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TRIAL REPORTER

Journal of the Maryland Association for Justice

IN THIS ISSUE

A CRASH COURSE IN AUTO NEGLIGENCE

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PRESIDENT'S MESSAGE

By Michael J. Winkelman

Acceptable Malpractice

Imagine having a conversation with someone and them saying, "heart disease is the number one cause of death in the United States, but I do not think we need to do anything about heart disease." Or substitute cancer, the number two cause of death in the United States. Have you ever heard anyone say, "cancer is what it is, we should not do anything to research cures."

Of course not. Both would be intellectually absurd notions to advance. Everyone, most notably the medical community and Big Pharma, work tirelessly to improve healthcare to address heart disease and cancer. As well they should.

And it is not just the medical community who works to support heart disease and cancer. Think of the billions of dollars raised every year through charity events for these causes. The V Foundation alone has raised over $400 million for cancer research. I suspect nearly everyone reading this message has either attended, or given money, to a charity event for cancer or heart disease or both.

Yet when it comes to the third leading cause of death in the United States, society, and most importantly legislators, have an entirely different reaction. There are no charity events to slow the third leading cause of death in the United States. Big Pharma and the medical community are not working tirelessly to find a solution to the third leading cause of death in the United States. To the contrary, they are working tirelessly and spending hundreds of millions of dollars a year to perpetuate the third leading cause of death in the United States.

That is because the third leading cause of death in the United States is **medical malpractice**.

George Tolley wrote an article in the last edition of this publication, citing the medical studies which demonstrate medical malpractice kills approximately 400,000 people per year in this country. To give some context to that number, the CDC estimated COVID-19 was associated with 250,000 deaths in the United States in 2022. And we shut the country down for COVID-19.

Why has medical malpractice become acceptable in this country? While the answer is not simple enough to condense into a sound bite, our collective experience helps provide guidance. The primary reason is branding. Corporations, the AMA, the insurance lobby, and certain segments of the population have effectively branded the controversy as doctors vs. trial lawyers. This is exceptional branding as we all know doctors win that contest every time.

The insurance industry pours hundreds of millions of dollars into this topic annually and has used the notion of an insurance crisis[1] to scare legislators into tort reform legislation. They have perpetuated this fallacy by suggesting if tort reform, including caps, were not in place, the industry would collapse and citizens would be unable to obtain healthcare, even though the facts demonstrate that states without caps have the same level of healthcare as states with caps[2].

The media propagates the false notion that runaway verdicts are pervasive, and fraudulent claims are the norm, rather than the exception. Corporations pour millions of dollars into political elections and advertising campaigns to keep medical malpractice safe and affordable.

And lost in all this pseudo-intellectual conversation are injured citizens. People harmed by medical malpractice. There are no charity events for them. No one hosts fundraisers for them. Their rights are trampled and their lives destroyed, and no one seems to care. No one, other than us.

The Sun recently ran an article documenting the continued rise of medical errors in Maryland. According to a study by the Maryland Department of Health, medical errors rose for the fourth straight year. There were 957 adverse events reported last year, including 808 Level 1 events, which are medical errors resulting in death or serious disability. And these are only the reported cases, as the statistics are based on self-reporting by the medical industry.

Yet, medical malpractice case filings in Maryland have remained largely static for years. Health Claims filings average between 600-700 per year, and a significant number of those (between 15-20%) are filed by prisoners and pro-se persons, which do not advance beyond the preliminary stages. So, if malpractice rates are up, why are malpractice claims not increasing?

This is due to a second level of what I term, "acceptable malpractice" in Maryland.

Maryland has passed repeated, and significant, tort reform laws in my practice lifetime. Caps make many cases economically unviable. Pre-trial requirements and specific expert criteria drive up the costs of pursuing cases, creating further barriers. And court created doctrines, like Daubert, can add between $50,000 to $100,000 in additional expense to a case, resulting in many viable cases not being pursued.

We, as an industry of trial lawyers in Maryland, undertake representation in 1 of every 37.5 cases we review. The vast majority of those cases - approximately 20 of the 37.5 - are cases where someone is injured, but they are not hurt badly enough to justify the significant expense associated with pursing litigation. These create

a second category of acceptable malpractice cases - cases where there was likely malpractice, but we cannot pursue the malpractice. While some would say no malpractice is acceptable, I would respond by noting malpractice which is unable to be pursued is, by definition, acceptable.

I do not know if medical malpractice law will ever change in Maryland to help injured people, but I do know our job as trial attorneys is to always fight for those people. And one of the ways we can do that is to educate everyone, this is not doctors versus lawyers, this is injured people versus corporate interests. And injured people should win that fight every time. Should, being the operative word.

Biography

Michael J. Winkelman of *McCarthy, Winkelman & Mester, LLP* practices civil litigation in state and federal courts throughout Maryland and select other jurisdictions, having tried over one hundred cases to verdict before judges and juries. He has extensive appellate experience having argued cases in front of the United States Court of Appeals for the Fourth Circuit, the Maryland Court of Appeals and the Maryland Court of Special Appeals.

[1] Maryland appellate cases which have discussed this topic specifically reference the "alleged" insurance crisis. "Alleged" has been used intentionally, as the judges appreciate the insurance crisis was not proven. Stated in a way which would satisfy our current high court – the alleged insurance crisis would fail a Daubert analysis on nearly every factor.
[2] Medical malpractice accounts for less than one half of one percent of total healthcare costs in the United States.

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Only Answer the Question That Is Asked!! Preparing an Auto Tort Client for Their Deposition

By David F. Risk
McGowan & Cecil, LLC.

When preparing a personal injury client for their deposition in a motor vehicle collision case, the primary goals should be:

(1) Making sure your client understands that during their deposition, defense counsel's most significant objective is to gauge whether a jury will like your client. This goal during deposition prep highlights to the client that their deposition will help their personal injury case if opposing counsel walks away knowing that a jury will find your client credible, and thus more likely to return a verdict in favor of your client.

(2) Make sure that before the deposition, your client has thought about their response to each question opposing counsel may ask during the deposition. This goal decreases the likelihood of a client off-the-cuff blurting out a response that does not accurately reflect their answer to the particular question.

(3) Ensure that your client is aware of the weak elements of their case. That way the client knows how to respond, and how to react when asked about evidence or medical records that can hurt them.

These goals will help the client to be as comfortable as possible going into their deposition, especially if the client has never been deposed before. It is worth noting that in order to achieve these goals, the prep meeting with the client is often more detailed than the deposition itself. Odds are you did an excellent job preparing your client if, after the deposition, your client says, "that was not as bad I thought it would be."

This article will review the best steps an attorney can take to achieve each of these goals when preparing the client for their deposition. However, for you to have the greatest likelihood of accomplishing these goals, it helps for the client to go into their deposition as comfortable with the deposition process as possible, especially if the client has never been deposed before.

One quick note: in-person meetings to prepare the client are significantly more impactful than virtual meetings. An in-person meeting with the client a day or two before their deposition is also a tremendous opportunity to further develop your relationship and rapport with the client, which can really benefit you and the client as the case progresses.

To increase the client's comfort level, I will advise the client of the deposition process, outlining that the client is likely to be asked the following:

- Background information about them, including their family, education, employment, and historical involvement in other legal matters.

- Prior injuries and other health conditions, prior medical treatment, and whether those injuries or health conditions were resolved prior to the subject motor vehicle collision.

- Subsequent injuries and other health conditions, medical treatment, and whether those injuries or health conditions impact the client's current health.

- Facts about how the motor vehicle collision occurred.

- The client's injuries, including the onset of symptoms.

- Medical treatment.

- Lost wages.

- Non-economic damages, including pain and suffering.

- Ongoing injury complaints/permanency.

- If their injuries inhibit their employment moving forward.

- Need for future treatment for the injuries caused by the crash.

Once the client understands that none of these topics are off-limits from the defense attorney's questions, it is important to emphasize the below principles/guard rails for the client to follow during their deposition.

First, and this is intentionally emphasized in all caps, ONLY ANSWER THE QUESTION THAT IS ASKED. It is opposing counsel's job to ask the right questions. The client does not need

to blurt out information that opposing counsel may not have been prepared to ask the client about. We have all had clients who were asked a question towards the end of their deposition, and in response the client volunteered non-responsive information that opposing counsel had completely forgotten to ask, until the client brought up the issue themselves. When explaining to only answer the question asked, I give the client an example. "If I ask you if the color of the sky is purple, your response should be 'no', not 'no, it's blue' because I did not ask what color the sky is." I will also tell the client to be comfortable with any uncomfortable silences. The client should know that after they provide an answer to a question, opposing counsel may intentionally delay moving on to the next question, in order to see if the client will blurt out information. The client must resist the urge to speak to fill a prolonged gap in between questions.

Second, make sure the client knows to take a moment and think about each question being asked before providing a response. The client likely does not want to be there answering questions from the defense attorney and is hoping that their deposition finishes as quickly as possible. However, I will emphasize to the client that they make sure they understand the question being asked, before providing a response. Taking a moment to think about the question before answering, not only provides a pace to the deposition that will calm the client, but it also will prevent opposing counsel from intentionally speeding up the client so they blurt out a response that hurts Plaintiff's case.
Third, make sure the client understands to take their time and review any exhibit shown to them. This is especially important in a remote deposition where it is often opposing counsel broadcasting the exhibit on a screen, without your client being able to physically inspect the exhibit.

Lastly, emphasize to the client that if they do not know the answer to a question, or are not sure of the answer to a question, that they should not guess. It is important that if the client does not know the answer, they should say such during their deposition.

Once your client has these principles and guard rails in mind, begin discussing the substance of the client's responses with them. When reviewing the client's observations of the facts, or injuries, I find it helpful to mock opposing counsel's questions to the client on each issue, as that will provide a good snapshot if a client needs added reminders to follow certain principles. For example, if the client is particularly long-winded, or maybe over-shares when nervous, that will be apparent during mock questions and will allow you to remind the client to ONLY ANSWER THE QUESTION THAT IS ASKED.

Now circling back to the aforementioned 4 primary goals to keep in mind when preparing your client for their deposition, each goal will be examined in greater detail.

Make Sure Your Client Understands That During Their Deposition, Defense Counsel's Most Significant Objective is To Gauge Whether a Jury Will Like Your Client.

