

Getting Optimum JSM results:

Strategic conflict or co-operation?

Speakers:



Brian McCluggage
mccluggage@12kbw.co.uk



Thea Wilson
wilson@12kbw.co.uk

Introduction

- ▶ JSMs are a vital and often underrated part of litigation.
- ▶ In this talk we will be discussing how to make the most of a JSM, covering:
 - ▶ Planning well to maximise the prospects
 - ▶ Tactics during JSMs and to deal with them

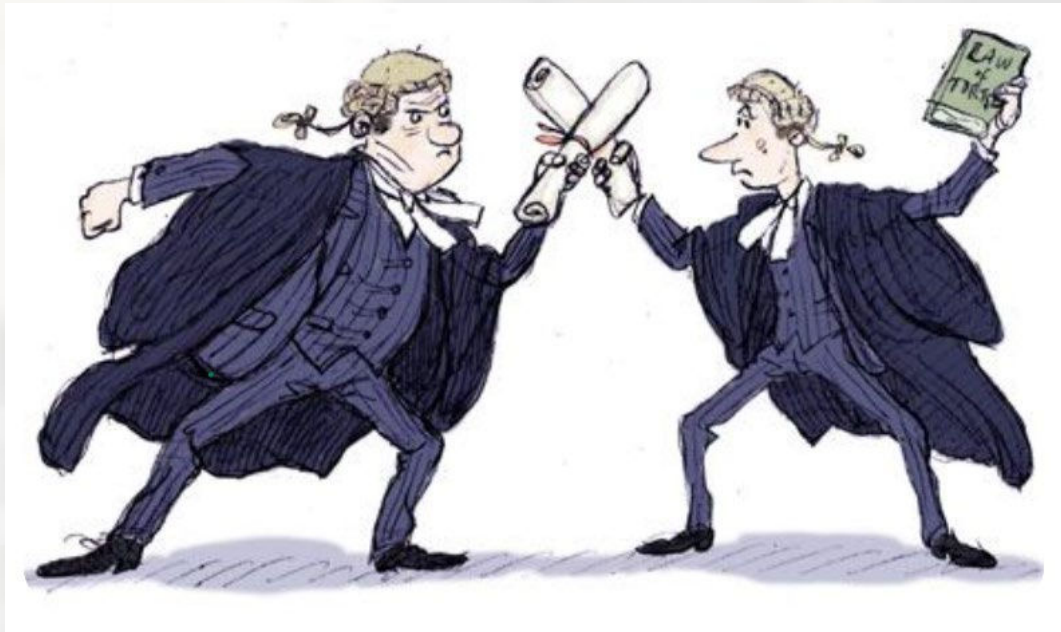


Timing of a JSM



Format

► JSM vs Mediation



Or



Format of the JSM

- In person, online or a hybrid?



Preparation



Know thy enemy and know thy
self and you will win a hundred
battles.

~ Sun Tzu

Preparation: Schedule of Loss



Preparation: Counter-Schedule



Preparation

► Use the right tools:



	Schedule	Multiplier if improvement after 10 years	Multiplier if improvement after 5 years	Counter Schedule
Life multiplier	22.0132	13.135	9.7	9.7 (7.5)
Multiplier to 75	5.4884	5.03	5.03	5.03
Multiplier after 75	16.23	8.105	4.67	4.67
Multiplier beyond first	21.0132	12.135	8.7	8.7


