

# HOW TO TRY A SOFT TISSUE INJURY CASE

By Elizabeth A. Leone

## I. VOIR DIRE

### a. Standard v. Case Specific Questions

- i. Standard: In every soft tissue injury case, you are going to have standard questions that you ask. You should have these saved on your computer for use over and over again.
- ii. Case Specific: You need to reflect on your case and ask yourself, “What am I afraid of in this case?” List out all your fears. You need to discuss these with the jury. Create questions surrounding these fears.
- iii. Do Not Be Afraid to Ask Questions! You must know everything, even if it hurts to hear it. You would rather the prejudice or bias of a juror come out during voir dire than during deliberations.

### b. Build Trust With the Jury

- i. Be open and honest with the jury, and they will be open and honest with you. Carry on a dialog with the jurors. If you have something in common with a juror, share that with them and form a bond.
- ii. If something smells really bad, air it out! If there is something that is harmful to your case that is going to come out in evidence, discuss it with the jury. Let the jury know that you are not hiding anything.

### c. Soft Tissue Issues

- i. Chiropractors: Discuss with the jury their feelings on chiropractors. Explain that your chiropractor is not a medical doctor, but still has specialized training in anatomy, orthopaedics, neurology, radiology and is going to be accepted as an Expert Witness by the Judge. Weed out any jurors that say they could not accept an expert opinion from a chiropractor.
  1. Advertising: Many defense attorneys are now starting to cross-examine chiropractors with their advertising practices. Ask the jury: Has anyone seen any chiropractic advertising? What do you think of it? Would that advertising cause you to give less weight to their opinion and testimony.
- ii. Low Impact: Be up front! Tell them, “The evidence is going to show that there is absolutely no visible damage to my client’s car, and I’m afraid that

you, the jury, may believe it's impossible to be injured if there is no property damage to the vehicles?"

- iii. Injury That You Can't See: Try to educate the jury what we mean by "soft tissue", "connective tissue", "sprain/strain". Is this as much a real injury as a broken bone? Even if you can't see it? Can they accept it as a real injury?

#### **d. Miscellaneous Voir Dire Advice**

- i. Don't use lawyer language! Be down to earth, smile, show sympathy, laugh at the appropriate moment. Show that you are not above them; but that you are one of them.
- ii. Taking Notes: If at all possible, have an associate, law clerk or paralegal there to take notes for you. Focus your attention on the jury and make them feel special by keeping your attentions directed towards them. Engage in conversation, not a question and answer session.
- iii. Deflect Defense Attorney's Tactics:
  - 1. Length of time it took for Plaintiff's counsel to question the jury; discuss this with jury before starting.
  - 2. Attacks on chiropractor's credibility; head it off.

## **II. OPENING STATEMENT**

### **a. What Do Jurors Want?**

- i. Jurors want to be entertained. They do not want to be bored. They do not want to be lied to. Make sure everything that you say in Opening is going to be backed up by your evidence.
- ii. Jurors want to be convinced. Because it's an injury they can't see, make sure they know that there is strong evidence to support your client's injury. Get that in their head from the start. Tell them about the "objective signs" of injury (swelling/spasms). Make sure they know that your client has NEVER been in another accident and has NEVER had treatment on their neck and back before this accident.
- iii. Keep your opening statement short, but effective. Watch the jurors as you are speaking. If you lose their eye contact, or if they have that "glazed over" look in their eyes, wrap it up!

**b. Be Creative!**

- i. Opening statement does not have to be a boring recitation of the facts in the case. As long as what comes out of your mouth is going to be brought into evidence, then you are not limited to saying every few minutes, “And the evidence will show...”
- ii. Attack what the defendant did wrong as a starting point. Not only do you want the jury to like your client, you want the jury to dislike the defendant. If the circumstances to the accident were egregious in anyway, make sure the jury knows it.

