

PRESENTED AT

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**Using Your Expert Witness as a Fact Witness
And Other Ways to Mine Your Personal Injury Case
for Valuable Damages Testimony**

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This paper is not about developing new tools. This paper is about using tools you already have to mine for new resources. Without a doubt, it is important for your client to be her own damages witness, but it's not fair or reasonable—or legally sound—for her to carry the burden on her own. If she does a good job, you're in a good position; if she does great, you're in a better position; but eventually you will start experiencing diminishing returns and even negative returns as you risk the jury starting to see her as a complainer.

It's important to mine your case for other valuable damages testimony, and one of the best places to look is your client's treating healthcare providers. That might sound obvious, but there is often great testimony available if you change your perspective. How? One way is to stop thinking about her doctor as an expert; instead, think about the doctor as an eyewitness. Another way is to embrace the healthcare providers you deem less vital to the case or less qualified to give opinions. Finally, get outside your client's home and look to the other areas of her life in which she interacts with people and makes an impact on them. Your client is human, she's going through a human experience, and she's more than just an injured person.

I. Start with the Charge

Start at the end. If you don't know your destination, how can you know your route? In most personal injury cases, you know what the basic Charge will look like when you first sit down with your client, so why not show it to her on day one? Whether you write it on a yellow legal pad, draw it on a dry erase board, or print an example from a past case, you need to discuss the Charge with your client as early as possible. Not working with the Charge from the beginning would be like a college professor passing out the final exam on the first day of class, telling you this will be the final exam, and you not looking at it all semester until you are cramming the night before the exam.

You are going to spend years of your life developing this case and preparing it for trial. You will miss dinner staying late at the office to answer discovery with your client after she gets

out of work, and you will put in extra hours on the weekend to prepare for that Monday morning deposition, but in the end, the result will come down to twelve strangers answering just a few *simple* questions. So if all of your work is meant to help answer these questions, know the questions and instructions that will likely be submitted to the jury:

What sum of money, if paid now in cash, would fairly and reasonably compensate Paula Payne for her injuries, if any, as a result of the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of Paula Payne. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

1. Physical pain and mental anguish in the past.

Answer: _____

2. Physical pain and mental anguish that, in reasonable medical probability, Paula Payne will sustain in the future.

Answer: _____

3. Physical impairment sustained in the past.

Answer: _____

4. Physical impairment that, in reasonable medical probability, Paula Payne will sustain in the future.

Answer: _____

(Texas PJC 28.3)

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