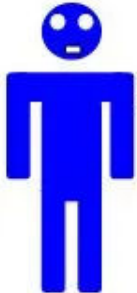






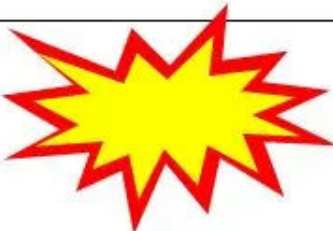
Head of Loss	Schedule	Improvement after 10 years	Improvement after 5 years	Counter Schedule
General Damages	£150,000.00	£100,000.00	£100,000.00	£75,000.00
Unpaid care	£190,119.30	£115,764.10	£115,764.10	£61,289.00
Paid care	£370.20	£370.20	£370.20	£0.00
Aids & Equipment	£5,911.60	£4,500.00	£4,000.00	£3,826.00
Shoes, Clothing & Glasses	£10,045.70	£6,000.00	£6,000.00	£1,200.00
Treatment	£765.75	£765.75	£765.75	£765.75
Vehicles	£8,768.00	£6,500.00	£6,500.00	£0.00
Accommodation	£17,078.16	£10,000.00	£8,000.00	£7,914.00
Travel	£2,378.88	£2,000.00	£1,800.00	£1,800.00
Holidays	£10,918.38	£5,459.00	£5,459.00	£5,459.00
Miscellaneous	£6,929.63	£3,000.00	£2,000.00	£253.00
Total Past	£253,285.60	£154,359.05	£150,659.05	£82,506.75
Interest	£5,121.75	£3,087.18	£3,013.18	£1,650.14
Care	£1,158,698.03	£747,213.61	£550,461.74	£216,008.25
Aids & Equipment	£41,420.55	£26,653.00	£12,556.50	£9,495.50
Shoes, Clothing & Glasses	£24,764.85	£12,478.25	£7,760.00	£1,000.00
Treatment	£32,070.13	£22,497.66	£8,708.04	£8,031.00
Vehicles	£108,967.02	£108,967.02	£108,967.02	£31,500.00
Accommodation	£579,505.83	£158,976.00	£158,976.00	£158,976.00
Holidays	£71,100.00	£39,500.00	£31,600.00	£24,750.00
Miscellaneous	£16,069.64	£3,283.75	£1,940.00	£0.00
Total Future	£2,032,596.05	£1,119,569.29	£880,969.30	£449,760.75
TOTAL	£2,441,003.40	£1,377,015.52	£1,134,641.53	£608,917.64


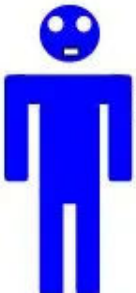
STRATEGY



GAME THEORY

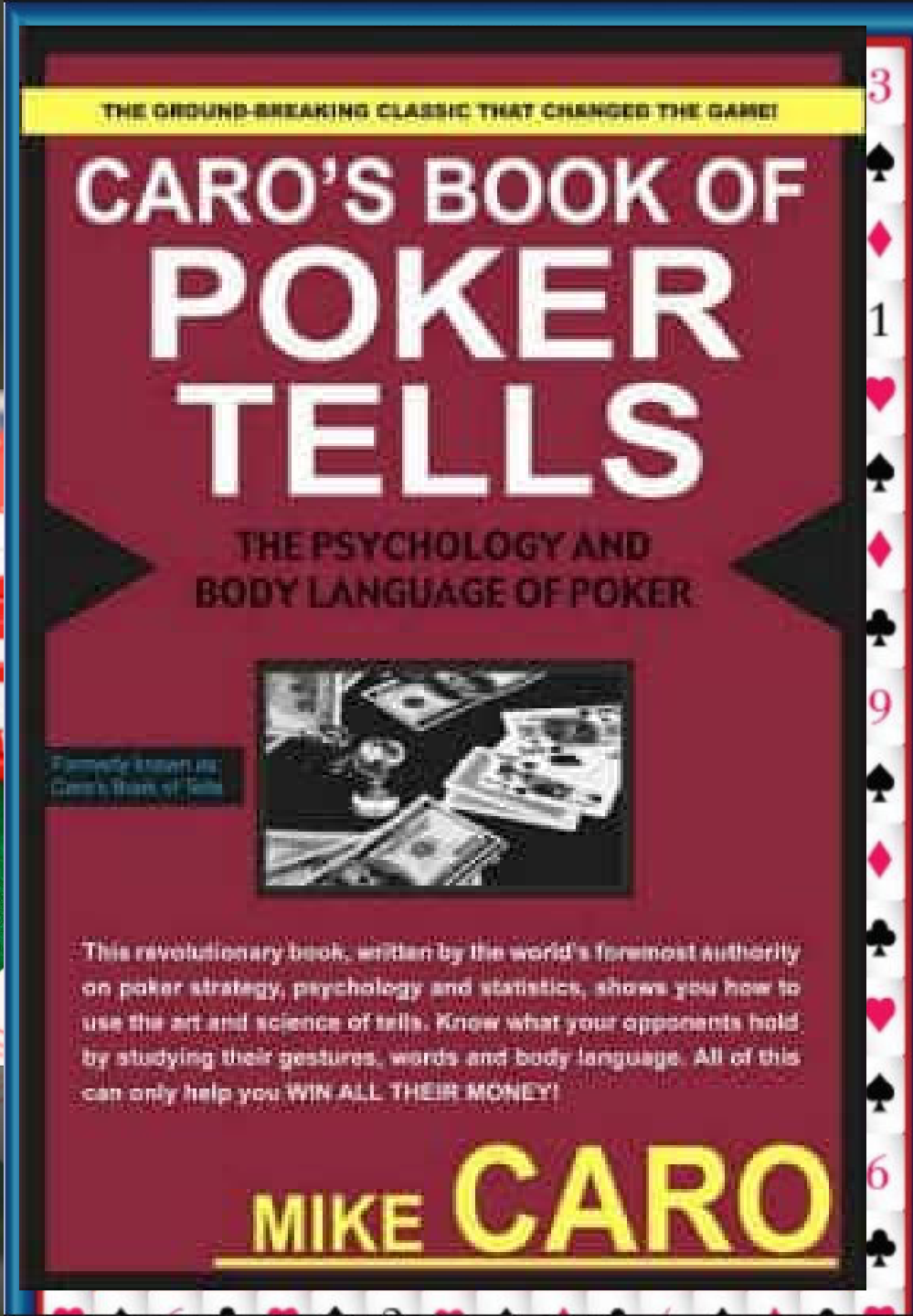
- ▶ The outcome of any decision in a “game” is dependent on the decision of that player and decisions of all other participants
- ▶ Game theory is about modelling games
- ▶ Game theory can be applied to negotiation
- ▶ Applies well to a Joint Settlement Meeting scenario

