



The Model Citizen

An Actual Client Call

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The following is a true account of an actual call made by a prospective client (as always, names and details are omitted in order to protect the identity and confidentiality of the caller!):

A lady called in order to ask if I could represent her for an injury she suffered inside a pawn shop's premises.

"Tell me what happened," I said.

She explained that she had gone to a particular northwest Texas town in order to get some dental work done, because she'd heard of this dentist who would take payment by check. She told me, without a hint of reservation, that she had written a "hot check" to give him because she knew she didn't have the funds to pay him, but "really needed the work done!"¹

After getting the work done and giving him the check, she realized she had better come up with some cash to pay the amount if she was caught.² So she took some of a relative's jewelry (she didn't say

whether it was by permission, and by this point, I didn't want to ask) and hurried to a pawn shop to see what she could get for it.

While inside the pawn shop, she tripped due to what she described as a "buckle" in the painted concrete floor of the shop (quite possibly a depression in the concrete flooring), and fell forward on her hands and knees. She complained of aching in one of her knees and her hips, and wondered how much she could sue the pawn shop owner for...

Needless to say, I did not take this case. The caller sounded very unashamed in her desire to "find an angle" and get everything she could, despite her own wrongdoing. This would make her a very difficult client to work with, and a very unappealing witness in front of a jury, no matter how serious her injuries were, or how negligent the pawn shop owner may have been.

One of the most difficult things to explain to a potential client is that his or her personality, character, and likeability are extremely important. So often, I get questions like, "what does it matter if I did X?" or "why does a jury get to hear about Y?" or "just because I'm Z, what does that have to do with me getting hurt?"

There are things that definitely matter in deciding whether, and how, a case can be pursued before a jury. They are not necessarily conclusive (that is, they don't "kill" the case), and it is true that they have no bearing on the question of whether the defendant was negligent, but they can and do have an effect on damage awards. This is because damages are awarded by a jury of citizens just like you and me. Just as you or I would be skeptical of someone with a shady past, or reluctant to help out someone with an unfriendly or unlikable demeanor, a jury will be skeptical or reluctant to help out a plaintiff by awarding significant damages if the jury dislikes or distrusts the plaintiff.

For example, a plaintiff may believe (and justifiably so) that his previous criminal convictions have nothing to do with a case in which he is suing a defendant for either injuring or defrauding him. However, anytime a plaintiff takes the witness stand, swears an oath to tell the truth, and insists that an incident happened as he says it did, or that he has suffered the damages he claims to have suffered, he puts his character and truthfulness at issue. The defendant's attorney would be entitled to cross-examine him with evidence of any felony convictions, or even misdemeanor convictions that demonstrate dishonesty or bad moral character.³

In one such case, I represented a construction worker who was suing his employer for forcing him to work solo on a project that should have been done by no less than two to three people. In the course of performing that job, he suffered a serious back strain with vertebral disc damage. It was learned in the course of investigation and pre-trial discovery that he had pled guilty a few years earlier to welfare fraud when he had misstated his income in order to receive benefits. Such evidence would most likely be admissible, because it is relevant to the credibility of the plaintiff and tends to show he is the type of person who seeks money to which he is not entitled. Fortunately, we were able to obtain a reasonable pre-trial settlement in that case, and did not have to go before a jury.

In another case, I represented a fairly young single mother whose pickup truck was run off the road when the defendant driver made a reckless lane change. After her truck went into a ditch, she suffered a herniated lumbar disc (a serious injury where one of the vertebral discs in her lower back was ruptured). She was a very cheerful person with a positive approach to life. She stayed home for only a day and a half, and then got right back to work, continuing to work her normal job while she also underwent physical therapy and cortisone injections in her lower back. Her orthopedic doctor testified that she might be a surgical candidate in the near future.

The jury awarded her substantial damages for her past and future medical expenses, and pain and suffering, and after the case was over, I got the opportunity to ask some of the jurors what influenced their decision. Most of them answered that they were impressed with the client's positive attitude and hard-working nature, and were sympathetic to her. If she had been bitter, angry, or had spent a large amount of time off of work simply lying in bed and feeling sorry for herself, they would not have been so sympathetic.

Many more plaintiffs would do well to follow this client's example and not see their injuries as a chance to complain endlessly, engage in self-pity, or inflate their damage claims.

I was also involved in a trial where the client had a very spotty and irregular job history and spent many long periods unemployed, quitting job after job. He was employed at the time of his auto accident, though, and did have to be off of work to undergo treatment. The defense attorney did a good job of highlighting his past employment history in order to convince the jury that he was the sort of person that found any excuse not to work. The members of the jury disliked the client so much that, even though he had a clear injury and legitimate medical treatment, they awarded him zero damages.

Remember: a jury doesn't just decide what it thinks about the hard evidence and testimony in a plaintiff's case. It also decides what it thinks about the plaintiff and his personality, character, and attitude. The most important thing a plaintiff – and in fact, any person in life – can do is to try and be positive about what has happened to him, try his best to recover from his misfortune, be grateful things are not worse, and diligently follow his doctor's instructions in an effort to get better.

In the context of a plaintiff's case, that sort of approach can mean the difference between a good, sympathetic jury verdict, and a very painful lesson that adds insult to injury!

