



Soft Tissue, Big Results

October 11, 2013 – Columbus, OH

The Good, the Bad, and the Ugly
Embracing All Three

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Background

<u>1993 Crash</u>	<u>2009 Crash</u>
<ul style="list-style-type: none">• Traumatic brain injury• Declared disabled• Out of work• 14 years of problems• 3 year “good” period	<ul style="list-style-type: none">• Aggravation of pre-existing brain injury and fibromyalgia• No objective radiology findings• Return of mental instability and related symptoms

The Good Period: ‘06 - ‘09

- Back to working full time
- Improved relationship with family
- Improved mental health
- No treatment

After the '09 Crash

- Back to working full time
- Improved relationship with family
- Improved mental health
- No treatment

Initial Meeting

- Only came because his wife made him
- Sat stoically
- Responded to nothing unless asked
- Harbored resentment over representation in '93 crash
- Generally unpleasant
- Spent lots of time getting him on board

Pretrial

- Pretrial offer: \$10,000
- DME doctor: neck strain, 4-6 weeks
- Treating doctor: aggravation of symptoms from pre-existing brain injury
- Liability stipulated

Trial Goal: Embrace the Facts

- Get out in front of **the bad**
 - Pre-existing, permanent problems
 - Client is rough, volatile
 - Bad marriage *before* crash
 - On disability
 - Medicaid paid bills, only about \$2,000

Trial Goal: Embrace the Facts

- **Pre-existing condition:**
 - Voir dire targeted to aggravation
 - Opening clarifying aggravation
 - Comparison: '93 crash / good period / '09 crash

Trial Goal: Embrace the Facts

- **Client is rough, volatile:**
 - Warn jury
 - Use to support aggravation of mental conditions
 - We're claiming he's nuts

Trial Goal: Embrace the Facts

- **Client is rough, volatile:**
 - No “woe is me” from client whatsoever
 - Presents poorly
 - Easy to lose him
 - Instead, ask client about other witness’ testimony
 - “How did it make you feel to hear _____”
 - Trigger his volatility to re-enforce
 - Did not warn him

Trial Goal: Embrace the Facts

- **Low Medical Bills:**
 - Paid by Medicaid
 - Didn’t claim
- **On Disability**
 - “Let’s hold the correct party responsible and get him off the taxpayers dime”

Trial Goal: Embrace the Facts

- **Bad marriage *before* crash**
 - Knew defense would point to marital problems as alternative cause of mental symptoms
 - Divorced after ‘09 crash
 - Didn’t try to blame ‘09 crash for divorce
 - Instead, use ex-wife as first witness

Trial: Voir Dire

- **Five Jurors Booted for Cause**
 - Reason: Preponderance Standard
 - Some said not enough
 - Others: not enough for noneconomic
 - Judge Attempted a Curative Instruction
 - RC 2313.17(9)
 - *Hall v. Banc One Mgmt. Corp.*, 114 Ohio St. 3d 484 (2007)

Trial: Opening

- **Response to liability stipulated**
 - Defense accepts that crash was their fault
 - but does not wish to accept responsibility for the harm the crash caused
- **DME**
 - Brain injury: no MRI findings, but mild brain injury doesn't show up on tests 99% of the time
 - Then, highlight records review only

Trial: Witnesses

- **Family Members**
 - Compare: '93 / good period / '09
 - Always start with '09
 - Tell stories
 - Some candid, hurtful comments

Trial: Witnesses

- **(Former) Employer**
 - Drive home the good period – back to work
 - Job performance after crash
 - Eventual firing

Trial: Witnesses

- **Treating Doctor**
 - Pump credentials
 - Specialize in brain injury
 - Treated before and after
 - Relate to football players
- **DME**
 - Hired gun
 - Records review
 - Never saw plaintiff
 - Didn't know dates
- **Jury Response**
 - Credentials = negative
 - Disliked demeanor
- **Jury Response**
 - All doctors deserve respect

Trial: Closing

- **“You have a right to be on a jury that follows the law”**
 - (David Ball on Damages)

- **Chart: Evidence vs No Evidence**

Plaintiff	Defendant
ISSUE #1	
• Records, testimony, etc	• No Evidence
ISSUE #2	
• Records, testimony, etc	• No Evidence
ISSUE #3	
• Records, testimony, etc	• No Evidence

- **If juror says _____, remind them no evidence**

Trial: Closing

- Damages

Noneconomic
• ---
• ---
• ---
• ---
• ---
• ---
• ---
• ---
• ---
• ---
• ---
• ---
• Physical injuries
• Pain

Trial: Closing

- Call to action – What Good Will the Money Do?

- Counseling to regain visitation rights
- Get him off the taxpayer's dime
