

Intro:

This is Michael Cowen. Welcome to Trial Lawyer Nation. You got to have the right case because if you take it up and it's the wrong case, then you can make some really bad law that's going to affect a lot of plaintiffs- There's always an answer, the joy is in finding- One of the reasons that I love being a lawyer is this exact process- The way we live our life has nothing to do with the presentation sequence at trial- As trial lawyers, we pick up and move on, and keep going- You're losing or gaining one out of every 10 jurors, which can really make a huge difference in the ultimate result of the case- Whatever you think about, you create- Learn all you can and never stop, And then have the guts to try case after case after case. Welcome to the award-winning podcast, Trial Lawyer Nation. Your source to win bigger verdicts, get more cases and manage your law firm. Now here's your host, noteworthy author, sought after speaker and renowned trial lawyer, Michael Cowen.

Michael Cowen:

Today on Trial Lawyer Nation, we've got a good friend of mine, Ed Ciarimboli. Ed is a great lawyer from Philadelphia, has a wonderful practice, also speaks a lot. I know him from the speaking circuit, teaches what he learns to other lawyers. He also recently was one of the few lawyers that's been able to not just try case, but successfully try a case in our area of COVID. We always wanting to learn more about how can we get our cases to trial and what do we need to do to try them successfully during these challenging times? So Ed was nice enough to agree to come on the show. How are you doing today?

Ed Ciarimboli:

I'm doing fine, man. Thank you for those kind words, and it's really an honor to be asked to be on your podcast. Just before we got on, I was looking at some of the people that have come before me, and a pretty impressive list.

Michael Cowen:

Well, it's more impressive now. Thanks. Thanks so much.

Ed Ciarimboli:

Yeah, I feel pretty humbled. So thank you. It's great to see you. We haven't seen each other in too long, too long.

Michael Cowen:

Yeah, absolutely. Once I get two, three weeks after my second dose, I'm firing up a jet and going around the country. I'm going to start seeing people having fun.

Ed Ciarimboli:

Absolutely.

Michael Cowen:

I'm done with this. I'm going to be safe. But I'm done with this.

Ed Ciarimboli:

I completely, completely agree. We'll be drinking drinking some Pappy Van Winkle together.

Michael Cowen:

Absolutely, my friend, I'll bring it with me. So tell me before we get into your trial, because you had a trial back in November, but not everyone on the podcast listening knows you. Tell us a little bit about yourself and your background?

Ed Ciarimboli:

Sure. So I have three offices in Pennsylvania, we have an office in Philly, we have an office in Kingston, Pennsylvania, which is right outside of Wilksberry, and then we have an office in Scranton. I'm sure that everybody knows Scranton literally from The Office. But we have 12 lawyers in my firm. We handle a whole host of things. My practice primarily is handling commercial motor vehicle cases. I would say that about 75% of my practice is doing that. The other 25% is handling catastrophic cases, including medical malpractice and products liability and things of that nature. But I've been fortunate, as you said, I do a lot of speaking.

Ed Ciarimboli:

I was fortunate enough to start getting really heavily involved with AAJ and teaching probably about nine years ago. That really allowed me to meet great people like you and really develop my skills as a lawyer, both from a teaching perspective, and then I'm always stealing something from somebody in all the seminars that I teach at or colleges that I teach at. It's something that I'm pretty passionate about. Right now, I'm the co-chair for the NCAA board for AAJ with a good friend of mine, Carl Solomon. That's been a blast. I wish it was not during COVID because we would have a lot more fun.

Ed Ciarimboli:

But fortunately, our term is two years. So hopefully next year, we'll be able to get to see each other a lot more. And it's a really tight knit bunch and close bunch. But yeah, I try a lot of cases. A number of years ago, a good friend of mine, he's since passed on, his name's Paul Sceptor. He pulled me aside. This is probably six or seven years ago, and he said, "You better get really good at trying cases." I said, "Oh, I love trying cases." He goes, "I mean, you really got to get good at being in the courtroom because you're the worst lawyer I've ever seen at settling a case." He's like, "You're absolutely, positively, hands down, I don't know what it is, every time I'm talking to you, it's zero off the case." He said, "You're terrible, absolutely terrible."

Michael Cowen:

That could be case selection too.

Ed Ciarimboli:

Who knows? But he's like, "You're absolutely terrible, terrible at it." I said, "You know what? You might be right." So really have focused on getting as good as I can in the courtroom, as comfortable as I can, and always trying to push the envelope in terms of how we try cases. Now, we're certainly trying them differently than we did a year ago or two years ago. Whether it's from a technology perspective or from a witness prep perspective, or whatever it may be.

Ed Ciarimboli:

I mean, this COVID trial, which I know, we'll get into, I mean, it was a complete 180 from everything that we have worked on so hard over the last six, seven years in terms of connecting with the jurors to exhibits to visuals. I mean, it was really pretty, pretty fascinating.

Michael Cowen:

Some of our listeners are really experienced, accomplished trial lawyers. But we have a lot of listeners that are working, they're on their path to becoming experienced accomplished trial lawyer. One of the things that people seem to always want to know is, what have you done, you've mentioned like going to AAJ stuff. But what have you done to develop yourself as a trial lawyer?

Ed Ciarimboli:

Yeah, I think the biggest thing that I've done to develop myself as a trial lawyer outside of really investing in education, and when I say investing in education, not just popping onto a webinar. But I mean, really going someplace and really focusing on the different aspects of trial, outside of direct or cross, but how you're doing it, your presence in a courtroom, your voice, what you're doing with your hands, your body language, your movement.

Ed Ciarimboli:

I've been very fortunate over the last six or seven years to work with some really outstanding people that have helped me along that path because when you start to take a step back and then look at how you're delivering what you're delivering, it's pretty fascinating. We all like to think we're pretty good. Then all of a sudden, you start recording yourself, and you're watching it, and you're breaking it down. You're like, "Ah man, it's just terrible." I know you've done that Michael. It's humbling.

Michael Cowen:

I'm getting ready to start next week of daily opening practices on video because I've got a case, we're hoping to start trial on February 1st. It will be by Zoom. So the video is really important, because that's what the jury's going to see. Not just practicing our camera people and stuff, but that means I have to watch it and it is painful to watch yourself, because we're not as smooth as we think we are.