The aspect of this goal is to highlight for the client that several of opposing counsel's questions during the deposition will be tailored to determine whether your client will present well in front of a jury. At the end of the day, defense counsel knows that a jury is more likely to return a significant verdict for the plaintiff if your client testifies credibly, and respectfully. I will tell my client that after their deposition, defense counsel is going to write a report to their client that advises whether the plaintiff will testify well in front of a jury. Very often that assessment can determine the likelihood that a fair offer will be made by the defense during settlement discussions.

A great way to promote a client who is family-oriented, hardworking, or active in their communities, is to make sure your client knows to testify to those things when opposing counsel asks your client about their background or asks about how the client's day-to-day life was impacted by their injuries. For example, if your client's injuries inhibited their ability to care for their young children or work a demanding job, yet the client fulfilled those responsibilities anyway, make sure the client knows to testify to those facts. Another way to personalize your client to defense counsel is if you have a client who is physically active, competing in marathons or other competitions, however their injuries prevented the client from participating in those activities.

It is important to remind the client that if they know the answer to opposing counsel's question, the client should provide an answer. There are few things worse than a client who for no reason whatsoever refuses to provide answers to basic questions, simply because those questions are asked by opposing counsel. For example, not answering questions about where the client was traveling from when the crash occurred, or not answering questions about the client's injuries, will present poorly during the client's deposition.

During the deposition prep meeting, I also will advise the client that opposing counsel will ask questions to gauge whether the client will, when given the opportunity, exaggerate their injuries. For example, make sure the client knows they will be asked if they lost consciousness, or if they remain in physical and financial hardship two years after their crash occurred. If the answers to those questions are truthfully "no", the client should answer "no" to those questions. The defense is going to note in the report to their client that the jury will like the plaintiff because they testified credibly, even when given the opportunity to exaggerate.

If opposing counsel has an aggressive style and is likely to aggressively question or confront my client during their deposition, I will let the client know that beforehand. It is helpful to impress on the client to do their best to remain calm and professional throughout the deposition, as this kind of tactic

by opposing counsel is often to measure whether a client will lose their cool when asked questions about negative evidence. Alternatively, defense counsel utilizing aggressive tactics may be to "wear down" a plaintiff, increasing the likelihood of an earlier resolution at a lesser amount than what the defense was willing to resolve the case for.

Make Sure That Before the Deposition, Your Client Has Thought About Their Response to Each Question Opposing Counsel May Ask.

The purpose of this goal is to maximize your client's comfort level during their deposition. It is only natural for one to become uncomfortable when confronted with a question for the first time by an opposing party, especially if the question is raised in an attempt to discredit the client's testimony.

During the client's deposition prep meeting, ask them detailed questions about their injuries, such as what body parts were injured, what that pain and discomfort felt like, and when your client began to experience each symptom. Ask your client when they sought medical treatment for those injuries, and when they sought follow-up treatment. What kind of treatment did your client receive from each provider? Did the treatment help? Did your client follow the recommendations of their doctors? Furthermore, I will ask the client questions about their lost wages claim that I expect will be raised by defense counsel. This way the client is familiar with answering these important questions when the deposition occurs.

During the deposition prep meeting, I will express to the client that if they are certain they know the response to a question, then the client should testify confidently when providing their answer. This is significant in disputed liability cases, where opposing counsel may ask several detailed questions about the facts of the crash. An opposing counsel tactic is to ask questions to your client that are intended to infer that your client does not accurately remember certain facts. For example, questions may be prefaced with "well are you sure…", "how do you know…", or "I am trying to understand what you remember…". The purpose of this questioning style is to gauge whether your client will decrease the level of certainty in their own prior testimony. Ultimately, if your client is sure of their response to a question, it is important that they remain steadfast in testifying confidently while providing the answer. You do not want defense counsel to include in the deposition recap to their client that the plaintiff does not seem sure about the facts of the crash.

If the roadway where the crash occurred and its surrounding areas are significant in a case, make sure your client has an opportunity to refresh their memory of the area. That way when your client is shown a Google Maps image of the crash location, your client is not in the middle of their deposition rushing to figure out which lane their car was located in before the defendant's vehicle drove through a red light, striking your client's vehicle.

Additionally, I try to ask the client each question that I believe opposing counsel will raise during the deposition that draw attention to injury or treatment issues that may not be the strongest evidence for the plaintiff's case. For example, if there is a gap in the client's treatment, or if the client refused medical attention at the scene, ask those questions during the prep meeting. That way the client knows those questions are coming during their deposition, and your client can still comfortably testify to the onset of their injuries, as well as to any treatment gaps.

Ensure That Your Client is Aware of the Weak Elements of Their Case.

The most common negative evidence that will be attacked by defense counsel during a deposition is if the client testifies inconsistently with what is reflected in their medical records. That is why it is very important to review your client's medical records prior to preparing the client. When preparing the client, I will review any medical provider notes with the client that I believe defense counsel may highlight during the deposition.

Best practice is to have all of your client's prior treatment records from before their injury. This is significant in any permanent injury claim, in case there is any prior treatment or injury that defense counsel will emphasize during the client's deposition. If you have those prior treatment records, review any pertinent prior injuries or health conditions that may have impacted your client even before they were involved in the motor vehicle collision. That way there are no surprises during the deposition. You also especially do not want your client to testify there are no prior injuries, if there is a prior treatment record that contradicts that testimony.

At the end of the day, your client's performance during deposition will always be somewhat unpredictable. We will not truly know how the client performs "under the lights" until the deposition occurs. My hope is that this article provides at least a couple of takeaways that can assist in putting our clients in the best position possible for their deposition.

Biography

David Risk is a litigator with extensive trial experience, including more than 20 jury trials taken to verdict. David is also licensed in Virginia, and the District of Columbia.

David previously worked as a civil defense attorney defending personal injury claims. Before going into private practice, David was an Assistant State's Attorney in Baltimore City, prosecuting non-fatal shootings and felony handgun offenses.

David grew up in Maryland and lives in Baltimore County with his wife, son, and 2 daughters. David graduated from University of Maryland School of Law. Before law school, David graduated from Pennsylvania State University.

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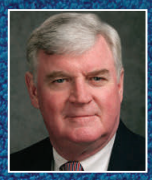
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Transforming Evidence into Emotion

By Sharon Reece-Gleason and Justin Wallace

Yost Legal Group and Law Offices of Justin A. Wallace, LLC

Storytelling is a powerful method for conveying information and events in a way that highlights impactful moments, communicates complex messages and creates shared bonds and experiences between the storyteller, the characters and the listeners. A robust story that is filled with an informative background, a rising plot, an unfortunate event and a life lesson form the basis for a compelling story. Furthermore, techniques used by the storyteller, such as dialogue or visual aids, help to grab the attention of the listeners and emphasize certain points. The listeners' response to a story - commonly evidenced through emotion and understanding - is often the gauge for how deeply the story impacted them.

In the context of law, trial attorneys are essentially experienced storytellers. Each time they present their client's damages to the jury, they are telling someone's life story - including the unfortunate conflict or injury that stemmed from the defendant's wrongful act. In turn, the jury's verdict is the gauge by which trial attorneys can determine whether the story, and their method of storytelling, was successful in appealing to the jury's emotions and persuading the jury to compensate the plaintiff accordingly for the injury.

Persuading the jury to place a monetary value on a plaintiff's injuries and/or pain and suffering is a difficult undertaking. The techniques outlined below have proven effective in capturing the minds of each juror and capturing the jury's collective conscience.

Tell a Compelling Story

Every plaintiff has a story worth sharing and worth fighting for. As advocates for our clients, we have a duty to share this story in a way that touches the heart and soul of each juror.

The most compelling narrative not only simplifies complex data and legal arguments, but also weaves together the emotional journey of the plaintiff from before the incident, to the incident itself and the subsequent harm, to the resulting suffering and its impact on his or her life post-incident. This framework familiarizes and personalizes the plaintiff to the jury, allowing them to really resonate and empathize with the plaintiff's suffering and intangible losses, such as the loss of enjoyment of life, loss of quality of life and emotional distress, among other general damages. For instance, if an individual was an avid runner who enjoyed competing in marathons and, after an unfortunate injury of paralysis from the defendant's wrongful act, is confined to a wheelchair, it is important to detail how this injury has thwarted this individual's passion and zest for life. Tell a story of how this preventable tragedy changed your client's outlook on life forever. Ultimately, an emotional story that humanizes the plaintiff will not only be memorable and persuasive, but effective in obtaining a substantial verdict.

Build Credibility with the Jury

In order to effectively speak to the jury and develop their trust, a connection has to be formed through sincere communication and engagement, buttressed with logical, yet non-patronizing explanations. It is a delicate dance between the two, but one that must be mastered in order for jurors to listen to the evidence with an open mind and believe your convictions about the plaintiff's injuries stemming from the defendant's misconduct. A passionate and logical approach with solid eye contact - beginning at voir dire and continuing on throughout trial - is the most effective method to build an honest rapport with the jury. It conveys the facts of the case in a structured way and helps the jury understand the assignment to attribute a dollar amount to the plaintiff's harm – a concept that can often feel foreign to jurors who are not accustomed to placing a monetary value on a person's life or suffering.

Further, sometimes the less said, the better. Speaking to the jury does not always require a lengthy explanation. On very technical points, keeping the communication concise and simplifying any jargon will improve the jury's understanding of the evidence and increase their connection to you.

Be Mindful of Jury Perception

Each juror comes to the courtroom with their own backgrounds, personal experiences, understandings and perceptions that can greatly impact the group dynamics, the decision-making process and ultimately the verdict. Thus, it is critical not to overlook the importance of dismantling any misconceptions about the plaintiff that could cloud jurors' minds on the origin of the plaintiff's harm or the legitimacy of the severity of the harm. This can be achieved

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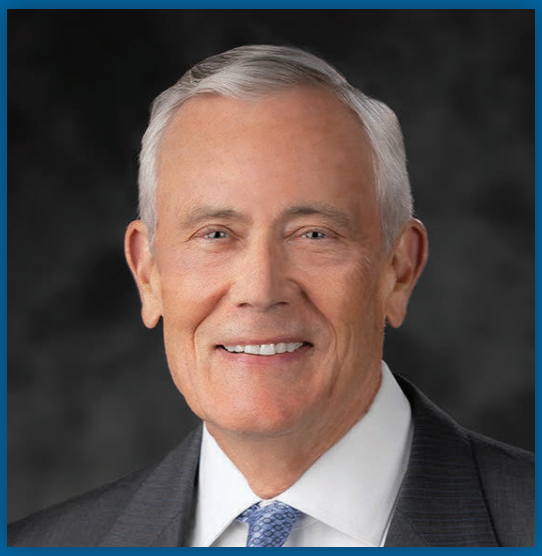

Hon. Harry C. Storm (Ret.)

