

Trying Cases Successfully Through the Eyes of a Young Lawyer

By: Michael J. DiBella

I was in 4th grade when I first entered a courtroom. My father asked me if I wanted to skip school and help him carry his exhibits for a jury trial. I didn't know what a jury trial was nor did I care... He had me at, "skip school!"

So, you ask, what does the 4th grade and skipping school have to do with anything? Good question! I've learned how to be a litigator from being in the courtroom not the classroom. It's a bit scary in the beginning but, man does it become a lot of fun!

I took trial ad, my brother and I were finalists in a negotiations competition and I was the recipient of some academic awards; however, I can honestly say, I was not prepared for the nauseous feeling when my father handed me the Jury Cards to select my first Jury. It was just two months after being sworn into the Illinois Bar and I was standing in front of a jury in the law division feeling like I couldn't put together a simple sentence. Talk about humbling!

Since my first trial I've stopped reading every supplement available on how to try a case and started reading people's faces. I stopped worrying about what others thought about me and started asking questions. Mainly, I observed. For over two years I made it a point to be in the courtroom for at least two hours per week watching other experienced lawyers. I trained myself by staying after my court calls, watching hearings on motions in different divisions and finding an occasional trial to sit it on. No matter what type of case, I was there adopting well molded mannerisms of experienced attorneys.

I am by no means saying that I'm a great litigator. I have many years before I can mature into that. However, I can honestly say that I'm now very comfortable in the courtroom and to me that has been the key to winning Jury trials.

So, how do you become comfortable in the courtroom? Well, its preparation. Yup! That's it. I have found that the more I am prepared the easier it is for me to just talk and ultimately argue. Two abilities that my Italian heritage has blessed me with!

Why do I say preparation is the key? Its simple, by the time you get to trial, you already know the case like the back of your hand. You've taken the depositions; you've finished the discovery and now its time to talk to the people of your community. If you are prepared for the procedural issues then all that is left is talking; something that you have been doing way before 4th grade.

Shaikh v. Morris

This past December I tried a case in Skokie. It was a rear-end auto accident with minor damage to the plaintiff's vehicle. We claimed exacerbation of a preexisting herniated disc and Allstate was the insurance company on the other side.

The pre-trial was the day of our first big snow storm. Although I walked in a bit stressed from the snow and commute, once I opened my travel trial case, I was ready to go. I had everything in place and I was off to the races. Procedurally, the big success was keeping the photographs out from the Jury's view. I believe every personal injury attorney that has a minor impact soft tissue case knows the case *DiCosola*. Since I was not successful in keeping photo's out in other trials, I've added a seven page



memorandum in support of my Motion In Limine to exclude photographs. If you would like a copy, go to the links section on our website at any of the following addresses: www.dibellalawyers.com, www.northsidelawyers.com or www.southsidelawyers.com.

Holland v. Jones

This past February, I tried a rear-end auto soft tissue case. Of course, State Farm was the insurance company on the other side. We had an offer of \$1,800. We received a verdict in the amount of \$6,700. So, what did I take away from that Jury trial?

I suppose it would be effectively trying a personal injury case without a doctor. It's hard to try this type of case as your hands are tied. If you spend your clients \$2,000 on an evidence deposition of the treating physician, then he/she will probably owe you money when it's all over. Luckily, if you prep your client well enough and discuss your evaluation of the case with the Judge in pretrial, you can get the jury to hear everything necessary for them to rule in your favor. However, make sure you have the doctor on call to testify, if the judge will not give you any leeway.

To follow is a sample line of questioning:

Ms. Plaintiff, what were your chief complaints in the emergency room?
Neck, back, shoulder pain.

Were you examined by a doctor?

Yes, it was a complete exam. (Don't fight the objection, the jury already heard it)

What treatment if any did he provide?

I had x-rays, he prescribed Vicoden, Flexeril and Motrin and referred (told) me to follow up with my primary care physician if I continued to have pain.

OBJECTION HEARSAY

Your honor it is not being offered for the truth of the matter asserted but is being offered to establish Ms. Plaintiff's impression and the effect it had on the listener.

What did you do next Ms. Plaintiff?

I continued to have pain in my neck, back and shoulder so I went to my primary care physician as instructed by the doctor.

What did you do next?

My doctor referred me to a physical therapist for treatment.

I'm sure many lawyers reading this have many arguments against this line of questioning and the ability to successfully try a case without a doctor. Obviously, this is just a quick sample. Procedurally, you have to set yourself up prior to trial, mainly through Request to Admit Facts. Further, there are certain issues that must be dealt with in your Motion In Limine. If you have this type of case and would like to discuss it, please contact me at one of the above listed websites.

Don't settle for short money! It's getting extremely hard to settle cases for reasonable value. Try the case. Throw yourself to the wolves, get in there and be prepared. After you've been knocked around a few times you'll see it starts to become a lot of fun!

[Editor's Note: We received the following e-mail from Michael DiBella just as we were delivering the newsletter to the printer: "I'm faxing over today's Jury Verdict. It's another one against Allstate. \$2,500 medical bills, soft tissue bruised knee. Last offer \$1,700. Verdict Plaintiff \$19,491x 20% Contrib. = \$15,593." The fruit doesn't fall far from the tree. Good for you Mike.]