

Once upon a time, a beautiful, young, princess was rear ended at five miles an hour, sustaining a whiplash injury that took four months to heal and resulting in \$2,100 in damage to her carriage. On the other side of the Kingdom of Far, Far Away, an ugly, drug-addicted troll was also rear ended at five miles an hour, sustaining a whiplash injury that took four months to heal and resulting in \$2,100 in damage to his cart. In a perfect world, both of these cases would have the same value in front of a jury. However, we all know that is not true.

It was a bad traffic day in the Kingdom and sweet, innocent Snow White was side-swiped by a teenage Prince Charming who was out joy riding with his friends and who most likely had a little too much to drink. Across town, Shrek was t-boned by a middle aged accountant at an uncontrolled intersection. Both Snow White and Shrek sustained the same injuries and incurred the same amount of property damage. These cases most likely do not have the same value in front of a jury. The \$60,000 question is: “why not?”

There are many intangibles that go into evaluating a case. Probably the biggest, most important intangible is the plaintiff – who is she, what does she look like, how does she come across. I had a case years ago in which the plaintiff was probably the most attractive woman I had ever seen. She was also one of the nicest plaintiffs I had ever encountered. She was hit head on by a taxi cab that veered into her lane. Needless to say, that case was quickly settled. On the other hand, I had a case in which my client had ran a stop sign and hit a woman who was the polar opposite of the attractive plaintiff. This plaintiff had been around the block a few times and showed it. She had a chip on her shoulder the size of a boulder. She had more encounters with the police than any plaintiff I had ever seen. Her injuries were not minor and her medical bills were close to \$20,000. However,

The Intangibles of Settlement

— by Lori K. DeDobbelaere

on the day of trial, her attorney convinced Kaiser to compromise its lien to almost nothing and the case settled for \$3,000. I cannot remember what the first case settled for but I know it was a lot more than \$3,000.

It is also important to look at who the insured is, especially if liability is disputed. However, even in admitted liability cases, who the defendant is matters a great deal. Several years ago I had a case involving the age old question of who ran the red light. Plaintiff was a Ph.D in engineering from India who was employed with Intel. My client was a 19 year old kid who dropped four letter words all over the place during his deposition. Although, we felt that we may have had the green light, we settled that case. I have yet to have much luck defending an elderly driver or a teenage driver.

Experts tell us that 90 percent of what occurs during jury deliberations has absolutely nothing to do with the evidence that was presented. A juror will discuss how his Aunt Millie was rear ended by a teenage driver and never got over it or how his Cousin Tom hit a woman who was just like the plaintiff and was a complete faker. Another juror might say “No one over the age of 70 should be driving. It is no wonder this poor plaintiff was hurt.” There are natural biases that people have that need to be taken into account when evaluating the value of a case. For instance, ninety some percent of people believe that a company will deliberately pollute in order to save money. If you are defending a company in an environmental pollution case, that is a statistic that you need to remember. You will walk into the courtroom with the deck stacked against you.

Oregonians like other Oregonians and are okay with Washingtonians. However, a defendant from California is going to have a tough row to hoe. A case filed in Multnomah County typically has a higher settlement value

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than one filed in Washington or Clackamas County. Some of the smaller counties do not much like people from Portland. These are all things that need to be taken into account with deciding what a case is worth.

Computer programs can be invaluable tools in determining the value of a case. However, we need to remember to be flexible in determining settlement value. We would like to think that the value of a case does not go up simply because the plaintiff is Snow White or a beautiful, nice princess, but the reality is that it does. Psychological studies have shown that people like people who are attractive and who are not too young or too old. They like people who are more like them. So if the case is in a rural, blue collar community, the jury will like a plaintiff who is blue collar more than one who is a professional. Of course this is all theory and there are always exceptions to every rule.

There are so many intangibles that go into determining the settlement value of a case that it is impossible to discuss them all here. What is important to remember is that an evaluation does not stop at the injury, length of treatment and amount of property damage. We need to look at the people involved, the nature of the accident and where the case is (or will be) filed. There are no hard and fast rules which makes correctly evaluating a case more of an art than a science.

Back in the Kingdom of Far, Far Away, the beautiful Princess received \$8,000 plus her medicals and wage loss, the Troll received \$3,500 plus his medicals (he had no wage loss); Snow White received \$28,000 plus her medicals and Shrek was found to be 50% at fault so ended up with net recovery of \$7,500. No one lived happily ever after but they at least found closure. ❖