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The Honorable Harry C. Storm has joined The McCammon Group after eight years of dedicated service as an Associate Judge on the Sixth Judicial Circuit Court for Montgomery County. Prior to his tenure on the bench, Judge Storm enjoyed a successful career in civil litigation with a focus on commercial disputes, contracts, and tort law. He also served as an Assistant State's Attorney for Montgomery County. A Fellow of the American College of Trial Lawyers, Judge Storm is a Past President of both the Maryland State Bar Association and the Montgomery County Bar Association. Judge Storm now brings this exemplary record of excellence and experience to The McCammon Group to serve the mediation and arbitration needs of lawyers and litigants throughout Maryland and beyond.

by directly acknowledging and addressing these misconceptions up front – whether they focus on the plaintiff specifically or the justice system as a whole. This candor will not only build trust with the jury, but also allow each juror to confidently rely on the information and instructions provided as opposed to their individual cognitive heuristics or emotion.

Think Broadly About Non-Economic Damages

The greatest tool in any trial attorney's arsenal is creativity. Many attorneys focus simply on a plaintiff's "pain" or "suffering" from the defendant's misconduct when presenting a non-economic damages case. However, non-economic damages include a much broader array of intangible, negative harm; the absence of which can severely impact a plaintiff's damages award if not presented to the jury. In fact, Maryland Civil Pattern Jury Instruction 10:2 states, in relevant part:

> …All damages that you find for pain, suffering, pre-impact fright, inconvenience, physical impairment, disfigurement, loss of consortium, or other non-pecuniary injury are "Noneconomic Damages"

Thus, presenting non-economic damages affords trial attorneys with the opportunity to discuss the unique impacts of the wrongful act on the plaintiff's life. In doing so, jurors may be able to understand and relate to that particular loss and, in turn, feel compelled to award the plaintiff a more just verdict. For instance, in presenting a plaintiff's injuries of a herniated disc to the jury, the damage element of "inconvenience" could be outlined. While not everyone would understand the subjective, excruciating pain that accompanies a herniation, almost every juror would understand the inconvenience of having to build a schedule around healthcare appointments. Almost every juror would understand the inconvenience that limited mobility would have on the amount of time it takes to complete everyday tasks. Further, almost everyone could understand the inconvenience that a potential need for surgery could have on one's psyche and nerves, as the pain of the injury intensifies and non-invasive treatment becomes ineffective. Similarly, in a motor vehicle accident case, almost every juror could understand the inconvenience of losing a vehicle entirely from an accident or having to rent a vehicle for a period of time while their own vehicle is undergoing repairs. In sum, regardless of the type of case or the severity of the injury, there are countless examples of inconvenience that should be presented to the jury to humanize the plaintiff in the jury's eyes as well as garner genuine compassion and understanding for the hardship that the injury has had on the plaintiff's life.

Appeal to Their Emotions

TThe emotional connection for any activity is important in a damages case in order to maximize empathy. The impact of each individual harm on a plaintiff as a result of a defendant's negligence is more easily understood when the emotional effect of that harm is presented clearly to the jury. Perhaps a plaintiff has an elderly grandmother they are close to that they take to lunch every Wednesday. In the months following the injury, the plaintiff was unable to make time between doctor's appointments for those lunch appointments. It is not enough to elicit the loss of activity; the emotional toll must also be elicited from the plaintiff. Maybe the plaintiff felt that they lost quality time with their grandmother or feels that they "let down" their grandmother. Perhaps another plaintiff felt that their physical impairment caused, or continues to cause, a burden on their family. Not every juror takes their grandmother to lunch weekly, but every juror knows (and hates) the feeling of having let someone down. Every juror can understand not wanting to feel like a burden on a loved one. Not every juror is fortunate enough to plan vacations to Europe that they then miss out on due to an injury, but every juror can understand the emotions attached to missing out on quality time with family or friends. Thus, the key to making every element of a plaintiff's damages case understandable is to boil the loss down to an accompanying emotion or feeling that the jury can connect with. Once this is done, the jury will have an easier time assigning a monetary value to what was taken from the plaintiff.

Conclusion

Jury trials, in many ways, are case studies on how ordinary citizens - often from various walks of life - think, perceive and interpret complex evidence presented to them. Thus, presenting damages to the jury is all about the art of persuasion. Convey a compelling, emotional and illustrative story of the plaintiff's indelible losses to the jury that, in turn, will motivate and empower each juror to create a positive, final chapter (and new beginning) to that story - with a verdict that is both meaningful and just.

Biographies

Sharon Reece-Gleason, of the *Yost Legal Group*, is an attorney in Baltimore, Maryland. Sharon has successful tried and/or resolved numerous cases filed in Baltimore City Circuit Court. Currently, her practice focuses primarily on toxic torts and mass tort litigation matters that have been consolidated into multi-district litigations.

Justin Wallace, of the *Law Office of Justin A. Wallace, LLC*, is a solo practitioner in Timonium, Maryland. Justin's practice focuses on civil litigation in personal injury matters. In practice since 2015, Justin has successfully tried numerous Circuit Court jury trials throughout the State of Maryland.

Habits of a District Court Warrior

By Robert Coleman Westbrook Flowers

Marks & Harrison

Introduction

In the early years of any trial lawyer's practice, it is critical to absorb every available opportunity to learn from great and seasoned trial attorneys (and hopefully someone also already encouraged you to become part of the MAJ's cooperative community of seasoned trial lawyers). But for this article, I learned the habits of a *particular* seasoned attorney, Eric Schloss, to provide practical advice for the young practitioner.

Many of us know or at least *know* of Eric. For our newer members and readers, Eric Schloss is (among many things) a very accomplished trial attorney as well as a very approachable and friendly guy. Eric has been in more courtrooms than most lawyers will see in their career, and his career has been built in the crucible of the high-volume practice. A search of Eric's name under the Maryland Judiciary Case Search actually *caps* out the court's system, exceeding five-hundred results. Eric's robust practice meant he had to figure out how to prepare, how to survive, and how to consistently excel in District Court — the arena where many young lawyers' practices take off or fizzle out.

When I sat down with Eric, I was already expecting to hear war stories (and I definitely did) but what shined through our interview was Eric's knack for mentorship and his true love of connecting and sharing his experiences.

In speaking with Eric, I wanted to know what habits separate the lawyers who thrive in District Court from those who just get by? What makes a "Courtroom Warrior:" the kind of attorney who doesn't just show up, but dominates the process and earns the respect of judges and even opposing counsel? What career pathways create great trial lawyers?

So, over the course of a generously long interview, we went through the experiences and lessons that shaped his approach and the practices he still relies on decades later. Unfortunately, I lack the word budget to lay out his wisdom in full, but what follows is a summary of the paths that led him to success and the habits he believes any young lawyer should cultivate if they want to succeed in trial work and thrive in their career.

Embrace High Volume and Challenging Cases

I wanted to start with Eric's history - what early career decisions shaped the outcome of who he is now.

Mr. Flowers: "Was there a particular moment or case early in your career that shaped how you approach litigation today?"

Eric didn't hesitate. He went straight back in 1995, when he was a young developing trial lawyer at *Saiontz & Kirk*.

Eric Schloss: "Their (*Saiontz & Kirk*) system was simple: every Friday, each of us got five new files. The goal was to keep a hundred cases in *litigation* at all times. Within a year and a half, I was managing more than a hundred auto negligence cases in District and Circuit Court in Maryland and D.C. …"

Eric Schloss: "So I'm doing on average anywhere from as many as two to three District Court trials a week and I could be doing one to two jury trials a month. And as a young associate at that firm, I was the lowest person on the totem pole. I'm getting the worst of the worst, I'm getting the low [property damage] or no [property damage], gaps in treatment, disputed liability, etc. and I was *winning* those cases."

In short, starting out, Eric got the scraps. It was a trial by fire. But with a look of reminiscing on his youthful revelation, he said: "That's when I knew I had what it takes to be a litigator."

For young lawyers, there's a simple takeaway here: don't shy away from volume, and embrace those challenging, fringe cases. Those messy, low-value cases are where you develop your chops. You'll learn courtroom procedure by repetition, you'll sharpen your instincts, and you'll develop the confidence that only comes from standing in front of a judge or jury again and again. It might feel overwhelming at first, but Eric insists there's no substitute for that kind of early experience. He encourages young lawyers to seek out as much courtroom time as possible through PD's offices, SAO's offices, insurance defense firms, or high-volume PI firms. "You want to know if litigation is for you?" he said. "Get into a place where you're in court every week. You'll find out fast whether you can handle it."

Lean on Mentorship and Build Relationships

The conversation then turned to how Eric developed the skills to handle more difficult cases along the way, and how he learned to handle the messier cases *before* he had the vast amounts of experience that he has today. He highlighted that cooperation with colleagues, variety, and perspective is key to building any case strategy.

"I wouldn't just go to one mentor," he told me. "I'd ask several lawyers, hear their perspectives, and *then* choose my strategy." In those early years, he learned by canvassing the experience of those around him, and that habit became a philosophy. Today, even for the experienced trial lawyer, he champions formal mentorship programs.

But mentorship isn't just about senior lawyers. Schloss stresses two other avenues of growth, cooperation among your plaintiff-inclined colleagues and civility and relationship building with opposing counsel. Eric said: "My mentor told me: we all play in the same sandbox. Do favors for the other side, because you never know when you'll need one. I've built my reputation on that." It's advice every young lawyer should take seriously. Your reputation isn't just with judges and clients — it's also with your colleagues on the other side of the table. Not even one of us is on an island.

Always Work with the Fact-Finder in Mind

A critical skill for any young lawyer to develop is case identification and screening. Many successful managers of law practices develop and laud the skill of selecting the right cases and identifying strong or difficult cases early. I wanted to ask Eric's how he identifies these, and what his calculus was for whether he should try a difficult case. To that end, I asked him what principles guide him today in deciding whether or not to move forward with a case.