Ed Ciarimboli:

Not even close, not even close.

Michael Cowen:

Do you mind me asking who you've worked with to develop yourself?

Ed Ciarimboli:

Well, so I would say over the last six or seven years, so I've worked with Paul Sceptor, Philip Miller, Rodney Jew. We saw each other out at Rodney's, it seems like forever ago, doesn't it? It was just last year. I've worked with Katherine James and Alan Blumenfeld, and a guy named David Mone. Yeah, he's out of Minnesota. He was terrific. He came from the theater. He was a producer, a director. So worked a lot with him on delivery and movement because I was one of those people that I felt comfortable in a courtroom, too comfortable, if that makes any sense. So one of the things that he really drilled into me was, "Look, just like if you're in a theatrical production, the actors, they don't just wander all over the stage. They move for a purpose."

Michael Cowen:

Right.

Ed Ciarimboli:

So when you're in a courtroom, you should do the same thing. You should move for a purpose. Otherwise, stand still, damn it. Stand still and talk. I tell you, it was one of the most difficult things that I had really overcoming because I wouldn't say I was one of those people that's pacing back and forth in a courtroom. But I mean, I just felt comfortable. I would move. Again, when you start to watch that, one of the things that he made me do, and he said, "Look, I played basketball in high school and my first year in college" He said, "You watch film. That's how you become better, whether it's shooting a jump shot or playing defense or whatever." He said, "Being an actor is no different. They have to watch film." He said, "Now, being a lawyer, if you really want to improve on these skills, you got to put in the work, and you got to do those things."

Ed Ciarimboli:

I mean, I probably watched countless hours of myself just looking like an idiot, because I'm like, "What am I doing?" That doesn't even make any logical sense. But I've had the good fortune. I've worked with a woman named Melissa Gomez. She does a lot of work with some of the folks in AIEG that I know you're a member of as well, Michael. Melissa does some great jury stuff. A guy named Harry Plotkin, Harry worked on, actually was part of the team on this last case. Harry's based out of LA, and really, really good trial consultant, especially when it comes to putting together demographics for what good jurors and bad jurors are.

Ed Ciarimboli:

So those are just some of the people that I've had, very fortunate to work with over the years, and then just to all my brothers and sisters in the different organizations that we're in, just really learning from them and how they do things and why they do things and trying different things and failing and figuring it out and failing again, until you get it right.

Michael Cowen:

Absolutely. There's some people that are in the reptile school, the brawlers, college school. Do you have a particular approach you take or you just ...

Ed Ciarimboli:

I'm not, and I'll tell you why. Because I don't think that there's a one size fits all. For example, when we were out with Rodney, I mean, I love Rodney. I love the stuff that Rodney does. But for me, the thing that I feel a little bit more comfortable with is not using boards, all boards. It's having a mix of me, whether it's a board and a PowerPoint, or a visual or whatever it may be. The reptile is that you got to do it this way all the time. If you don't, then you're doing something wrong. One of my teaching philosophies has always been, "Look, there are some fundamental things that you have to master." Whether that's in a deposition skill or a trial or whatever it is.

Ed Ciarimboli:

Then once you master those fundamentals, from there, you should craft your story of your case around the case because not every single story is going to fit for every single case, nor should it. So that's how

we've really approached the case. Like with Catherine James and Alan Blumenfeld, I've gone out to California and sat with them, a place called the Culver Hotel, which is really cool hotel and just locked ourselves in a room for a couple days, trying to figure out what's the best story for this case.

Ed Ciarimboli:

When I say story, meaning, the sequence of the witnesses. One thing that I think that people, they really overlook, is the sequence of the witnesses is so vitally important because each one of them plays a different role and has different importance. I know you've done some work with Sari, and that's one of the things that she's really ... I've read a bunch of her stuff and watched a bunch of her stuff. I know that that's something that she's really, really, really on top of. You got to know where these people fit and if you don't-

Michael Cowen:

Exactly, exactly. Absolutely.

Ed Ciarimboli:

It doesn't work.

Michael Cowen:

I wish I could talk, I'm dying to talk more on this, but I know that my opposing counsel will probably listen to this between now and the trial, so I'm going to have to hold back a little bit. If we get to try it, then I'll do another recording later and talk about what we did. But we've really been ... Struggling is the wrong word because we have a story that can be told in three different sequences. I mean, one is like, what happens in the press and then the company part and one is the company part and then what happens in the press. There is a conventional wisdom on how to do it. But then there's some thoughts about what's right for this case. They just say, "Rodney Jew says to do it in this order," and I love Rodney and I respect Rodney. But I don't believe that sometimes that's the most persuasive way to do it. Because sometimes people have to know what, that something bad happened before they care about what the company did. The company's wrongdoing only makes sense after you know that something bad happened.

Ed Ciarimboli:

Yeah.

Michael Cowen:

Then everything means ... Well, in other cases, where you want to make it. I was working on a product liability case, and we focused group it. My client was a passenger in a car. He got in the car and Christmas morning, said he didn't know but who knows. What happened is that his friend and everyone else were drinking all night, and he went to bed. He woke up and his friend is drunk as a skunk. He got in the car with him, and they drove and then took a curb, he fasted in 180, went backwards into the tree, and the seat collapses backwards, he ends up being paralyzed. On top of that, it was a 93, 94 vehicle, which is the front half was a 93, the back half was 94. It's called a clip, they've been welded together because they have been two different rep cars. But neither one was around collision, so it shouldn't have affected the seat. But he had some challenges in that case.

Michael Cowen:

So when I structured the opening, we started off about talking about the company's knowledge. We showed the crash test where the seats collapse backwards when they're doing crash tests to test the fuel tanks. Then we went into nine or 10 prior cases where this make and model car had been rear ended. Either that person in the front seat was killed, the person in the front seat wasn't killed or paralyzed the kid behind them. So then when we got to our case, it was just another one of these cases with some weird facts. Different cases call for a different sequence.

