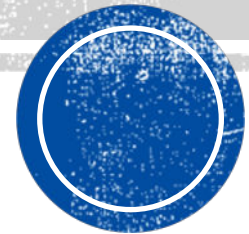


# **10 STRATEGIES TO INCREASE THE VALUE OF A MEDICAL NEGLIGENCE CASE**



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**1**

**FROM THE OUTSET, LOOK FOR THE  
CONSCIOUS VIOLATION OF A KNOWN RULE**

**Find the conscious choices by the  
defendant to violate a standard (*a rule*).**



**2**

**LOOK FOR HOW TO CHALLENGE THE DEFENDANT'S  
SYSTEM RATHER THAN THE INDIVIDUAL  
DEFENDANT**

**System Failure**

**Attributable to company's  
prior conscious choices**

**Likely to happen repeatedly  
– FORESEEABLE DANGER**

**Individual defendant may  
be a victim.**



# 3

**BUILD THE CASE ON A UNIVERSAL TRUTH THAT EXPRESSES THE MORAL HIGH GROUND OF THE CASE AND FRAME THE ISSUES**

- 1) What is the most compelling moral high ground of your case?**
- 2) How can that moral high ground be expressed in a single statement (or rhetorical question) that jurors will universally agree is correct?**



# 4

## **EXPLAIN THE KEY FACTS [GOOD AND BAD] IN STORY FORM**

**1)What was the first bad choice by the defendant that led to the crisis and the bad outcome?**

**2)What motivated the defendant to chose wrongly instead of rightly?**



**5**

**FOCUS THE STORY ON THE DEFENDANT'S CONDUCT,  
IDEALLY STARTING BEFORE THE OCCURRENCE**

**Where to start the story?**

**Availability bias/confirmation bias.**

**Focus on defendant's bad choices/ bad motivation.**

**Inevitability.**

**Discovery plan!**



# 6

## **BUILD THESE POINTS INTO ADMISSION SEEKING DEPOSITION**

- **Power of admissions**
  - **Cross-Examination**
  - **Defendant must agree – it must be true**
  - **Cutoff all credible escape routes**
- **Rule**
  - **There is a rule**
  - **Known reasons**
  - **Known risks**
  - **Defendant aware and must agree**
  - **Defendant violated rule and caused preventable harm**



# 7

## **JURY TEST THESE POINTS AS A MATTER OF ROUTINE**

**Early testing matters – it reveals how real people tend to react to the facts of a case and the trial story.**

- 1) Concept focus groups**
- 2) Structured focus groups**
- 3) Mock trials**





# 8

## **FOCUS EARLY ON HOW TO ANCHOR AND PRIME YOUR DAMAGES**

- 1) Loss of positive value of healthy life.**
- 2) Prepare to anchor (or compare) the positive value of what has been lost to another known number.**
- 3) Consider how to prime your largest damage categories for trial.**



# 9

## **BUILD STORY FURTHER ON DEFENDANT'S RESPONSE TO THE INJURY**

**Jurors might minimize or forgive a bad decision that they conclude is an example of momentary bad judgment.**

**When defendant refuses to acknowledge any responsibility and expresses no remorse, juror attitudes may shift.**

**Defendant's no-remorse attitude delays or deprives a plaintiff of financial resources to recover or adjust while compounding the mental suffering from the initial bad occurrence.**

**Jurors write the end of the story.**



# 10

## **TACKLE THESE POINTS EARLY – PACE MATTERS**

- 1) Most important good and bad facts.**
- 2) Most important law – jury charge.**
- 3) Assessment of court, jury pool, opposition.**
- 4) Investigation and discovery plan.**
- 5) Damage evaluation.**
- 6) Budget.**

