

Michael Cowen:

This is Michael Cowen and welcome to Trial Lawyer Nation.

Voiceover:

You are the leader in the courtroom, and you want the jury to be looking to you for the answers.

When you figure out your theory, never deviate. You want the facts to be consistent, complete, incredible.

The defense has no problem running out the clock. Delay is the friend of the defense.

It's tough to grow a firm by trying to hold on and micromanage.

You've got to front load a simple structure for jurors to be able to hold onto.

What types of creative things can we do as lawyers, even though we don't have a trial setting?

Whatever you got to do to make it real, you've got to do to make it real. But the person who needs convincing is you.

Welcome to the award-winning podcast, Trial Lawyer Nation, your source to win bigger verdicts, get more cases, and manage your law firm. And now here's your host, noteworthy author, sought after speaker and renowned trial lawyer, Michael Cowen.

Michael Cowen:

Today on Trial Lawyer Nation, I am joined by attorney Brandon Thompson. Brandon has got a string of incredible verdicts most recently in a \$111 million verdict in a medical negligence case. But before we could start, I just wanted to say thank you to Lawpods. Lawpods is producing this podcast. They make it so easy, all I have to do is record. They do all the editing, cutting, producing, marketing, everything else. If you're going to have a podcast and if you're attorney trying to get referrals or even trying to get business from the public, you definitely should. I highly recommend Lawpods. That being said, let's go ahead and get started. Brandon, how are you doing today?

Brandon Thompson:

I'm great, Michael. Thank you.

Michael Cowen:

So tell me a little bit about yourself.

Brandon Thompson:

Sure. So I practice in Minneapolis, Minnesota, a lifelong Minnesotan. I was born and raised here. I've been a plaintiff's personal injury, slash medical malpractice attorney for essentially my entire career, which is... Gosh, going on 17 years now.

Michael Cowen:

What attracted you first of all, to plaintiff's work?

Brandon Thompson:

It's an interesting story. So when I was in high school, I knew that I wanted to be a lawyer. I knew I wanted to be a trial lawyer. I got roped into doing mock trial when I was in high school. Went all through

undergrad knowing that I wanted to be a trial lawyer, but I had no idea really at the time what that looked like other than that I wanted to be in court, and I thought I probably didn't want to do criminal work.

So I just always assumed that I was going to do corporate type work. Work for big corporate litigation. I did a summer after my second year of law school with a firm in town that will remain unnamed. They did insurance defense work and I hated it. I hated every second of it. I didn't like the work. Yeah, I just didn't like it.

And so I didn't know what I was going to do. And I actually thought for a time in my third year of law school, "Do I want to go back and get a PhD and teach history or something like that?" And then my best friend from law school was planning to join his dad when we graduated. And his dad was a very good personal injury lawyer in town and he had a solo practice. And so my buddy, Pat Stoneking said, "Well, why don't you come work with my dad and I?" And I thought about it and I thought, "God, do personal injury work?" I mean, have my face on a billboard. I mean, I didn't know anything about PI work other than that. So I thought, "Well, what the heck? I might as well give it a try because I don't really know what else I'm going to do."

And so I started working there during third year of law school and I loved it. I absolutely loved it. I loved the work. I loved being able to represent real people. And I realized very early on in that time working for that small PI firm, that what I had been missing with the firm where I had worked after my second year of law school was working for real people and really making a difference in people's lives.

And that feeds into my own personal background a little bit, although I didn't realize it at the time, but I never look back. That's what I've been doing ever since, and I can't imagine doing anything else. I always tell people, I feel like I'm one of those very fortunate people who just happens to have found the thing in life that I really truly do feel like I was born to do.

Michael Cowen:

You said that fits into your personal background. Can you tell me a little bit more about that?

Brandon Thompson:

Yeah, sure. So very blue-collar upbringing. So my mom is one of 10... She's the eighth of 10 kids. She was the only one of 10 kids to graduate from high school, believe it or not. My dad worked as an electrician at the Ford plant. I was the first person in my extended family. I mean, going all the way back to getting off the boat from Norway and Germany, first person to go to college in my family and really having the... How do I put this? The love of service and the love of helping people is just something that was ingrained in me from really early, really, really early on. And actually, my dad's dad was a refrigerator repairman who worked for a time at the federal courthouse in Saint Paul, Minnesota. And you can imagine the pride that he had when his oldest grandson became a lawyer and actually practiced, tried a case in that courthouse.