Ed Ciarimboli:

Yep. Yeah, no. Believe me, I completely agree. Again, I think there's some fundamentals that have to be worked into each one of them, but you got to work hard to find what fits for your particular case. If you don't, I think you're doing a disservice to your client. If you're just walking in there and you're trying the same case in the same way every time because it's just a cookie cutter approach. It's certainly not something that we do. I know it's not something that you do either.

Michael Cowen:

Yeah. It also lets the defense lawyers get your transcripts. File the right limine, make them anticipate your arguments. I mean, there's some good. But I just think this whole one size fit all. Society changes. Early in my career, when I was prime of law, just like soft tissue car wreck cases. I had a method that I would get an excess verdict about every third trial, which is for those cases are good because I mean, most people, meds plus 2000. I had to get one case, and we'd get under our meds. I'd get one arguments, like two or three times the meds. I had to get one where we'd have like 3000 in meds and I'd hit between 40 and 90,000.

Ed Ciarimboli:

Yeah.

Michael Cowen:

Averaged out pretty good for a baby lawyer, trying to make a name for himself or trying to make a little money. At some point, my formula stopped working. I was doing the same thing I did two years ago, but it stopped working because the societal attitudes have changed.

Ed Ciarimboli:

Yeah.

Michael Cowen:

We had to go back and retool and revisit how we're trying our cases.

Ed Ciarimboli:

Yep, absolutely. You got to do it. I commend you for doing all the hard, it's just doing the work.

Michael Cowen:

Yeah.

Ed Ciarimboli:

Just trying to do the work.

Michael Cowen:

It's fun. I haven't done this for a long time. But I've worked past like 3:00 in the morning a couple times. Someone said, "I feel so bad for you." I said, "Why? I'm having a blast. If I was like drinking wine until 3:00 in the morning, would you feel bad for me? I'm doing the same thing. I am having fun."

Ed Ciarimboli:

I love it. You get a rush out of doing it.

Michael Cowen:

You do you.

Ed Ciarimboli:

I would say if I could be in trial 12 months out of a year and just be focused in that process, I'm the happiest guy in the world.

Michael Cowen:

Right?

Ed Ciarimboli:

There's nothing that I'm stressed about when I'm doing that and going through that process. I mean, obviously, the stressful things are making sure that we take care of our clients and our clients' families. But for me, personally, I mean, it's just fantastic. I love doing it.

Michael Cowen:

It's fun, it's fun.

Ed Ciarimboli:

Yeah, it is. It really is a blast. It's a blast.

Commercial 1:

Each year the law firm of Cowen-Rodriguez-Peacock pays millions of dollars in co-counsel fees to attorneys nationwide on trucking and company vehicle cases. If you have a case involving death or catastrophic injuries and would like to partner with our firm, please contact us. We have experience finding potential defendants that other firms miss. We've added millions of dollars to cases by finding these sources of recovery. If you have a catastrophic injury or death case where the policy limits appear to be insufficient, give us a call. If we can find another defendant, we can partner on the case. If we can't, then we won't ask for any of the fees. You can reach Delisi Friday by calling 210-941-1301 or send an email to Podcast@TrialLawyerNation.com. She will coordinate a time for Michael Cowen to speak with you in person or by phone to discuss the case in detail. Now back to the show.

Michael Cowen:

Well, let's starting talking a bit about your case then. So tell me, you had a trial in November. So during the height of this pandemic.

Ed Ciarimboli:

Yeah.

Michael Cowen:

What kind of case was it?

Ed Ciarimboli:

It was a really interesting case, little quirky case. There was a company, and this company was buying this machine. So they buy this machine, and it's called DMEG machine, and it's a molding machine. Big machine, it weighs about eight, 9000 pounds, it's got hydraulic fluid in it, about 55 gallon drum of hydraulic fluid in it. So what happens is this company purchases this machine from a broker, the broker's out in Ohio. The machine is located in New Jersey.

Ed Ciarimboli:

So they have to get this machine shipped to their facility. What they do is they call up a crane company for the rigging and transportation. They don't tell them anything about the specifics of the machine. They don't tell them that there's hydraulic fluid in it. They tell them the approximate weight, but they don't give them any of the manufacturer's recommendations or anything like that. Company goes down. They are in the process of moving this machine. It's two guys. There's both riggers, they're working a forklift.

Ed Ciarimboli:

When they pull the machine out, and they're going to put it up onto the flatbed truck, they put it on, and then they have to pick it up. Basically, they have to teeter it in order to put the cribbing underneath of it, to transport it. When they do that, what happens is the hydraulic fluid had not been drained in the machine. There's no bladder in this tank. The fluids slosh to the side and to the front. The machine tipped over, our client was standing off to the side of the machine, but he was in a pinch point, which was one of the things that the defense was keying on in the case, and the machine crushed his head.

Michael Cowen:

Oh my god.

Ed Ciarimboli:

Yeah, I mean-

Michael Cowen:

He worked for the rigging people or who did he work for?

Ed Ciarimboli:

So he worked for the rigging people. Yeah. He worked for the rigging company. So we couldn't sue the crane company because of the worker's compensation bar.

Michael Cowen:

Right.

Ed Ciarimboli:

So we ended up suing the broker of the machine initially, and we ended up suing the company that purchased the machine. So very fortunate in doing the work that you and I do a lot in terms of commercial motor vehicles, I knew the Federal Motor Carrier Safety Regulations 100 million times better than the defense did. So what this case ended up, what we were able to turn it into was that we had a shipper, a carrier and a receiver. In this particular transportation cycle, the shipper was this company, and they were also the receiver because they were shipping this machine from Point A to Point B.

Michael Cowen:

Because it was their machine already? They already had title filled?

Ed Ciarimboli:

Right.

Michael Cowen:

Okay.

Ed Ciarimboli:

There was some great documents between the broker and this company. Those documents ended up being really critical in the case. We'd said that this company was responsible for the rigging and transportation. So now, you have hydraulic fluid in this machine, which is a hazardous material and qualifies under the class. It was class one hazardous material. So it imparted a whole bunch of responsibilities on the shipper. They said, "Yes, we have to follow this. Yes, these rules apply. We know all about hazardous materials," because the business that they were in, they had tons of injection molding machines with ten of thousands of gallons of hydraulic fluid.