**c. Preparation**

- i. Do not throw opening statements by the wayside when doing your trial prep. Try this for preparation: Literally write out your opening statement, word for word. Do it on the computer or in long hand. Go through and pep it up! Delete your lawyer language that subconsciously came out while your were writing. Add more descriptive words and phrases. After you have a wonderful story that you can’t wait to share with the jury, do an outline of it. When practicing, read the long version over a few times (but, do not memorize – you don’t want to be rehearsed). When delivering your opening statement, use the outline if needed.

**III. DIRECT EXAMINATION**

- a. **Plaintiff:** You must prepare your client for his or her testimony. Do not think just because your client is outgoing and personable that they can wing their entire testimony.
  - i. Meet with your client. Go over the entire direct exam. Pay particular homage to the really good statements or phrases by your client. Practice, practice, practice! Go through the direct examination until both you and your client are comfortable, but not rehearsed. Some clients take more work than others.
  - ii. Bring out in direct all of the things that go to proving your soft tissue case.
    1. Client’s past health: Play up the fact that your client was very healthy before the accident (ie, never been to a doctor in 10 years prior to the accident, or never injured neck and back before this accident)
    2. Address past accidents/injuries: Make sure your client is clear that although they had had a similar injury in the past, it had completely healed up. Point out the activities that they were doing at the time this accident occurred with no problems.

3. Show how active your client was at the time of the accident. Talk about all their hobbies and interests; point out their abilities to do physical activities.
  4. Show that your client had a great work attendance history (ie, never missed a day up until this accident) You client isn't the type to lay out of work.
  5. If the property damage is minimal, show the severity of the impact in other ways. Have your client explain in detail what happened to their body upon impact. Explain if anything in the car flew about upon impact. How far was the car pushed forward. Was your client surprised or aware of the impending impact. Which way was your client's head turned.
- iii. Lecture your client on decorum. Be polite, open and honest. Admit your low points while looking the jury in the eye. Do not exaggerate symptoms in a soft tissue injury case. Do not fight with defense counsel; be polite but firm in your statements. Don't get stuck in the rut of supplying yes and no answers to the defense attorney; explain!
  - iv. Prepare for Cross Examination: Have your client read, re-read and then read again their deposition transcript. Let them know that if their testimony differs at trial from the transcript, the defense attorney is going to beat your client over the head with it. Get another attorney from your office to cross examine your client as practice. Have your client prepared thoroughly for whatever attacks are going to come from the defense attorney.
  - v. Develop Pain and Suffering: If you want the jury to give you anything over the medical expenses, then you better have a decent pain and suffering claim. This is particularly important in soft tissue cases. Develop pain and suffering with your client and work with your client so that they are descriptive storytellers. When your client testifies about something they couldn't do, ask, "And how does that make you feel?"
- b. **Investigating Officer:** To testify, or not to testify, that is the question. If liability is contested, you must call the investigating officer so authority is on your side.
- i. Speak with the officer ahead of time, in person if possible. Ask to see any written notes by the officer, or written statements by the parties.
  - ii. Explain the evidence that is inadmissible to the officer so they are not shocked that they can't testify about a certain thing.

- iii. Find out if the officer particularly remembers things the Defendant said, especially about speed and distances, etc.
  - iv. Discuss complaints of pain at the scene.
- c. **Expert Witnesses:** Thoroughly prepare for your expert witness.
- i. Medical Doctors:
    1. Meet with your expert ahead of time. Don't waste the doctor's time by going over every question, but explain the general layout of your direct examination.
    2. Discuss in detail with the doctor all issues and questions surrounding causation
    3. Explain to your expert how the defense attorney is going to attack him
    4. During his testimony, have him teach the jury with drawings, diagrams or models. Get him out of the witness chair and in front of the jury.
    5. For direct examination, don't go into agonizing detail about every single visit your client made. Boring! Rather, go through your meds and highlight the important stuff; then carry on a conversation with the doctor about that.
    6. Be careful of the correspondence you send to your doctor.
    7. If your client passed malingering tests, discuss in testimony
    8. Discuss property damage; ask your doctor if he diagnoses and treats someone based upon the damage to the vehicles.
  - ii. Chiropractors:
    1. Use all of the above ideas on your chiropractor.
    2. In establishing your chiropractor as an expert, go into detail about the courses they take in chiropractic college (ie, orthopaedics, neurology, radiology, anatomy)
    3. If your chiropractor can say it, bring out the fact that medical doctors refer to him

