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How Jurors Think, Act & Behave: An Interactive Case Study

Take Back Control of Litigation

With the increase in frequency and severity in litigation, it is necessary to understand what is driving those factors and how a pro active defense can fight back against that trend.

Part of the trend has developed as a result of plaintiffs utilizing life care plans and other tools to avoid economic clamps from tort reform. Another part of the trend has been the development of super rich plaintiff firms that can afford to take the matter to trial.

This coupled with the development of third party litigation funding which helps the underlying plaintiff have the money they need to bridge the matter through trial has led to more willingness on behalf of plaintiffs to move forward with cases that have significant injury and rely on the jury for the outcome versus settlement.

Techniques to accomplish this on behalf of plaintiffs

The plaintiffs have adopted the well-known reptile theory which provides both an outline for them to try their cases and a mechanism for the jury to have a basis for awarding damages.

They have developed life care planners out of the strategy to counter the caps on economic damages and that process has led to a steadily increasing amount of exposure given the circumstances noted above.

Paradigm shift

It is time for a paradigm shift for the defense. In order to do this, we first must realize what the jury mindset is. Jurors no longer accept the fact that the defense does not have the burden of proof on liability and damages and in fact needs that proof to be able to reach a fair decision on the case.

In addition, the increasingly gorilla tactics of plaintiffs' attorneys are requiring the defense to be more passionate and aggressive in their defense presentation including

understanding how to present delicate issues such as sympathy, liability, causation and damages.

Methodology / Anchoring

This program demonstrates a number of experiments that help understand the mindset behind anchoring thoughts. This anchoring can be applicable to both liability and to damages. It is a psychological tool that the plaintiffs have recognized and utilized to help push the jury towards their thinking on liability and damages.

The purpose of the program is to recognize that we are in a psychological war with plaintiffs' attorneys. They are waging this war to change the jury decision making process and we must counter.

Anchors are a common day life experience. We utilize anchors on everything. We tend to utilize anchors as reference points to make decisions and evaluations. Sometimes if those anchors are not based on true facts, they can lead us astray.

The general misconception is that we rationally analyze all factors before making a choice to determine the value. The truth is our first perception tends to linger in our minds and affect our later perceptions especially if there is not a development of facts to support the underlying decision.

This program goes through several examples of that to demonstrate the effect that has on jurors in making determinations.

Life Care Plans

We go through the background to establish the tort reform birthed life care plans. This is unintended consequences of shifting the focus from non-economic damages to economic damages. Evidence to show large number of future costs for the plaintiff in order to avoid caps on damage requests is the underlying motivating factor behind these.

While life care plans may have started reasonably, competition between life care planners that led to a higher and higher price raise between life care planners competing for plaintiff's attorney's work. No one is paying attention to the differential between the plaintiff's prior existing problems and the added problem caused by the tort. Instead they are maximizing future costs, sometimes in a very unrealistic value.

The actual value of plaintiff's needs are lost and the jury is only focused on numbers that are put in front of them by plaintiff's life care planner, especially if the defense fails to defend those numbers. Increase exposure to the defense to pay the high costs of future care based on these inflated prices by the plaintiff has resulted in an increase elevation of settlement values. Both in settlement and trial, the defense is tending to rely solely on the life care planners, numbers.

Unfortunately, life care planners purposely ignore the past actual medical costs, true attendant care costs, and studies demonstrating lifetime costs to severely injured persons versus regular costs.

It is necessary for the defense to undermine these life care plans both by showing actual practical treaters and their view of what future needs are going to be as well utilizing tools such as life expectancy and the Affordable Care Act to undermine such costs.

Part of this process needs to change the mentality of waiting for the demand from plaintiff. In order to anchor, we need to make the first offer in cases. These offers need to be realistic offers that truly create risk for the plaintiff and the plaintiff's attorney. It is then shown that these type of offers help anchor the number for settlement and results in significant reduction in settlements for the defendants.

What is an anchor number?

Jurors are asked to assign a value or a number to a case but often this task is difficult. When asked to make quantitative decisions in nominal situations, people use available numbers as a starting point or anchoring for their reasoning. When people have difficulty determining the monetary amounts assigned to a case, they resort to mental shortcuts known as anchoring or adjustment and the adjustment. According to the anchoring principal, the first offer made in negotiations sets up a powerful unconscious psychological anchor that acts as a gravitational force. Stated simply, this is a strong correlation between the first offer and the final outcome.

Jury studies show that when defendants produced no testimony contesting plaintiff's damages, the jurors felt compelled to find a number based in relation to what the plaintiff's number was. While they may discount that number because it is unreasonably high, they still utilize it in developing their findings.

Studies have shown that anchoring affects are persistent even when the anchors are extreme and ridiculous on behalf of the plaintiffs. The jurors still tend to use that number as a starting point for their evaluation leading ultimately to higher verdict awards and damages.

While the state of the industry is currently where plaintiffs utilize medical bills and treating physicians and life care planners to set damage and the defense sits back and waits. It is time for a paradigm shift. It is crucial to develop our own true realistic number, do this early through discovery and expert reviews. Once that number is set, we need an anchor value both for purposes of settlement and trial that can help get the matter resolved.

Anchoring and Early Resolution

It is well known that resolution of a claim within six months can lead to a cost reduction of for as much as 50% over the settlement value not counting the reduction in legal costs. Thus, early evaluations are absolutely necessary.

We also discuss how we can be vaccinated against the plaintiff's attempt to anchor us both on liability and damages. It is primarily a technique utilizing true available factual data to support opinion versus being psychologically led to one point or the other.

Defendants must change their mindset. They have to understand the value of the case early and push the case toward that value through psychological tools and actions. It is only when we undertake the burden to establish these things that we will be able to reverse the trend of higher verdicts and settlements for plaintiff.