



My Case Isn't Going to Trial, So Why Do I Need a Trial Consultant?

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We at IMS sometimes worry that the common monikers for our profession, such as “trial consultants” and “jury consultants,” create the impression that a case needs to end up in trial for us to be of assistance. Add in the fact that [civil jury trials have been in steady decline](#)¹ while alternative dispute resolution is on the rise, and you may be primed to overlook **a number of ways that research services can still give you a leg up** in your next case—no trial required. Here's how:

1. You Can Find Out Whether You *Should* Go to Trial

Litigation research (e.g., focus groups and mock trials) in the earlier case stages is a great way to determine your case value. If you're not sure whether to settle or not, for example, knowing how jurors might respond should you continue to trial is invaluable when weighing your options and assessing your risk. Researchers can also craft projects to test specific variables, so you can learn whether the inclusion of certain facts, verdict form language, or potential *in limine* rulings might affect your case's strength.

The following are just some of the insights this kind of research can offer:

- Is your case “winnable”?
- Are there enough strong defense jurors to overcome plaintiff sentiments?
- What questions would prospective jurors want answered? What gaps are in your case?
- What type of damages exposure might you face at trial? What range of damages could you expect?
- How might *in limine* rulings affect case value?

2. You Can Inform Your Settlement Strategy by Gaining the Advantage

Once you've learned the value of your case, if you do opt to settle, you'll enter negotiations with significantly more knowledge and leverage. And this doesn't only extend to your own hand; you'll know quite a bit about what your opponent is playing with, too. **Consider this:**

- A solid idea of your damages exposure means you can identify a fair (and preferably *favorable*) settlement.
- If you know your opponent's weak spots, you can press on them. You'll also have the opportunity to come up with counters for your own vulnerabilities.
- Don't forget graphics! Having a firm grip on your case presentation and bringing professional, persuasive graphics to the table shows your opponent that you're ready for action and gives them a taste of what they're up against—a strong move if they're not so sure they want to risk a trial.



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3. You'll Still Need to Persuade Judges or Arbitrators

Alternatives to the jury trial are growing in popularity, but you're still ultimately trying to convince someone of the merits of your case. Studies have shown that communicating with non-jurors requires many of the same techniques to maximize effectiveness. (Check out our article discussing the similarities between judges and jurors, for example.)

In any of these no-jury scenarios, testing and developing your themes, strategies, graphics, and/or witnesses through a mock-style project can still make all the difference. After all, the rendered decisions are just as legally binding.

Bench Trial

If it's a judge who will decide your case, you can still test potential outcomes. A mock bench trial—in which we use a panel of retired judges similar in profile to your case needs—examines how your judge might rule, which arguments and themes they might find most advantageous to each side, and more.

Arbitration

Likewise, our mock arbitrations gather a sample of decision makers with the right background to match your arbitrator(s). Along with ascertaining strengths, weaknesses, gaps, and potential outcomes, such research can evaluate any witnesses that might be presented during the arbitration—whereupon you can further prep them as needed.

Bonus: Mediation

While mediators don't make binding decisions, providing them the means to understand your side of the story can steer the mediation process and perspective. Moreover, as with a settlement, having a fleshed-out grasp of each side's strengths and weaknesses allows you to better communicate your position to your opponent. A mock mediation can work to accomplish these goals.

Conclusion

Keep in mind, of course, that if mediation or settlement talks reach an impasse, you'll likely still find yourself headed to trial—all the more reason to have begun honing your arguments, themes, and graphics in advance. These will serve as a foundation and guide as you continue to build your best case.

The more you know about how key parties could react to your case facts and presentation, the better prepared you'll be to direct the litigation process toward a favorable outcome, no matter what route that process takes. [Ask a litigation professional](#) to learn more about how your case can benefit from research.

¹ That said, in our experience, clients still frequently go to trial.

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