

From the President



Ryan E. Hodge

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option. It's how insurance
companies lose.

As the president of KTLA I get to write a column for the Journal. I consider it a privilege and an honor to be able to address our members on a regular basis and hope that I am up for the task.

It seemed to me that the first order of business would be to talk about what my agenda is for the upcoming year at KTLA (soon to be KAJ). That was my original intent as I started this article, but when I got to the end, I realized the article has nothing to do with what my agenda at KTLA is this year. This article has to do with a personal mantra that I want to ingrain in every member of this organization. A mantra that is crucial to our survival and to our ethical duty to our clients. That mantra is simply this: WE MUST TRY CASES. Let me say it again. WE MUST TRY CASES.

I hear many people complain of caps. I really don't have cases that are affected by caps. I have lots of cases affected by jurors I fail to communicate with about my client's damages. Yes, you heard me correctly. I fail to communicate my client's damages to these jurors. I used to say that these were bad jurors. But I believe my attitude has to change. While I agree that the climate for plaintiff's attorneys is less favorable than it used to be, it does me no good to believe there are

bad jurors. If I think they are bad, I will fear them. I will fear them being on my panel. I will fear them to the point that I will tell myself I should take the insurance company's absurdly low offer because a jury would do worse. I will loathe the fact that they are trying to be on my jury so they can crucify me. I will try to get them thrown off rather than trying to understand how to persuade them.

I know good, just verdicts can be obtained in non-cap cases. I see a half dozen attorneys that consistently produce good trial results. They don't blame bad jurors for bad verdicts. They persuade people I might call bad jurors and get good verdicts. They do it year in and year out. I have spent a lot of time talking to the lawyers who get good verdicts. They will tell you that there are no silver bullets they use to get good verdicts. The one thing they all say is that if you don't try cases, you can't get good verdicts.

Trying cases ... that's sort of a scary thing in today's climate. There were only 115 civil personal injury cases tried per year in 2004 and only 93 in 2003. In fact, if you do some investigating, you will find out that 80% of those cases are tried by the same handful of lawyers year in and year out.

It just so happens that many of those lawyers who still try cases are the same ones that consistently get good verdicts. It just so happens that the computer program that many insurance companies use to value cases factors in whether the attorney who represents the injured party will take a case to trial. In other words, trying cases results in better settlements.

So why are so few lawyers trying cases? There are several reasons. First,

the cost is astronomical. Being out of the office is expensive. The cost of experts and doctors is nothing less than insane. A well-known local doctor in Sedgwick County charges \$1,000 an hour to review a case. I should point out that he does all defense work and that I don't blame him for charging \$1,000. I wouldn't sell my soul for anything less than \$1,000 an hour either.

But is the cost really that expensive? What if trying two cases a year resulted in adding 3%–5% to the value of our settlements? Lawyers I have spoken to will tell you that it adds at least that much. Because each of us has different practices, we must each do our own math to see if it's economical, but I would suggest that anyone who handles more than 20 personal injury cases a year is doing a disservice to their clients by not trying cases.

Another reason we don't try cases is just plain fear. We don't know how to try cases. We are afraid of losing. The simple fact is that lawyers who are afraid of trying cases are afraid because they don't try cases. Lawyers who don't try cases don't know how to try cases because they don't try cases. To learn how to try cases you must try cases. To get rid of the fear you must try cases. Living in fear is not an option.

I have two girls ages four and seven. Every time they get in trouble I ask them what the golden rule is. I ask them if they think that what they did was consistent with the golden rule. I have learned to ask myself this when it comes to how I treat clients. Would a client want to know if they put their life in my hands that I don't try cases? I am a trial lawyer, aren't I? For our members, trying cases is not

an option. It's how insurance companies lose.

Our organization has over 700 members. If every single member endeavored to try just one case in the next two years, that would be 350 cases a year. We would triple the number of cases tried around the state in a year. Will trying one case, win or lose, hurt an insurance company? Of course not. Will trying 350 cases in a year for two years straight hurt an insurance company? Good question. It may not hurt, but it's sure not going to help the bottom line. They have defense costs—costs that at some point a bean counter will say are too high and the powers that be will suggest paying more on cases to get them settled to reduce defense costs. Who knows, maybe trying those cases will result in better trial lawyers. Maybe it will result in lawyers who are so concerned with getting good results that they don't have time to focus on how bad juries can be. Maybe — dare I say it? — maybe it will result in ... *gasp* ... good verdicts.

Not knowing how to try cases is not an excuse either. This organization has many fine lawyers who will offer all the help that anyone needs to learn how to try a case, and they will do it for free. They will do it because, for them, it's the right thing to do.

I'm sure lots of lawyers have heard stories of people like Gerry Spence who claim to have never lost a single civil case. I am not that lucky nor that good. I once heard Gary Pillersdorf, a well-known New York trial lawyer who has tried over 300 cases to a verdict, say that the reason he has tried so many cases is because he has lousy case selection. Most of us have lousy case selection from time to time. There is no shame in trying those cases and losing. There is shame in settling a case and going to bed at night feeling dirty knowing deep inside the case was settled for all the wrong reasons. ❖

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