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An “executive summary” for your plaintiff’s case

HELP YOUR CLIENT AND YOUR CASE BY GETTING TO THE POINT

We all like to think we’re interesting. That we can capture a room’s attention with a clever story, our thoughtful wit, or an insightful analysis. Likewise, we all fancy ourselves as brilliant writers who, with the push of a few keys, usher erudite sentences from our brains into our briefs, letters and emails. In reality, most of our compositions leave something to be desired. I mean, we certainly all have our moments. We wouldn’t be successful attorneys if we didn’t have some degree of persuasion and intellect that convinced a client to sign with us or a judge (or jury) to find in our favor.

But how much time do we really have before we lose a reader’s attention? Meandering paragraphs, poor grammar, passive sentences, and fractured logic all play roles in throwing the brakes on a reader’s focus. Some theorize that readers spend about 10 seconds before deciding whether they’re going to continue reading with actual dedication. (Dr. Kalpathy Subramanian, *Myth and Mystery of Shrinking Attention Span*, Int’l. Journal of Trend and Research Development, Vol. 5(3) (June 2018).) For others, it seems attention vaporizes immediately. This appears to be a symptom of today’s addiction to the internet as “our brains form shortcuts to deal with it all – scanning, searching for key words.... This is nonlinear reading, and it has been documented in academic studies.” (Michael Rosenwald, *Serious reading takes a hit from online scanning and skimming, researchers say*, Washington Post, April 6, 2014, available at https://www.washingtonpost.com/local/serious-reading-takes-a-hit-from-online-scanning-and-skimming-researchers-say/2014/04/06/088028d2-b5d2-11e3-b899-20667de76985_story.html).

So, that great point you made at page 12 of your brief that cites to a

50-page exhibit may not have its intended effect or, worse, could have been missed entirely.

But what about our mediators? Aren’t we paying them to attend to our prose and read (and understand) our mediation briefs? Well, sure. But let’s be real. Just like us, our mediators are very busy with very demanding case loads. They have clients (us) contacting them at all hours, asking for updates about their (our) cases. They too are under pressure to resolve cases by bridging what starts as a seemingly impossible gap, but ends as a successful connection where the parties finally lower their guards and agree to a fair and equitable resolution.

An Executive Summary – a one-page outline of your case – comes to the rescue. It’s a distilled version of your Probst-like mediation brief into something that’s focused, coherent and incisive. It’s written with the intention that the mediator (as well as defense counsel and insurance adjusters should you choose to share it), will use this as their reference guide during the mediation.

An example of the Executive summary

On the opposite page is an Executive Summary from a recent case with party names changed for confidentiality.

The content is self-explanatory. The point is to get to the point. Capture your reader’s attention with a single page. Let your mediation brief fill in any gaps your readers may reference if they have additional questions or desire extra information.

The Executive Summary is also an important self-exercise as it forces me to focus the essentials of my case. It contains economic numbers that I would blackboard at trial because they are factually and legally supported. I often

write these as though I’m forced to try a case to a jury simply by giving each juror just one sheet of paper and nothing more. I’m done writing when I feel comfortable that a juror – having no additional information – would conclude that defendant is at fault and understand the nature and extent of my client’s harm.

Now, are there cases so complicated that even distilled they could not fit on a single page? I suppose, but I haven’t come across those yet. If you have multiple clients for the same incident, then each person should get their own Executive Summary with numbers and other factual information that is unique to them.

As mentioned, the full mediation brief still serves an important purpose. You can tell your client’s whole story there. I find it especially useful to add photographs from the scene, property damage, injuries, and images of my client’s pre- and post-incident life.

The Executive Summary is meant to embrace today’s reality that it’s increasingly more difficult to capture your reader’s attention. Getting to the point clearly and concisely sends the message that you know your case and shows that, no matter how complicated, you can deliver the key information in an easily digestible format. Chances are, your mediator will thank you for it.

Andrew Owen is an attorney with Panish Shea Boyle & Ravipudi LLP. He focuses his practice on litigating and trying catastrophic personal injury and wrongful death cases involving trucks, commercial vehicles, pedestrians, industrial or construction accidents, as well as dangerous conditions of public and private property.

EXECUTIVE SUMMARY

Jones v. Widget Co.

Venue: Long Cause in DTLA (either Judge Doyle or Judge Singer). Trial date pending.

Plaintiff: Brent Jones, age 30. Currently married. No children. Was a director of special events with Central Sports Media. No longer employed or employable.

Defendants: Widget Co. and its employee, Maggie Smith.

Insurance: Primary: \$100,000 with Safeco; First excess: \$2,000,000 with ACE American, Second excess: \$5,000,000 with National General. Beyond this, Widget Co. had \$7 billion in gross sales in 2020.

Incident: Auto v. motorcycle collision. On January 8, 2016, at 5:00 p.m., Maggie Smith was traveling on the 405 south to LAX in the HOV lane. Smith attempted an unsafe and illegal lane change over the solid double yellow lane markers into the number 1 lane. Smith did this without signaling or making sure the path was clear of other motorists. In so doing, Smith collided into Brent Jones, who was lane sharing on his motorcycle. Jones was ejected from his motorcycle and crashed face first into the bumper of another vehicle.

Injuries:

- Severe traumatic brain injury: diffuse axonal injury with hydrocephalus, encephalomalacia, and gliosis (shearing brain injury with brain tissue death and shrinkage accompanied with water on the brain and scar tissue)
- Post-traumatic seizure disorder
- Bilateral blindness (complete loss of vision in left eye and sees only partial shadows in right eye)
- Loss of smell
- Loss of taste
- PTSD with major depressive disorder and neurocognitive disorder



Economic Damages:

• Past and Future LOE (present value):	\$1,780,693 to \$2,888,808
• Past <i>Howell</i> Medicals:	\$1,698,726
• Future Medical (present value):	\$6,380,756 to \$9,511,702
TOTAL:	\$9,860,175 to \$14,099,236

Prior Demands: Plaintiff served a 998 on Widget Co. totaling \$75,000,000 on May 6, 2020. This 998 expired. Widget Co. has made no offer to date.