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LITIGATION

Greater Sensitivity Needed When Handling Wrongful Death Distracted-Driving Cases

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Special to the Legal

About 10 years ago I represented a mother whose 20-year-old son was killed while walking across the street. The defendant driver told police he never saw the young man. Based on that statement and what was contained in the police report, this looked to me like a case in which the driver had been distracted. There was no reason why an attentive driver should not have been able to see the pedestrian. The pedestrian was crossing from the driver's left to right and, when struck, had completely crossed one lane of traffic and was most of the way through the driver's lane of traffic. The mother kept asking over and over: "How could this have happened?" "Why

didn't the driver see my son?" and "Why my son?" The police investigation did not answer those questions. Shortly after I filed the wrongful death lawsuit the insurance company for the defendant offered its full policy limits. Within a few weeks I was also able to convince the applicable underinsured carrier to offer its full policy limits. We were still in the very early stages of the lawsuit so no depositions had been taken and only minimal discovery had been conducted. I was happy that I had been able to obtain the maximum available for my client and in a relatively short period of time. I thought that by getting a wrongful death settlement quickly, it would allow my client to more easily move on with her life. I presented the settlement to my client, told her that there were no other

sources of recovery, and that it made sense to settle the case. She followed my advice and the case was settled, a release signed and funds distributed.

Looking back now I realize I had not fully served my client. I had obtained compensation for her, but I had not helped her to find answers for why her son had been killed in what seemed like a senseless and preventable crash. I was focused on compensation, but had done nothing to answer her questions. While I had been sympathetic and compassionate, I had not been empathetic. I did not realize then just how important it was to try to find answers to the questions that haunt clients whose loved ones are taken suddenly in auto collisions.

After my daughter Casey was killed by a distracted driver in 2009, I also wanted to know why

the driver did not see my daughter walking in the crosswalk in broad daylight, why he rolled through a stop sign and said he never saw her. It would not be an overstatement to say, at times, the need to know why consumed me. I ultimately did learn the answers to some of my questions because of the thoroughness of the police investigation.

Before any readers start thinking that what I am talking about, or what my client needed, was “closure,” let me dispel that idea in the strongest possible terms. Do not ever suggest to a grieving parent or spouse that the conclusion of the legal proceedings will provide closure. For a client mourning the death of a loved one the conclusion of the legal proceedings is only the conclusion of the legal proceedings. After the case is settled they will still mourn the loss of their loved one, often for the rest of their lives. Settlement of a case should not be an invitation for a lawyer, judge or mediator to pretend to be a grief counselor and give unsolicited and potentially harmful advice. I have seen several of the Philadelphia area’s most respected mediators get chewed out by clients under these

circumstances. Absent the explicative, this is close to a quote from one of my clients after a case was settled at mediation and she was told by the mediator that now she could have closure: “How dare you suggest that by settling this case I should forget my son.” In her grief she interpreted that statement to mean she

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should now close the book not just on the case, but also on the memory of her son. It is my practice now to remind defense counsel, judges and mediators that “closure” is never an appropriate word to use with reference to a settlement involving the death of a family member.

So why do some clients ask these questions over and over, and why do they need to find answers to these questions, if answers

exist? Trauma has been described by psychologist Roni Janoff-Bulman, from the University of Massachusetts, Amherst, as not what we can see on the outside of a person, but rather the internal disintegration and disorientation that results from our “psychological unpreparedness” for the event. Janoff-Bulman describes what are referred to as “world-view assumptions” which traumatic events may shatter. These include basic beliefs that the world is benevolent, that if we work hard and are good people bad things will not happen to us or those that we love and that the world has meaning. In essence, they provide us with a sense of safety and predictability and expectations about the world we live in. But, how could the death of a child ever make sense to a parent? How could the world be safe, and meaningful, if young people with their entire lives in front of them are killed in random acts? Asking these questions and attempting to find answers is part of reshaping one’s world-views to accommodate or assimilate the traumatic event. Research confirms that finding meaning, or sense-making, facilitates the post-trauma adjustment process.

Since Casey's death, I have become an advocate for educating the public about the dangers of distracted driving and often family members of those killed or injured by distracted drivers reach out to me through our website EndDD.org (End Distracted Driving). Within the last two years about a dozen family members, often parents who have lost children, after hiring a lawyer who settles their case, ask me if I can help them find out why the driver killed their loved one. Their questions, like those of my client 10 years ago, were not answered before their cases were settled. In most instances the cases were settled early, without depositions or discovery. Some of the clients related that even when they asked their lawyers about getting more information about the conduct of the defendant driver their lawyers told them since the full auto insurance policy limits had been offered the case had to be settled and there was nothing more that could be done. Others did not realize until after the settlement that by settling the case they no longer had the opportunity to try to find out what the defendant was doing at the time of the crash.

Today, I make it a point to have a client's questions concerning their loss answered if I can and carefully explain that the signing of a release will preclude any additional steps to answer some of these questions. If the case can settle prior to depositions I work with defense counsel or adjusters to have an affidavit or statement taken from the defendant after conveying to them my client's specific need for information.

Should satisfying clients' psychological needs for answers to these questions be part of the lawyer's job? Should plaintiffs' lawyers do more for their clients than just obtaining maximum compensation? Once policy limits are offered, should the plaintiff's lawyer continue to seek information? Should the plaintiff's lawyer, when recommending settlement of the case, make certain that the client understands that settling the case will preclude further opportunity to seek answers to their questions? Based on the number of clients who have reached out to me, frustrated and feeling not well-served by their lawyers and based on my personal perspective, I certainly would answer all of these questions "yes." But, I

recognize that others may have differing views.

As plaintiff's attorneys we are in a unique position to provide more than just competent legal representation. Shouldn't we also help our clients if we can in their process of trying to adjust to the loss of a loved one? While doing so may not be required under our obligation to zealously represent our clients, it is consistent with compassionate and sensitive representation of our clients. •



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