Michael Cowen:

Oh, yeah. And so, is it mostly medical malpractice?

Brandon Thompson:

No. Yeah. So I've been doing almost exclusively medical malpractice work for about the last 12 years.

Michael Cowen:

So that's one of the hardest ways to make a living other than maybe just doing slip and falls. One of the hardest ways to make a living as a plaintiff's lawyer, I think. I mean at trucking case, I can look at a police report and I can say, even if I screw this up, I'm still going to do something with it. It's just, can I make this a huge case or I'm going to screw it up and make it a mediocre case. Whereas medical malpractice, I mean, you don't even always know when it comes in, whether it's going to be a good case and then you can do everything perfectly and still the people like the doctor and they don't want to give money. And so, what attracted you to that area of law?

Brandon Thompson:

So that's also a little bit of an interesting story. So when I was a couple of years out of law school, I had my first child and I loved the small practice, but the financial ups and downs of a little tiny personal injury practice were getting a little bit stressful for somebody who was just going to have a baby.

I mean, whether I settled a case in the last three months or not, this kid's going to still need diapers. So I started thinking about making a change and I actually considered trying the whole business litigation piece of it. I thought, look, if I'm going to make a change, maybe I'm just going to really make a change and try something different. So I applied for a job at what was then Robins, Kaplan, Miller & Ciresi in Minneapolis, which was one of the biggest law firms in town.

And I applied for a job in the business litigation group and I got a phone call from their recruiting person. And she said, "Well, I know that you applied for the business litigation job, but one of our medical malpractice partners, Kathleen Flynn Peterson, is looking for an associate in her practice. Would you be interested in coming in and interviewing for that job? And I thought to myself, "Well, you obviously don't want me for the business litigation job, so sure." What the heck, I'll come in.

And I knew a little bit about Kathleen at the time, but not much. I didn't know that she is one of the best medical malpractice lawyers in the entire country. And quite frankly, I didn't understand at the time what an enormous opportunity it was for me to interview with her. I learned that before I came in for the interview and I got lucky. I got lucky that she had recently lost an associate, Tom Sinus, who was a great lawyer, still is a great lawyer practices in Michigan.

She really loved working with him. She was heartbroken that he left. She had to find somebody because she had such a busy practice and she decided to take a chance on me. And she's told me since, and I believe her, "Look, honestly, I'd interviewed 50 people and I was sick of interviewing people. So I figured I'd give you a shot." So I mean, I got lucky.

And I told you before that I really enjoyed personal injury work. Medical malpractice truly is I think the niche that is perfect for me. You're right, it's difficult. It's incredibly difficult. It's hard as you said to think about a harder way in some ways to make a living practicing law, because it is so tough, but it's also fascinating. And the intellectual stimulation that I get from handling these cases and from the tremendous team of people that I'm surrounded with every day, it's just I look forward to going to work every day. I really truly do.

And no cases the same, I mean, when I was doing auto cases, you get into a groove or a routine and it's the same thing over and over again in a lot of ways. When MedMal is totally the opposite and every case you have, you're building on what you learned on a previous case or the case before that, the experts are all brilliant and sophisticated. The defense lawyers for the most part are brilliant and sophisticated. And on top of all that, we're able to help people.

I mean, we've been fortunate enough that we've got a successful enough practice, so we've got more work than we know what to do with. And so we get to choose the cases that we're going to handle. And that means that when you're a defense lawyer, sometimes you represent people that maybe you don't

want to represent. Could you get whoever the insurance company gives you? I've got the incredible luxury of only representing people who I truly, truly want to help and feel like need help. And we have the honor of helping them navigate some of the darkest, most complicated times in their lives. And it's a tremendous privilege and I'm gushing a little bit, but I love it. I really do.

Michael Cowen:

I did some medical, my practice work until 2003 when the Texas legislature changed our law and I took the hint. But what I found, one of the toughest things for me was case selection because I would get to the point where I would no longer meet a client before we reviewed the case for merit, because I would meet somebody in their story. It would be so tragic, but it would be such a tough case to prove. And then I would make really bad decisions based on my heart instead of my head. What do you do to make sure that you picked the right cases? Because that's such an important thing in medical malpractice,

Brandon Thompson:

Well, first of all, what you just described is I think the way that my team would describe me, they say, "You never want to turn down any case." And I say, "That's what you guys are there for." No, I mean, Michael you're right. Case selection is such an important part of what we do. And we have a really robust system where like you... I mean, we typically don't meet with folks except in really rare circumstances until we've had an opportunity to really get the case hard.

