

Taking on the Impossible Case

by John H. Gomez

I'm writing this column three days after receiving a disappointing verdict in a case I tried in Pomona. The case involved Clive Alexander, a friend's father. Our friend came to us and explained that his dad had been injured in a rear-end collision in 2004. The injury had effectively ended his career as an ironworker. His dad had hired lawyers and gone to trial. The result had been disappointing: a \$48,000 verdict. That amount did not even compensate Mr. Alexander for a year's lost wages. Because of juror misconduct, Mr. Alexander was awarded a new trial. Otherwise unhappy with his prior lawyers, he hired us to retry his case.

And so, four days after obtaining a verdict against Starbucks in a slip and fall case, I left my poor family and moved into a hotel room in Rancho Cucamonga to begin preparing the case for trial. I was tired, emotionally drained and feeling sorry for myself. Every day, however, I would spend time with Clive. And every day, I got more excited to try his case for him. I learned that he had emigrated here from Trinidad and Tobago at the age of 18. I learned that he had served two tours of duty in Vietnam as a River Boat Captain, under fire almost daily. When he came home to Los Angeles, he decided to be an ironworker. One of only two black people in the union at that time. He sat in the Union Hall for an entire year before someone hired him on for the day. He remained working for that employer for the next nine years. Otherwise, he worked as an ironworker for 32 years before his injury.

His clearly was a story I wanted to tell. There were, of course, some real challenges in his case. His prior lawyers had directed all of his medical care and not done a great job. In the seven years before trial, there were separate gaps of treatment of two and three years. Still, we thought we could explain. He relied upon his lawyers and they let him down. That had nothing to do with whether the defendant's conduct caused him harm. I was working with Bob Knaier from my office. I had rescued him from Latham & Watkins and he was motivated and excited to finally be going to trial. Between Bob's enthusiasm and the time I spent with Clive, I got pretty excited myself.

Our first day of trial, our trial judge sent us to a settlement judge. He lectured us about how tough Pomona juries were. He gave us a list of all of the auto verdicts in the last five years. He told us that "maybe" he could get \$60,000, and that if he could, we should jump at the chance. The highest offer at that point was \$40,000. "No thank you, sir," we said. That was the first "reality check" that we were hit with. It's kind of demoralizing being told how bad your case is when you believe in it. But it happens to us all the time. And so, we reported back to our trial department.

Once trial started, it seemed like things went pretty well. Jury selection went okay. The panel as a whole seemed somewhat hostile, unhappy and distrustful. I thought, however, I was able to talk to them. I wasn't thrilled about the panel we ended up with, but I was hopeful that they would have compassion for my amazing client. They also were well-educated as a group. I thought that would help me in Clive's case.

The evidence came in as well as it could. I thought we "won" each and every witness and each and every day. Still, the courtroom seemed dusty, quiet and lifeless. When the day for closing arguments came, I reached out for help from my CASD brothers and sisters. And they answered. I dare not list everyone that made the trip for fear of missing a name, but between CASD members and Trial Lawyers College alumni, I must have had 30 supporters in the courtroom when I delivered my closing argument. The energy in the room palpably increased. I

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am eternally thankful for that. It made a difference. I prayed that the jurors would listen and understand. Still, when I spoke to them, they seemed not entirely there. It worried me. I asked for four million dollars. That seemed fair for an injury that ended a man's hard-earned career.

I talked about humanity and character. The defense lawyer talked about attorney-directed care, "soft tissue" and gaps in treatment. I felt blessed and supported to have my friends there. Still, I didn't feel great about things. We finished up on Friday around 4:30. On the Tuesday after a holiday, we received our verdict: a bit over \$330,000. We saw that as a loss. We really wanted a lot more for Clive and thought he deserved it. Afterward, he consoled us. He told us that he would have been happy with any result. He said that he just wanted them to know that he had "been there," and for his story to have been told. He told us that he actually expected a lower amount. He bought us wine and beer to make us feel better.

Friends since have suggested that, in that venue, and given those facts, we should be pleased. I'm still not. I am saddened by a Facebook posting Clive did the night of the verdict. He wrote "after a lifetime of having an open mind I realized today that being black still has no value in white America." Clive obviously is black. There were zero blacks in our jury panel. We talked in *voire dire* about giving Clive a "black man" discount. I hope that didn't happen. I wish that we had been Clive's lawyers from the beginning. I know that I could have gotten him more if we worked up the case. I wonder what else we could have done. I second guess decisions we made.

Still, there are some good things that come out of trying tough cases. First, very few lawyers would have stepped in and retried this case for Clive given the facts and history. I am very proud that we were able to help a good man. Second, adversity teaches humility. I feel stronger, more knowledgeable and more ready for the next

fight. Finally, I think that with the pain comes the joy. I have tried impossible, economically disastrous cases before. I tried a wrongful death case for a two-strike felon that died at the hands of prison guards. There were no witnesses. I wasn't thrilled about that case either when I first got involved. In that case, and last Friday, however, I felt like I was doing what I had become a lawyer to do.

There are deserving people in this world that need our help. If you don't occasionally break your own rules and say "yes", nobody is going to help them at all. In the end, you may not make much money. The journey may be tough. But you will be making your family and your profession proud. I'm still getting over the hurt. I know, however, that Clive needed our help and we did our very best. I'm proud of that. Take an impossible case for justice now and again. You will be glad you did. **TBN**



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