

MEDIATION OPTIONS AND STRATEGIES

**PLAN
DALLAS, TEXAS
MAY 23, 2018**

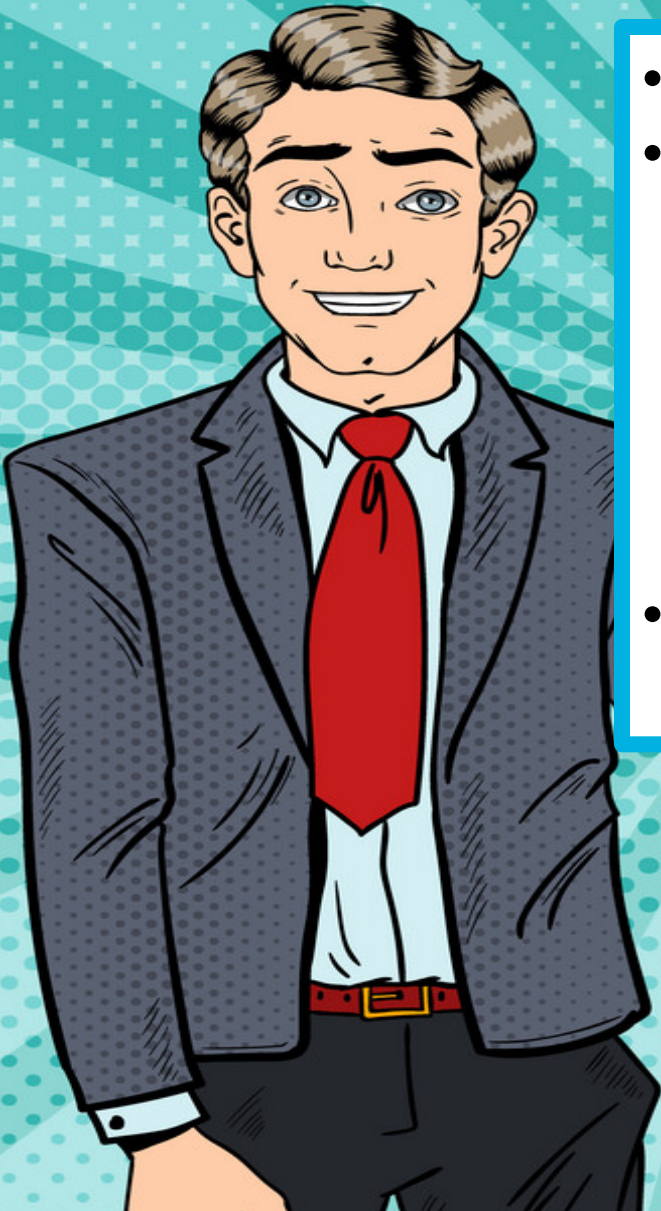


Applicable Law

- **Uniform mediation act**
 - **11 states**
 - **No uniform law**
 - **Material terms**
- **Mediation v. Arbitration**

