

PERSONAL INJURY 2010

I have found quite an amazing transformation that has taken place in the personal injury practice in the last fifteen (15) years. I recently attended a very basic seminar on personal injury cases. I do this from time to time in the areas of law that I practice in order to check my fundamentals, as with a baseball pitcher having his pitching coach go over the fundamentals of his delivery. I also find that I can always learn one or two valuable nuggets from the teaching staff, even if I know and/or am familiar with all the material.

In my most recent personal injury seminar, I learned something indirectly that I found quite shocking. This was not a fact included in the materials, it was a fact provided by the expectations and opinions of the personal injury attorneys on both sides of the aisle that were in attendance. It seems that in today's current personal injury environment, absent a catastrophic medical injury, most attorneys feel that they have been successful when they can collect enough on behalf of an injured party so that the party can pay their medical bills and pay their attorney. This is a huge change from the days when the question was how do we define how much an injured person's pain and suffering damages are worth. Apparently the insurance companies have continued a trend started in the late '90s where they basically tell an injured person that you may have all these medical bills but we choose not to believe you, we think they are excessive, or we think that you are faking, even though we do not have any direct evidence on that point. Therefore, we are not going to honor all your medical bills and we are going to offer you less than the total amount of your medical bills and lost wages.

I can hear injured people reading this article and saying "That's terrible, how can they get away with that." The answer is we, the citizens of the United States, allow them to.

Since the mid '90s insurance companies have been running advertisements about insurance frauds and insurance rates so that basically every person in America who has car insurance thinks first about their insurance rates and possible insurance fraud rather than the injuries of a victim in a car accident. Jury verdicts on less than catastrophic injuries have consistently spiraled downward. This is not from scientific research mind you; this is based upon my observation as a practicing attorney in North Carolina during the last twenty-five (25) years. It is also based upon the fact that the attitude of jurors has changed tremendously during that time, even when answering questions before the trial. It seems a great many jurors go in

with the attitude that the person seeking to be compensated for their damages due to a car accident is just looking for a payday, is not really hurt, and is not entitled to money damages. I have a couple of observations on that point.

- Most of the people who have that attitude tend to either own businesses or not have been the victim of a car accident or had a family member where they were either not paid fully for their car or not paid fully for their damages.
- The insurance company has won the public relations battle training people to think about their own insurance rates before they think about their fellow man.
- The plaintiff's attorneys are the victim somewhat of some of their own successes, for instance, the McDonald's coffee case.
- The public as a whole thinks everyone with a claim is out for a free payday.

Point number one about the jurors being non-sympathetic to a plaintiff's injuries can be analyzed through another area of law which is the Tax Court. Most people do not overly concern themselves about the almost limitless power that the Internal Revenue Service wields and about their techniques unless one has been on the receiving end. Most people simply choose to believe that the person the IRS was after deserved it anyway. The fact that a good, tax-paying American citizen gets captured in the clutches of the IRS is something no one will believe until it happens to them.

The same thing can be said about persons injured in an automobile accident in a less than catastrophic manner. It is relatively clear that people are entitled to compensation when a drunk driver runs a stop light and kills their 70 year old grandmother or a mother of three small children, but when someone texting hits the back of a car of a hard-working citizen who then misses work because they cannot raise their left leg, everyone usually thinks of their own pocketbook first. That same hard-working citizen who does not go out and run up their medical bills is immediately branded a faker. All their claims and arguments to the contrary fall on deaf ears at the insurance company's office because they know that the odds are good that they can convince a jury that the injured person is just looking for a free meal ticket and not looking to get compensated for what they deserve under the law.

The second point being that the insurance companies have won the public relation battle speaks for itself. Insurance companies spend billions of dollars on advertising and many of those advertisements carry two purposes: (1) to increase that company's premiums and business; and, (2) to convince the public that insurance claims are insurance fraud and you need to aggressively deny those claims and investigate them in order to help save each and every one of us fine citizens money on our premiums. This unfortunately has been extremely successful and I am sorry to say, in my opinion, there is no cure. It simply reflects change in the attitude of the American public brought on by spin-doctors.

The third cause of the devaluation of personal injury cases is the plaintiff's attorney's own successes. In an effort to continue to get good clients and to reward themselves plaintiff's attorneys have had a long-standing practice of publishing, crowing, and screaming from the highest mountaintop whenever they get a good verdict. Sometimes even the insurance company publishes large verdicts in a hope it will work against the plaintiff's bar. The most blatant example of all this is the McDonald's coffee case. Without knowing any of the facts in this case most people throughout America will cite this case as a reason why people get paid something for nothing. I have researched this case and found that there were many unusual facts in this case, including that the final verdict was reduced below the millions of dollars that the public in general seems to believe the plaintiff received. McDonald's documents over 700 claims because the temperature at which they sold coffee was so hot that it would scald human tissue. The coffee was above 180 degrees Fahrenheit and was spilled into an elderly woman's lap causing serious burns. The 79 year old lady suffered 3rd degree burns on 6% of her body. The lady offered to settle for \$20,000.00 before trial and McDonald's refused. McDonald's had previous notice about the temperature of the coffee and had done nothing. And finally the verdict was reduced on appeal and a much smaller amount was awarded to the injured lady. A settlement occurred and was sealed so no one really knows the final result but everyone used that case as a lightning rod.

The last point is related to the first three issues and points out how people and their doctors are not believed when their testimony clashes with a juror's self interest. Jurors seem to believe that everyone wants something for nothing, no matter how clear the evidence on damages may be.

The only conclusion I can draw as a practicing attorney is that injured persons, their doctors, and their attorneys face an uphill battle when the injuries are less than disabling or life threatening. The client needs to be aware of the realities of the personal injury practice as it exists today before starting any personal injury case.