And I told you before, we've got a team of amazing people around us. And some of those people are medical analysts who are actually nurses, doctors, people with medical training who are able to help us with that initial intake process, really sort through a lot of the stuff that isn't something that we would ultimately take on and then get to the point where we can take a little bit deeper dive into the 1%, 2% of the cases that we're actually interested in.

I think it's a testament to our team and to our process that it is a rare event that we will have a case that we agree to take on that we aren't then able to get expert support on the very first expert call that we have, because typically speaking we've really, really dug in and done our due diligence on a case before we agree to take it on.

Michael Cowen:

So what are you looking for? Are there certain characteristics that make a good medical malpractice case?

Brandon Thompson:

Yeah, so I mean, obviously we're running a business. And so, one of the key components of any case is it's got to be a really significant injury. One of the biggest mistakes, I think that MedMal lawyers make is having the initial look at a case, be based on the perceived strength or weakness of liability. I try not to do that.

I don't want to take a case that I think has slam dunk liability, but maybe has questionable damages. Because how many times do you take one of those cases and you get into it and you realize, "Well, maybe liability's not as strong as it was." So it's always, always, always the first criteria is, is there really a significant injury here?

And part of that is a business decision, but part of it quite honestly is we've got a finite amount of time. We've got a finite amount of resources and my team and I really want to dedicate those resources to helping the people who we truly feel need our help the most.

And so that's the initial criteria. And then we look at liability, of course. I got to see a path to liability. I don't have to be convinced that I'm going to be able to make liability on a case before we agree to take it on because obviously, there's a lot more research and investigation that needs to be done on that piece of the case, but I got to be able to see a path.

And then the third criteria for us, and I alluded to this before. It's got to be people who I feel like we will want to work with for years. I mean, I always tell people when we first meet with them, I mean, look, we're a small law firm, we're a small team. And in a lot of ways our clients become like family to us and you've got to be comfortable with us in terms of being somebody that you'd want to sit down and be a part of your family on Thanksgiving dinner. And we want to feel strong about that with you all as well.

I still stay in touch with lots and lots of my clients. Actually, w one of my partner and I just got invited to the wedding of one of our clients. We settled a case for them three years ago and I still go pheasant hunting with them in South Dakota every year.

Michael Cowen:

Oh, that's awesome.

Brandon Thompson:

Yeah.

Michael Cowen:

So you've in a field, that's a tough field. You've had a string of multimillion dollar verdicts in medical malpractice cases. Are there any patterns or characteristics you find give rise to being more likely to get a big verdict in the case, besides just the injury?

Brandon Thompson:

Such an interesting question. And I thought that you would ask a question along those lines. So much of it. I mean, I would like to sit here and say, look at all these brilliant things that we do, that nobody else is doing. That'll allow just you do this too, and you'll get these great verdicts. So much of it in medical malpractice work is the jury that you pick. And a lot of that is the jury that you end up with.

The pool that you start with and sometimes you just, frankly, got to get lucky. And I tell young lawyers and I tell our clients before a case goes to trial, "In order for us to win, we got to be perfect. The defense has to make a couple of mistakes and we got to get lucky and it's a small hole to thread, but we got to thread it in order to be successful in your case.

So I always tell people, I mean the work that we do, I think gives our cases the chance to be successful and you got to at least have that. And then you got to just kind of let go and hope that you've armed your good jurors with enough to go out there and finish doing your job for you because it's the rare case that you're going to convince every single person in that jury box to be for you. It really truly is. I think after polling jurors it's maybe happened to me one or two times in my career that we've kind of had them all going into deliberations and we knew we were going to have them much more often than not. There's a few holdouts and you've got to have people who are armed with the facts and armed with your arguments to get in there and finish the job for you.

Michael Cowen:

Are there certain fact pattern? One thing I was thinking about just in when I was... And it's been almost 20 years for me, but mistakes and judgment versus systematic problems, versus money driven decisions

or money influenced decisions versus just an honest mistake are there things that you're looking for that you think are more likely to lead to a victory?

Brandon Thompson:

Yeah, that's a good question. So obviously, mistake in judgment is a pitfall for the plaintiff's side. I mean that is a defense theme that they hammer on and that works much, much more often than it doesn't. And so, you've got to be able to frame the case in a way that's really going to allow the jurors to believe that this wasn't just like an honest mistake in judgment but there was something that happened here that deviates from what you would expect.

