

**The Importance of Defending Plaintiffs**

By Sydney S. McLafferty

This past October, media outlets all over the world (yes world!) lit up with the story of a Connecticut woman who sued her then eight year-old nephew. The headlines most commonly stated that the Aunt sued her nephew for \$127,000 dollars for an ‘over exuberant hug’ he gave her when she arrived at his birthday party. The dollar figure was almost always included in the headline. The backlash on social media was vicious, dubbing her the “Auntie Christ” and the “Aunt from Hell”. Shortly thereafter, the hashtag, “#badaunt” was born.

The popular story was covered by most major media outlets the same way; the same ten second summary of the case, the same disapproving frowns and shaking heads of reporters shaming this ‘bad aunt’, Jennifer Connell, for her greedy behavior. One report even showed a short clip of a door-step-interview of Connell’s neighbor, shaming her for her despicable greedy behavior in suing a young boy for money.

My jaw actually dropped wide open when I saw that clip, appalled that Connell’s neighbor was so quick to jump on the judgment train and throw her own neighbor right under the bus.

Yet, every single one of you reading this article right now knew what this case was really about. You knew there was an insurance policy, you knew the aunt was not pursuing money from her nephew personally, and if you saw a more detailed follow up report which chose to quote the language from the complaint, you even recognized some David Ball language the Plaintiff’s attorney used. “The injuries, *losses and harms* to the plaintiff were caused by the negligence and carelessness of the minor defendant in that a reasonable eight-year-old under those circumstances would know or should have known that a forceful greeting such as the one delivered by the defendant to the plaintiff could cause the *harms and losses* suffered by the plaintiff.”

So why is it so hard for the rest of the world to figure it out? After all, what kind of money does the lay person really think an eight year old would have to pay a judgment anyway? (It’s not like it’s McDonald’s, right?) My eight year old has a savings account that accumulated his \$100 birthday checks from his great grandmas before they passed away, but not anywhere close to enough money to pay for even one wrist surgery.

Certainly a significant source of the perpetuated misinformation is the media. Licentious reporters have become more interested in grabbing readers than reporting the facts. And insurance policies, are in fact, boring. Daniel Tepfer, a reporter who covers the courts for the Connecticut Post is believed to have authored the initial report of this story. Disappointingly, Tepfer chose not to mention the fact that the Plaintiff had endured two, likely painful and expensive surgeries, but rather quoted that the Plaintiff complained of discomfort while holding an hors d’oeuvre plate. This is just one example of the over-sensationalized hype he wrote which quickly garnered the attention of more and more people and spread like wildfire.

Our own evidentiary rules actually perpetuate this fraud as well. Connecticut, like Ohio, has an evidentiary rule prohibiting evidence of the existence of liability insurance on the issues of negligence. The purpose of the rule is to avoid any prejudice that might influence a jury to relax its standards in deciding liability. In other words, using the fact that the defendant had insurance as indication that they were at fault. However, the rule is also designed to protect the amount of damages determined by the jury. In other words, from the presumption that the amount of the award isn't that important if it is paid by an insurance company.

And so, as you might expect, when one reviews the Connecticut Superior Court docket for the *Connell v. Tarala* case, it is completely devoid of any mention of the insurance company that is behind the scenes, defending the young Mr. Tarala and which would be responsible for paying any verdict rendered against him. In fact, in order to at least take a guess at what insurance company might be involved, you have to perform a docket search of the attorney who represented Mr. Tarala and see that she often times defends various subsidiaries of the Traveler's insurance group to know with good likelihood, the Tarala's were insured by Traveler's.

It is this type of violent reaction and social media firestorm, however, which suggest to me that the real prejudice that now exists is that which is borne by the Plaintiff. Read the comments on the social media posts about Ms. Connell and you will find the raw, mean-spirited thoughts of the general public which is YOUR NEXT JURY. For example, one writer posted "[w]hat's going on is that Aunt Jennifer is pure hellspawn, a mysteriously animated pile of human excrement that embodies the worst of humanity." (I chose that one for the lack of profanity, so you can imagine the flavor of most other posts.) And beyond being mean, you will see how truly misinformed they are, completely ignorant of how far off-base many of their comments are.

In reality, at a minimum, every person who has a license has been informed, whether they chose to follow the law or not, that one must have liability insurance in order to drive a vehicle legally. Similarly, mortgagors commonly require property insurance on property they are financing, and renters are typically informed they should carry renters insurance. So is there any great risk that a jury would base a negligence decision merely because the defendant was insured?

The real root of the issue is that the rule protects the amount of the damages awarded because it allows – and in fact encourages - people to speculate that this poor little 8 year old boy might have to pay a six figure verdict to his aunt when nothing could be further from the truth. Interestingly, the language of the rule itself does not address anything about damages:

*Evidence that a person was or was not insured against liability is not admissible upon the issue of whether the person acted negligently or otherwise wrongfully. This rule does not require the excluding of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership or control, if controverted or bias or prejudice of a witness.*

Ohio Evid. R. 411. However, it has been the knee jerk reaction of the courts to categorically exclude evidence of liability insurance without question.

I suspect that many of you will receive phone calls from potential new clients, afraid to be calling you because they 'aren't the type of people to sue' but are having trouble with an insurance company. For me, these phone calls just serve as more evidence that the mainstream dialogue has gone so far the other way. The purpose of liability insurance does not even register in the general public's initial thoughts. And how many of your clients, after learning about the process, are stunned when they find out that even though it has been the insurance company jerking them around for a year, the adjuster will likely never even be seen in court or identified as having any role in the matter at trial. What happens in the courtroom is so drastically far from what has been happening up until that point.

I commend Jennifer Connell for not disappearing after the social media storm came raining down upon her. To the contrary, she allowed interviews and explained to the public what we already knew; this was a case about getting medical bills paid by a homeowner's insurance policy. After all, she fractured her wrist and required two surgeries. In fact, she was still likely to have a third surgery. As Connell aptly pointed out, the legal system shields insurance companies from the spotlight when it is them who aren't stepping up and taking responsibility for claims on properties.

I encourage all of you to use social media, blog posts, editorials and the like to get the correct information out there. Very few of us are 'the type' to sue someone. Correct the implications, the misinformation that you see in the headlines. Heck, print the comments from 'tort reformers' like the one quoted above, talk about them in your next voir dire and rid your jury of those who aren't appalled at such hateful and ignorant thoughts. We cannot sit by idly, watching the bullying attacks. While it may not always be the popular position, attacks on the integrity of our judicial system will in the long term cause a chilling effect, scaring our clients away from their own courthouses.