			
		SWERVE	STRAIGHT
	SWERVE	 	 
	STRAIGHT	 	

			
		SWERVE	STRAIGHT
	SWERVE	0 , 0	-1 , 1
	STRAIGHT	1 , -1	-5 , -5

Negotiation as Poker

- ▶ Playing your opponent as much as your cards
- ▶ Do you know your opponent?
- ▶ Is your opponent a good player?
- ▶ Every bid contains information
- ▶ No respect for your bid.....



Opening bids

- ▶ Does it matter who goes first?
 - ▶ Existing offers make a difference?
 - ▶ Showing confidence?
- ▶ Making a significant deduction from schedule or raise from counter-schedule?
 - ▶ Likely to produce similar reaction?
 - ▶ “2nd offer 1st”

Second bid

- ▶ If someone makes a move on first bid, need decide whether:
 - ▶ You make a move?
 - ▶ Or stay close to starting position?
- ▶ Anger/frustration
 - ▶ Claimants get anxious
 - ▶ Insurers get irascible
- ▶ Need to remember: negotiation is a series of bids AND a psychological process

Effective/Ineffective Strategies?

Strategy A: Starting off (or second bid) moving close to what you think the claim is worth, small movements thereafter

Strategy B: Sticking to close to your Schedule/Counter-Schedule and only making a substantial later move after exhaustion

Strategy C: Waltzing: step – step – close

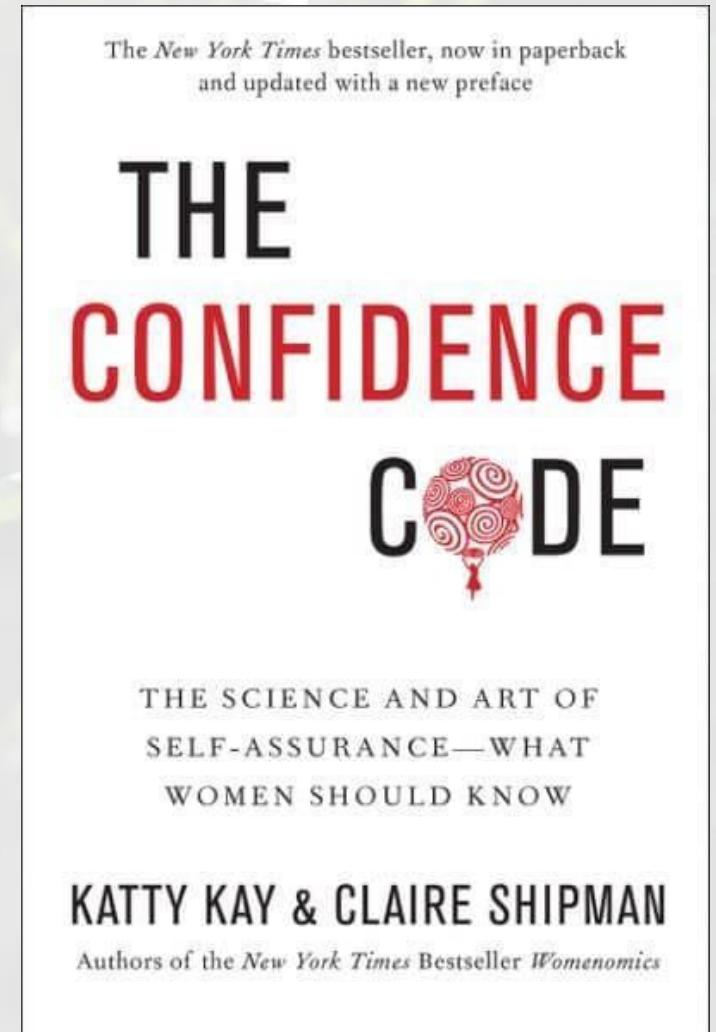
Listening

- Enjoy the Silence
- More information = better decisions
- Lawyers like talking....often too much
- Short questions to get someone to elaborate on a "submission" - effective



Breaking down offers?