Ed Ciarimboli:

So they knew all about these rules, they just didn't follow any of them. So what ended up happening was the shipper under the Code of Federal Regulations and the FMCSR, they were supposed to inspect it. They were supposed to classify it. They were supposed to make sure that it was safe for transport. They were supposed to make sure that the company that they were hiring was able to transport hazardous materials across state lines. They didn't do any of this. The defense of the case was we hired we hired this company.

Michael Cowen:

Yeah.

Ed Ciarimboli:

We hired this company. That's it. That was their entire defense. Other than our guy was standing in the wrong place, their entire defense was, "We hired this company, that's it, and we don't have any responsibility."

Michael Cowen:

That seemed a pretty good, We hired a professional company to do this for us. They hurt themselves doing it, but that's on them. If you have questions, you need to ask them.

Ed Ciarimboli:

It's exactly right. The nice thing about the regulations, they were pretty specific. They said that these are the responsibilities that the shipper has. Fortunately, when we took the depositions of some of the corporate people, they were terrible. I mean, they were flat out terrible. Every time we showed them the document that said, "Okay, you say you're responsible for rigging. You're responsible for inspection. It's right here in black and white. Did you do an inspection?" No, we didn't do any inspection.

Ed Ciarimboli:

One of the neat things that we did in this case is during the deposition or before the deposition, we had done some focus groups to get us ready for the deposition. One of the things that kept coming up about the inspection, like a checklist. The one woman in one of our focus groups, she's like, "Yeah, like those people, like those guys who are walking around with the clipboards and they're checking stuff off all the time?"

Michael Cowen:

Yeah.

Ed Ciarimboli:

So in the deposition, we had an a PowerPoint, it was a clipboard that had like a yellow pad that had all the elements that they were supposed to do for an inspection. We just checked them off. No, no, no, no, no. It became one of the core exhibits in the whole trial. I mean, super simple exhibit. Didn't cost us more than probably ... I think we bought the clipboard on stock images for \$1. It was just a really clean powerful image.

Ed Ciarimboli:

But that was the premise of the case. Our client was a wonderful man. He was 61 years old. He had an adult daughter, Stephanie was 32. He had two young, beautiful grandchildren. This guy was amazing. I mean, he just was a really good human being. So much so that one of our key damage witnesses in the case was his ex wife.

Michael Cowen:

Oh wow.

Ed Ciarimboli:

Yeah, his ex wife testified what an amazing person he was. One of the interesting stories and one of the jurors afterwards actually said, like, "Wow, that was really powerful." They got married young, didn't work out, they got divorced. But they had a daughter. The ex-wife remarries, and they end up having two more children. Our client George just was wanted his daughter to make sure that she was in a good family environment. His ex-wife and her new husband buy a house. He remodels the whole house for them.

Michael Cowen:

Wow.

Ed Ciarimboli:

Doesn't charge them a dime. His daughter's on the softball team, ends up coaching the softball team. Then his daughter ages out, and he ends up coaching their daughter. I mean, we just had really great stuff. Everybody from the company that he worked for, they were just outstanding. I mean, these were tough guys. These were riggers. I mean 30, 40-year riggers. They just came into a courtroom and just completely broke down talking about it. So it was pretty powerful stuff.

Ed Ciarimboli:

It's interesting, those are some of the intangibles that I think that defense lawyers, especially insurance defense lawyers, they just overlook that stuff. It's always about check the box, what were his wages? What were his medical bills. We didn't put any economics into the case because the anchor on them made it about \$400,000. It was a relatively low anchor. We didn't want it in the case. I'll tell you how that ended up. The case settled at trial after I crossed their economic expert. Yeah, it was really fascinating. But that was the case. It was set for trial. It was originally set for trial in September. Then the judge had continued it to November. She was adamant that we were going to try the case.

Michael Cowen:

Before we get to the trial, I've got a question. So you really used federal regulations, specifically to trucking to really make your case against the target defendant as a shipper and as a receiver. Shipper, for people that don't do live trucking, is the company that hires a trucking company to ship something. The receiver is where they're delivering the goods, the party that's going to receive the goods. Did you work up the case before you got into depositions. Did you figure this stuff out on your own and look up the regs and other reg or did you hire an expert explain to you what the regs were?

Ed Ciarimboli:

Well, I mean, I had a fairly good understanding of the regulations. The thing that I was not 100% sure on was just the hazardous material aspect of the federal regulations. My expert's a guy named Ken Lacey. He used to run Jones Motorcoach, great, great, great expert, reviews them a whole bunch. He's just a fantastic expert. I called him up and I said, "Ken, here's the scenario." I think it fits into this, but I'm not sure. Ken said, "Hold on, I'm going to make a call." Then he texted me and he said, "Expect a call from this guy, Jody." I said okay. 15 minutes later, I get a call from this guy, Jody. Jody owns a company that specializes in moving hazardous materials.

Michael Cowen:

Oh wow.

Ed Ciarimboli:

They move fracking, water, hydraulic oil, everything else. He's like, "You're 100% right." That falls right directly into the classification of the hazardous material. These are the responses the non delegable duties that a shipper has whenever they are going to be moving hazardous materials, especially across state lines, so that it's in interstate commerce. I had that basic knowledge. But very keenly, I think I might have had one case four or five years ago where the truck was hauling hazardous materials, and

got into a wreck. But it didn't involve the nitty gritty of what it was, the shippers' responsibilities, things of that nature, it just was this was the hazardous material that they were hauling and the driver fell asleep.

Michael Cowen:

Because what I found is, and I love a lot of the experts we work with. But we can't just go to the experts and say, "Here are the facts. What are my theories?"

Ed Ciarimboli:

No, no.

Michael Cowen:

Because one, they're going to miss things. I mean, because they're industry people, they don't always think of every possible theory. The other thing is they're looking at making so many so many hundreds an hour. No one has more of a motivation on your case. I mean, I've got a case. I'm getting ready for a trial where cell phone's a big issue. We finally got the cell phone files from our expert. I could go look too. I find all kinds of stuff that he didn't point out.

