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Front Page Story

Are Soft-Tissue Injury Cases Creating 'Super' Trial Lawyers?

Plaintiffs' Attorneys: Suits 'Forced' To Litigation

By Lynn Patrick Ingram

Practitioners handling soft-tissue injury claims are gaining more and more courtroom experience and are becoming "super" litigators -- all because some insurance companies continue to offer nothing for soft-tissue cases and "force" them to trial, plaintiffs' attorneys tell Lawyers Weekly.

The so-called "no-pay" practice of certain insurance carriers is turning the state's practitioners into "super" lawyers, according to Grosse Pointe attorney John C. Carlisle.

This is because lawyers have no choice but to take their clients' cases to a jury, he observed.

"Necessity is the mother of invention," Carlisle said. "As more cases are rejected, plaintiffs' lawyers will begin sharing information and finding ways to win these cases. Eventually there will come a time when plaintiffs' lawyers become 'superlawyers.'"

Southfield attorney Steven M. Gursten agreed that the no-pay practice is creating better trial attorneys.

"There is no question that I'm a better lawyer now because of [being forced to try a soft-tissue case]," Gursten said.

But John Goldwater, who is with Allstate Insurance Company -- one carrier noted by plaintiffs' lawyers for not settling soft-tissue cases -- said that Allstate does not have a policy or position on soft-tissue claims.

"We look at each case on its own merits," Goldwater told Lawyers Weekly.

In the meantime, plaintiffs' attorneys report that zero settlement offers are frequent. Accordingly, Gursten recommended that lawyers handling soft-tissue cases:

* incorporate the themes of "accountability" and "responsibility" into their arguments;

* use plenty of demonstrative evidence; and

* engage in aggressive motion in limine practice.

'Clear' Message

Carlisle predicted that the creativity of young lawyers in particular will ultimately abolish the no-pay practice of some insurance companies.

"Young lawyers have no choice but to try these cases," he observed.

"As they gain confidence and they take more cases, [insurance companies'] risk will grow and eventually they'll go bankrupt," said Carlisle, who obtained a $775,000 verdict in a case involving Allstate. (See "Plaintiff In Auto-Tort Action Collects For Soft-Tissue Injury," June 15, 1998.)

Gursten acknowledged that lawyers handling soft-tissue cases are finding ways to overcome zero settlement offers.

"These cases are simply forcing lawyers to become more sophisticated," said Gursten, who also secured a $1.06 million verdict against Allstate.

Gursten said that the award in his case should have sent a "clear" message to insurance companies: "You're taking needless risks with the lives of your insureds by refusing to act reasonably and settle these cases."

In Gursten's case, the plaintiff's vehicle was rear-ended by a driver insured by Allstate. The plaintiff was diagnosed with three herniated disks in his neck and one in his back.

The plaintiff then sued the defendant in Oakland County Circuit Court to recover for his injuries. The case mediated for $25,000, which was rejected by both sides.

At trial, the defendant admitted liability but argued that the plaintiff's injuries were caused by previous accidents and degenerative processes. A jury awarded the plaintiff $1.06 million for pain and suffering.

Themes Of The '90s

To prevail in a soft-tissue case, attorneys must incorporate the "new themes of the 1990s" into their arguments, Gursten said.

For example, in his case, Gursten focused on the defendant's "unwillingness to take responsibility" for the plaintiff's injuries after the defendant had admitted liability.

"Because we were in Oakland County, which is very conservative, one of the things I felt was important was the defendant's lack of accountability," Gursten said.

"For two-and-a-half years they ignored [my client] and when they weren't ignoring him, they were attacking him," he asserted.

But Gursten said that the defendant's "attacks" on the plaintiff ultimately backfired.

"The defense lawyers' attacks of my client's credibility fit well with our theme of 'lack of

accountability,'" Gursten explained. "Framing the issues properly in showing their lack of accountability hurt them when they attacked my client."

Gursten further noted that litigation could have been avoided altogether, but that the insurance company "forced us to come to court and file this lawsuit because of a lack of accountability."

'Show Me The Evidence'

Gursten explained that demonstrative evidence is crucial in overcoming an insurance company's zero settlement offer.

"A lot of jurors don't trust lawyers," Gursten said. "This is especially true with younger jurors. They want to see things for themselves."

Because jurors are skeptical, Gursten suggested that attorneys enlarge medical exhibits, such as MRIs, to let the jury draw its own conclusions.

"This takes the case out of the realm of two lawyers," he explained. "You earn the jury's trust by making it objective, letting them see it, keeping them interested and focusing on themes they'll relate to."

Gursten also advised that attorneys use "aggressive" motion in limine practice for soft-tissue cases.

"I had to stop [the defense] from attacking my client by reframing the issues," Gursten said.