

Reflections from a Trial

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I recently finished a nine day Work Comp subrogation trial in rural Minnesota. This was a Plaintiff's personal injury case that I worked on for seven years. I was there from the beginning until the very end. A lot happened in seven years on the file, well before the case went to trial. At the trial, I sat in the back of the courtroom at the request of Plaintiff's counsel who did not want the jury to know about the work comp benefits his client had received. These are some of my reflections as I look back on the whole process, including the trial.

1. I found out about this loss right after it happened. I was able to get the right expert to the scene right away. This proved invaluable to the Plaintiff when he got involved at a later time. My ability to provide access to information to Plaintiff's counsel at the beginning of the case helped build a relationship that benefitted my client as the case moved along.
2. Personal Injury cases move at the speed that Plaintiff's counsel wants them to move. You might ask, why in the world did this case take seven years to resolve? The short answer is that medical developments kept happening which made the Plaintiff's lawyer choose to wait before placing the matter into

suit. As it turns out, this delay ultimately resulted in Plaintiff's doctors having the evidence they needed to establish the Plaintiff's future medical needs. For claims people wondering why we can't move the case along more quickly, the answer, in most states, is that we are often at the mercy of Plaintiff's counsel's timetable. In this case, we were helped by the delay.

3. Along the way, I was able to assist the Plaintiff's attorney in getting favorable rulings from the Court on motions brought by the defendants. I was an additional voice highlighting and bolstering arguments in favor of the Plaintiff. This was another value to the Plaintiff.
4. Our expert became the key witness at the trial. I was able to work with Plaintiff's counsel to help shape our expert's testimony in preparation for trial.
5. Every time I am involved in a trial, I am always amazed at the time, expense, and effort it takes to put on a compelling case. There is high risk given that every ruling a judge makes along the way can have a significant impact on your case.
6. Watching jurors being selected in a rural jurisdiction can be misleading. My initial impression of the empaneled jury as a conservative panel unwilling to give a substantial award did not hold up at the end of the case. Ultimately, this apparently conservative panel ended up giving a substantial award that I did not expect.
7. It is hard to tell during the trial which way things are going. You just have to continue on with your plan and hope it is working. There were many times in trial when I did not expect a Plaintiff's verdict. Defense lawyers presented a very competent and effective rebuttal to every part of Plaintiff's case.

8. In the end, the jury awarded 2.2 million dollars to the Plaintiff. Their verdict was well thought out, as was their very nuanced liability assessment. The Defendant I thought would escape liability was hit with the lion's share of fault. He was the one witness who was less than likable on the stand. I suspect that mattered.

All parties have incredible risk in trying cases. There are certainly times where there is really no choice, but to try the case. When this happens, it pays to have as many allies as possible. For Plaintiffs lawyers involved in cases with a work comp subro interest, the subrogation lawyer can be their best friend.

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