

Psychodramatic Techniques in a Soft Tissue Case

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Recently, I tried a soft tissue case to a \$550,000 jury verdict in New Jersey. The injury was neurologic; there was no positive MRI or herniation. The plaintiff, Delphine, was a young woman visiting from Paris. She was a passenger in a vehicle struck by a speeding car which fled the scene. Until this case, the highest award for a similar injury, as reported by New Jersey's Jury Verdict Analysis Digest, was \$32,000. I want to share with the members of the Trial Lawyers College several factors which contributed to the successful result.

1. PSYCHODRAMA USED TO DISCOVER THE CLIENT'S STORY

I note here my thanks to John Nolte, who consulted with me and the plaintiff to discover the liability story and the effect of the accident on the plaintiff's life. We videotaped the session, and repeatedly returned to it to provide the details of the accident and injury.

a. The Accident

As frequently is the case in so-called soft tissue cases, the focus of the defense was on impact and the absence of serious damage to the vehicle, as well as absence of objective injury to the plaintiff. We were able to overcome this defense by focusing on the impact to our client, Delphine, inside the vehicle, highlighting the force with which the vehicle in which she was traveling must have been struck.

In our preparatory session and at trial, Delphine described to the jury, her sighting of the vehicle that struck the small Acura in which she was the passenger. As the speeding BMW 740 that broadsided her and the driver was sighted, she closed her eyes, tensed her body, and tried to scream out. Upon impact, she described for the jury, the exact movement of her head, from side to side; her body slammed into the passenger door and her head hit the window glass. Then, when the driver of the BMW backed off and, incredibly, struck the car a second time, her head snapped back and forward. Delphine described the precise movement of her body in both impacts, as well as showed the jury how far the car was pushed into the intersection. The jury was able to sense the force of the impact, on the car and the plaintiff.

One of the more dramatic facts revealed through psychodrama, was that Delphine's driver followed the fleeing BMW, and Delphine scrawled the license plate with a lipstick which had been thrown from her purse in the impact.



b. Injuries

Delphine revealed in psychodrama both the extent of her injuries as well as the losses to her life caused by the accident. There were two extremely important factors here: 1) we were explicit in telling the jury each resulting limitation in everyday activity; and, 2) we were careful not to overstate the case: Delphine's direct testimony acknowledged that each aspect of her injury that had improved, which allowed her to be seen both as credible and not a malingerer.

Delphine testified to the immediate sharp pain in her neck and back, which did not improve for more than six months. She told the jury that for the first few months she left bed only to treat with her chiropractor. We learned in psychodrama that when she did return to Paris two months after her planned departure, it was with the assistance of a nurse who was provided through her travel insurance, and ensured her safety on the trip.

Delphine established through a time line, the conditions she had, what improved and when, and her eventual chronic condition: sometimes severe pain in the head, forcing her to take codeine and other drugs, and constant dull back pain.

I believe the case was won in the direct testimony that came out of the psychodrama sessions about the devastating effects the injuries had on the aspirations of this young woman, and the inability she was left with to pursue life's pleasures and chores. Delphine told the jury all of her limitations: she was unable to continue in her job as a hair stylist because she could no longer hold a hairbrush. (When she had tried once to blow dry her mother's hair, she was forced to stop, bringing her to tears). With this aspect of her loss, we emphasized to the jury that it was not whether or not she would have achieved her goal to be a stylist in Paris, it was instead the right that each person has to pursue their dreams, whether they succeed or not.

Delphine provided detailed, painful testimony that she no longer could swim: she had to be rescued in her first attempt following the accident. She could no longer run or walk long distances. She had to give up dancing because when she tried it, she was had to rest in bed for three days. She gave up woodworking and

painting; even writing was too painful for long periods of time.

In our session, John Nolte asked Delphine if she had painted a self-portrait since the accident. She revealed that she had: the painting was red and angry. When she was asked how she saw her injury, she said her body was like a piece of paper that had been ripped in two. She described this to the jury.

2. PSYCHODRAMA USED IN OPENING

In the trial opening, the accident and injuries were laid out as they had been revealed in psychodrama. The opening began. It was a warm evening in June of 1997. A young French woman visiting America is singing with her friend as they drive back from having ice-



cream... Suddenly, she sees a black BMW. It lurches forward across the intersection... She opens her mouth to scream, no words come out... 'Who did this?' Then, portraying the villain, 'That man, X, the defendant.'

In the opening, we told the jury what they would hear from the plaintiff: her injuries had improved. Some things had gotten better, but some had not. We told the jury about her limitations. She could not dance or swim or run or walk. All of this came in the opening.

3. RIGHTEOUS INDIGNATION IN CLOSING

In closing, we used Gerry's building summation. Originally, the judge had ruled that he would not permit summation which was not anchored in the facts. We asked to analogize based on the evidence

presented. This request was granted, and it opened the door for our building summation.

We told the jury that once a cement truck struck a small building. The owner of the truck offered \$50 to repair the wall and replace a chink of cement. But before the repair could be made, things started happening in the building: the telephone lines would ring, and no one would be there; the electricity flickered on and off; the heat in the building went out.... Then, the owner of the building said, Keep your \$50. I want a new building.... Well, the owner didn't get a new building, but the repair cost a lot more than \$50. This is Delphine LeDoujet. She cannot be repaired, she cannot get a new body. She is condemned to live in a body that cannot function for the rest of her life.

We then empowered the jury. The defendant claimed he had left the scene because he was afraid of Road rage. But after driving home, he failed to notify authorities that he had been in an accident. He was clearly a hit-and-run driver. Who did this to her? I asked the jury. He did. None of you members of the jury would have done what he did. You would have called the police to say, "I may have hurt someone; I may have killed someone...." You all as responsible citizens would have done that. But that's not what defendant did. He fled. He went and he hid like a rat in a hole. None of you would have done that, as responsible citizens. Now, I'm asking you to be responsible again and make this defendant responsible for what he did to Delphine.

CONCLUSION

I believe that psychodrama is instrumental especially in the smaller case, where liability and injury need to be vividly portrayed. It provides the framework for the opening and the direct testimony of the plaintiff, who must be believed for the case to be successful. In the trial, the truth that has been developed through psychodrama can be vividly presented to the jury.

I am extremely indebted to John Nolte and Rex Parris, who helped me in the case. My experience convinced me of the enormous value of psychodramatic techniques at trial. ☺