

## Do. Or do not. There is no try.

The title of this column comes from quite possibly the most memorable line of a great 20<sup>th</sup> century philosopher, Yoda, in *Empire Strikes Back*. These are the final instructions the Jedi Master gives to Luke Skywalker before he raises his ship from the swamp and heads into battle. This great nugget of undeniable wisdom teaches Luke to have a deeper presence, to be more mindful and engaged in all that lies ahead. Leading up to this time, Yoda had been trying to nurture Luke and essentially get Luke to grow up. In this moment, with these words, he makes it clear: commit yourself, completely, to everything you do. Win. Or lose.

by: Brett Schreiber, CASD President



### *Do. Or do not. There is no try.*

In this month's column, I hope to reach some of the Luke Skywalkers of this organization and perhaps encourage a few to commit to trying their next low ball offer case to verdict. The topic is timely as I sit at my desk during a week I was otherwise supposed to be in trial. A former CASD member, and a fine trial lawyer in his own right, had signed up a case on the eve of a blown statute. He filed it, provided the carrier all of the medical records on a stipulated liability rear-ender, and made a very reasonable policy limits demand of \$100,000. The carrier responded with a counter of \$25,000. Due to unanticipated health and family issues the originating lawyer had to refer the case out and called me. We've proceeded to work the case up and have been offered the policy on multiple occasions since. In fact, most recently the carrier has started offering us more than the policy to resolve the case. I don't take their calls anymore.

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With an out of town plaintiff, an out of town spinal surgeon, and other scheduling snafus we couldn't be put on the wheel and so now have a date certain to try the case in mid-October. We'll board over \$1 million in specials and will ask the jury for several million more. Could we settle this case for some modest amount above the policy now? Sure. But I'm a firm believer that some cases just *have* to be tried. Sometimes we *have* to go all in even if it doesn't make the most financial sense. Or as Yoda tells us, sometimes we *have* to do.

I'm as stoked as anyone when I see posts on the listserve or write-ups in this magazine about huge verdicts by one of our colleagues. But candidly, I'm often more impressed and at times have more respect for the lawyer who takes that case with a \$7,500 offer to trial, gets a \$30,000 verdict, beats their 998, and picks up a few extra shekels for the cause. I'm proud to be part of an organization of trial lawyers who are willing to take big swings, put their time and treasure on the line, all in hopes that a jury does the right thing and makes a just and fair award.

In a recent listserve thread about low ball offers and recalcitrant defense tactics, the discussion morphed into one about the need – for all of us – to try more cases. As mentioned in that thread no one puts “settlement lawyer” on their business card or website. But as one of my earlier columns this year discussed the reality is that most “litigators” are not “trial lawyers” in the sense of actually trying cases. The statistics were shocking as to how few civil jury trials most lawyers have actually taken to verdict. While my personal experience pales in comparison to many, by year end I'll have completed my eleventh year of practice and will have just shy of a dozen trials under my belt. Not as many as some, but certainly more than most.

Continued on page 4

Thankfully, there are any number of lawyers in this organization who give freely of their own time and expertise to help a fellow colleague prepare for, fund or otherwise try a case to verdict. Recognizing that many within the ranks of CASD don't necessarily have a mentor or someone to turn to for assistance in preparing for trial, we offer the Trial Masters Committee (TMC). This is a tremendous, free (and for some reason underutilized) benefit for all CASD members. The TMC consists of numerous experienced, top-notch trial lawyers (i.e. Trial Masters) who are both CASD members and former board members of CASD and SDTLA. Two to three members of the TMC will make themselves available for two hours once a month to meet with any CASD member at a local law firm to hear about the members' cases and to provide valuable insight in preparing the case for trial.

To be clear, the TMC is not just a resource designed to assist in last minute trial prep, get tips on voir dire, opening, closing, themes, etc. but is also a resource that could be relied upon for strategizing early on in a case. Perhaps you just signed up a case and aren't quite sure what to do, which experts to retain or which liability theories to pursue? The TMC will meet with you on a monthly basis (free of charge) to guide you through those uncharted waters.

Similarly, I know I speak for many in this organization when I say that if you have a question about an expert, need some briefing on an issue or are looking for some guidance along the way, pick up the phone and call. I must get at least one call per week from lawyers I've never met who have either read a post I wrote on list-serve, heard me speak somewhere or for whatever reason think (often times incorrectly) that I actually know what

I'm doing. I take those calls every week, I talk things over and give whatever advice and insights I can. And that's what makes this organization so great: sharing freely of one's time and lending a hand to help a colleague is the rule, not the exception.

There's no question that it can be scary to try cases. Its hard work that comes with tremendous risk for you and your client. However, one of the fundamental differences between us and our adversaries is that when you go to trial as a CASD member you've got nearly a thousand attorneys in your corner. There is not a defense firm in this country that can match us in size and resources when we lock arms and fight. Together.

So to all you Skywalkers out there, go find your Jedi Master; whether it be for a couple of hours at the TMC or as co-counsel to take you to verdict. Either way, *do* what you gotta *do*. **TBN**

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