4. If your chiropractor did a thorough and documented physical exam, go through it in some moderate detail. Have the chiropractor explain the testing he does and have him describe whether the test is an orthopaedic test or a neurologic test, etc.
5. Have chiropractor describe what is a soft tissue injury; tearing of fibers and scarring when they repair. You can't see these on an x-ray.
6. So, how do you know a person has a soft tissue injury? Have your chiropractor explain his objective findings. For example, when he examined your client and he has muscle spasms in his neck, have your chiropractor testify that muscle spasms are objective signs of injury; that they are involuntary muscle reactions that cannot be controlled or faked by the patient. X-rays that show reversal of the lordotic curve can mean muscle spasming.
7. Have your chiropractor describe his treatment, the purpose behind it, and how it helps promote healing.

**d. Lay Witnesses**

- i. First accept that everything your client says in direct examination is disregarded by the jury. You need supportive witnesses who have no interest in the outcome.
- ii. Meet with your supportive lay witnesses ahead of time. Have a conversation with them about your client. Find out what they know.
- iii. Evaluate your lay witness; you want them confident, articulate, down to earth and open. If you ask them a question about your client and they can discuss the answer for several minutes, you've probably got yourself a winner.
- iv. Look for the story tellers; those witnesses that can tell charming stories about your client. Particular stories paint better images for the jury. Show photographs if you can.

**IV. CROSS EXAMINATION**

**a. Preparation to Cross the Defendant:**

- i. Preparation for your cross examination of the Defendant begins during the discovery deposition of the Defendant. It is important to ask ALL of the right questions and be complete in getting the Defendant's story. You can't ask too many questions, nor can you get too detailed. Go back and ask the same question over to see if their testimony changes.

- ii. In preparing your cross, carefully read the Defendant's deposition. Highlight and organize all of the statements the Defendant said that help prove your side of the case. You may want to do a deposition summary. Base your cross off of the helpful things the Defendant will say.

**b. Crossing the Defendant**

- i. Be prepared to impeach when the Defendant's testimony differs from the deposition transcript. All those numerous and detailed questions you asked during the deposition tend to be hard for the Defendant to keep track of and remember.
- ii. Be polite but strong in discrediting the Defendant. There is no need for dripping sarcasm or facial grimaces for the jury to get it when the Defendant is lying or coating the truth.
- iii. Save the greatest statement by the Defendant for last. Confirm they are not calling their own expert doctor, or biomechanical engineer to testify on the defendant's behalf.
- iv. Consider calling the Defendant as an adverse witness in your case, especially if they are easy to ruffle and you want to throw them really off balance.

**V. FINAL ARGUMENTS**

- a. **Is having closing argument that important?** Yes! It is very important the jurors hear you last, especially so you can rebut the defense attorney.
  - i. Try to force the defense attorney to put on evidence. If there is a low impact issue, don't put the photographs into evidence; force the defense attorney to do it.
- b. **Burden of Proof:** Proving our case by the greater weight of the evidence is a great argument tool, especially in soft tissue injury cases.
- c. **Take the Wind Out of the Defense Attorney's Sails:** You know the biggest point that the defense attorney is going to harp on. Bring it up first and address it.
- d. **Be Reasonable:** Your request for money has got to fit the case. Jurors are already expecting you to ask for a ridiculous amount so please them with a reasonable request. However, if your facts dictate a large recovery, don't be afraid to ask for it either. Remember: Some defense attorneys are waiving your Response to Monetary Relief Sought in front of the jury so make sure it is a reasonable amount.

- e. **Before and After Evidence:** Jurors relate to examples that are given during testimony. During your direct examinations, you should have brought out plenty of evidence to show how your client was before the accident, and how they suffered after. Remember: Because the jury can't see your client's soft tissue injury, they need to see something else. Remind the jury of example after example that was given to them and hopefully they will conclude that no person in their right mind would suffer these things unless they were truly hurt.