Because one of the things that we're really fighting against is people's internal, Don Keenan would call the reptilian sense of self-protection. And part of that sense of self-protection is to always attribute these bad things that happened to somebody else, to some decision that was under that person's control as opposed to out of that person's control. Because if I'm a juror and I think boy, this awful thing happened and it was because the doctor made this stupid decision. Well then I'm thinking but for the grace of God go I. And the next time I am in a doctor's office, or my daughter or my son, or my dad, or whoever that could be me.

And so just from a self-preservation standpoint, I think people want to create a narrative in their mind that holds the profession, the medical profession up on that pedestal and protects you from having this cognitive dissonance of feeling like the next time it's going to be me.

And so we've always got to frame it in a way that... Try to think about how to put this, that allows the jurors to see this doctor, or this nurse, or this hospital, or this situation as something that is an outlier, is a deviation from the norm. That's so important. And there's a lot of different ways we can do that, of course.

Michael Cowen:

Can, you can give some examples.

Brandon Thompson:

Sure. Well, I'll give you an example in the case. The last case that we had, that we got that great result on. The frame in that case was that, look, this is a good hospital. These are good doctors. I don't know how many times I talked about how these guys were really good doctors or good people. We're not here to smear them or anything like that.

The fact of the matter is the system at this hospital is set up such that they're overworked. This was a Saturday. These guys were on call. None of them went back and saw this young man for hours and hours and hours and hours before he was discharged from the hospital. That's not really their fault. They were busy doing lots of other things. And the way this hospital is set up, they've made the decision to transition that those discharge decisions to nurses who, God bless them, they're nice and wonderful, and good people and everything else, but they're not equipped to make those decisions.

And so, I didn't in this case make the really direct accusation essentially that look, this is a money-driven decision. Actually, find a lot of times with conservative jurors in a place like Minnesota. You lose credibility by trying to directly say that. You want to put it out there and let the jurors come to that conclusion on their own. Look, okay. So, why is this hospital set up this way?

And I think that is in large part, one of the things that drove the verdict in this case.

Michael Cowen:

So, yeah. Tell a little bit more about the case. So I know you had an 111 million verdict, which is incredible. I know that you had... It was medical negligence, that's all I know about. I've read a couple articles, but I don't know a whole lot about it. So tell me about that case.

Brandon Thompson:

Sure. So we represented a wonderful young man named Anuj Thapa. And Anuj is a citizen of Nepal and he was 19 years old at the time this happened. And he had been in the United States for couple of weeks. He and his best friend traveled from Kathmandu, they were flying on Christmas day and they were coming to Minnesota to go to college.

Let me give you a little bit more background on Anuj, because actually I think it's fascinating and it gives a little bit of context, I think, for the size of the verdict. So Anuj grew up in a village. I mean it's a village, a farming village, about an hour outside of Kathmandu up in the hills. He's from a farming family. He grew up in a, you can call it a house, some people might call it a hut, a house without heat.

And in Nepal, like in a lot of countries, they have these aptitude tests that they have young kids take that separates the weak from the chaff and decides who they're going to put their resources towards. And Anuj scored really high on these aptitude tests. And so his folks, God bless him, they scrimped, and saved, and they borrowed from relatives and they sent Anuj to Kathmandu. He lived with a relative in the capital city, so he could go to this elite high school.

And he had this dream from early on that he was going to become a mechanical engineer. And in Nepal, I learned this throughout the course of the case. In Nepal, that's like on par with being a doctor or a lawyer. It's like one of the most prestigious positions. And he had this dream that he was going to come to the United States. He was going to get his engineering degree. He was going to work here for a few years and get an understanding for the profession. And then he was going to move back to Nepal and he was going to be the guy.

So he goes to high school in the capital city, does really well in high school. And now he's going to come to the United States and his parents take out loans from some people in the village to send him here. And he's going to go to St. Cloud State University. St. Cloud is a medium size city in central Minnesota. There's actually kind of a big Nepali community there. And I asked these folks why that is in the course of the case. And they explained to me it's because living in St. Cloud is cheap. So it ended up being someplace.

That's what drives that. I mean, they were very frank about it. Look, it's cheap and school's cheap and it's a pretty good school. So he and his buddy fly over on Christmas day and they're going to start in the spring semester. And Anuj, in addition to being really a brilliant young man is a great athlete. He's a really great soccer player. He's a runner, he's a hiker grows up in Nepal, so he and his buddies are up hiking in the Himalayas on the weekends, things like that. But soccer is his first love. And he's out playing soccer with a bunch of other Nepali kids on a Friday night and he gets slide tackled. And this kid busts his leg up bad. It's a really bad break. He's just screaming in pain on the field. They actually call an ambulance. Come take him to the St. Cloud hospital goes to the emergency room.

