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Trying Car Wrecks on the Cheap

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TTLA Car Wrecks 2016

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- I. FORMS, FORMS, FORMS!
 - A. Intake form:
 1. Follow the format for an Original Petition.
 2. Anticipate the standard questions you see in the interrogatories received from the defense. You can just paste these into your discovery responses, attach a verification and get your client to approve.
 - B. Medical Bills and Record Exhibits:
 1. Once you client has finished seeing a provider, order medical records and bill by affidavit using forms, TRE 902 (10) for the Records and the CPRC Sec. 18.002(b-1)
 2. Order with just the title "Affidavit", and once suit is filed, add a cover page with the cause number and style on top.
 3. Alternatively, use the procedure set out in Rule 902 (10) (B) for the use of an unsworn declaration of the custodian
 - C. File case as Level 1. This limits the number of Interrogatories, and Admissions, but this in effect limits the scope of your case. The defense is not going to have a 'scorch the earth' discovery strategy. Less time = less money.
 - D. Written Discovery:
 1. Response to RFD (e): this is your Witness List
 2. Exhibit List is Plaintiff's Response to Disclosure (Medical Records and bills) and Production (crash report, photos, repair estimate, lost wage, and other practical items (See Exhibits below).
 3. Always send admissions.
 - a) Liability facts
 - b) Damages. Can use admissions to prove up your medical.
 - c) If the Defense does not admit your medical records/bills meet the business record exception to TRE 803, then you can tax the expense to the Defense in your Motion for Court Cost. (See Appendix).
 4. Make sure you have the Defendant pinned down on their discovery answers. No equivocating is allowed. CHEAP does not mean EASY. This requires a lot of work on your part to keep after the defense attorney to answer the discovery. If you are successful in pinning the defense attorney down, this prevents trial by ambush.

E. Depositions:

1. Consider not taking the Defendant's deposition.
 - a) Determine the completeness of the Defense Discovery Responses.
 - b) Defense does not generally like this. There is too much uncertainty on their part of the case. The Defense attorney does not know their client like you know yours. The Defendant has forgotten significantly about the MVC before the Defense attorney ever set foot in the picture.
 - c) Make sure you have defendant pinned down on discovery responses and you have a simple fact scenario. (e. g. rear end collision: defenses are not usually that creative: "My foot slipped off the brake", "I rolled into plaintiff", or the sudden sneeze.
 - d) You must have good cross examination skills and be able to restrain yourself. Just the facts ma'am.
2. Non-stenographic Deposition TRCP 203.6 (a)
 - a.) Video: Grunt and groaners; eyewitnesses. This will really save time in trial.
 - b.) However, be wary if the opposing counsel convinces the Court, for good cause, you may have to get a court reporter to transcribe the deposition. TRCP 203.6(a); *Wrenn v. G.A.T.X. Logistics, Inc.*, 73 S.W. 3d 489, 499 (Tex. App.- Fort Worth 2002, no pet.).
3. Combination: Take Defendant by stenographic deposition with a court reporter, and videotape it yourself. This will provide you a tool to easily impeach the witness, keeps the defense honest and memorializes the events.

F. Be ready.

1. Always announce ready and be ready
2. Vigorously oppose any continuances, especially if you have a Level 1 case.
3. Delays almost always hurt your case and make you look weak.
4. Small does not mean unimportant. Trying small cases cheaply will benefit you in the long run, win, lose or draw.
5. Fear is a great tool.

G. Voir Dire

1. Have a go-to list of questions for your less than 20 minute voir dire
2. Jury questionnaire? This will need to be coordinated with the judge and opposing counsel. In a one day trial, these are more trouble than they are worth.
3. If you get a traditional voir dire, for an hour or so, a seating chart helps establish a rapport with the panel, but I would stay with ten (10) questions or less, otherwise you defeat the purpose of trying the case quickly. If you do your voir dire right the Defense voir dire should be real quick.
4. Experienced attorneys find it harder to try a case quickly. If you can be brief, the jury will appreciate this in a day trial.