Ed Ciarimboli:

Yeah, yeah.

Michael Cowen:

Because I'm there at 2:00 in the morning digging through this line by line by line where he was looking for big stuff. It's an overwhelming amount of data, I'm not faulting him. It's not that I'm telling them what to say, I'm just asking, "Hey, look at this, does this show this or not?" Oh yeah, it does. Same for the safety experts. This is kind of what I'm thinking, am I right or wrong? Obviously, you can't tell them what to say and you don't want that because people need to believe passionately what they're saying to be credible testifiers. But to just go, "Well, I'm going to go take a case and hire an expert and have the expert tell me how to do my case." I mean, it's not going to work.

Ed Ciarimboli:

No way. No, it's going to fail. Right, you know, fail on the spot. It really is. Yeah, absolutely.

Michael Cowen:

So you're talking a little bit about the jury selection process. How did you do jury selection in a way that was safe for the jurors?

Ed Ciarimboli:

Yeah. So we picked the jury at an old theater, and it was a huge room, I was more nervous about this jury selection than any other jury selection I've ever done because just the fear of the unknown. Even though we had gone to the facility to kind of scope it out ahead of time, you just had no idea. The judge just did such a phenomenal job. She gave a speech in the beginning of jury selection and talked about the importance of jury selection and how in a 100 years, that juries had gone on throughout world wars, civil unrest, you name it.

Ed Ciarimboli:

It gave our case just this air of importance. I think that everybody that was there felt it. I think it was really important for her to do that. Then from the safety perspective, everybody was social distanced. Then what she allowed us to do was go into a separate room, everybody was around, spread out. She basically let me individually voir dire the first 40 jurors.

Michael Cowen:

Wow.

Ed Ciarimboli:

Which was amazing, I mean, really, really amazing, and really was needed because in our work up to the case, and then figuring out who were going to be our good jurors, bad jurors, and then kind of our neutral jurors. We were able to get a treasure trove of information that I truly believe that our case was won in jury selection in that particular case, it really was.

Michael Cowen:

Just based on information that you got coming into it?

Ed Ciarimboli:

Yeah, so I worked with Philip Miller. We did six online focus groups. I think we ended up polling about 200 people before the case. What we did, the first group that we started with, we gave them the narrative and we laid it, but the sequence always remained the same. We started with just this guy's head was crushed by this machine. Why did it happen? Then we went into the company and the sequence of events. Then talked about the damages. So then each time we added a particular fact that we thought would move the needle, and that did. Then we were able to get such amazing data.

Ed Ciarimboli:

I mean, we were able to ask so many questions that you wouldn't normally even get into during a live focus group. One of the overriding themes for us from all of those groups was that people who relied upon other people to do their job safely, those were going to be our best years. Meaning like laborers, like people who they needed information from somebody else in order for them to do their job the right way, and do it safely. If those people fail to provide them the right information, then they were willing to hold other people accountable for not doing that.

Ed Ciarimboli:

Then the other thing that was fascinating for us was people that actually ... Because initially, they're running a forklift, they ran it wrong, the guy who was operating the forklift. There was some blame that was trying to be cast on him, that he ran the forklift wrong. It was the exact opposite. People who had experience running a forklift and doing rigging were fantastic for us, because they fit right into that mode or model of the individuals who required information from other sources to do their job safely.

Ed Ciarimboli:

That when they didn't get it, those people, the up the line people, the bosses, the companies, they were putting these workers at risk. We had all that data. And then we gave it to Harry Plotkin. Harry ran everything through programming. We found out these jurors, were going to be in our sweet spot, and it

didn't really matter. Age didn't really matter. Socioeconomic factors really didn't matter. It was just this was who they were and what their mindset was.

Ed Ciarimboli:

So we had 12 jurors, two alternates. When we were going through, we ended up of the first 40, of that first 20, we ended up having six people that had experience either they themselves running a forklift or seeing people running forklifts, or were laborers. So the defense the whole time was thinking these were going to be great jurors for them, and it totally blew them out of the water.

Michael Cowen:

That's awesome.

Commercial 2:

Thank you to everyone who attended Cowen's Big Rig Boot Camp in August. We had an excellent virtual turnout this year and are already thinking of how we can continue to raise that bar for next year. If you'd like to attend virtually in 2021, be sure to mark May 20th, 2021 on your calendar now and save the date. To stay updated with details as they become available, visit BigRigBootCamp.com and sign up for our mailing list. Now back to the show.

Michael Cowen:

Did you notice any difference on the composition of the people that showed up for this courtroom versus the kind of people that normally would show for a courtroom of-

Ed Ciarimboli:

Honestly, there was no difference. There really was no difference. I mean, we had people from age 18 to 90. From a very cross section of the population, I mean, we had people that were owners of companies. We had people that were students, we had people that were laborers, teachers, firefighters, policemen. I mean, we had a lot of people. I was stunned. It actually gave me a lot of hope because of these 80 people, none of them fought hard because of COVID when they showed up to get off of jury duty.

Michael Cowen:

Wow.

Ed Ciarimboli:

Yeah, not one single one of them. That was one of the things obviously that we were very concerned about. Then just in terms of how they did the selection, they ran it pretty well. They really did a good job, the judge did a really good job. The judge I think was more liberal with cause challenges just because of COVID. If somebody had a work issue or a childcare issue, even if it wasn't an overwhelming issue, she was very quick to get them off the jury so that we really seated 12 people and two alternates that there was no groaning. No groaning.

Michael Cowen:

How about the courtroom setup? How did you ...

Ed Ciarimboli:

Michael, this was the thing that gave me a lot of sleepless nights. So they put the jurors in the gallery, all spread out. The two alternates were in the very back of the courtroom. What they did then was they had two huge screens that were set up on each side of the gallery. The witness was in the jury box, like the middle of the jury box. So the judge is here, witnesses over here, juries way over here. As I was saying before, one of the things that we've worked so hard on over the years is the best thing that you have in a courtroom is you in terms of your body presence, and your voice and your movement, and making that connection with the jury.