They do. I mean, obviously he's got this really bad fracture. And so they call in the on call orthopedic surgeon and the on call orthopedic surgeon does surgery on him that night reduces the fracture, puts in a rod and a bunch of screws. They put them all back together again. And he's recovering in the hospital in the early morning hours.

Now, when you have a fracture like this, it's a high impact sports injury, it's a closed fracture. So even though the fracture was really bad, it didn't break through the skin. You're at really high risk for developing something called compartment syndrome. And inside your leg, it's actually divided up into

four compartments and the muscles, and the tissues, and the blood vessels, and the nerves are in these different compartments. And the compartments are divided by fascia, which is a really tough type of tissue.

And what happens with compartment syndrome is you've got swelling inside one of those compartments, but because the fascia is so tough and inelastic, if there's too much swelling in one of those compartments, the compartment itself won't swell and the blood vessels and the nerves will start to get compressed. And the blood supply to that part of the leg will get cut off. Compartment syndrome is one of the few true orthopedic emergencies.

It needs to be treated promptly because if you don't treat it promptly, then the muscles and the nerves in that part of the body where the blood supplies cut off are going to die. So doctors are trained when you've got a fracture like this and a surgery like this, you got to watch them carefully for compartment syndrome. They didn't do that for Anuj. And so, he spent that day in the hospital, he was in excruciating pain, screaming, crying, riving in pain.

They gave him a lot of pain medication. The doctors were called a couple of times. They just bumped up his pain medication. The orthopedic surgeon never ever saw him after the surgery. His PA saw Anuj one time in the morning, like eight o'clock in the morning. And then it was just nurses from that point on. And the medical records documented. And this was one of the big issues in the case. When you talk about that in a minute, the medical records documented that they got his pain under control. And so they discharged him later on that day, like 5:00, 6:00 PM. And he was in excruciating pain when he went home. But he's a kid, 19-year-old kid who doesn't speak very good English. And he is been in the country for a couple of weeks.

He and his buddies just assume, "Well, yeah, I'm in pain, but it's the same pain I was in when I was in the hospital. This is just what to expect. And the nurses told him that, look, the doctors say that you're going to be in pain. This is just what you expect.

So he goes home and he's still in pain, but he's thinking, I guess I just got to kind of suck it up and tough it up here, because this is just what they told me to expect. And six days pass until finally he and his buddies are just like, "This is ridiculous." This can't possibly be the way it's supposed to be. So they there's 15 of these Nepali college kids and they load him into a car, and they take him to the emergency room the next weekend and a different orthopedic on call surgeon evaluates him and he's got compartment syndrome. And they take him to surgery and they open up his leg and the muscles and the tissues in there are just gray and dead, and he's got a really bad injury.

And they try to do what they can to save some function, be for him, they save his leg, but he's got significant permanent nerve damage in his leg. He's got a foot drop, so he can't lift up his foot. So he drags his foot behind him, he's got a limp. And it's the type of injury that's really only going to get worse over time because his gate is affected. And so, as he limps around day after day, after day, that affects his knee and it affects his hip and it affects his back. And on top of that, he's got because of the nerve damage, he's that he's got really, he's got significant nerve pain every day.

I mean, it's just every single day, every hour, every minute of every day, he's got pain. And then on top of the physical injuries, he's got some really unique cultural injuries that I really believe drove this verdict in some ways. And there's some other things about the verdict that I think drove it. We can talk about that in a minute, but I want to talk about the cultural thing.

I told you that his goal was to come to the US and become an engineer and be the guy, right? That's like the hopes and dreams of his family and his village. And everybody else that dream got torn from him before it even started. He had to drop out of school for that semester because he was... I mean, he had

12 different surgeries after this. He was in the hospital for 40 some... In and out of the hospital, rehab, things like that.

And he had to drop out of the engineering program, the pain and the derailment of that academic path and the physical injury to his legs, such that he wasn't able to do the laboratories and things like that. The kid dropped out of the engineering program and ended up being in general electives or something is going to be his major. I mean, it's just some fake major that's just going to allow him to get a college degree.

