

## TEN COMMON MISTAKES WITH REGARD TO TBI CASES

1. FAIL TO ASSESS WHAT IMPRESSION YOUR CLIENT WILL MAKE UPON JURORS:
  - (a) On witness stand;
  - (b) Seated in courtroom;
  - (c) Outside the courtroom, e.g. depression, client seen smiling or laughing
2. COMBINING MORE THAN ONE DIFFICULT DAMAGE CLAIM:
  - (a) Brain injury with aggravation of pre-existing condition;
  - (b) Brain injury with wage loss claim for someone with a terrible work history.
3. FAILURE TO DEAL WITH ALTERNATIVE EXPLANATIONS FOR YOUR CLIENT'S PROBLEMS:
  - (a) Pre-existing head injuries;
  - (b) Malingering;
  - (c) Other pre-existing psychological or psychiatric disorders; and
  - (d) Effects of medicine (memory, fatigue)
4. FAILURE TO USE AVAILABLE LITERATURE TO SUPPORT CLIENT'S CLAIM:
  - (a) Treating physicians vs. forensic expert;
  - (b) Caveat: Not black vs. white but shades of grey
  - (c) Don't overestimate your ability to cram
5. FAILURE TO PROPERLY PREPARE PLAINTIFF FOR DEPOSITION:
  - (a) Detailed account of events surrounding accident vs. claim of loss of memory (where does your client get his/her account of accident)
  - (b) Have they read all witness statements, accident reports, etc.
6. FAILURE TO UNDERSTAND NEUROLOGICAL AND NEUROPHYSICAL ISSUES:
  - (a) Don't underestimate the time it will take you to "get up to speed";

- (b) You may have enough time to get to know about some supporting literature, but not enough time to learn contrary literature;
- (c) Don't underestimate the knowledge of your expert (treating or forensic)

7. FAILING TO GET ALL INFORMATION ABOUT CAUSATION OF DAMAGES TO EXPERTS ON THIS ISSUE:

- (a) Prior accidents (acceleration/deceleration);
- (b) Prior injuries (sports, etc.)

8. FAILURE TO EFFECTIVELY USE LAY WITNESSES:

- (a) Witnesses at the scene;
- (b) Impartial witness of changes in function/family members

9. FAILURE TO EXPLAIN MECHANISM OF INJURY:

- (a) Need to bring together engineering and medical issues.

10. FAILURE TO ACCEPT THAT CAUSE OF YOUR CLIENT'S PROBLEMS MAY NOT NOW BE RELATED TO TBI.