Flowers: "What practices do you follow today when evaluating whether a case is worth pursuing?"

Schloss: "In my early years, I didn't get to choose. At *Saiontz & Kirk* and later at *Gordon Feinblatt*, cases were just handed to me — the good, the bad, and the ugly — and I litigated them all. Now, in my own practice with my partner, Lee Saltzberg, I get to screen my own cases. Most of the time, liability is straightforward — rear-end collisions at stoplights, for example. But when it's iffy — maybe the client waited weeks before seeking treatment, or liability is questionable — we have a chat… and, when it's an iffy case, my partner and I ask, 'What would a judge or jury think about this?' If the client waited weeks before seeking treatment, or liability is shaky, we put ourselves in the fact-finder's shoes. *That* question guides our decisions."

It's a simple discipline, but can be a powerful tool. Too often, young lawyers get caught up in what they think of a case, or what they hope a client deserves. Schloss reminds us to remember that it's the judge or jury who ultimately decides, and you have to build your evaluation around that perspective from day one. He also quietly nods at the fact that it is important to collaborate on these decisions, to keep your perspective fresh and avoid becoming stale in your analysis.

Discovery —Stay on the Offensive and Dedicate Time Just for It

With any litigation practice comes managing discovery. In dissecting Eric's process and habits, I wanted to explore both his *philosophy* around discovery and his case-by-case *habits*. Discovery, Eric insists, is not busy work nor an afterthought. It's where trial themes are born. Unlike many high-volume lawyers, he personally dictates his discovery responses when he has total peace, often late at night or on weekends.

Eric Schloss: "That's when it's quiet. No phone calls, no emails, just me, the file, and my dictation machine. That's where I start to really figure out: how am I going to try this case?"

This dedicated time away from distractions is the key to thinking deeply in your cases, reflecting on your trial strategy, and deepening your practice. Find some time you can set aside and get away from the noise and interruptions.

Eric also uses early discovery as a psychological tool to keep defense counsel off balance. "I'll send unexecuted answers right away with a note: 'I'll provide the signed page once I have it. In the meantime, please send me yours.' I want them thinking I'm already ahead of them — because I am." Using the early response sends a clear message that you're not only ready and on top of this file, but that your case is to be taken seriously.

The lesson here is clear: discovery isn't something you delegate and forget. It's an opportunity to shape your case, deepen your practice, and set the tone with your opponent.

Prepare Clients Relentlessly

Moving through the life cycle of a district court case, we moved on to trial preparation and more specifically, client testimony. Eric's tone turned serious. He sees rigorous client preparation as a non-negotiable.

Eric Schloss: "I refuse to put any client on the witness stand who hasn't given me at least an hour of prep," he said. "I've told clients flat out — if you won't make time, I'll postpone the case before I put you up unprepared."

His process is structured and follows many good trial clinics and CLEs on client preparation: first, advice - he goes over the dos and don'ts of testimony. Then, practice, he takes clients through their story chronologically — background, accident, treatment, damages. Finally, he cross-examines them himself, stress-testing weak answers or poor recollection by putting on the 'defense hat.' There are entire courses and seminars on how to effectively do this, so we didn't waste too much time on the nitty-gritty here.

I queried if he'd ever gotten push back from his clients when being cross-examined by their own attorney. If he does, Eric tells them: "If you think I'm being tough, wait until you see the defense attorney." Most get the point quickly.

For young lawyers, the takeaway is obvious: no amount of lawyering can fix a client who isn't prepared to testify. It's your responsibility to make sure they're ready.

Be Organized and Adaptable at Trial

Next, I asked about Eric's trial routines. How he prepares his files and handles the chaos of a District Court trial, where surprises are common and cases move quickly.

First, he touched on technology.

Eric Schloss: "You can't be a trial lawyer and be paperless," he said flatly. "…I've seen some [attorneys] do it and they fail at it. They only show up to court with their laptop and that's all they have. And when the time comes, they struggle to find what they need." He described in detail exactly how his case file is organized and what he brings with him to court. His trial files are meticulously tabbed — correspondence, bills, discovery, police reports, notes on body-cam footage, and exhibits — everything where he can grab it instantly. If you want the nitty gritty, email Eric.

He stresses that having a set system for your files allows you to handle the high-volume practice. But he notes that being organized isn't the same as being rigid.

Mr. Flowers: "So, to summarize: have a system -with physical media at trial - and then adapt your system to your case and improve your system over time?"

Eric Schloss: "Yes, and with enough preparation and knowledge of my case, if somebody throws me a curveball during a trial, I am ready and flexible."

Eric urges that the more you can get away from any sort of question list or script, the better lawyer you'll become. He stopped scripting questions years ago. Instead, he writes down *only the answers* he expects from the witness.

Eric Schloss: "If you're staring at a script, you can't pivot when something unexpected happens," he explained. "If I need a reminder to put me back on track, looking at the drafted answer cues me on the fly. That's how you adapt your 'question list' into a flexible tool."

The lesson for new lawyers: figure out your system, prepare meticulously, but keep yourself flexible in the moment and not married to your planned questions. Court rarely goes exactly as planned.

Always Be Teaching — Always Be Learning

Finally, we talked about what made Eric an accomplished trial attorney and what keeps him from getting complacent after hundreds of trials. His answer: teaching and learning, *all the time*.

Eric sees himself as an educator in the courtroom. He urged that you need to know the law *well enough to teach it to someone* in order to be successful in court and edge out those cases where either the facts are close or where the judge doesn't have the same legal background as the lawyers.

Eric Schloss: "You do not assume the judge knows everything. A lot of judges did not do what we do. They didn't do personal injury before they went on the bench. They don't know all the things that we know. If it's a close call, bring the statute and bring case law. And if you don't know what statute or case law applies, *put it on the MAJ list-serve*. Say 'hey, I have this case coming up. These are the facts. Does anyone know of a statute or case that I should be?'"

He continues to explain that when the case is close, a statute or case law serves as the final brick over your opponent's argument. "…When you have it - Hand it up. Give the court something to hang its hat on."

But more than just a trial tool, learning and teaching is what has made and kept him sharp.

Eric Schloss: "Too many young attorneys go in the hallway when their case isn't called. Stay in the courtroom. You'll learn more by watching mistakes and successes than you will anywhere else."

For Schloss, the habit of learning and teaching applies especially to himself. Even after 30 years, he still sits in on other lawyers' trials. He said: "Every file teaches me something new. You adapt, you stay prepared, and you never stop learning."

Do What You Love, With People You Love to Work With

We ended our conversation on the subject of maintaining a high-volume career for 30 years and avoiding getting burnt out. Eric's view is simple. If you don't love the work (or where you're working) something has got to change.

Eric Schloss: "If that alarm goes off and you don't *jump* out of bed excited to be plaintiff's personal injury lawyer, you're either at the wrong firm or you're doing the wrong area of the law. Let's be honest, we're at the office one-third of our life. So, if you're at the office at minimum of one-third of the day, then you better love what you're doing - I don't care what your career is. Am I stressed every day at work? Of course, I am because I'm juggling so many files in litigation… but I come to the office happy. I leave the office and go home happy. I work nights and weekends - and I'm happy. If I wasn't happy, I wouldn't be doing all this… and neither should you."

Closing Thoughts

For Eric Schloss, these habits aren't abstract ideas. They're lived practices, developed and tested in thousands of cases. They're about preparation, perspective, and persistence. And they are lessons every practicing lawyer can apply.

If I could tie together the entire interview into a tagline it's this: "Never coast, never assume, never stop learning, and make sure you're happy in what you do." That, perhaps, is the path to becoming a District Court warrior.

Biographies

Robert C. Flowers is a personal injury attorney with *Marks & Harrison, PC*, where he zealously pursues the rights of the injured and enjoys a robust trial practice. Robert began his law practice as an immigration attorney after graduating from American University Washington College of Law in Washington, D.C. He is fluent in Spanish and prides himself on serving the Latino community of the greater DMV area.

Robert is also the Treasurer of the Maryland Hispanic Bar Association, is an active member of the Maryland State Bar Association and the Maryland Bar Foundation, and is a graduate of the MSBA's Leadership Academy. Robert is licensed in Maryland, Virginia and the District of Columbia. In his free time, he enjoys spending time with his wife and daughter, exercising, and practicing martial arts."

Eric N. Schloss has practiced at *Saltzberg & Schloss* in Towson, Maryland since 2015. He practices personal injury in Maryland, Virginia and Washington, D.C., concentrating in injuries caused by motor vehicle collisions, workers' compensation cases, premise liability and personal injury litigation.

Eric has an AV Rating with Martindale-Hubbell. He was selected to the 2025, 2024, 2023, 2022, 2021, 2020, 2019, 2018, 2017, 2016, 2015, 2014, 2013, 2012, 2011 and 2010 lists of Maryland Super Lawyers in Maryland Super Lawyers Magazine in the area of Personal Injury Plaintiff: General. He was also selected as a "2020 Top Rated Lawyer in Personal Injury Law" in The DC/ Metro area by ALM (American Lawyer Media) and Martindale-Hubbell. Additionally, he was elected as a "2013 Top Rated Lawyer in Personal Injury Law" by American Lawyer Media and Martindale-Hubbell and was selected to the 2009 Rising Stars as seen in Maryland Super Lawyers magazine in the area of Personal Injury Plaintiff: General.

Eric serves on the MAJ Board of Governors (2005-present), is a Past President of MAJ (2021-2022), serves on the MAJ Legislative Committee, testifies before various committees in the Maryland General Assembly, is a frequent lecturer for the MAJ and frequent writer for the MAJ Trial Reporter.

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The Impact of Workers' Compensation Benefits on First and Third-Party Claims

By Rebecca L. Smith and Cooper Tanbusch

Warnken, LLC

When someone is injured by a third-party during the course of their employment, under MD Ann. Code, Labor and Employment, § 9-901, the injured worker is entitled to file both a workers' compensation claim and a third-party personal injury claim against the person liable for the injury. The interplay between workers' compensation claims and negligence claims is important to consider from intake until the final settlement disbursements are made. Knowing what claims need to be filed first, how to maximize recovery for injured workers, and how to ensure that coverage is adequate are key.