And he's going to live with that every day for the rest of his life. He feels like his whole family and his whole village sent him here to make something of himself. And he's got all this potential and he gets here and the whole thing gets screwed up and to make matters worse because of the degree of pain in his leg from the nerves that gets greatly exacerbated by the cold.

He can't move back to Nepal because he doesn't think from the pain standpoint, he can tolerate the climate there. And so, now you got a kid whose dream was to become an engineer and return home and be like the savior of his family and his village and all of that is taken away from him. So that's the case.

Voiceover:

Each year, the law firm of Cowen, Rodriguez, Peacock pays millions of dollars in co-counsel fees to attorneys nationwide on trucking and commercial vehicle cases. If you have an injury case involving death or catastrophic injuries and would like to partner with our firm, please contact us by calling 210-941-1301, to discuss the case in detail and see where we can add value in a partnership. And now back to the show.

Michael Cowen:

So, who were your targets? You talked a little bit about the systematic stuff, but who did what wrong?

Brandon Thompson:

The hospital and the orthopedic practice are separate entities, both were defendants early on in the case. The hospital, we dismissed from the case on an interesting agreement that involved them being dismissed without prejudice. But we would have the ability to go back and prove up an apparent authority claim against them down the road if there was a big excess verdict, which we're navigating that piece of it now, because it was a big excess verdict.

But the case was tried against the orthopedic clinic was the defendant. And there were two individuals whose care was in question, and it was the surgeon and his physician's assistant. And the claim in a nutshell was that they should have been monitoring him more closely for the development of compartment syndrome. Somebody should have went back and examined him before they let him go home. If they would've done that, they would've realized that he had compartment syndrome. They would've operated on him then and there, would've been resolved, and he would've been left with essentially no permanent injury. There was a robust defense to that claim, but that was the claim.

Michael Cowen:

What was that robust defense?

Brandon Thompson:

Compartment syndrome, one of the hallmarks of compartment syndrome is what's called pain out of proportion. And the way that the defense presented compartment syndrome is that it is the worst pain

imaginable times two or three. It's not subtle. It is incredibly excruciating. And the fact that they were able to get this kid's pain under control by the medical documentation with narcotic pain medication means that he could not have had compartment syndrome.

Their defense was, it would not have been physically possible for him to have had compartment syndrome in the hospital. And he must have developed it when he was at home. They claimed because he had some dramatic increase in his pain that caused him to come back to the hospital six days later. And I'll tell you, Michael, that was a gift to us that they framed the case that way, because it allowed us throughout the case to paint this as a credibility contest and not just a credibility contest, but we were able to paint it as... Look, in order to buy their story, you have to believe that Anuj and his friends who we had come and testify are lying. There's no two ways about it.

And one of the things that Rick Friedman, fantastic trial lawyer, he's got a book Polarizing the Case. And this was one of those instances where you've got this just golden opportunity for a polarization. Throughout the entire case, and then I really hammered it home in the closing argument, framed it as "Look, you've got a decision to make here. You don't have to decide that the hospital's bad, or the doctors are bad because they're not. They're good people. But what's happening here is in order for you to buy the story that they're selling, you've got to believe that this kid and his friends are lying."

And the way that I presented it in the closing argument was, do you really think that this 19-year-old kid, he's in the country for a couple of weeks, he's on a student visa. He comes in here, and he manufactures a lawsuit. He lies under oath in his deposition. He lies under oath. Here, we come into, it's a federal courthouse, it's this great, big, huge, ornate courthouse. He comes into this federal courthouse with all the trappings and the judge sitting up there in his robe and he looks the eight of you in the eye, and he lies to you under oath. He perjures himself.

And not only does he do that, he convinces his friends to come in here and perjure themselves. These guys who are here on student visas, what do you think is going to happen to them if they perjure themselves? And they do all of that to make up a lawsuit and convince you to give him a bunch of money. Now, if you believe that that's what happened.

If you think that Anuj Thapa is a liar, if you think he's just making this whole thing up, that I hope you go back there in that jury room and you come back here in two minutes with a verdict against us and all of us should be ashamed of ourselves. But I don't think that's what you're going to do, because I don't think that's what happened. And I think you all know that's not what happened. And it wasn't what happened. And obviously, they believed Anuj and they believed his friends.

Michael Cowen:

You said there were also other things that drove the verdict. What other things besides... It was a credibility battle. They basically made him out to be a liar. The jury didn't believe that, they didn't like that.