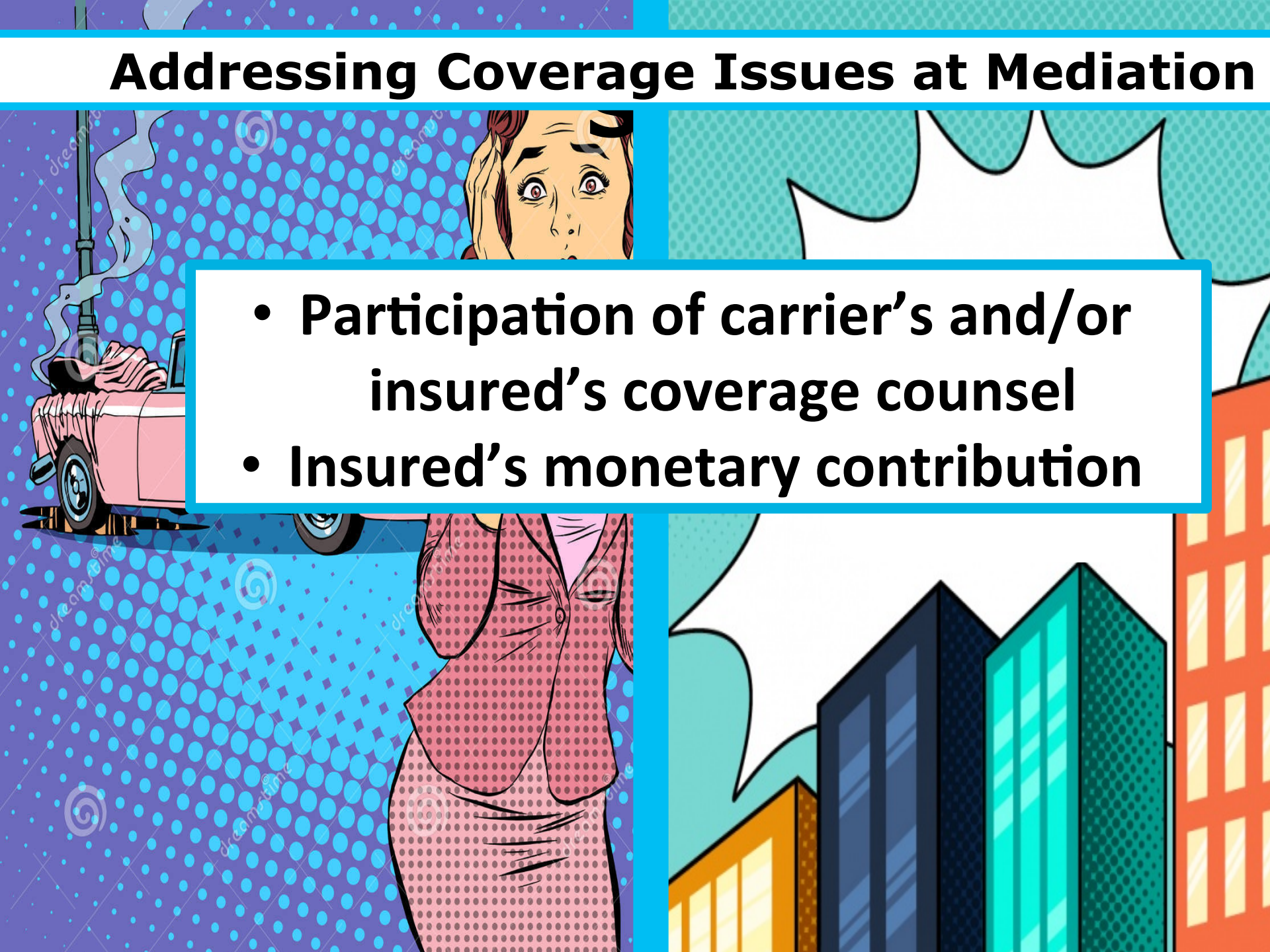


STATISTICS



- 95% increase from 1995-2010
- Resolves insurance defense cases 83% of the time
 - Workers comp: 87%
 - Contract: 87%
 - Motor vehicle: 85%
 - Other personal injury: 77%
- Consensual mediation makes 10% difference

Addressing Coverage Issues at Mediation

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- Participation of carrier's and/or insured's coverage counsel
 - Insured's monetary contribution

Selecting the Mediator



- Selection process
- Advantages and disadvantages of using retired judges
 - Subject matter expertise vs. mediation experience
 - Facilitators vs. evaluators