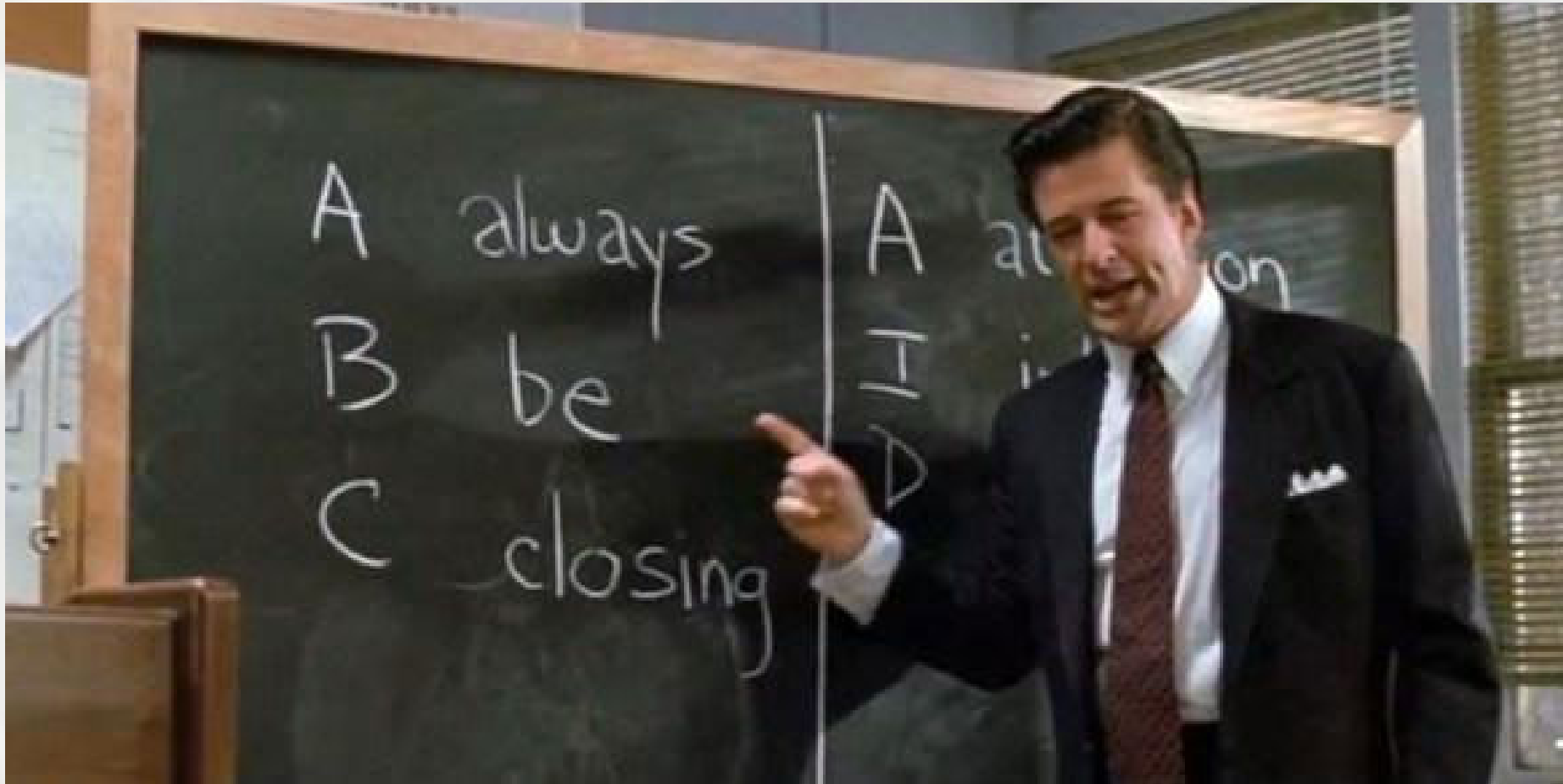
- It all depends..... BUT
- An offer broken down shows confidence
 - Fully prepared
 - Analysed the case
 - Can make tactical concessions
- But you will offer too much for certain heads



Ending the process

- ▶ Holding final offer over to next Friday?
- ▶ Is there more in the back pocket next week?
- ▶ “Brucey Bonus” [*not a ‘time bomb’*]
- ▶ Walking out.....

“Final Offer”



Post-process

- ▶ 9am the next day: Part 36
- ▶ Holding an offer over
- ▶ Further discussion?
- ▶ Or a hard-line?



Questions?