Ed Ciarimboli:

Being there with them, guiding them through this trial, couldn't do any of that. Because now I'm 80 feet away from the jury who's in the back of the courtroom. My witnesses as well. So what we did is, I mean, we streamlined this case completely, down to its bare essentials. So almost every question on direct or every question on cross had some corresponding visual that was on the screen that the jury could see and connect with.

Ed Ciarimboli:

I mean, that was a lot of work. When you're looking at your questions and you're like, "Okay, every question has to have something that they're going to be able to focus. How are we going to make a connection with them otherwise?" We have to make sure that we can check in with them, "Hey juror number seven, you're in the third row." The judge let us do this. Can you see everything that's on there? Yes. Can you hear the witness? So we were able to do that. That became really important because the defense didn't have anything. Nothing at all. I mean, they tried the case just like it was your normal, traditional case, defense lawyer standing up at the podium, his back is to the whole gallery. Yeah, he's talking to a witness. They are literally looking at his ass while he's asking questions. It was mind blowing. He was making-

Michael Cowen:

Because it's not about the witness, it's about the jury.

Ed Ciarimboli:

Completely. All he was concerned about was his asking questions of the witness. But that was one of the things that really was, how do I say, difficult, challenging and very rewarding, because we practiced it a lot. When we got it down, when we got into the courtroom, I mean, it just flowed so easy because now, it was like, "Okay, next. What's the next image?" Then ironically, I found myself not even needing notes at all throughout pretty much the whole courtroom. The visual was right there in front of me, which triggered the question, or the question flowed from the visual. So it was actually pretty free. Just in terms of the courtroom setup. Probably the most difficult thing was sidebars.

Ed Ciarimboli:

So we add to social distance in sidebar. So if you were asking questions, you were allowed to have your mask off. Then when you went up the sidebar, the judge wanted you to have your mask back on. So now, if you can imagine the judge, and then the defense lawyers are at the one side of the bench, and then the bench cuts off where the traditional witness stand would be, and then the court reporter was there. So the court reporter would basically go into the witness box. Then I ended up having to sit, sidesaddle on the railing in front so that the judge could hear me, and we'd be social distanced and could hear the defense. Then they would be able to have the appropriate white noise.

Ed Ciarimboli:

So that was really unique. But the case tried really well. I mean, everything went in pretty smoothly. Again, I think it was because we really worked super hard on making sure that every single thing had some corresponding visual that the jury could be able to see and take, and had a real takeaway on it. But I'd tell you, we walked on eggshells every day because the judge told us before the trial, "Look, if anybody comes in the next day, and they test positive or their family member says positive, it's a mistrial."

Ed Ciarimboli:

You put a lot of time, energy and money into these cases. We spared no expense because it was a big case, and we treated it as such. That made for some sleepless nights during the trial, just like, "Please nobody test positive."

Michael Cowen:

I bet. Now, how did you sequence your story to try to put the focus I guess more on the shipper instead of other people being involved in it?

Ed Ciarimboli:

That's a great question. So my opening statement essentially started with, "On this day, George James went to work and never came home." Why? Then we started, "Let me introduce you to this company." Then I started talking about the company. Then I started talking about what the company did, started talking about how experienced the company was with hazardous materials, how they handle hazardous materials all day, every day, etc, etc, etc. Then I explained the whole transportation cycle, shipper, carrier, receiver, and we had a great visual. I mean, just a terrific visual with the company and the company's logo, and then the truck and the machine and then their company.

Ed Ciarimboli:

So it was really easy for them to understand, the bookends of this movement was this company. Then we introduced the federal regulations, and spend a lot of time as one of the things that I love Rodney for and I think that is a true genius, is taking your jury instructions and applying them to your case, and making damn sure that you talk about them in your opening, you talk about them with your witnesses because at the end of the case, those are going to be your foundation, those are going to be your backbone. We did that. We broke down our jury instruction and the words "duty and responsibility." Then those corresponded to words in the documents as well. So that's how it really kept the focus on the defense.

Ed Ciarimboli:

Then from the sequencing perspective, my first witness in the case was the corporate representative of the company. My cross of him was probably maybe a half hour, and he did terrible. I mean, he came off very smug, a little bit angry. Even though he had agreed that didn't taken any of these steps, they just kind of kept defaulting to that we didn't have anything to do with it. We just thought we hired these guys. That was it. We didn't have to tell them anything.

Ed Ciarimboli:

Once we were able to show the jury, "No, you have the responsibility, not this company, this was your responsibility, and how did you fulfill it?" I think it absolutely set the stage for the rest of the trial. So we went from the corporate representative into our expert, and then into some of the folks from his work. That was where we were most concerned with our case is that the defense was going to be able to make some points crossing the owner of the crane company, crossing the co-employee.

Ed Ciarimboli:

At the end of the day, these guys were just brutally honest. I mean, they came in and they said, "Look, we don't have a hazmat certificate. So why would we even ask a hazmat question, we don't even have that certificate? They know we don't have that certificate because we've been working for them for 20 years. The only time we've ever moved anything that has had any hydraulic fluid in it, it's been in their facility from Point A to Point B, not on a roadway."

Ed Ciarimboli:

So these guys, they were just like your blue collar, super honest guys. But then when they talked about this guy, their co-worker who they had worked with for 30 years, you saw these really tough guys just break down and start crying. It was powerful. Every day, every single solitary day, they kept putting more money on the case, after they told me in the beginning, "We're not going to pay you A." Then they went to, "We're never going to pay you B." Then they went to, "We're never going to pay you C." Then it finally got to the point where it was the last day of trial.

Ed Ciarimboli:

I said, "I'm going to rest." They said, "Well, I want to ..." I didn't call my economic expert. Judge said, "Are you going to call any other witnesses?" I'm not calling any other witnesses, and I was never going to call the economic expert. So the defense, so we take a break, and the defense says, "Judge, we're going to call out economic expert. He's here." They had said this the night before, and I didn't say anything, because I was hoping he showed up. Right? I was really hoping he showed up.

Michael Cowen:

They want to put in your economic damages because they think it's going to anchor the jury lower.