Brandon Thompson:

So I think the uniqueness of his injury. So this was one of those rare cases, not unheard of, but a rare case where somebody's got an injury, that's bad enough that it affects just about every aspect of their life every day. And he's a young kid, he's got a more than a 50 year life expectancy. So you've got this tremendously long period of time. So you've got that combination, so a lot of times you've got somebody who's got a really bad injury that affects them every day, but the injury because of the nature of the injury, it affects their life expectancy.

It means somebody's got a brain injury and they're going to live another 10 years, 12 years as a result of that, he's got this unique constellation of things where it's a bad enough injury, that it's a big impact on every part of his life. And it's also going to be with him for 50 plus years.

Then on top of that piece of it, you've got this unique cultural aspect of it. Find me another case where you've got somebody who truly has had their American dream torn away from them in the way that his was. And I can't emphasize enough what a great kid he is and how credible he truly was and how just kind and humble he and all of his friends were. I mean, it was just one of those moments where they're testifying and you think these are the kind of people that a jury really is going to want to help if they have an opportunity to do that.

So certainly, I think that drove the verdict and then more probably than anything else, we got some jurors and we got lucky that there's just no two ways about it. One of the jurors, the juror who ended up being the foreperson actually had talked in jury selection about how going to Nepal was one of his lifelong dreams. It's on his bucket list of places to go. I can't believe the defense lawyer left him on, by the way, he ended up being the foreperson. And so, just all of these things all came together, like I said before, I mean, things went perfectly for us. The defense made some mistakes that we were able to exploit and we got lucky with a tremendous jury.

Michael Cowen:

Do you think somehow, a doctor who doesn't go back and see the patient just relies on what a nurse wrote down is a better case than one with a doctor actually went there and missed it. I mean, if you go there and miss it seems like it's a greater act of negligence, but to jury maybe, if you go there and miss it, that's a mistake of judgment. But if you just don't go, that seems... I mean, I want my doctor to check me out before I go home.

Brandon Thompson:

I think you're absolutely right. From an objective standpoint, you would look at that and you would say, "Boy, if you go and you have the chance to catch it and you just flat out miss it, that's really negligent and really dumb." But from a jury appeal standpoint, I think you're right. And that goes back to the whole idea of this cognitive dissonance and wanting to create an outlier. For people on the jury, the thought of...

Boy, the doctor is ignoring me. That's something that's really easy for people to envision happening, especially in modern healthcare where, I mean, everybody has been to the doctor or been in a hospital and had the experience of sitting there and waiting, and waiting, and waiting, and waiting and not knowing what's going on. That's another strong theme for us a lot is the idea that these people are just being kept in the dark. Both because it plays into negative feelings that people have, negative preconceived notions people have about the healthcare system. And also because it's a really scary thing for people to feel like they're being left in the dark about stuff.

Michael Cowen:

It reminds me of an experience I had just with the medical people not always getting it right. I mean, I was actually in court and I had back pain and the pain started moving into my groin area. And while I was driving back from out about an hour drive from the courthouse back home, it felt like honestly, someone was just grinding their heel on my part of my body. I would not want someone grinding their heel on.

And so, I go to the ER and describe my pain and then they kept coming back. The next person come in, "Oh, so it burns when you pee?" Like, "No, it doesn't burn when I pee, it feels like someone's stepping on something nearby." And then each person would come in. I mean, finally when the fifth person came in

like, "I don't have VD, I have something else going on and I had a kidney stone." And what it was and kidney stone passes and all pain goes away.

But it's just like one person got it wrong and then every other person came in the room and repeated that wrong thing and nobody would ever correct it. And it was just so... Of course, you're in excruciating pain at the time and makes it worse. But no, it was so frustrating that nobody would listen and fix it. Drove me nuts. I don't know if any of that resonates with jurors.

Brandon Thompson:

No, it absolutely does. And that too feeds back into this idea of people sit on a jury with their life's experiences. Good and bad, we got to recognize that. And when it comes to the healthcare system, people have a tremendous amount of good preconceived notions about doctors in particular and nurses that we're fighting an uphill battle against, right?

They're brilliant, they're caring, they've dedicated their lives to wanting to take care of patients. And of course, the defense lawyers are going to play that up as part of their case. So we've got to contend with that. You're not going to get a lot of traction. I don't think most of the time, unless you've got a really uniquely disgusting doctor. You're not going to get a lot of traction with trying to convince people that their preconceived notions about doctors being caring don't apply in this case, but where you can get some traction is emphasizing the negative preconceived notions, the negative experiences that people have had with the healthcare profession.