Is There a Viable Workers' Compensation Claim? Is There a Responsible Third-Party? Is There PIP and UM/UIM Liability and Coverage?

An accidental personal injury is "an accidental injury that arises out of and in the course of employment."[1] Whether an injury arises out of or in the course of employment depends on a number of factors. Once it is determined that there was an accidental personal injury, it is important to determine whether a third-party's negligence caused the injury.[2] If a third-party caused the injury, during intake, gather as much information as possible so you can determine insurance limits for the injured worker under a personal policy and for the negligent third-party. If there is a negligent third-party, the injured workers' policy must be examined to determine if there is PIP coverage and UM/UIM coverage. Knowing this information at the beginning of a case is required to ensure that the injured worker receives all benefits in which they are entitled.

File and Collect Benefits Under Personal Injury Protection (PIP) Before Filing and Collecting Benefits Under the Workers' Compensation Claim.

Under Maryland Insurance Code § 19-507, the PIP insurer has no right to recover on any benefits they have paid out, whether medical or monetary. However, if workers' compensation insurance does pay before the PIP insurer, the amount the Claimant may recover under PIP is reduced to the extent of the benefits paid by the workers' compensation insurer. As such, when possible, the PIP claim should always be filed before the workers' compensation claim. A PIP carrier may try to escape responsibility for paying benefits by sending medical billing to the workers' compensation insurer directly. You should ask the workers' compensation insurer to refrain from paying any medical benefits until you request payment on medicals.

If workers' compensation insurance does pay before PIP insurance, PIP is reduced to the extent workers' compensation insurer paid benefits. It is important to keep in mind, however, that PIP will pay for 85% of the injured workers' lost wages; if the injured worker is receiving TTD at 66.67% of their average weekly wage, the attorney can make a claim under PIP for the difference between the 66.67% TTD payment and 85% that PIP would pay.[3]

Once the benefits your claimant can receive from PIP have been exhausted, you can then file the claim with the Maryland Workers' Compensation Commission.

Clearly, there are situations where filing the PIP claim prior to the workers' compensation claim is not a viable option. Claimants who are missing work and/or need extensive treatment immediately may not have the ability to wait to file a workers' compensation claim.

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Filing the Workers' Compensation Claim Before Settlement of Any Third-Party Claim

Workers' compensation claims must be filed within two years of the date of accident. The workers' compensation insurer shall not pay benefits to the claimant unless a claim is filed. Practically speaking, the workers' compensation claim should be filed immediately after PIP is exhausted, or sooner if the circumstances require.

The workers' compensation claim must be filed prior to the settlement of a third-party negligence action. If a third-party claim has been settled prior to the filing of a workers' compensation claim, the workers' compensation claim will be barred.[4]

Third-Party Claims and Workers' Compensation Liens

The lien is one of the key components in the interplay of a workers' compensation claim and a third-party claim. There is a statutory lien that must be repaid when a third-party negligence action is pursued in addition to the workers' compensation claim.[5] Even if the Claimant decides not to pursue a workers' compensation claim, if the workers' compensation carrier paid any reimbursable benefits, a lien is created and must be honored.[6]

A workers' compensation carrier's lien encompasses any compensation, medical benefits or funeral expenses paid by the workers' compensation insurer. This includes all indemnity payments (TTD, TPD, PPD, PTD, VR/TTD) and all medical expenses. The lien, however, only attaches to a benefit the Claimant can receive under workers' compensation; if a claim is made for economic or non-economic damages not covered by Subtitle 6 benefits, loss of consortium, or lost wages from secondary employment, the workers compensation lien would not attach.[7] The workers' compensation carrier's expenditures on defense – such as payments for attorneys and surveillance – will also not be included in the lien.

The workers' compensation carrier also cannot claim the total amount of medical costs billed. The carrier can only claim the amount that it has paid on the claim.[8] The lienholder is also responsible for their proportional share of the attorney's fee and expenses.[9]

First-Party Claims – Uninsured Motorist (UM) and Underinsured Motorist (UIM) Claims

Unlike a third-party negligence claim, first-party claims such as UM and UIM claims can, and sometimes should be, brought before the workers' compensation claim.[10]

For first-party claims, there is no statutory lien and there is nothing that is repaid to the workers' compensation carrier for any recovery from a first-party action. Instead, the UM/UIM cause of action is offset by the unpaid portion of any workers' compensation lien. The worker's compensation carrier would receive no such credit or offset from the UM/UIM carrier because UM/UIM benefits are first-party contract benefits.[11] Statutory liens based on third-party recovery do not attach to the recovery of first-party benefits, however, due to the "one recovery" rule, the UM/UIM carrier may adjust the total amount of coverage available.[12]

The UM/UIM benefits are reduced to the extent that the Claimant recovered money that was not reimbursed to the third-party lienholder. To determine how much UM/UIM coverage is available the attorney can deduct their costs and expenses of the action and ensure the third-party lienholder is reimbursed for compensation paid, medical services, and funeral expenses. The Claimant keeps the remainder after the attorney's fees are deducted and the third-party lienholder is reimbursed.[13]

Thus, if there is no workers' compensation lien to be reimbursed because UM/UIM benefits were pursued first, then there is no offset in the UM/UIM claim. Likewise, if any workers' compensation lien is paid in full, there would be no offset in the UM/UIM matter.[14]

Because of this, it is imperative to determine whether a negligent third-party has insurance before the workers' compensation claim is filed to determine which claim should be pursued first. Likewise, the injured workers' insurance coverage for UIM should be obtained as soon as possible to determine whether the third-party claim and UIM should be pursued after the workers' compensation claim is filed, but before permanent disability benefits are pursued in the workers' compensation matter. The more benefits that are paid in the workers' compensation claim, the less coverage available for the UM/UIM case.

The Employer and/or Workers' Compensation Insurer Can Pursue the Third-Party Action

If no third-party claim is filed by the Claimant, the Employer, Insurer, Subsequent Injury Fund and the Uninsured Employers' Fund have the right to bring a third-party action as a derivative suit on behalf of the Claimant. These entities have two months from the issuance of an Award from the Commission to file suit.[15] If they do bring a derivative third-party claim, the entity bringing the claim bears a fiduciary duty to recover as much as possible for the Claimant.[16]

If a derivative suit is not brought at the end of two months after the Award Order, the Claimant can file their own third-party claim.

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Third-Party Claims and Holidays

If the Claimant received any money from the third-party case after repayment of the statutory lien, the workers' compensation insurer is allowed a "holiday" on its payments. A holiday allows the workers' compensation insurer to receive a credit towards any future workers' compensation benefit, including medical treatment and indemnity benefits, up to the amount the claimant received in their pocket from the third-party action.

For example, should the Claimant receive $5,000.00 from a third-party action, the workers' compensation carrier is entitled to receive a credit toward any future workers' compensation benefit up to this amount.

The holiday can apply when the Claimant seeks further workers' compensation benefits. When negotiating with the workers' compensation carrier regarding the lien repayment, ask that any holiday be used for future indemnity benefits only to ensure that the claimant can receive necessary treatment if needed in the future without worrying about the holiday.[17]

Liens Higher Than Limits

There is a possibility that a Claimant could recover nothing from a third-party claim.

When a Claimant receives a third-party settlement or award, the attorney's fees and expenses (and any possible government liens) must be paid first. Following the payment of any attorney's fees and government liens, the Employer, Insurer, Subsequent Injury Fund and/or Uninsured Employer's Fund's subrogation rights follow; the Claimant must reimburse for prior compensation paid, even if it means the Claimant recovers nothing.[18]

This problem can arise when the workers' compensation lien is greater than either the tortfeasor or first-party coverage. When this occurs, pursuing any action outside the workers' compensation claim is one of coordinating with the lienholder over the amount of the repayment of the lien. If the workers' compensation carrier agrees to reduce its lien, the first-party benefit will still be reduced because the amount of the unpaid lien will still be counted against the Claimant.[19]

What Does This All Mean?

Coordinating benefits is paramount! During intake, ask questions to gauge whether the claimant has PIP coverage, whether filing a PIP claim before the workers' compensation claim is a feasible option, and whether the third-party is insured. If possible, PIP and UM claims should be pursued before a workers' compensation claim is filed.

A workers' compensation claim must be filed before settlement of an action against a third-party. However, if the tortfeasor has minimal limits and there is a UIM potential, it may be worth filing the workers' compensation claim, pursuing limits in the third-party action, repaying the compensation lien to date, pursuing UIM, and then pursuing the permanency benefits through the workers' compensation claim.

Biographies

Rebecca Smith is a Partner at *Warnken, LLC*. Her practice focuses on representing individuals in workers' compensation matters and other personal injury matters. She is a member of the Maryland Association for Justice (MAJ) and is co-chair of the Workers' Compensation Section. Rebecca is the architect behind the website mdcomplaw.com, which allows injured workers to obtain an estimate of workers' compensation recovery based on information provided by the injured worker.

Cooper Tanbusch is a recent graduate of the University of Baltimore Law School, and current paralegal at *Warnken, LLC* for Rebecca Smith. He is also a proud member of the National LGBTQ+ Bar Association. Outside of work, he enjoys spending time with his dog and going to concerts.