Ed Ciarimboli:

Right. She's like, "Well, do you have an objection?" I say, "I don't have an objection." Now, by all rights, they were so dumb that if they ... They made two critical errors. One, in Pennsylvania, the only way I get reckless indifference is on a survival action, not a wrongful death action. So if I don't put anything in on the survival action and they don't put anything in on the survival action, then I don't get reckless indifference in the case. So it was a little bit of a gamble on my part, but I knew they really wanted to do this. Now reckless indifference, if I get the checkmark on recklessness, which it was headed that way, it would eliminate any comparative negligence on my guy's part.

Michael Cowen:

Oh wow.

Ed Ciarimboli:

Yeah. So it was like one of those moments where they're like, "Well, we're going to call our economic expert. What do you think of that?" I'm like, "Well, thank God." So they're going to call this guy, so they put them up. I knew that this was like a throwaway expert for them too because the lead attorney, he lets his associate handle the economic expert.

Ed Ciarimboli:

I'm like, "Oh, this is going to be fun." So I get up on cross. The first thing out of my mouth, because their economic expert said that my 61-year-old guy that people have been raving about what a wonderful human being he was, that his economic damages were \$62,000. It was an offensive number, it was appalling. So I get up, and I say, "Let's do some math." Again, I didn't have any numbers in this case, I didn't put any numbers in. I said, "Can we agree that that every minute of life is important?" Yeah. George James is 61. He's got a life expectancy of X. How many minutes is that? Well, it turned out it was like 11 million minutes. So boom, right up on the big screen. 11 million. I mean, and it stayed there.

Michael Cowen:

Because you don't have to ask for a number in closing in Pennsylvania, right?

Ed Ciarimboli:

Correct, correct. We have to weave in some some economic numbers. We have put another anchor that was just as big regarding the time, the value of this machine. So it all tied together on the anchor aspect of it. So then for the next 20 minutes, I cross them. So I start there, and then I said, "You're the economic expert." Yes. Okay. You know the jury instruction in Pennsylvania. Yes. He's also a lawyer, by the way.

Michael Cowen:

Wow.

Ed Ciarimboli:

I said, "You're aware life expectancy, this jury must consider on the issue now of economic damages that you're putting into this case, they have to consider the type of person that Mr. James was, did you do that?" No. I said, "Well, let's take a look at the type of person he was." Michael, for the next for the next eight minutes, I went through photograph after photograph. This is Mr. James coaching softball for a kid who's not even his kid. This is Mr. James getting an award at work with his co workers. This is Mr. James at the wedding of his daughter, which by the way, he paid for the reception for the wedding for his daughter, because his daughter's parents were having a hard time financially, and never told anybody ever. Did you take that into consideration? Did you take this into consideration?

Ed Ciarimboli:

I mean, it was just boom. One thing after another, after another, just getting totally destroyed. Then I say to him, his name's Chad Stoller, and I've crossed him a bunch, I said, "Mr. Stoller, I know you. I mean, I respect you, I know you on a personal level. I know you're a father, you're a husband. Those things are far more valuable than any economic number. Wouldn't you agree?" He says, "Well, that's an interesting philosophical question." I said, "It is." I said, "Would you agree with that?" He said, "Yes." I said, "You're not telling this jury that Mr. James's life is only worth \$62,000, are you?" He said, "No, I'm

not." Then he went on some big spiel about mathematics, and I just sat down. After that, corporate counsel for the company was there that day. The lawyer for the excess carrier was there that day.

Ed Ciarimboli:

So we break, and now we're going to come back in the afternoon, and they come running up to me, and they're like, "This case is getting settled. This case is getting settled. That was ridiculous." They put a lot of pressure, the excess carrier, there was a primary and then basically two levels. So we got the case settled right then and there.

Ed Ciarimboli:

But as a little interesting aside, so another lawyer had ended up coming into the courthouse and had to go into where the judge was for some criminal matter or something, and was talking to one of the judge's clerks. They're like, "How's Ed's trial going?" They said, "Well, it was going pretty good until about a half hour ago. It went from good to unbelievable after they put their economic expert on." It settled right after that. As a closing the family, they were able to buy a house and move out. They were in tough living circumstances. They just sent me the most beautiful Christmas card. Those are the things that when it all comes together, what we do really makes it all worth it.

Michael Cowen:

Absolutely.

Commercial 3:

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Michael Cowen:

Did anyone get to talk to any of the jurors after the trial?

Ed Ciarimboli:

Yeah, so interestingly, so the case settles. Because of COVID, the judge didn't want to bring them back into the courtroom. Basically, what the judge did is she just had her clerk go and tell them their services are no longer needed, the case had resolved. So I had asked the court if we could reach out to the jurors and said, "Yeah, no problem." So I send each of the jurors a handwritten note and just said, "Hey, thank you for your service. I know you probably have some questions. If any of you want to reach out and talk about the case and what happened, I'll tell you everything that I can tell you. Of the 12 jurors, eight of them reached out to me.

Michael Cowen:

Oh wow.

Ed Ciarimboli:

Man, I tell you what, Michael, each one of them was better than the last. They were just such amazing people. The thing that I had asked them, each one of them, I said, "Were you nervous?" They said, "You know what, we were very nervous, we were very nervous about being there." But then the judge put us at ease, the court staff put us at ease. Everybody was respectful of wearing a mask. Nobody came into an area that made anybody feel uncomfortable. You kept checking in with us all the time to see if we heard everything, if we saw everything, if we needed anything.

Ed Ciarimboli:

They were all like, "That made us kind of not forget that we were in there during COVID. But at least that everybody was doing everything they could to protect us." That was good. That was great. We kind of asked them about all the points that we had talked about. I mean, they were dead on. All eight that we talked to, they were all with us. They hated the defendant, right from the get go, loved our family. I said, "If there was one moment in case that you really take from you, that I did well or poorly." Because I always ask, "What can I do to get better?"

Ed Ciarimboli:

A couple of the jurors are like, "Well, that economic guy, can't believe that they even put them in there and you did a really good job with that." I said, "What did I do poorly? If there was anything else that I could have done that would have made things better or easier or anything of you know that nature?" One juror said, "You got to wear different shoes."