## **VI. SO, WHAT DOES IT ALL BOIL DOWN TO?**

- a. If the jury likes your client, and they trust you, the attorney, then everything else is just icing on the cake. Thus, you need to choose your Plaintiff well, and you, the attorney, need to portray honesty, justice and truth to the jury.
- b. Entertain the Jury: You can follow the law and Rules of Evidence, and still put on quite a show for the jury. Be creative! Your smaller soft tissue cases are the perfect times for you to try out your creative stuff. What have you got to lose?
- c. Make Causation a No-Brainer: The hardest thing you have to overcome is getting the jury to believe your client was injured. Derive this not only from your expert's testimony, but by your other evidence.
- d. Be Reasonable: The jury is expecting you to be frivolous in your demands for money. Shock them with a reasonable amount because after all, you only want what is fair to everyone involved. If you'd like, leave it totally in their hands for the number. Tell the jury, "Hey, the case is worth whatever you tell us it's worth... and we're absolutely fine with your judgment!"

## **VII. AND I COULDN'T LEAVE WITHOUT TALKING ABOUT ALLSNAKE – LET'S TAKE THE VENOM OUT OF THE SNAKE BITE!**

- a. Current State of Affairs: Allstate is denying legitimate soft tissue injury claims, or they are offering a nominal amount to settle. This is forcing trial lawyers to do one of two things: 1) turn the cases away, or 2) go to Court.
- b. Take the Cases to Court – They Can Be Won! If you have a good Plaintiff, your chances are good to get a decent recovery. And the smaller cases can produce good attorney's fees for verdicts under \$10,000.00. The trick is to prepare your case well, but without spending hundreds of hours and costs in doing so. You have won a victory in Court if you beat their Offer of Judgment, and that's not so hard with their nominal Offers.
- c. Have your Motion for Attorney's Fees and Costs ready to argue after the verdict. Some judges are tired of Allstate's tactics as well, so try to catch your opponent off guard by requesting that the Court consider the fees and costs immediately after verdict.

**Attachment “A” – Detailed Jury Box Form**

Juror Name:

Position #:

Question Topic	+ or -	Explanation or Reply of Significance
Personal (name, address, etc)		
Prior training? (legal, med, friends that are)		
Prior injuries or lawsuits? (Including jury service)		
Chiropractors		
Feelings about awarding money		
Total +s		Accept:_____ Excuse:_____

## Attachment “B” – Example Soft Tissue Voir Dire

### VOIR DIRE

Introductions:

- Parties, Def Attorneys, Judge, Clerk, etc

Reason for Voir Dire:

- not designed to embarrass or harass
- designed to ensure a fair trial
- ensure that no bias or prejudice that will prevent from being fair and impartial
- confident and certain all will respond truthfully so all parties can enter this trial with clear minds and without bias

Explanation of Case

### GROUP QUESTIONS:

List all Witnesses and Lawyers

Plaintiff and counsel

Defendant and counsel

Trooper \*

Dr. \*

List other witnesses, etc

Ever served on a jury before?

- diff in burden of proof – civil v. crim
- able to reach a verdict
- anything about that experience cause you to not be able to fairly sit here today

Ever been a party to a lawsuit?

Ever been a witness in a case?

Ever been in a wreck before?

ANY FAMILY MEMBERS IN WRECK

- How happened
- Injuries/ treatment
- Claim or suit brought

Any family members or close friends that work in the law?

Any family members or close friends that work in healthcare?

Any family members or close friends that work in adjusting business or insurance industry?

Anyone have any strong religious beliefs or convictions that would prevent you from being able to sit in judgment of this case and render a fair and impartial verdict?

Any time commitments that would prevent from serving on this jury for the next few days?

## **INDIVIDUAL QUESTIONS**

Address

Married

Kids

Job – how long; what prior

Health Problems?

- low back?

Hobbies?

What does Quality of Life mean to you?

Evidence that the property damage to vehicles are minimal; in fact, there is no visible damage to my client's truck. Can you tell me your thoughts on whether you believe that the amount of prop dmg determines how severely a person is injured?

