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Closing Statements: Closing the Possibility of a Runaway Verdict Against Your Client



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Board of Contributors

By Jerry Hamilton | February 17, 2023 at 03:48 PM



Recently, a jury awarded the largest verdict in Georgia history for \$1.7 billion! This is not a standalone case. Unfortunately, runaway verdicts are a frightening reality for defense attorneys. This article is part of a series of articles that offer tips and strategies that defense attorneys should employ to help mitigate the potential of a runaway verdict.

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Why Are Closings So Important?

Renowned prosecutor Vincent Bugliosi once wrote, "It is the close case where summation tips the scales one way or the other." A closing argument is your final and best chance to arm the jurors with the arguments they need in the deliberation room. The closing will be what will embolden jurors to speak up and speak out against the injustices of a runaway verdict and hopefully allow your client to have a fair shot in that room. As such, it must be methodical, logical, and invoke emotion so the jury is empowered to do the right thing in the deliberation room.

Substance

A good closing argument will comprise of showing jurors which pieces of evidence to focus on; highlighting, through exhibits, the weakness in the plaintiff's arguments; giving jurors the larger themes to focus on to show that you are right; showing jurors that what you are arguing is a common sense approach that could apply in their everyday lives (of

course don't violate the Golden Rule); and addressing all aspects of damages to show why your numbers are fair and reasonable if they disagree with you on liability. The jurors will need to be armed with all these things when they go back to the deliberation room to give your client the best shot at justice.

Personalize the Corporate Defendant

In my last article, I discussed the importance of personalizing the corporate defendant during trial. Closing argument is your final chance to minimize any bias towards a defendant corporation. Tell the jury the company's story, the employee's story, and explain why the company should get a square deal. It was Teddy Roosevelt who said back in 1913, "We demand that big business give the people a square deal; in return we must insist that when anyone engaged in big business honestly endeavors to do right he shall himself be given a square deal." Harp on that theme. Show that your company stepped up. Show that the plaintiff may be overreaching and how, but do not leave the constant narrative of profits over safety untouched.

Do Not Attack the Plaintiff

After spending countless hours preparing, weeks of sitting through trial, and defending your client daily, the outcome of trial may begin to feel personal. During closing argument, many defense attorneys "attack" the plaintiff on a personal level, and sometimes, depending on certain credibility issues, a focus on the plaintiff is warranted.

However, as a rule of thumb, going after a sympathetic plaintiff only increases the jurors' resentment and anger toward the defense. Stick to common sense arguments. Ask rhetorical questions rather than attack. For example, point out the weakness in the plaintiff's case and then ask, "does that make sense?" Do the same when millions and millions of damages are asked for but the injuries simply do not warrant it. Does that make sense for this plaintiff? Explain why you have recommended a certain amount and the logic behind it. Explain why an arbitrary hourly rate formula or comparing the plaintiff to priceless pieces of art makes no sense. But don't attack the plaintiff because I have seen that backfire more times than I can count.

Drafting Your Closing Argument

It is a waste of time to start drafting your closing argument before trial even starts. Trial often takes a life of its own. No matter how much time you spend planning, the trial will never go precisely as planned. Therefore, preparation for your closing statement should begin after the first witness testifies. Jot down what was important about that testimony. Identify the key exhibits. If there was a piece of testimony that was so important get the daily transcript from the reporter. Read it back to the jury. Tell them these weren't your words, this is what the witness said.

Do not write a script for your closing argument. Scripting a closing argument often leads an attorney to be bogged down by the words rather than the message and substance of the argument. You went through the entire trial, so everything should be familiar to you. A short outline of your points should suffice. Look the jurors in the eye. Connect with them on your points. Make sure they understand it. Speak slowly but have the intonation to let them know when your point is made.

Unfavorable Evidence

There inevitably will be unfavorable evidence revealed about your client at trial. It is a defense attorney's nature to avoid addressing any unfavorable evidence during closing argument. However, the plaintiff will emphasize this evidence through trial, in their closing argument, and rebuttal. Regardless of whether you address this evidence or not, it will still be in the jurors' heads. Defense attorneys must address any unfavorable evidence head-on during closing argument. For example, defense attorneys should discuss why the evidence is not enough for the jury to side with the plaintiff or that the evidence is a red herring and distracts from the real issues of the case.

Highlight the Evidence the Plaintiff Did Not Provide

Witness testimony or trial exhibits are not always the most impactful evidence. Sometimes the most impactful evidence is often the evidence that the plaintiff never presents to the jury. Think of what witnesses were not called to testify? What medical documents were not presented? Why did the plaintiff not testify that she waited three weeks to seek treatment for her alleged injuries?

During closing argument, identify and detail the evidence never presented to the jury. Tell the side of the story that the plaintiff is hiding from the jury. Although silent, this evidence can make the most noise in the jurors' heads. Juries tend to question the gaps in the plaintiff's evidence and case. By affirming the plaintiff's silence, the defense affirms the exact questions the jury may have about the plaintiff's case.

Be Authentic

Jurors can recognize inauthenticity from a mile away. Leave the dramatics to movie actors and actresses. Closing arguments should be genuine, sincere, and direct. Get rid of the "fluff" and simply ask the jury to reach the result you would like them to reach. And do not forget to thank the jurors for their time.

Conclusion

Runaway verdicts are on the rise. Defense attorneys must do all they can to stop the growing increase of runaway verdicts even at the last stage of trial. The above strategies are essential for a fair trial for your client.

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