[1] Md. Code Ann, Lab. & Emply., § 9-101(b). 19-507.
[2] § 9-902. Action against third party after award or payment of compensation
[3] § 19-513. Limitations on recovery of benefits; § 9-903. Effect of receipt of amount in action
[4] Saadeh v. Saadeh, Inc., 150 Md. App. 305, 819 A.2d 1158 (2003).
[5] MD Labor and Employment Code § 9-902 (2024).
[6] Parry v. Allstate Ins. Co., 408 Md. 130, 968 A.2d 1053 (2009).
[7] Baltimore County v. Ulrich, 468 Md. 545, 228 A.3d 164 (2020).
[8] TravCo Insurance Co. v. Williams, 430 Md. 296 (2013).
[9] Ross v. Agurs & Progressive Ins. Co., 214 Md. App. 152, 75 A.3d 1022 (2013).
[10] MD Insurance Code § 19-509 and § 19-509.1 (2024).
[11] Erie Ins. Co. v. Curtis, 330 Md. 160, 623 A.2d 184 (1993).
[12] Id.
[13] Ross v. Agurs & Progressive Ins. Co., 214 Md. App. 152, 75 A.3d 1022 (2013).
[14] Saadeh v. Saadeh, Inc., 150 Md. App. 305, 819 A.2d 1158 (2003); Central GMC, Inc. v. Lagana, 120 Md. App. 195, 706 A.2d 639 (1998).
[15] MD Labor and Employment Code § 9-902 (2024).
[16] Podgurski v. OneBeacon Ins. Co., 374 Md. 133, 821 A.2d 400 (2003); Franch v. Ankey, 341 Md. 350, 670 A.2d 951 (1996); Erie Ins. Co. v. Curtis, 330 Md. 160, 623, A2.d 184 (1993); Hayes v. Wang, 107 Md. App. 598, 669 A.2d 771 (1996)
[17] MD Labor and Employment Code § 9-903 (2024).
[18] Podgueski v. OneBeacon Ins. Co., 375 Md. 133, 821 A.2d 400 (2003).
[19] Ross v. Agurs & Progressive Ins. Co., 214 Md. App. 152, 75 A.3d 1022 (2013); Parry v. Allstate Ins. Co., 408 Md. 130, 968 A.2d 1053 (2009); Blackburn v. Erie Ins. Group, 185 Md. App. 504, 971 A.2d 368 (2009).

Following the Digital Trail: Practical Uses of Geodata and Metadata in Litigation

By Melissa Maiese

Wais, Vogelstein, Forman, Koch & Norman

Introduction

The modern courtroom is increasingly digital. Evidence no longer comes solely in the form of eyewitness testimony or paper records. Instead, evidence now includes electronic data that can confirm timelines, authenticate documents and locate individuals with remarkable precision. Metadata (data about data) and geodata (location-based digital records) are at the forefront of this shift. Specifically, metadata provides critical contextual information. It automatically records details such as who created the data; when the data was created or modified; where the data originated; what devices or applications were used; and how the files were accessed, stored, or edited. All digital files contain metadata. It can be in the form of a Microsoft Word file's revision history, a photo's timestamp and geotag, or the audit trails of an electronic medical record. Geodata refers to information tied to the geographic location. This information can come from cell tower records, aerial photographs and Geographic Information System (GIS) models, social media check-ins included on an individual's posts, or GPS logs from a smartphone or vehicle navigation system.

Together, metadata and geodata increase litigators' credibility to the jury, expose inconsistencies and illustrate evidence visually in a way jurors often find persuasive. In essence, their role in litigation is growing - from criminal prosecutions to civil disputes - and their effective use requires both legal and technical acumen.

Case Applications

Automobile and Trucking Cases

The precision of electronic data has proven invaluable for automobile and trucking accident litigation due to its accuracy that is often more reliable than eyewitness accounts. Federal law requires commercial motor vehicles to use ELDs, which automatically record driving time and sync with the vehicle's engine. In litigation, ELD records can establish compliance with hours-of-service regulations; demonstrate driver fatigue or violations; or provide timelines contradicting or corroborating driver testimony. In addition, trucks often contain EDRs (the "black box"), which log critical data such as the truck's speed at the time of collision, the driver's brake application and throttle use and even seatbelt engagement. Combined with GPS fleet tracking, these data points allow attorneys to reconstruct an accident minute-by-minute.

This data can be collected from a driver's dashcam video, a truck's electronic logging device (ELD) entries, or a vehicle event data recorder (EDR) log which can show acceleration, braking, and speed. With these technologies, metadata and geodata can pinpoint the timing of the impact, outline the driver's behavior prior to impact and track the movement of the vehicle with remarkable precision.

Medical Malpractice and Professional Liability

There is a common adage in medicine: If it was not recorded, it was never done. Audit trails from electronic medical records should be increasingly scrutinized by plaintiff's attorneys. These metadata logs can reveal whether a chart note was created contemporaneously with treatment or backdated later. They can also reveal how long a doctor, or even an opposing expert, reviewed the medical records. Thus, inconsistent metadata can significantly undermine healthcare provider's credibility, while accurate audit trails can corroborate testimony.

Environmental and Mass Tort Litigation

Remote sensing, aerial photography, and GIS models have been admitted to illustrate environmental damage and establish liability. In Canadian cases, color infrared photography was used to prove herbicide drift damage, leading to settlements without trial. These technologies enable jurors and judges to visualize harm in a way traditional testimony cannot.

Admissibility and Authentication

Per the Federal Rules of Evidence 901 and 902, courts generally accept metadata to prove the existence and timing of records, but proving substantive content often requires additional authentication. However, courts diverge on when expert testimony is necessary and currently there is limited, if any guidance from

the appellate courts of Maryland. In the unreported opinion, *E&R Services, Inc. v. Thompson* (2021), the admissibility of metadata became central. A slip-and-fall plaintiff claimed injury from construction debris on a sidewalk. Defense counsel sought to introduce the digital "date taken" from an iPhone photograph of the alleged hazard. The trial court excluded the metadata, reasoning that the Plaintiff could testify that she took the photo on her iPhone but she could not testify as to the embedded information. The metadata could only be admitted via stipulation or through a qualified expert witness. The appellate court disagreed, finding that the average juror was able to understand the concept of the date the photo was taken, without the aid of expert testimony.

As attorneys, the Bench, witnesses, and jurors become more tech savvy the line that demarcates lay knowledge versus expertise will continue to move. As of today, courts may allow lay testimony for simple photo timestamps but complex datasets such as crash downloads from EDRs, GPS coordinates, or fleet telematics usually require expert interpretation. This can be cost prohibitive in many cases and should garner intentional deliberation from the attorney.

Hearsay Concerns

There is no way around it, metadata is hearsay. However, metadata often falls under the business records exceptions when generated in the ordinary course of activity. Audit trails, ELD and EDR records are generally admitted under the business records exception if generated in the regular course of business. However, courts scrutinize whether the records reflect mere existence (date created) versus substantive content (e.g., contents of a text message). Metadata proving the existence or timing of such records is often admissible, while substantive content (e.g., driver communications) requires further authentication.

Practical Challenges

There are other practical challenges for which all attorneys should be aware.

1. Privacy and Constitutional Limits

Overbroad warrants or discovery requests risk suppression under the Fourth Amendment. In Richardson v. State (2022), Maryland police seized a suspect's backpack containing cell phones. A search warrant authorized seizure of "all information … including geo-tagging metadata." The Court of Appeals found the warrant overbroad under the Fourth Amendment's particularity requirement but upheld the search under the good faith exception. The decision underscores both the evidentiary value of geodata and the constitutional risks of sweeping requests.

Requests for the preservation and production of metadata should be narrowly tailored to specific claims. Device storage limits (e.g., iPhones retaining only weeks of location data) make timely preservation essential. These requests, as requests for electronically stored information, should be made early in the litigation.

2. Data Quality and Gaps

Metadata may be incomplete or corrupt. An incomplete data set can lead to misleading or wholly inaccurate conclusions. The data can be corrupted intentionally or unintentionally. If there was insufficient attention to detail during the data's creation, the result could be fields left blank or incomplete. There can be a hardware malfunction that could result in metadata being written or read incorrectly. Further, metadata is subject to change each time a file is edited, transferred, or uploaded and downloaded. Therefore, drafting precise discovery requests for the metadata at the time the claim occurred can be crucial.

Ultimately, it is the responsibility of the attorney to ensure that the quality of the evidence they submit to the court is accurate, complete and consistent. In short, verify the validity, reliability, integrity and timeliness of the data with the following questions, respectively: 1) does the data clearly and adequately represent the intended result?; 2) are the indicator definitions, data collection and analysis processes clear and consistently applied over time?; 3) does the data, analysis and reporting processes have clear mechanisms in place to reduce manipulation? ; and 4) is the data sufficient, timely, and current?

3. Manipulation Risks

Metadata and geodata are vulnerable to manipulation, whether through intentional tampering or inadvertent alterations caused by software updates, device transfers, or user error. For example, a photo's timestamp can be changed simply by modifying device settings, and ELD or telematics data may be overwritten if not preserved promptly. Opposing parties may challenge the authenticity of such records by suggesting they were altered or fabricated.

To mitigate these risks, attorneys should work with forensic experts to generate hash values, maintain detailed chain-of-custody documentation, and rely on certifications under Rule 902 when available. Establishing data integrity early ensures that potentially powerful evidence is not undermined by credibility attacks. While the data is subject to change as more users interact with the file, outright destruction or alteration of the metadata can amount to spoliation.

4. Cost Considerations

One of the most significant barriers to the use of metadata and geodata in automobile and trucking litigation is cost. Extracting data from event data recorders (EDRs), electronic logging devices (ELDs), telematics systems, or smartphones often requires specialized forensic vendors and software. These services can range from a few thousand dollars for a straightforward download to tens of thousands when multiple vehicles, devices, or complex reconstruction analyses are involved. For smaller personal injury cases with modest damages at issue, the costs of hiring experts, securing certified reports, and creating demonstrative exhibits can quickly exceed the value of the claim, discouraging parties from pursuing potentially critical evidence.

Beyond initial extraction, attorneys must also account for the expense of expert testimony and litigation support. Experts

are not only needed to interpret raw data but also to authenticate it, explain its significance to the fact finder, and defend its reliability against cross-examination. Producing courtroom-ready visualizations, such as accident reconstructions or time-synced movement maps, adds further expense. As a result, cost-benefit analysis is essential; attorneys must weigh whether the evidentiary value of metadata and geodata justifies the financial burden, and consider seeking cost-sharing orders, stipulations, or early case assessment tools to avoid disproportionate discovery spending.

Conclusion

Metadata and geodata are no longer peripheral—they are central to modern litigation. From proving negligence in a sidewalk fall to linking co-conspirators in a robbery, these digital breadcrumbs tell stories that paper records cannot. Properly handled, they can be decisive in establishing credibility, timelines, and liability. But careless collection, overbroad warrants, or insufficient authentication can just as easily lead to exclusion.

For practitioners, the mandate is clear: recognize the evidentiary power of metadata and geodata early, preserve it quickly, authenticate it carefully, and wield it strategically. Done right, following the digital trail can mean the difference between winning and losing a case.

Biography

Melissa Maiese is an associate attorney at *Wais, Vogelstein, Forman, Koch & Norman, LLC*. She received her Juris Doctorate from the University of Baltimore School of Law. Melissa's practice focuses on birth injury and medical malpractice cases nationwide. She is currently barred in Maryland and Illinois.