Do you have any beliefs whether or not a person can be injured without there being major damage to the vehicle?

I'm afraid that you may not believe my client is injured because of the lack of visible damage to his vehicle; are my fears founded?

My client's injuries do not show up on x-rays; he suffered a strain/sprain of his lower back. I'm afraid that just because you can't see my client's injuries on an x-ray, that you will believe he's not injured?

How do you feel about people who bring a lawsuit for being injured in an accident?

I am afraid that because there are no visible signs of injury, you will not believe that my client could have been injured? Do you believe someone can be injured without seeing it on x-ray, etc.

If I prove to you that my client was injured as a result of defendant's negligence, and the law says that you make him whole by awarding money damages for:

(List out items claiming)

Would you be able to do that?

Evidence show that \* has a permanent injury, and if we prove that to you, the law says compensate him for not only what he has incurred in the past, but what he will incur in the future (bills, lost wages, pain and suffering)... would you have a problem doing that?

Law says that you are not to be swayed by sympathy or pity to either side, and that you are not to consider the consequences of your verdict to either the PL or the DEF – thoughts on that

When it comes time to deliberate, could you consider only the matters that are in evidence, and not speculate on any matters that are not in front of you as evidence?

### **GROUP QUESTIONS**

Can you put out of your mind everything that you see or hear on TV, books, ads and personal experiences and judge the case within the four walls of this courtroom?

Do any of you lean, right now, ever so slightly towards one side or the other?

Is there anything that I have not asked the prospective jurors that you feel I might need to know to get as fair a jury as possible?

Any questions I had asked prior, that you did not have an answer before, but now you do?

## Attachment “C” – Extra Jury Questions

1. State your name and address.
2. How long have you resided at that address?
3. Where were you born?
4. Educational background.
5. What is your current occupation?
6. How long have you been employed by your present employer? (If less than 10 years, what was your prior occupation and prior employers?)
8. What are your typical duties or tasks performed by you during an ordinary day of work?
9. What is your marital status? And has that changed in the last 10 years?
10. What is your spouse's occupation?
11. What was the last paid employment of your spouse or volunteer work outside of the home your spouse engaged in?
12. What organizations do you actively participate in?
13. Do you belong to any fraternal societies or any other types of societies?
14. Do you belong to any sports organizations or are a member of any sports teams?
15. Have you held a position of leadership in any of these organizations?
16. Do you know anyone else in this panel? Anyone else in the panel seated that has not yet been selected?
17. Are you personally acquainted with or have you ever worked with either of the parties of this case?
18. Have you ever heard of either party or do you know them by reputation?
19. The lawyers involved in this case are . Do you know any of them?
20. The witnesses involved in this case are . Do you know any of them?
21. Is anyone related in any way to the parties, the attorneys or any of the witnesses?
22. Has anyone had any financial dealings with the attorneys, the parties, or the witnesses?

23. Have any of you read or heard anything about this case other than what you have heard here today?
24. Has anyone heard anyone discussing this case?
25. Have any of you discussed this case with anyone?
26. Have any of you been a party to a law suit? What was involved in the case?
27. Were you the person bringing the suit or the person defending the suit?
28. Were you generally satisfied with the outcome of the case?
29. Did you actually go to Court or did you settle the case before you went to Court?
30. Is there anything about the case in which you were the defendant that causes you now to have a feeling against the Plaintiff due to the fact the you have been in the position of one being sued, that is the defendant, in another case?
31. Was there anything about the situation that would cause you to have a leaning in favor of the plaintiff because you have once been in the same position yourself?
32. Did you testify in Court?
33. Have any of you had a member of your family or a close friend who has either been a party to or a witness in a law suit?
34. Has anyone testified in a deposition?
35. Has anyone appeared as a witness in any type of a hearing?
36. Has anyone ever had his statement taken by an attorney or someone acting on behalf of an attorney?
37. Has anyone ever served on a jury before?
38. When and how many times? In what Court? (State, Federal) Has anyone served on a Grand Jury?
39. When you were called for jury duty, did you actually sit on the case or were you just questioned and then excused?
40. The case that you sat on was it a Civil case or Criminal case?