JOINT SESSIONS/OPENING STATEMENTS

- Ability to educate, evaluate and intimidate opposition
 - Risk of polarization





Mediation Scheduling

- Does location matter
- Out-of-state mediators
 - How much time

When to Mediate an Insurance Case

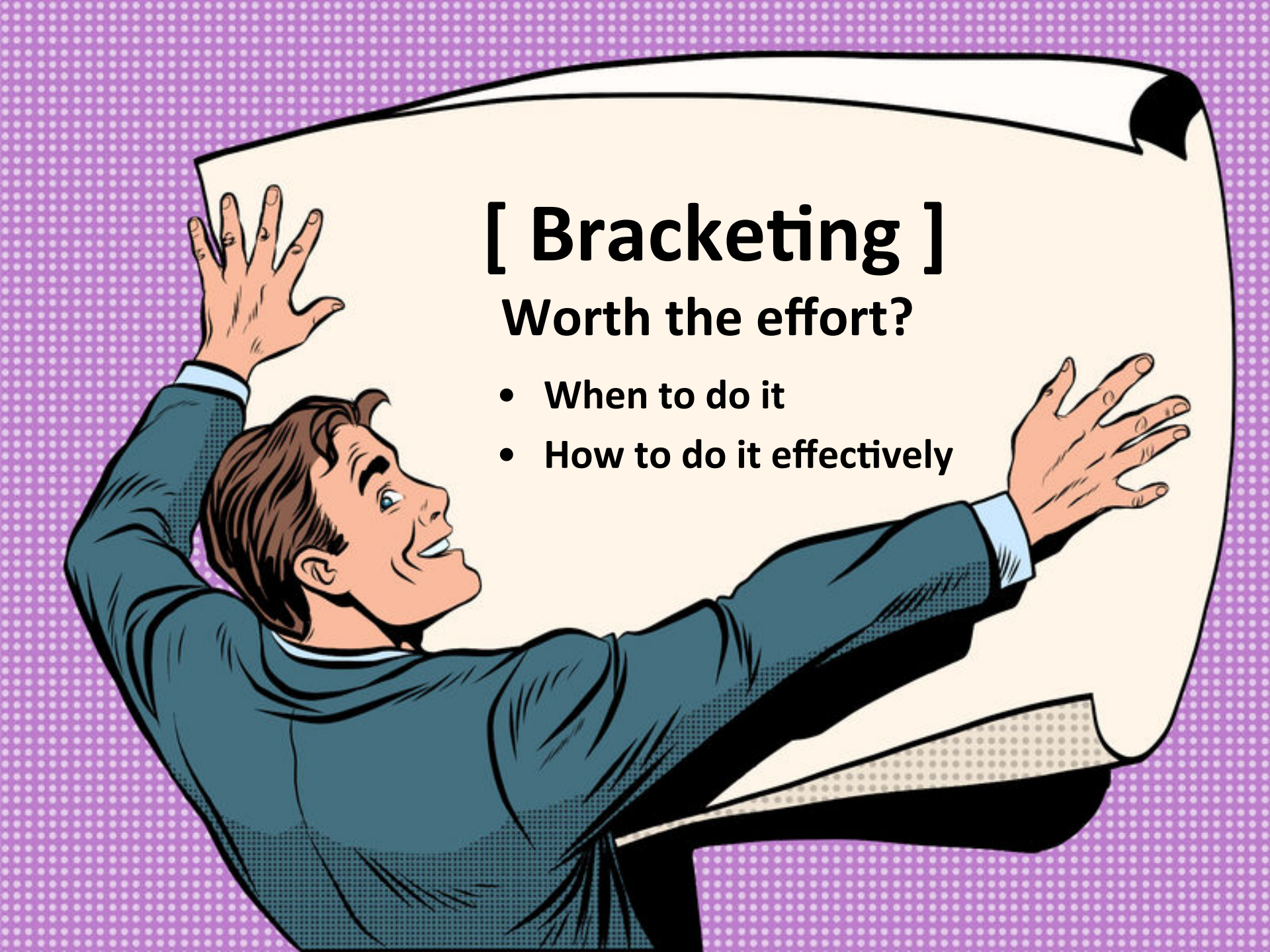
- Pros and cons of early mediations
 - Waiting too long

Attendance at Mediation

- Personal attendance of claims handler matter
 - Attendance of insured

EX PARTE MEETINGS BETWEEN CLAIMS HANDLER AND MEDIATOR

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- Taking counsel out of the loop
 - Potential loss of control

A cartoon illustration of a man with brown hair, wearing a blue suit, holding up a large, unrolled scroll. He is looking up at the scroll with a smile. The scroll is white with black text. The background is a purple grid pattern.

[Bracketing]

Worth the effort?

- When to do it
- How to do it effectively

When
Why

Mediators' Proposals

- Benefits and risks
- How to influence proposal



Documenting the Agreement

- Importance of first draft
- Address coverage issues
- Necessity of mutual releases
- Confidentiality and non-disparagement