H. Other Evidence / Exhibits:

1. Use Rules of Evidence:

- a. Business Record Affidavits (TRE 902 (10) : Medical bills CPRC sec. 18.002(b-1), medical records, wage and attendance records; X-rays TRE 901
 - b. Public Records TRE 1005
 - c. Hearsay Exceptions TRE 803
- I. Witnesses
- 1. Subpoena all your witnesses for the same time, the Plaintiff, Defendant, Investigating Officer, Employer/ Co-worker and Grunt and Groaner.
 - 2. Call the physical therapist as a witness. They are much cheaper than the doctor and they are usually geared toward patient education, and this will come out in their testimony. Caveat: They will opine they can fix just about anything with 6-8 weeks of PT.
 - 3. Practice court it. Each witness will testify to about 1-2 paragraphs of facts.
- J. Other Evidence / Exhibits:
- 1. Use Rules of Evidence:
 - a) Affidavits: Business Record Affidavits (TRE 902 (10) for medical records, wage and attendance records,
 - b) Medical bills CPRC sec. 18.002(b-1),
 - c) X-rays TRE 901
 - d) Public Records TRE 1005
 - e) Hearsay Exceptions TRE 803
 - 2. Photos: Vehicle, and Injuries, scars. A 4x6 is plenty, especially if use electronic presenters.
 - 3. Car Parts: bent trailer hitch; bumper absorbers. These actually go to the jury room if they came off the car.
 - 4. Medical appliances, prescription bottles in the appropriate scenario. Seems corny but makes it real for the jury.
 - 5. Be creative: (e.g. Tupperware, egg carton, bowling ball.) Photo of client younger or wedding photo, to have your grunt/ groan witness bring to show your client before the crash, or to humanize your client. (Photo of client in a halo at the prom/ in graduation robe).
 - 6. Use Google Earth --its free and you can print screen shots
 - 7. Demonstrative Evidence:
 - 1. Not real (real = the actual x-rays, vs. demonstrative: a text book diagram showing the vertebrae in the neck)
 - 2. Predicate: The sponsoring witness testifies:
 - a) Using the Exhibit will help illustrate testimony;
 - b) Exhibit depicts a certain area, scene, item, etc.
 - c) The witness is familiar with the area, scene, item, etc. depicted/ represented; and
 - d) The exhibit is a true, fair, accurate depiction.

Then the visual aid is admitted to for demonstrative purposes.

8. Judicial Notice: TRE 201. DO this ahead of time: have a stock list of facts you want the Court to take judicial notice of, such as feet per second, the speed limit, the Transportation Code.
- K. Equipment:
 1. Go old school: Foam core board: works well with a definition or a jury question and can be used again for years.
 2. Power point and lap top.
 3. Use whatever technology the courtroom has until you can afford the higher technology. Just change it up for the facts of your particular case.
 - L. Bench Briefs:
 1. Have some stock Bench briefs already prepared regarding your basic evidence, especially in the courts of general jurisdiction.
 2. This is especially important if you are young/ inexperienced/ unknown to the judge.
 3. Some areas to consider: Criminal records; PD photos, and prior MVCs; unrelated treatment, and habit evidence.
 - M. Jury Charge
 1. This will be tracking your Original Petition if you have allegations of statutory negligence; otherwise
 2. Have this drafted soon after you sign up the case.
 3. Use first one as a starting point for the next trial.
- II. Who is doing the work?
- A. Client: Use the client to obtain these items.
 1. Photos
 2. Crash report
 3. Vehicle damage repair estimates
 4. Loss wage documentation/ affidavits.
 - B. Staff
 1. Photos
 2. Crash report
 3. Affidavits
 4. Contact witnesses
 5. Case summary: This is a cheat sheet of your case containing the information you want to see which makes this case stand out from the others, as well as serves as a synopsis/ timeline. I like to know the type of crash, (i.e. rear end collision, high speed in parking lot investigated by the PD), paid or incurred amounts, witnesses, expenses, criminal record info, etc then the stand out factors: This is going to be anything that hurts or helps...
 - C. Defense
 1. Stipulations:
 - a. Medical records meet the business record exception to the hearsay rule.
 - b. Medical bills, meet the business record exception to the hearsay rule and CPRC
 - c. Loss of wages/earning capacity

2. Authorizations.
 - a) Give the defense a medical authorization and an employment authorization if wages loss is claimed.
 - b) This makes the defense attorney more cooperative. This costs you nothing, and it sets the tone for your case.
 - c) A case will move faster if the attorneys are not at odds.

III. Train and Prepare

A. Staff

1. Educate your staff about how a case works
2. Use checklists: We all have a pre-game warm-up, and we can revise this with each trial.

B. Yourself:

1. If you do not have one, I have an example. Start by re-familiarizing with the Defendant's case to prepare for opening, (David Ball, Damages 3); read client's deposition and review medical reports, and any other exhibits and discovery.
2. Review Documented damages and case summary/cheat sheet.

C. Client:

1. Have client review their discovery responses, crash report, the important medical records and photos.
2. Show them a checklist of tips to remember, like, "Everyone you encounter between now and trial is a potential juror, so be nice." dress appropriately and leave your cell phone at home.
3. Do your same Deposition preparation.
4. Deposition or trial preparation DVD is very effective at illustrating your caveats to the client, and this saves time.

IV. J. Edgar Hoover Next Trial:

1. Keep a running commentary/ critique on your experience
 - a) What worked and what did not,
 - b) What you can /should do differently
 - c) Make notes regarding the defense attorney and court.
 - d) These should be made as soon as they hit you.

V. Expect your offers to increase if you try more cases.

1. If you are crazy enough to try a bad case, or a small case, they know you will cost them some money.
2. If you are crazy enough to try a bad case, the insurance company knows you know how to try a good case.

VI. Reap in the Appreciation

1. Clients always appreciate you fighting for them.
2. Staff
3. Peers
4. Family