41. What was the general nature of the case that you were involved in?
42. Did you actually go back and deliberate on the case?
43. Did you reach a verdict?
44. Is there anything about your previous experience on a jury that would make you not want to sit on a jury again?
45. Is there anything in particular that you do not like about our judicial system whether it be the Courts, the lawyers or even the fact that you had to come for service on the jury?
46. What were your feelings about jury duty when you opened your letter of summons to appear here today?
47. Is there anyone who simply feels that a jury duty is an intrusion on his or her time?
48. Is there anyone who would prefer not to be here? Why is that?
49. Does anyone have a problem with seeing or hearing?
50. Has anyone noticed that they are able to learn things better by seeing than hearing?
51. Do you except the principle that a party may often unconsciously remember evidence after the fact in a light more beneficial to him or to her?
52. In this case, we may hear conflicting statements about specific parts of the case. Will any of you have any trouble establishing a standard to follow in helping you to determine which person is telling the truth?
52. Is there any of you who would hesitate to make a judgement about what is actually the truth?
53. Do each of you as prospective jurors except that it is part of your duty to determine the creditability that is the believability of a witness or a piece of evidence? Is there any person who does not want to take the responsibility to make such a decision?
54. Do all of you understand that in a trial of a law suit there is a division of labor between the jury and the judge. That is the jury decides what the facts are in a case while the judge presides what applies to the facts in the case? Do all of you understand that difference in function?
55. In other words, the jury as a group would be the sole judge of what the facts are in this case and his honor would be the sole judge of what law applies to this case. After you have heard all of the evidence, his honor will instruct you as to what the implacable law is for this case. Do all of you understand this?

56. If you were to serve in this jury, would you take the law exactly as his honor gives it to you at the end of the case regardless of whether in your mind you might feel that some part of the law is unwise?

57. As Americans we all have the right, of course, to disagree with our laws, but we except the responsibility of serving as jurors when we take an oath to follow the law as it applies to this case. You must except the law as written and given to you by the judge and you must follow the law. Will you follow the law even though your idea of what the law ought to be might be different from what his honor tells you the law actually is?

58. Is there anyone here who feels that he or she is fairly familiar with the law?

59. Is there anyone of you who belongs now or has in the past to any organization group that has among its purposes that of changing the established rules of procedures in civil cases?

60. Is there anyone among you now who believes that our established rules of civil procedure should be changed?

61. Have any of you had any special training in the law?

62. Have any of you ever worked in a lawyers office?

63. Have any of you taken any courses in law?

64. Have any of you now or ever been connected in any way with any type of a police department or other law enforcement agency whether it being civil or military?

65. Do any of you have immediate relatives or close friends who are connected in anyway with a law enforcement agency?

66. Have any of you served in any branches of the armed forces?

67. Where have you served?

68. What rank did you have in the \_\_\_\_\_.

69. How long were you in the service?

70. Has anyone close to you either a friend, a relative or any member of your family ever been severely injured or killed while serving in the military service?

71. Do any of you find any fault with the law that says a person who takes the witness stand regardless of profession, education, age, or sex has equal dignity with any other person and with every other person who takes the witness stand?

72. There will come a time when the Plaintiff will be called to testify. Will you judge his testimony by the same standards that you would judge any other witness' testimony?
73. It is possible in this case that the defendant will testify. If he does chose to testify, will you judge his testimony by the same standards that you judged any other witness?
74. Just because the plaintiff has brought this case are you going to discount what he has to say?
75. Do you believe that police officers are human just like you and me? Does that mean that they are subject to the same human weaknesses as you and I?
76. Do you feel then that a police officer may make a mistake during the course of performing the duties of his or her job?
77. If the testimony were to reveal that a police officer had made a mistake or had used improper judgment, would you take that in to account with all other evidence in this case and return a decision?
78. If the testimony were to reveal that the police officers had not made a complete investigation or had not followed up on all the evidence that was available to them at the scene of the collision but rather had been selective in the investigation they made, would you take that in to account along with all other evidence in this case in reaching a decision?
79. Have any of you ever been trained in a medical area?
80. Have you or anyone very close to you worked for a hospital or a doctor or have any association in that medical field?
81. Have any of you studied medicine or have gathered medical knowledge on your own?
82. Do you believe in fait? That is do you think some things happen because it is time for them to happen or that they were predestined to happen at that time?
83. Do you believe that when common safety and responsibility stand as they are followed many tragic occurrences can be prevented?
84. When something is termed as an accident, do you tend to think of it as something that has occurred because of fate, or do you think that it has occurred because someone was careless or did not live up to his or her responsibilities in following common safety procedures?
85. When you hear the term accident, does it mean to you that there was no fault or liability involved?

