



APR - ALTERNATIVE MARKETS

DEDICATED TO PUBLIC ENTITY

LESSONS FROM LOSSES—JURY SELECTION

“The only mistake in life is the lesson not learned.” —Albert Einstein

DESCRIPTION

A law enforcement officer in a city renowned for wealth and status lost control of the patrol vehicle while making a right turn. The officer’s vehicle slid out and hit a stopped car waiting to make a left turn. The claimant’s car had two passengers in it; both passengers were injured, and the vehicle was a total loss. Liability was adverse to the officer, and the case resolution was a matter of resolving damages.

Neither plaintiff was transported by Emergency Medical Services to the hospital from the scene; each plaintiff was treated extensively for injuries: between the two of them, medical expenses exceeded \$1.3MM.

Plaintiff 1 had Alzheimer’s disease and claimed that she sustained soft-tissue injuries to her shoulder, bruising, traumatic brain injury, and spinal injury that required surgery.

Plaintiff 2 alleged cognitive injuries that resulted in memory loss, vertigo, vision loss, numbness, and tingling in her extremities. Orthopedically, she had disc herniations and several steroid injections. She elected to have surgery, and it failed, twice. As a high wage earner, she claimed past wage loss of approximately \$500,000. The medical history reflected longstanding neck issues, depression, and a preexisting disc herniation due to a prior auto accident.

The plaintiffs demanded \$15MM to resolve both cases.

THE RESULT

The city believed the plaintiffs’ demand was unreasonable and did not discount unrelated, preexisting conditions. The city engaged several medical experts to review records, analyze the preexisting conditions, dispute the extent of injuries, and eliminate unrelated treatment. The expert reports rebutted the necessity of medical treatment rendered and confirmed injuries incurred prior to the accident. The city proceeded to trial. The jury-selection process lasted seven days because of difficulty finding an impartial jury. The case did not go to verdict: after a jury was selected, the case settled for over \$6MM combined.

THE PROBLEM

The city struggled to find an impartial jury because of three factors: the perception that the entity had wealth with limitless funds, distrust for the judicial system, and negative sentiment toward police officers. Although this case was an auto accident and did not involve allegations of excessive force, potential juror responses to the voir dire questions evoked strong responses regarding the legal system and law enforcement summarized as follows:



- Lawyers are bad people who twist things to coerce jurors to decide in their favor.
- Never liked anyone who went to law school.
- No faith in the judicial system.
- The justice system is illegitimate and broken.
- The city has money and can afford to pay for pain and suffering.
- Distrust for municipal governments and the police.
- Could not evaluate police neutrally because of personal interactions with officers where the juror themselves or their relatives or friends were racially profiled.
- Officer testimony cannot be trusted. Officers are less likely to tell the truth in order to save their job.
- Officers are not held accountable for their bad behavior.
- Social media has influenced personal beliefs from a positive to a negative view of police.
- The city spends too much money on police.
- The police are a gang.
- The police cater to the rich.

LESSONS LEARNED

Voir dire is French for “to speak the truth.” In court, *voir dire* is the process of questioning panels of potential jurors to identify biases that may impede a fair and impartial trial. Depending on the court, the inquiry may be written, verbal, or both, and it is conducted either by the judge or attorney or directly from either party to the suit.

Influencing factors such as social media, cycling news stories, personal experience, interactions with law enforcement, and deep pockets may affect a jury’s ability to evaluate a case objectively. The jurors’ responses in this matter signal that this community has work to do to establish a positive reputation with its citizens. Recommended actions to improve engagement with the public include involving citizens and business owners in decision-making; creating a media campaign to emphasize a community-oriented policing strategy; and ensuring frequent positive interactions among law enforcement, public officials, and the citizens they serve.

Litigation planning for claims against public entities, particularly law enforcement agencies, should include an early evaluation of the potential jury that may ultimately decide the verdict. If a trial is not an appealing option, consider alternative dispute-resolution strategies such as arbitration with a determined high/low range, mediation, or mock trials.

Note: Although the statements above are based on an actual loss, some of the facts may have been altered for the purpose of illustration and education. This information is not intended as legal advice. Contact an attorney to discuss the specific facts of your case.

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