

CHALLENGING DAMAGES IN HIGH EXPOSURE CASES

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I. INTRODUCTION TO TOPIC – WHAT MAKES A CASE “HIGH EXPOSURE?”

One in which the plaintiff or plaintiffs are seeking significant future economic damages, usually (1) future medical needs; and (2) impairment of earning potential.

A. How to Recognize Potential High Exposure Early in the Case

1. Typical Accident Scenarios

- a. School Districts – Injuries to Children During Sports Activities**
- b. Transportation – Common Carriers/Transit Authorities**
- c. Dangerous Conditions of Roadway or Other Public Property**
- d. Third Party Criminal Conduct on Premises (Shootings)**

2. Speed or Intensity of Impact

3. Are There Other Viable Defendants

II. EVALUATE YOUR POTENTIAL EXPOSURE AS EARLY AS POSSIBLE IN THREE EASY STEPS

A. What Type of Accident/Incident Gave Rise to Claimed Injury

B. What do the Collision Report and Initial Treatment Records Tell you About the Nature of the Injury

C. Who is the Opposing Attorney

III. INJURY SCENARIOS

A. Traumatic Brain Injury

Type – Closed Head Injury/Open Skull Fracture – Was Direct Impact Involved

1. Manifestations of Injury

a. Initial

- (1) Loss of Consciousness**
- (2) Loss of Memory**
- (3) Focal Neurological Deficit**
- (4) Alteration in Mental State**

b. Subsequent

- (1) Change in Moods or Personality**
- (2) Problems With Concentration**
- (3) Sensory Deficits – Loss of Smell, Visual Disturbance, Loss/Alteration of Taste, Hearing (Tinnitus)**
- (4) Headaches**
- (5) Alteration in Behavior (Mood Swings, Depression, Anger)**

2. Obtaining Information

a. Initial Responders – Suspected Head Injury – Glasgow Coma Score

b. Medical Records

c. School Records

d. Work Records

3. Alternative Factors Affecting Causation

a. Drug and Alcohol History

b. Prior Injury

c. Social/Family Issues

d. Other Health Issues

B. Investigating the Plaintiff

1. Social Media Search

2. Prior Claims

C. Neck and Back Injuries

1. Type – Degree of Impairment – Impact on Mobility

2. Manifestations of Injury

a. Films (X-Rays, CT Scan, MRI)

b. Is Structural Injury Apparent

c. Neurological Involvement

3. Obtaining Information

- a. **Prior History of Injury – Age of Plaintiff**
- b. **Employment History – Nature of Work Performed**
- c. **Other Health Issues**
- d. **Social/Family Issues**
- e. **Drug/Alcohol History**
- f. **Other Health Issues**
- g. **Recreational Activities**

4. **Investigating the Plaintiff**

- a. **Mining Social Media as Soon as Possible**
- b. **Pre-Accident Activities**
- c. **Prior Accidents/Injuries**
- d. **Medical History**
- e. **Family Members**
- f. **Travel**
- g. **Criminal History**
- h. **Sub Rosa Surveillance**

5. **Assessing the Plaintiff – Appearance and Presentation at Deposition
(Consider Video of Deposition)**

D. OTHER TYPES OF INJURIES PRESENTING POTENTIAL HIGH EXPOSURE CLAIMS

1. **Extremity Injury – Knees, Hands**
2. **Eggshell Plaintiffs, i.e., Diabetes, Osteoporosis, Prior Mental Health Issues**
3. **Gunshot Wounds/Assault**

IV. SELECTION OF EXPERTS

A. The Right Expert at the Right Time – Retaining an Expert

When obtaining an expert, you obviously want an expert familiar with the condition at issue. Make sure to give him or her all materials or other information you have obtained.

B. Challenging the Opponent Expert

1. **Look at Their Background and Familiarity With the Condition as Well**
2. **What Materials Have They Been Provided Prior To Forming Their Opinions**
3. **“Junk Science” – Is the Expert Opinion Based on an Appropriate Analysis of the Person/Condition In Issue?**
 - a. **Biomechanical Expert;**
 - b. **Medical Experts;**
 - c. **Neuropsychologists;**
 - d. **Psychiatrist;**
 - e. **Life Care Planner;**

f. Vocational Rehabilitation Expert;

g. Economist; and

h. Medical Billing Expert

V. CASE STUDIES – PRESENTATION OF SCENARIOS AND EXCERPTS FROM ACTUAL CASES

A. Traumatic Brain Injury

B. Serious Orthopedic and Back Injury

C. Exaggerated Injuries

VI. EVALUATING AND RESOLVING

VII. QUESTIONS