Recent Federal Laws and Regulations Affecting Motor Vehicle Cases

By Richard P. Neuworth

Lebau & Neuworth, LLC

Introduction

Surprisingly, two recent developments at the federal level are presenting additional opportunities to handle motor vehicle litigation. In March 2025, federal regulations were finalized presenting new opportunities for whistleblowers to receive substantial rewards for failures of motor vehicles and their respective parts. In addition, with regard to settling vehicle accidents, ABLE act accounts have been expanded to include all individuals 46 and younger unable to work as a result of the accidents, providing more opportunity for disabled individuals to benefit from the program.

Auto Safety Whistleblower Program

In an era of driverless cars and trucks and/or vehicles that can be operated without hands on a steering wheel, electric vehicles, whistleblower awards were certainly needed now more than ever. This article will analyze who can qualify, what one needs to show in order to receive an award and what the amounts of the awards are for the whistleblower and attorney.

A motor vehicle safety program including whistleblower rewards was enacted in 2015 as part of the Fixing America's Surface Protection Act (FAST). However, no final federal regulations were enacted until December 17, 2024.[1] Further delays occurred in preventing the regulations from going into effect until March 20, 2025.[2] As a result, there was only one award ever made to a whistleblower[3] prior to final regulations going into effect in 2025.

The incentives or rewards program is operated by the National Highway Traffic and Safety Administration (NHTSA). In order to be eligible for a reward, the NHTSA must issue a Notice of Corrective Action fining a manufacturer including individual parts manufacturers, dealer (including used car dealers) or distributors of parts in excess of one million ($1,000, 000). Both domestic and foreign manufactured vehicles are subject to Notices of Correction. The reward is between ten (10) and thirty (30) per cent of the fine issued by the agency. The amount of the total fine extends to both lump sum and penalties paid out over time. There is a public source of information tabulating the total number of penalties in excess of the minimum amount kept by NHTSA. There have been numerous penalties issued in excess of the minimum amount up to hundreds of millions of dollars against certain manufacturers.

What must a whistleblower provide in order to receive a reward? The reward has to be based on original information. Original information is information:

- derived from independent knowledge or analysis of an individual
- that is not known to NHTSA from any source of information (unless the source is the original source)
- that is not exclusively derived from an allegation made in a judicial or administrative action, in a government report, a hearing, an audit, or investigation or from news media unless the whistleblower is the source of the information

Significantly, the original information does not have to be first-hand knowledge of the violations. Examples include regular complaints about a particular issue(s) or even conduct repairs related to a particular issue on a regular basis.

Certain information cannot be the original source of the award including:

- derived solely from attorney-client privileged communications
- derived solely from attorney work product, or
- obtained in violation of federal or state criminal law, as determined by the court

In addition, there is an internal reporting requirement that necessitates reporting to the violator only when the reporting requirements are in place and have mechanisms to protect employees from retaliation. Assuming that a report is filed, the whistleblower does not have to wait for a decision from the internal report. A complaint may be filed with NHTSA immediately. At the latest, the whistleblower must complete a WB- AWARD

form to NHTSA at the latest within ninety (90) days of the Notice of a Covered Action by NHTSA. The bottom line message to whistleblowers is to exhaust internal reporting procedures if any are applicable and to file with NHTSA as soon as the information becomes available to the whistleblower.

The whistleblowing action may be brought by regular employees, directors, officers, audit, partners and compliance employees concerning vehicle safety the defects or complaints concerning parts of the vehicle. Former employees with such responsibilities including working for competitors would also be eligible as well.

ABLE Act Expansion

Currently, there are two ways to protect injured Individuals receiving settlements of motor vehicle accidents and other bodily injury cases that are also receiving federal disability benefits. Those federal disability benefits include Social Security Disability, SSI (low income program for Social Security beneficiaries) and Veterans disability benefits. Those two ways are through expensive special needs trusts and/or ABLE (Achieving A Better Life Experience) accounts. However, the ABLE act accounts are accounts are limited to disabled individuals under the age of 26.

ABLE Act expansion adopted in 2022[4] opens the door to such ABLE act accounts to individuals that became disabled up to age 46. The expansion means millions of more individuals[5] will be able to retain federal disability benefits while at the same time receive low cost ABLE act accounts. These accounts are useful for several reasons.

Initially, the accounts are helpful for cases involving smaller settlements and structured settlements that are paid over time.

ABLE act accounts provide greater flexibility for disabled individuals than special needs trusts. These accounts can be used for many types of disability related expenses such as housing, education, transportation employment support, assistive technology, health care costs not covered by health insurance and basic living expenses like food and utilities. Although, special needs trusts are useful, the trust does not offer the wide flexibility of uses to disabled individuals. The following is a list of other advantages offered by these accounts.

- The disabled individual may use ABLE act accounts in combination with special needs trusts. There is no penalty to set up both simultaneously
- The ABLE act accounts may be used for structured settlements as well as lump sum settlements.
- The disabled individual does not have to be a resident of Maryland to open up an ABLE act account in Maryland.
- The disabled individual may include up to $19,000 a year to the ABLE act account. The individual may contribute far more if he or she is not eligible for an employer sponsored reireme3nt plan. The total contributions may be up to $100,000 and grow substantially above $100,000 based on the nature of the assets invested in the account
- The ABLE act account is far cheaper to set up and maintain than a special needs trust. The requirements are far simpler than the time it may take to set up a special needs trust that may take months or longer. The account may be set up prior to the special needs trust being finalized in court.
- An individual or married filing jointly by setting up an ABLE act account may receive a tax deduction or credit up to $2,500 for state income tax returns in Maryland.

If you believe that a case will be settled after December 31, 2025 and your client is applying for disability benefits, it is important to have the treating health care provider(s) support said claims for either Social Security disability, SSI or Veterans benefits. That support should track the requirements of the federal disability program and may be prepared currently in 2025 for use next year.

What are the disadvantages of such accounts? Medicaid has to be paid back from the ABLE act account from the death of the beneficiary. Age limits and contribution limits are other issues that need to be carefully considered.

Conclusion

Hopefully, these new federal policies will help enhance the value of your personal injury practice.

Biography

Richard P. Neuworth, is a founding partner of *Lebau & Neuworth, LLC*, with 35 years of experience in disability, employee benefits and employment law litigation. Richard is an AV rated attorney and has been listed Best Lawyers in America in Labor and Employment Law and in Super Lawyers for Employee Benefits. Mr. Neuworth is a member of the American Bar Association – Labor and Employment Section, Maryland State Bar Association Labor and Employment Section – Section Council since 2006, Maryland State Bar Association – Elder Law Council in 2010, Maryland Association of Justice, Baltimore City Bar Association, Leaders in the Law, and National Employment Lawyers Association. Mr. Neuworth is a graduate of George Washington University and earned his JD from the University of Baltimore School of Law.

[1] 89 Fed,Reg. 101, 952, 101,955 codified at 49 C.F.R. Section 513
[2] 90 Fed. Reg. 8249 (January 28, 2025)
[3] The only award was $34 million given on November 9, 2021 to an engineer at Hyundai for engines seizing up and catching on fire on Hyundai/Kai engines. .
[4] Public Law 117-328, Divison T, Section 124, Secure Act of 2022
[5] It is estimated that at least millions of more injured individuals will be eligible for ABLE act accounts. The expansion is estimated to include over 1, 000,000 disabled veterans.

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Tuesday, November 11, 2025
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LLC Legislative Session Preview
Thursday, December 4, 2025
12:00 - 1:00 pm
Virtual

Board of Governors and LLC Holiday Party
Wednesday, December 10, 2025
6:00 - 8:00 pm
Victoria Gastro Pub

Trial Ready: Opening Statement Workshop
Tuesday, March 3, 2026
9:00 am - 4:00 pm
MAJ Office, Columbia

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Mark your calendars for these upcoming programs. Full details and registration will be shared as they become finalized.

From Lawyer to Leader: Taking Charge of Your Role, Your Team, and Your Firms
Friday, January 23, 2026
MAJ Office, Columbia and Virtual

Justice Day in Annapolis
Thursday, February 5, 2026
8:00 am - 12:00 pm
The Maryland Inn, Annapolis

Medical Negligence and Nursing Home Seminar
Tuesday, February 17, 2026
MD Innovation Center, Columbia

Women's Caucus Seminar
Friday, March 6, 2026
Location TBA

Legislative Session Debrief
Wednesday, April 22, 2026
Location TBA

Workers' Compensation Seminar
Thursday, April 23, 2026
9:00 am - 4:00 pm
MAJ Office

72nd Annual President's Dinner
Saturday, June 6, 2026
6:00 -10:00 pm
The Atreeum at Soaring Timbers, Annapolis

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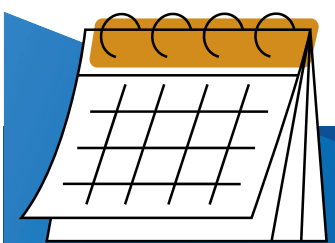

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Best Practices for Representing Spanish Speaking Clients in Personal Injury Cases in 2025

By Emmanuel "Manny" Fishelman

Zipin, Amster & Greenberg, LLC

Our legal system is based on a premise of justice for all – but for many Spanish-speaking clients, particularly those who are undocumented, that promise is often unfulfilled. This especially holds true in 2025, where competently and zealously representing these types of clients requires far more than knowledge of personal injury law. It demands cultural competency, sensitivity to immigration-related fears, and an understanding of the deeply rooted systemic barriers that can prevent full participation in the justice system.

The combination of language barriers, cultural norms, and fear of immigration consequences makes it uniquely difficult for many Spanish-speaking immigrants to assert their legal rights, even when they have meritorious personal injury claims. This article explores how lawyers can ethically, strategically, and compassionately represent these clients, focusing on three intersecting themes:

1. Language and cultural barriers to accessing justice;
2. The deep-rooted fear of ICE and deportation among immigrant communities; and
3. Client reluctance to go to court and how to assess and communicate risks.