86. Do you realize that when we as individuals frequently refer to an occurrence as an "accident" it in fact was not an accident but rather something that could have been prevented and that is, therefore, an act of irresponsibility or an act of fault?
87. The defendant here is being accused of an act of negligence and not any criminal act. Is there any juror here who does not understand this or has any questions about what this means?
88. At times in the past, I have heard jurors discussing the facts of a civil case and they will say that the defendant was guilty or not guilty. Do you understand that there is no questions of guilt in this case? Guilt has to do with criminal cases. In this case, we are talking about negligence or liability that arises from negligence, do you understand that difference?
89. Do any of you feel that there is a time when negligence is permissible or understandable?
90. Have any of you or any member of your family or close friends ever suffered a leg or foot injury?
91. How did this injury come about, what was the extent and nature of the injury?
92. Have any of you or has any person close to you spent more than a week in the hospital?
93. Have any of you had to have surgery on your foot?
94. Have any of you suffered an injury that though healed still causes you discomfort or pain?
95. Have any of you ever been injured in a automobile wreck?
96. Have any of you ever been a pedestrian who has been hit by an automobile?
97. Have any of you ever been involved in an automobile wreck?
98. Whose fault was it?
99. Are you aware that money is the only form of compensation a person can seek under our system of justice?
100. Though money may not be capable of restoring a physical or an emotional loss, would you feel justified in determining an amount of money to be paid to a person who has suffered a loss?
101. Do you have any feelings against a person coming to Court and asking for monetary compensation for injury and damage done to him?
102. Do you believe in making compensation through a fair, just and adequate verdict to a person who has been injured through the fault of another person?

103. If you were injured by the negligent conduct of someone else, would you expect that person to compensate you for those damages?

104. If someone broke into your office and damaged your computer so that it no longer functioned adequately, would you expect that person to have to pay for repairing your computer or to replace it?

105. Would you expect that person to be responsible for any law suit that you incurred while waiting for you computer to be fixed?

106. Do you see any difference in a person who broke into your office and broke your computer and having to pay for it and a person who broke a part of your body and having to pay for it?

107. After you have heard all of the evidence, if in your opinion it would take a very substantial sum of money to make a fair compensation to the plaintiff, would you hesitate to bring in a substantial verdict in this case?

108. Do any of you have any artificial financial limits that you carry around in your head beyond which you would not make any compensation in money? That is to say you have something in your own mind without telling anybody else that just says I would not compensate more than x amount of dollars whatever that might be no matter what the injuries might be.

109. Is there anything in your education background experience or belief system that makes you feel that a person can not be compensated with money for pain and suffering?

110. Would you feel this way even if the Court instructed you that the Plaintiff has a right under our laws to be compensated for any and all pain and suffering that you felt or would continue to feel?

111. How many of you would say to your self that a million dollars is a lot of money?

112. Are there any of you who is sitting here today that would feel that one million dollars in a verdict is just too much money and no matter what the facts are and no matter how impressive it is it would be impossible for you return a verdict that high?

113. Are you aware that there is a difference between the burden of proof in a criminal case and a burden of proof in a civil case?

114. The court will instruct you that the plaintiff has the burden of proof in the civil case proved by the greater weight of the evidence that the defendant is liable for his damages. I know it sounds like a lot of technical and legal language and it is, but what it simply means is if we had a scale and if the scale were evenly balanced as it should be in your mind right now at the beginning of the trial, all we would have to do is have the plaintiff to tip the scales so slightly that the evidence would tend to show that the defendant is liable for the damages. Do any of you have any difficulty in understanding the standard by the greater weight of the evidence?

