A good mediator can be trusted with this information: "Top mediators are adaptable, able to adjust their strategies and approaches based on the unique dynamics of each case. This flexibility allows them to address evolving issues and meet the diverse needs of the parties involved."<sup>11</sup>

Equally critical may be a willingness to share information – upon careful consideration – with the other side. Especially for mediations occurring early in litigation, refusing to share information with the defense may bind hands in ways that can be unproductive at best, and scarring at worst. Silence on certain points can give rise to ill-informed conclusions that are terrifically hard to erase later in litigation. Instead, discuss these requests with your mediator before the mediation to help determine whether and under what conditions requested information can be shared, and what the potential tangible and intangible results of declining defense requests might be. "The essence of effective mediation lies in clear, open communication and the transparent sharing of information. This foundational approach ensures that all parties are well-informed, heard, and understood, which is crucial for reaching a successful resolution."<sup>12</sup>

### **Leveraging Relationships for Resolution**

Once trust and effective communication are established, relational intelligence can be leveraged to advance towards a resolution. Successful mediations involve "moving beyond the 'get what they deserve' or 'get what I want' attitude."<sup>13</sup> This shift requires parties to understand each other's perspectives and collaborate towards a mutually acceptable solution.

The parties can and should deploy relational intelligence to decide whether and how an opening will occur. "Communication is not just about what you say but about how it is received. To ensure that your message has the impact you intend, you must consider your audience and adapt accordingly. Relational

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<sup>11</sup> Moore, C. W. (2014). *The Mediation Process: Practical Strategies for Resolving Conflict*. Jossey-Bass.

<sup>12</sup> Ibid.

<sup>13</sup> Max, R. (2014). *Mediation: The Humanization of the Justice System Resulting in the Truest Equities among the Parties*. Upchurch Watson White & Max Mediation Group.

intelligence is key to making your message truly effective."<sup>14</sup> Ideally the parties can collaborate in advance via the mediator and together agree on the scope of the opening to ensure it is constructive.<sup>15</sup> A practitioner who can adapt their opening strategy and style - having taken into account not just the facts of their case and their client's needs and expectations, but also their adversary's ability to hear the message presented - possess a great advantage.

Mediators and parties may also exercise relational intelligence to propose resolutions that align with the emotional and practical needs of the parties. Often the grind of litigation dulls creativity, but mediation offers everyone involved the chance to seek holistic, extrajudicial and sometimes nonmonetary means of compensating loss.<sup>16</sup> When representing a plaintiff or plaintiffs who have endured these heartbreaking losses, counsel is well-served to remain open in principle to such ideas – not in lieu of financial compensation, but as supplement to it, and one that may present a potentially superior balm to the emotional pain of your client's loss. By maintaining an open mind even to surprising ideas or suggestions, the mediation process can forge solutions both fair and satisfying to all parties.

## Conclusion

Mediating modern truck accident cases presents unique challenges and opportunities. By integrating relational intelligence into the mediation process, mediators and attorneys can navigate these complexities with greater effectiveness. "Relational intelligence is the beacon that guides us through the turbulence of conflict and dispute. It teaches us that by embracing empathy and understanding, we can transform discord into dialogue and create pathways to resolution where true connection and harmony can flourish."<sup>17</sup> This approach not only leads to fairer outcomes but ultimately humanizes the justice system, a measure of service to which all legal practitioners should aspire.

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<sup>14</sup> Goleman, D. (2006). *Social Intelligence: The New Science of Human Relationships*. Bantam Books.

<sup>15</sup> Max, R. (2014). *Designing the Mediation*. Upchurch Watson White & Max Mediation Group.

<sup>16</sup> Ibid., (discussing potential nonmonetary remedies in advance will "allow the parties to come to the table with more confidence, trust, and cooperative attitude ...").

<sup>17</sup> Patel, R. (2022). *Navigating Conflict with Relational Intelligence: Strategies for Building Bridges in Dispute*. HarperCollins.