T-Bone Accidents

A trial simulation was recently conducted involving a "T-bone" accident that took place in a four-way intersection. The background for the case is as follows:

The driver of Vehicle A was a plaintiff in a civil suit charging the driver of Vehicle B with liability and damages for medical bills in excess of $250,000 and lost wages for more than twice that amount. Damages for pain and suffering were also being requested, in addition to the special damages.

At first glance, and with a quick review of the police report, it appeared that the driver of Vehicle A had little or no chance of recovery for damages. The accident occurred as Vehicle A was traveling east on a two-lane stop-sign intersection and Vehicle B was traveling south on a two-lane highway that did not have a stop sign at the intersection. Vehicle B had the right of way under existing law. The speed limit for both vehicles was 35mph. According to two unbiased witnesses, Operator A was traveling east and approaching the stop sign. Operator A was talking on her cell phone and had reduced her speed to either walking speed or perhaps even stopped at the stop sign. Operator A failed to yield at the stop sign and continued into the intersection, directly into the path of Vehicle B. Vehicle B struck Vehicle A at the driver's door and drove Vehicle A across the intersection into a tree on the southeast corner of the intersection. There were no skid marks associated with Vehicle B. The airbag on Vehicle B deployed and Operator B was not injured; the airbag on Vehicle A did not deploy because it was a side impact.

Operator A claimed that once she moved into the intersection, Operator B would be required to yield to her, she further alleged that Operator B was speeding, and she also claimed that Operator B was inattentive, hence no skid marks prior to impact. The research was presented in a trial simulation format over a two-day period. Six groups were used, three juries on the first day and three juries on the second day.

On the first day of presentations, plaintiff counsel made a presentation that was mainly scientific in nature and similar to the style usually used by defense attorneys. He did not humanize the client, he simply made the claims and supported them with expert testimony that Operator B was probably traveling 5-10mph over the speed limit, Operator B should have had time to react, and Operator B was therefore responsible for damages. All three juries deliberated to verdict and all three found in favor of the defense. The juries flatly rejected the claims made by Operator A and pointed out during deliberation that she was the cause of the accident, if she had yielded, there would have been no accident, and the actions of Operator B should not have made a difference because all damaging activity began with the behavior of Operator A.

Prior to the second day's presentations, extensive changes were made to the plaintiff counsel's style of presentation. Instead of the dry, scientific version, the plaintiff attorney

first talked about who the plaintiff was. They humanized the plaintiff and talked about her life up until the day of the accident. Much information was provided about the activities she enjoyed with her children, the sporting activities she in which she participated, and especially her love of physical fitness and the time she spent in the gym. After the client was humanized, it was carefully explained to the jurors what her life is like now. The stark contrast between her life before the accident and her life after the accident was brought to the attention of the jurors. Medical expenses were not produced simply as copies of documents, but counsel used a felt pen and easel to make a running tally and in effect "construct" the medical expenses for the jury. He then proceeded to do the same with lost wages. At this point, the jury had a humanized plaintiff and a structured format to get to special damages.

The attack was then made on Operator B. Careful attention was paid to adjectives and adverbs to describe, in a negative fashion, the driving exhibited by Operator B. It was pointed out that she was familiar with the neighborhood and was traveling from 5-10mph over the speed limit even though she knows that children run and play through this neighborhood on a day-to-day basis. Jurors were made aware that she was speeding as she approached an intersection. The jurors also learned that she had a clear and unobstructed view of Vehicle A prior to Vehicle A even entering the intersection. It was pointed out that even if Vehicle A failed to stop, Vehicle B had plenty of time to take evasive action. The most graphic terms were used against Operator B, such as, "She plowed into the other car without out ever stepping on her brake pedal." The jurors came to believe that Operator B was careening through a neighborhood filled with children, not paying attention and endangering everyone else on the road.

With this change in format, all three juries found in favor of the plaintiff, Operator A.

The lessons of this trial simulation are clear. Even if your client has a high degree of comparative fault and has been cited for failure to yield at an accident, a recovery can still be made if the jurors become convinced that the other driver was negligent to a significant degree. This is best accomplished by carefully humanizing your client first, following up with a comparison of their life before and after the accident, structuring exactly how a total of special damages should be reached, and then demonizing the behavior of the other operator.

Unless the plaintiff's case is put together in a very careful fashion, the jurors will not understand that in most accidents, most drivers have some degree of fault. One person engaging in reckless or negligent acts does not cause most accidents. When that is the case, an accident is usually avoided. Only when the laws of physics prohibit evasion is evasion not an option.

It is important for both plaintiff counsel and defense counsel to understand this. Appropriate settlement cannot be reached unless defense counsel understands that even in a good case, their client is at risk.