

ANATOMY OF A TRIAL - THE PLAINTIFF'S CASE

Presented By:

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JOHN ASHLEY

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DONDON**

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CHAPTER 1 – THE “BIRTH” OF THE PLAINTIFF’S CASE (ALSO CALLED THE “INTAKE” BY THE LESS DRAMATIC OF US)

- **PRE- AND POST-ACCIDENT VIDEOS AND PHOTOGRAPHS**
- **ADMISSIBLE MEDICAL EXPENSES**
 - Auto cases: Expenses paid by Insurance admissible or not—The “fake insurance policy”
- **TIME TO START OPPO RESEARCH ON THE CLIENT**
- **DECISION ON NEED FOR LIABILITY EXPERTS**
 - Theories of liability
 - Standards, codes, regulations and statutes
 - Understanding accident dynamics, construction methods, product design/function
 - Identifying necessary documents
 - Identifying subjects for deposition questions

CHAPTER 2 -- SETTING THE TERMS OF THE DISPUTE - THE “COMPLAINT”

- **TIMING OF THE FILING OF THE COMPLAINT**
 - Severity of the injury—potential long-term consequences
 - Type of case—slip and fall, construction, products liability, medical malpractice
- **ALLEGATIONS**
 - Finding the soft spot between saying too much and not enough
 - Remember that you can plead in the alternative
- **STANDARDS AND CODES**
 - Include standards and codes, regulations, statutes and Restatement Sections (don't forget the “magical” Restatement Sections (323 and 324A))

CHAPTER 3 – DISCOVERY – **THE “REAL TRIAL”**

- **ORDER OF WITNESSES**
 - Build the foundation step by step
 - End with all the “Big Cheeses”
- **CLIENTS**
 - You need to “dance with the one who brung ya”
- **THE “CHARACTER WITNESSES”**
 - Identify and disclose the non-family members: bosses, co-workers, friends and family
- **EXPERTS**
 - Don’t forget the “four corners rule” for the reports
 - Obtain your own “IME” physician to testify (in addition to treater or without treater) to equal the playing field
 - Don’t forget to explain the standard for admissibility of an opinion in Pennsylvania for opinions on nature of injury and causation (cannot say “more likely than not”)

CHAPTER 4 – PREPARATION FOR THE SHOW

• MOTIONS IN LIMINE

➤ THE “PLAINTIFF WILL NOT OR DID NOT CALL THE TREATER”

□ *Bentivoglio v. Ralston*, 288 A.2d 745 (Pa. 1971), holding that a treating physician is a witness equally available to both sides of the litigation and it is an error of law for a court to grant an adverse inference against the plaintiff for failing to call a treating physician to testify at trial, and if the trial court permits evidence, argument, or gives an instruction to that effect, it is grounds for a new trial. See also *Bennett v. Sakel*, 725 A.2d 1195 (Pa. 1999) (confirming the prior holding in *Bentivoglio*).

- USE OF EXHIBITS DURING OPENING

- *Com. v. Parker*, 919 A.2d 943 (Pa. 2007): Where a tangible piece of evidence is within the scope of evidence that a party intends to introduce at trial and there is no question as to its admissibility, the display of the piece of evidence is wholly proper during an opening statement provided that its display does not inflame passions of the jury.

- *Risperdal Litigation W.C. v. Janssen Pharmaceuticals, Inc.*, 174 A.3d 1110, 1117 (Pa. Super. 2017): “Counsel is permitted to use visual aids during opening...statements to assist the jury in understanding the evidence”.

- *Webb v. Scranton Quincy Hospital Company*, No. 2021 CV 4073 (CCP LACKAWANNA 2024)

- Excerpts of videotape depositions of defense witnesses:
 - Include agents of defendant—4020(a)—Can use depositions of a party for any purpose so long as party present or represented during the taking of the deposition or had notice of the deposition
 - Non-party medical witnesses—4020(a)(5)—Can be used for any purpose whether or not witness available to testify

CHAPTER 5 – TIME FOR THE SHOW

- VOIR DIRE

- AUTHENTICITY, AUTHENTICITY, AUTHENTICITY

- Identifying most likely adverse jurors

- Business executives and owners

- Young men (ages 30 and younger especially not married and without children)

- Professionals in the same fields as the experts or similar fields -- “depending”

- People who have suffered from disability from injury—yes, that’s right

- Find those jurors who will identify with the client

- “Houston, we have a Network Problem”

THE OPENING

- The Plaintiff is “One of Us”--the common experiences and traits
- Defendant is not “One of Us”—made bad choices, broke rules we all live by
- Show as much as you can instead of telling
- Discuss and explain your client’s bad stuff
- Remember you are telling a story—people like stories

THE ORDER OF PROOF

- Defense or Plaintiff's witnesses first?
- When do I call the experts?
 - Special note for videotape depositions
- When do I call the Plaintiff?

ATTACKING WITNESSES

- “You can’t always get what you want, but you just might find, you get what you need” or put another way, most of the time you go for the kill, you end up dead.

CLOSING

- Remind them how important they are and how important this case is to all of us
- We have kept our promises
- Remind them of agreements
- Don't forget the damages
- Prolong the agony
 - Talk in future days, not years
- Show and discuss important jury instructions
 - Factual cause
 - Concurrent causes
 - Pre-existing conditions
- Go over the verdict sheet
- Make sure you can say that your client "did it right" in dealing with their injuries, has earned and deserved their respect.