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Turn Your Adversary Into an Asset

BY JOHN COCO

As zealous attorneys, we seek every possible advantage in litigation—we hone our skills, thoroughly prepare for trial, and work hard for our clients. But there's an asset in every case that we shouldn't ignore—our adversary. This can be defense counsel, an insurance adjuster, or even an insurance company's top decision-maker. If your adversary appreciates the value of your client's case from the outset, it will be easier for you to obtain a just result.

Mindset reset. The first step to turn your adversary into an asset is to understand that every case is unique. The bumps and bruises of litigation can leave us discouraged and disillusioned. Yet, every day, newly injured people are unwillingly thrust into the legal system and need our help. Each person, injury, and situation is different. You must first believe that your client's case is different. If you don't, your adversary never will. In my practice, we demand the value of the *individual's* injuries, not the value of what is typically paid on a similar injury.

thing for a client is when our adversary considers adding value to the standard amounts paid because of some unique fact. For example, we have had cases for musicians where our result was multiplied many times above the standard case value because of how the injury affected their ability to play their instrument. Think about the thousands of hours of practice that it takes to master an instrument. A standard case involving a non-displaced hand fracture might have damages of \$50,000—but it can be worth much more for a musician if it affects their ability to play and future earnings. If you don't understand this and convey it to your adversary, you are doomed to get a standard result.

The value of your client's case may not be readily apparent to your adversary. It is your job to lay it out for your opponent to see. If you do this hard work early on, you empower your adversary to maximize their valuation because you made it easier for them to understand that value. For example, if there is a particularly important note in your client's medical record,

“Making thoughtful demands will empower your adversary to make your client whole.”

Show and tell. Convey this mindset to your adversary through every document, interaction, and conversation with them. Be particularly mindful of your initial interaction with an insurance carrier or defense attorney. If you send a generic letter of representation, have a generic phone conversation with an adjuster, and eventually file a generic complaint, expect generic results.

Set the right tone by paying extreme attention to all of the details at play in the case—especially the human factors. For example, avoid using language such as “he/she” or “the above-referenced plaintiff” in your letters and pleadings. These shortcuts do not speak to your client's individuality. Include your client's background information in letters and pleadings.

Craft your client's unique story from the case's inception so your adversary will see its value at the outset. The best

specifically mention it in your demand letter and include a copy. If your client is suffering from a complex medical condition, explain it in detail so that your adversary can appreciate its significance and implications.

Give them room. In personal injury litigation, our adversaries' true clients are typically insurance companies, and the company's job is to maximize profits. If we set demands that leave no room for our adversaries to appear to add value, it's hard for them to be an asset in our client's case. Making thoughtful demands will empower your adversary to make your client whole. For example, if you believe a case is worth \$100,000, don't begin there—make a demand that enables you to *end* there. The insurance adjuster may be required by protocol to offer less than they have reserved on the case. Allow the adjuster to show their superior that they were successful in having you come down in your demand.

These are just a few strategies to turn your adversary into an asset. If you begin to think differently about your cases and clients, you may unlock your adversary's help to obtain the justice your clients deserve.

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