

You gotta spend money to, uh, save money

How big should trial budgets be? That question is rather like asking a financial advisor for a one-size-fits-all investment program, suitable for individuals of all circumstances. Obviously, he can't responsibly give you one. But is a blanket policy as to what gets spent at trial appropriate? If general flexibility as to litigation budgeting is essential, then so should be considerations as to when dollars are authorized for the risk industry's ultimate investment: trial.

An excellent case in point is *Erman v. India Cuisine, et al*, Cause No. 01-2-35867-7 SEA, Superior Court of the State of Washington for King County, recently tried by Steve Block and Jody Reich of Seattle Harmonie member Betts, Patterson & Mines. In this case, a woman slipped and fell in an insured restaurant, indisputably fracturing her sacrum. Liability was admitted.

By virtually all medical accounts, the fracture healed normally within two to four months. But the woman continued complaining of horrific neurological, urological and gynecological symptoms. She sued the restaurant, seeking some \$2.3 million in damages.

The woman's credibility and sympathetic appeal were a challenge to the defense. She also found an out-of-state orthopedic surgeon to testify about a concealed spinal injury ostensibly undetectable by "traditional" medical science. The stage was set for potential disaster. A three-week trial filled mostly with testimony from the woman's friends, family, doctors and economic experts easily could have painted a bleak picture.

But the restaurant's insurer, through third party claims administrator and litigation managers Ron Coleman & Associates, Ltd. of Richmond, Virginia ("RCA,"), rose to the task. Sure you gotta spend money to make money, but with apologies to whomever coined that familiar adage, you gotta spend bucks to *save* them, too. RCA's Bob Murray ably administered the defense from the beginning, allowing his defense counsel the latitude to take all needed medical depositions (there were many), standing firmly behind compelling defense positions, rejecting plaintiffs' often dubious arguments, and seeing the matter through to its defense-favorable result.

The first investment was in jury consultant Trial Behavior. What kind of juror would put credence in undiagnosed medical conditions? How can those jurors be probed and determined? Trial Behavior's expertise contributed to selection of an appropriate panel.

The second investment was in a series of graphic demonstrative exhibits, including anatomical portrayals and timelines explaining the plaintiff's long history of medical contacts for undiscernible conditions. The demonstratives weren't cheap, but they spelled the difference between objective understanding and emotional inclination driving the jury's decision.

The third investment was authorization of an associate attorney to sit second chair through proceedings. The efforts of a second attorney in preparing and undertaking a portion of the trial questioning; presenting certain legal arguments; analyzing testimony and apparent jury reaction; and taking notes during lead counsel's cross examination of witnesses, cannot be underestimated.

The result? Awarded were early medical costs and general damages in the total amount of \$89,000 (well below a previously issued \$250,000 offer of judgment). Jurors explained that defense demonstratives had guided their decision, and that they didn't sympathize with the plaintiff's story.

True, the medical issues and plaintiff's history could have been presented verbally. But would the jury have understood and retained a mere explanation after three weeks of trial testimony?

True, one attorney could have tried the case. But with a second attorney at the defense table, every cross-examination point was jotted down and made available for closing. The trial dynamic was better monitored and fine tuned. The load on lead counsel was lightened, allowing him to optimize his performance.

True, a different jury could have gone a different way. But the use of a jury consultant minimized that risk.

In these days of tightened litigation budgets, trial expenses often are viewed as dispensable luxuries. *Erman* demonstrates why it's important not to lose sight of the financial investment any trial truly is.

Harmonie works!!