115. Would any of you have any difficulty applying the standard by the greater weight of the evidence rather than the standard of beyond a reasonable doubt which is the standard used in criminal cases?



Attachment "E" – Litigation Evaluation Form

**LITIGATION EVALUATION**

TPW Sent to Client On: \*

Client Set up Appt for: \*

Atty reviewed file on: \*

Review Conducted by: \* on \*

Client: \*

Attorney: \*

D/L: \*

**INFORMATION FROM FILE**

**LIABILITY**

Client is ( ) driver  
( ) passenger

Type of Collision: \*

County: \*

Accident Report Review: \*

Client's version: \*

Position of Client: \*

Witnesses: \*

Property Damage: \*

Photos: \*

Legal Issues: \*

Other: \*

Final Liability Evaluation: \*

**MEDICAL TREATMENT**

PROVIDER	DATES	CHARGES	SUMMARY

Diagnosis: \*

Total Meds: \*

Permanency: \*

Pros: \*

Cons: \*

Other: \*

**LOST WAGES**

**Employer:** \*  
**Date of Hire:** \*  
**Job Duties:** \*  
**Rate of Pay:** \*  
**Time Missed:** \*  
**Lost Wage Statement:** \*  
**Other:** \*

**OTHER DAMAGES**

**Prescriptions:** \*  
**Ortho Devices:** \*  
**Mileage:** \*  
**Hire Others:** \*  
**Other:** \*

## EVALUATION OF CLIENT

- Met with Client on \*

Facts of Accident: \*

Describing Injuries: \*

Describing Treatment: \*

Describing Lost Wages: \*

Describing Effects/Injuries: \*

### Ratings:

- ( ) Appearance
- ( ) Believability
- ( ) Demeanor
- ( ) Attitude
- ( ) Confidence
- ( ) Sympathetic
- ( ) Eye contact

## TRIAL PREP WORKSHEET REVIEW

### EMPLOYMENT HISTORY

\*

### PRIOR CLAIMS/LAWSUITS

\*

### CRIMINAL BACKGROUND

\*

### PRIOR MEDICAL HISTORY

\*

### PRIOR ACCIDENTS/INJURIES

\*

## WITNESSES

### EXPERT MEDICAL

\*

### LIFESTYLE WITNESSES

\*

### EMPLOYMENT WITNESSES

\*

### CHARACTER WITNESSES

\*

## OVERALL EVALUATION

### PRESENTATION OF CASE

Theme of Case: \*

Liability: \*

Damages to Date: \*

Lifestyles Damages: \*

Futures: \*

Witnesses: \*

### RECOMMENDATIONS

\*

### PROS/CONS

\*

### TRIAL BUDGET

Filing Fee: \*

Service: \*

Depo of Def: \*

Depo of Plaintiff: \*

Video Depo: \*

Expert Fee: \*

Subpoenas: \*

## Attachment “F” – Sample Trial Notebook Setup

### TRIAL NOTEBOOK INDEX

- \*. INITIAL PLEADINGS
- \*. PRE-TRIAL ORDER
- \*. MOTIONS IN LIMINE
- \*. JURY SELECTION
- \*. OPENING STATEMENT
- \*. EXHIBITS LIST
- \*. WITNESS LIST
- \*. DIRECT EXAMINATION OF PLAINTIFF
- \*. DIRECT EXAMINATION OF INVESTIGATING OFFICER
- \*. DIRECT EXAMINATION OF \*
- \*. DIRECT EXAMINATION OF \*
- \*. RESPONSE TO MOTION FOR DIRECTED VERDICT
- \*. CROSS EXAMINATION OF DEFENDANT
- \*. CROSS EXAMINATION OF \*
- \*. OTHER TRIAL MOTIONS
- \*. NOTES DURING TRIAL
- \*. FINAL ARGUMENTS
- \*. JURY INSTRUCTIONS
- \*. VERDICT FORM