Language and Cultural Barriers to Accessing Justice

Language is one of the most immediate and persistent barriers for Spanish-speaking clients navigating personal injury cases. Being able to adequately communicate with and understand your client is a vital part of representation. In a personal injury matter, language barriers can impact how accurately an attorney understands their client's version of events as to how the accident occurred, how the client communicates their symptoms to medical providers, and how well the client understands their legal options, including pre-suit settlement versus litigation and trial. As with any type of litigation, a breakdown in communication at any stage in the attorney-client relationship can result in the loss of crucial evidence, failure to comply with legal deadlines, or unjust settlements.

Attorneys who work with Spanish-speaking clients must ensure that language access is baseline competency. This means:

- Having a fluent Spanish-speaking attorney or staff member that can communicate with clients. This ensures real-time interpretation during meetings, depositions, mediations, court hearings, and trials. If Spanish-speaking staff are not available, another option is a language line interpreter; however, this service would necessarily decrease the amount of communication available for your client. Finally, while it may occasionally be necessary, attorneys should avoid relying on the client's family or friends to translate because they are not trained in legal terminology; and
- Providing translated versions of all key documents, including retainer agreements, settlement releases, and medical authorizations.

The above best practices require attorneys representing Spanish-speaking clients to have effective language-access systems in place. Representing Spanish-speaking clients without an effective infrastructure may not only jeopardize the client's case but may also violate the representing attorney's ethical obligations. Under ABA Model Rule 1.4 (Communication) and Rule 1.1 (Competence), attorneys have a duty to communicate effectively with clients and to provide competent representation. These duties extend to clients who speak limited or no English.

Even when a lawyer speaks fluent Spanish or uses interpreters correctly, cultural misunderstandings can still impact effective communication and competent representation. For example, in many Latin American cultures, authority figures — including lawyers, doctors, and judges — are viewed with deep respect. A client may hesitate to ask clarifying questions or may say they understand something when they do not, for fear of appearing disrespectful or ignorant. In some instances, that fear

of appearing ignorant may also cause a Spanish-speaking client to attempt declining the use of a translator, even when a translator is advisable and even necessary.

Likewise, some Spanish speaking clients may be skeptical to share key details because they do not fully trust the lawyer. This mistrust could stem from the client's experience dealing with a "notario" either in their country of origin or in the United States. In Latin America, the term "notario" refers to a licensed legal professional, often equivalent to a lawyer. In the U.S., however, notarios are not attorneys and sometimes exploit this cultural misunderstanding to commit the unauthorized practice of law, especially in immigrant communities. Notorios may charge for purported legal services they are not qualified or licensed to perform, provide false promises as to results they can obtain, and mishandle important documents. Such unqualified, unlawful representation by notarios often lead to devastating consequences for Spanish-speaking clients, such as deportation and loss of legal rights. As a result, many immigrants — even those with valid personal injury claims — approach some lawyers with deep skepticism, fearing they may be taken advantage of again. Therefore, establishing trust in the attorney-client relationship with Spanish-speaking clients is essential and requires transparency, cultural sensitivity, and a commitment to clear, honest communication.

Additionally, concepts like pain and suffering or contributory negligence may be unfamiliar to or interpreted differently by a Spanish speaking client. If a client blames themselves for their injury — even when legally they are not at fault — they may minimize their injuries, the facts showing liability on the part of another party, and/or fail to follow through with obtaining proper medical treatment.

Attorneys should recognize and address these dynamics by:

- Building trust early and consistently, through culturally sensitive and empathetic interactions;
- Encouraging questions and feedback, and checking for understanding;
- Timely responding to client communication;
- Explaining U.S. legal concepts in culturally familiar ways (e.g., using analogies from clients' home countries); and
- Respecting the client's values, even if they differ from litigation norms (e.g., a strong preference for privacy, family involvement in decisions, or religious beliefs about healing).

Effective representation requires recognizing the human experience behind each case, not just the legal elements. By doing so, culturally competent attorneys can provide their clients with legal counsel tailored to the individual's needs. By being culturally competent, attorneys can more effectively represent their clients because they are able to better understand why a client feels as they do.

The Deep-Rooted Fear of ICE and Deportation Among the Immigrant Community

The reality of 2025 is that many immigrants live in a state of sustained anxiety. The present enforcement priorities of Immigration and Customs Enforcement (ICE), changes in immigration policy, political rhetoric, and increased surveillance leaves many immigrants (regardless of their immigration status) in constant fear of detention or deportation. Even when no active ICE operation is involved, the mere perception that any interaction with law enforcement, the courts, or a government-affiliated institution could lead to immigration consequences is enough to paralyze potential plaintiffs.

This fear directly impacts personal injury litigation in several ways:

- Clients may delay seeking medical care after an injury, worried about providing identification or being reported to authorities;
- They may decline to report an accident, whether to an employer, insurance company, or the police;
- They may avoid going to the hospital or therapy, leading to gaps in treatment that reduce case value;
- They may disappear altogether due to immigration fears associated with pursuing their claim.

Much of this fear is rooted in misinformation or misunderstanding about what pursuing a personal injury claim entails. Immigrant clients often assume that:

- Filing a lawsuit will expose them to ICE or immigration enforcement;
- Giving their name, address, or employment information will be reported to the government;
- Going to court will require documentation they do not have;
- Being in a courtroom could lead to being "picked up" by ICE.

While these fears are understandable, they are rarely based in fact — and attorneys have a crucial role in separating myth from reality. Notably, in Maryland, courts do not usually inquire into immigration status in personal injury cases. An exception to that general rule may be if an undocumented litigant makes a lost wage claim, but even then, legal status would likely be irrelevant. Generally, ICE does not actively target court appearances related to civil claims. However, there have been instances in Maryland this year where ICE agents have entered courthouses to make arrests. When ICE agents do enter courthouses, it often makes the news, overrepresents the occurrence of such ICE enforcement, and thus has a chilling effect on the willingness of member of the immigrant community to pursue personal injury cases through the litigation process.

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As such, attorneys should:

- Proactively discuss immigration fears early in the representation — even if the client hasn't raised them;
- Clarify what information is truly required, and how it will be used or shared;
- Emphasize that immigration status alone should not bar recovery in personal injury claims because immigrants are equally entitled to damages for injuries caused by someone else's negligence;
- Where possible, connect clients with immigration attorneys or nonprofit organizations who can help assess their overall legal situation;
- Consider limiting what is disclosed in discovery, while still complying with court rules, if sensitive information could put the client at risk.

Fear of deportation often has a direct and detrimental effect on medical treatment. For example, clients that are fearful about their legal status are more likely to skip medical appointments, avoid going to the hospital, and may use aliases/different names when obtaining medical treatment. Any of these acts can negatively impact and damage a client's case. It is well known that in a personal injury case, consistent medical care and documentation are crucial to proving causation, severity of injury, and damages. In explaining the medical aspect of cases to Spanish speaking clients, attorneys should:

- Help clients locate medical providers who have Spanish support doctors, chiropractors, and/or staff because medical providers who understand immigrant concerns are more likely to provide care regardless of documentation;
- Explain that medical records will be used for the case, but are not typically shared beyond that;
- Consider working with nurse case managers or bilingual care coordinators who can support the client's recovery and medical compliance.

It is important to remember that narrative and perception are important. If a Spanish speaking client has made questionable or damaging choices with respect to their medical treatment, framing the client's choices in light of their immigration-related fears can help preserve a client's credibility with the defense attorney, insurance adjuster, the court, and the ultimate trier of fact.

Client Reluctance to go to Court and How to Assess and Communicate Risk

"I don't want to go to court" is something that I have heard more this year than at any other time in my career. Given the current immigration climate, it is not surprising that many immigrant clients, even those who have otherwise been cooperative and compliant with medical treatment, may balk at the prospect of going to court. For many of these immigrant clients, their concern is not about public speaking, cross-examination, or even legal costs. Many immigrant clients fear that showing up in a courtroom could lead to exposure to ICE agents, an arrest based on prior immigration history, being asked about their legal status in court, and/or having their name and address entered into a public record. While these fears are rarely realized, they are not irrational. As discussed earlier, there have been instances of ICE entering Maryland courts to arrest immigrants in certain jurisdictions.

Attorneys should therefore help their immigrant clients separate perceived risks from real legal exposure. The first step should be to ask the client about prior criminal convictions during intake. Also, ask the client if they are presently a party to an immigration proceeding and whether they are subject to a deportation order. For clients with criminal histories or active immigration issues, it may also be helpful to refer them to an immigration lawyer or an immigrant rights organization that can assist the client with better understanding their immigration enforcement priority level. Also, it may be helpful to ensure that the client's current home address or place of work is not unnecessarily disclosed in public filings.

Attorneys who have Spanish speaking clients who don't want to appear in court can consider some of the following:

- Binding arbitration done in the comfort of the attorney's office or remotely;
- Filing a motion to allow their client (or witness) to testify remotely;
- Asking the client to wait 12-18 months (assuming there is time left on the statute of limitations) for the immigration climate to "cool down";
- Having the client sign a waiver that they will dismiss their lawsuit if there is no settlement offer extended prior to trial. While not advisable, that may be a better alternative to simply dropping the case without filing suit.

In conclusion, having represented 2,500 – 3,000 Spanish speaking clients throughout my career, I have found that Spanish speaking lawyers often have a special rapport with Spanish speaking clients that truly helps with effective and competent representation. If you have a Spanish speaking client, and are unsure if you are the best fit for them, I recommend referring the client to any of the amazing bi-lingual trial lawyers in MAJ such as myself, Meliha Perez Halpern, Jamie Alvarado Taylor, Crystallis Vergara, Robert Coleman Flowers, Alexander Geraldo, or David Ascensio (this list is not exhaustive and there are other great options too)!

Biography

Emmanuel ("Manny") Fishelman is a Partner at *Zipin, Amster & Greenberg, LLC* where he manages and oversees the personal injury department. He attended law school at the University of Maryland Francis King Carey School of Law. After law school, Manny practiced personal injury at two reputable law firms in Maryland. In 2022, he became a Partner at Zipin, Amster & Greenberg. Today, over 90-95% of Manny's clients are Spanish-speaking, and many are undocumented. Manny is half Ecuadorean and a fluent Spanish speaker. Manny is a former President of the Maryland Hispanic Bar Association and remains an active member of the Board of Directors. He also is an adjunct professor at the University of Maryland Carey School of Law where he teaches a "Practicing Law in Spanish" course. The course is taught exclusively in Spanish.

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