

## How to Litigate Soft Tissue Cases

The MTLA and the ATLA are both providing seminars on how to deal with companies and their low settlement offers. No seminar is going to tell you how to handle the low settlement offer. Collectively, the most effectual way to handle low settlement offers is to try such cases. If enough of us present cases to a jury successfully, we will change the insurance industry's opinion on the true value of these claims.

In order to win, you must first be willing to lose. There is a rumor going around the plaintiffs' bar, started by the insurance industry, that juries are cheap, cold-hearted, mean, and unwilling to award in the plaintiff's favor. For those of us willing to face a jury, these are only rumors.

For example, in the short period of time that the insurance industry has claimed M.I.S.T. and L.I.S.T. cases have no value; I have brought nine (9) cases before a jury. In all of these cases, property damage was less than \$1,000.00 and all had priors with the exception of one. In October of this year, I also tried a case with severe property damage and no priors. The following is a list of the outcome of those jury trials.

Some would say that for the amount of time I have spent on these minimal impact soft tissue cases, I have actually lost money. In reality, when you look at the net verdicts and the amount of time one spends from opening a file to closure, I probably did. However, I certainly didn't do it for the money. I did it because I believed in my client's right to a jury trial. I believe in their right to have fair, compassionate resolution of their claims. I do not believe in simply accepting the insurance adjuster's last offer based on what the insurance adjuster, a mediator, or some other inexperienced lawyer is telling me juries are doing.

In these nine minimal property damage soft tissue cases, most of which had pre-existing conditions, the average net jury verdict is \$12,119.77. The average gross verdict is \$20,555.00. So why are plaintiffs' attorneys recommending and accepting \$5-7,500.00 for minimal impact, soft tissue cases? Worse yet, why are plaintiffs' attorneys recommending and accepting \$12-15,000.00 for major impact soft tissue cases with no prior injuries? I believe the answer is that most of us are not willing to walk into a courtroom for fear of losing.

In evaluating a case, I solicit opinions from experienced trial lawyers in my office, their insight as to the value of my claim, and what a jury may or may not do. By doing so, I call on years of experience from trial lawyers who have faced actual juries.

Insurance adjusters round-table a claim. In other words, they discuss "what cases are settling for" rather than what juries are doing. Even with the Colossus computer evaluation, the information fed into the program is "what amount cases are settling for." Therefore, every offer accepted by plaintiff sets the value for that type of case.

Until the plaintiffs' bar begins trying cases on a more regular basis, the insurance industry will continue to diminish the settlement value of claims. Any plaintiff's lawyer handling soft tissue cases should be trying 3-5 of those cases per year. If not, then they are more than likely selling their clients short of fair compensation for their injuries.

The information you obtain from this article is not, nor is it intended to be, legal advice. You should consult an attorney for individual advice regarding your own situation.

## About the Author

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