Ed Ciarimboli:

I said, "Got to wear different shoes? Why do I have to wear different shoes?" She said, "Because the one day you were standing there, and when you would move your foot," because the floor at that one area was like a tile. She's like, "Every time you would move your foot I can hear like a ... Like a little squeak in the rug." Okay. I'm like, "If that's worst thing, then that's fine." But no, they were just good people. They were just nice people. They were kind people. None of them had an ax to grind.

Ed Ciarimboli:

We got a little bit lucky, we had just people that we're willing to serve, and we're okay with it. We did the hard work beforehand so that we put ourselves in the best possible position to be successful for our client. Fortunately, we were.

Michael Cowen:

I guess, two closing questions for you. One, for people that are wondering, "Should I push the case to trial during COVID or should I wait until everyone's vaccinated and we're back to normal or the new normal, whatever it's going to be?" Because they're scared about the uncertainty. What message? What would you ...

Ed Ciarimboli:

Yeah. I say do it. The reason I say do it is, look, it is scary. It is frightening. We also have a job to do. We have clients to represent, and those clients need us. A lot of times, their financial futures are riding on us. If we just focus on the uncertainty and the scariness of COVID, then I don't think that we're doing our job as lawyers and advocates for them. I think you got to do it, and you really got to focus and you've got to work four times harder than you do for a normal trial. But if you put in that work and do it, I think

that you can overcome that uncertainty and those uneasy feelings and how really scary it is. I'm a firm believer in that.

Michael Cowen:

What if your only option had been trial by Zoom?

Ed Ciarimboli:

Yeah, I don't know, honestly. That's tough. Because I mean, just as you have been, we've been doing depositions over Zoom for the better part of the last. They're okay, but they're not perfect, they're not great. If your only option is trial by Zoom, then you got to do it. But I think the same thing is now, what are the things that you got to work on on Zoom? All right? You got to work on your eye contact, your hand, you got to work on visuals, you got to work on screen sharing, you got to work on your background, all those things that you really got to make sure that are perfect.

Ed Ciarimboli:

So that A, they're not distractions. B, now through this particular type of medium that you're communicating as effectively and as efficiently as you as you can. So I think it can be done. It certainly presents a whole plethora of unique challenges. But I definitely think it can be done. Then there's also, the way that Zoom is set up, I also think that there are some things that are better in terms of trying a case because you're going to see immediately somebody's reaction to a piece of testimony or a piece of evidence or a visual.

Ed Ciarimboli:

As opposed to in a jury trial, just because of the how where you're at, you may miss that. But you sure as hell aren't going to miss it on Zoom. If it's something that you're keyed into and your people are keyed into, and you pick up on that, then I think that the body language over Zoom can tell you a lot. It can be very intimate as well. You'll know, I mean, you're going to know over Zoom. You're going to know that when people are engaged because they're going to get closer. You're going to know when they're just checked out because they don't care. So I think that you'll be able to, from that perspective, pick up on some things that you might miss in a courtroom just because of the spatial elements in the courtroom.

Michael Cowen:

For anyone who's thinking about doing the Zoom trial, you don't have to just sit in front of a computer. There are other kind of cameras that can be used as web cameras. I mean, you can get someone operating a camera. You can stand up, you can move, you can get a printed board and have someone zoom in on it. So you can use mix media, you can hold a model and have someone zooming on it. So be creative if you're going to do this stuff.

Ed Ciarimboli:

Yeah. We bought a thing called a Jigabot. It's really cool. It has a remote, and it's a camera. So the camera goes on this little apparatus, if you will. Now, I could stand up, and I could hit zoom and it'll zoom in on me pointing to something in the background. So it's super cool. I mean, there's so many, so many things that you could do in terms of lighting and microphones and cameras and camera angles.

Michael Cowen:

All of these cameras too. One thing I like about documents as opposed to electronic exhibits, I crossed a defense medical. I don't want to call him expert, paid opinion witness, a medical doctor they hired. I had a client that had just really, really exceptionally horrible injuries immediate. I mean, severe traumatic brain injury, lots of broken bones. One day, I just got an outline of the body. I just went through them. They were all in his report. I just mark it right, a severe traumatic brain injury. I wrote that out, and I just went through each one and created exhibit live on Zoom, so that it's just more engaging, and got it all from a defense witness. Play it before we play our witnesses and give it even more credibility.

Ed Ciarimboli:

No question about it. That's one of the other things that we've been working really hard on in deps. Because we know that look, these deps, these clips from these deps are going to end up being in our trials. What have we been doing? We've been doing the same thing like creating exhibits during Zoom, so that when people are watching this, they're engaged, they see something, they see movement. The yes, no, matrixes that we have, we've been doing those live, lots of graphs. Because we can take tons of information and distill it down into one visual that people are looking.

Ed Ciarimboli:

They're looking at it. You see them, when they're on the Zoom, they're interested in it. They want to see what's on that. So there are some aspects of the of the Zoom trial that I think, certainly can be better than even in a real courtroom. But look, end of the day, I wouldn't call you a trial lawyer, you're a warrior. I know that you're going to go in there and slug it out and do everything you can to put your clients in the best position to make a recovery. I just have such respect for you, Michael, in doing that. I mean, you got tremendous results and your passion speaks for itself.

Michael Cowen:

Thank you very much, Ed I really appreciate you joining us. If someone here is listening and they want to reach out to you either because they got a case they want to talk to you about or they just have an issue that they want to discuss with you, what's the best way to reach you?

Ed Ciarimboli:

Sure. So my email is EJC@FCLawPC.com EJC@FCLawPC.com. Then the best way to get ahold of me is on my cell phone, 570-510-9941. As all of us, it's always right there, and it's always on. Drives our families crazy every now and then. But feel free to reach out anytime. So if you have any questions or comments or want to get a little bit more information or talking about a case, whatever it may be.

Michael Cowen:

Thanks, Ed I really appreciate you come on today. I've really gotten a lot out of this. I really appreciate it. You got me fired up to try to get back on that courtroom.

Ed Ciarimboli:

Cool. Thanks, Michael. Good luck next week.

Outro:

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Commercial 4:

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