And so with your example, with people repeating the same bad story over and over again, not really listening to you, everybody's had that experience when they go to the doctor, feeling like they're not being heard. And so there again, if you are presenting a story where the reason that these bad things happened to this person is not because this doctor was a bad person, it's just because this person wasn't being heard. That doesn't outright eliminate, but it minimizes some of that cognitive dissonance of people trying to overcome their own life's experience because they say, "Yeah, look that I've had that happen to me too."

My doctor's a good person, but there's also been times where I don't feel like I'm being heard and I could see bad stuff happening because of that. Doesn't mean the doctor's an awful person just means that the system is set up such that they don't have enough time to be able to spend the time with me that they want to, or blah, blah, blah, blah, blah. Again, back to one of your earlier points about this idea of it's a system wide failure, as opposed to a judgment problem. I think all that stuff is critically important.

Michael Cowen:

So we know what the result was, what was your ask to the jury?

Brandon Thompson:

So this is interesting. So there's a lot of discussion and debate amongst trial lawyers about whether you ask for a specific number, how you decide what to ask for in terms of a specific number, when to put the specific number out there. There's a lot of lawyers who believe and with good reason that, especially if you're going to ask for a big number, get it out there in vladier, put it out there in opening.

Other cases, maybe that's not appropriate for. And in this case, I made the decision to not ask for a specific number and the way that I argued it, a way that I have done it, and many, many others do it this way is you talk about the economic damages. And then you talk about how the non-economic damages are the greatest harm in the case. And the way that I painted it to him, we had a... I can't remember what it was, 1.5 or \$1 million. I think it was about a million bucks in economic damages in the case. And I

talked with them about how not one penny of that goes to compensate Anuj for not being able to go back home, not be an engineer, but his pain, all that stuff.

And it's up to you to decide whether it's two times that much, or five times that much, or 50 times that much, I don't know. Well, they decided it was worth a hundred times that much. So I'm glad I didn't give them a specific number. This might be one of those cases where I learned something or... Not that I learned something that I learned, something that maybe I shouldn't have learned.

Because now the next case I'm going to think, "Well, in that topic case, I didn't ask for a specific number and look what happened. And then I won't ask for a specific number, and it'll come back to bite me." So there too, I think so much of it is really case dependent and dependent on the jury that you have and things like that. Another example of how I got lucky.

Michael Cowen:

One thing I've learned from doing this podcast is I've been able to talk to a lot of great lawyers who've gotten great results around the country, and they all do it different ways. And so, I think it's who you are, who your jury is. And a lot of it has to do with what the case is and what the situation is.

Brandon Thompson:

No question.

Michael Cowen:

You may have lost yours if you started off talking about \$100 million dollars before they heard the facts. I mean, I don't know, I don't know much about your case, so I just-

Brandon Thompson:

I don't think I or very many other lawyers would've had the hoods but ask for \$100 million in this particular case. That would've been something.

Michael Cowen:

That's why I was wondering, did they give you less than what you asked for more than what you asked for, but I mean that evidently even by your suggestions of what they could do, they get more yeah. Did you get a chance to talk to them about what motivated them to do that?

Brandon Thompson:

I did. I have a chance to talk with the foreperson on the jury. I actually had lunch with him and it was, as it always is, every time you talk to a juror after a win or after a loss, it was a fascinating eye opening, jaw dropping experience. I believe that they truly were motivated by what a wonderful person, Anuj was, what he had been through. And again, this cultural, familial type injury that is really so unique.

And it was clear to me as I was talking with our foreperson that as I've said several times already, look, we were just fortunate that he was on the jury. We had, I think, five or six of the eight, pretty solid for us going into deliberations. And then he, and a couple of the other jurors did the rest of our work for us. And if there's one takeaway that I have kind of one learning point from this case, and it's a learning point that I've learned many times over the years and David Ball talks about it a lot in his great book on damages, you got to arm those favorable jurors to finish your work for you.

And like I said, that's a lesson I've learned a number of times, but never has it been hammered home as clearly as it was in this case. It is just so critically important. The people who are against you, man, you're

not going to convince them. If you're tailoring your presentation towards trying to convince them, you're only going to make them dig in their heels more.

You have got to figure out how to get your story in the hands of the people who are predisposed to your position and give them the talking points that they need to finish the job for you back in that jury room.

Michael Cowen:

That's so important. I will tell you that that is so... At least for me, it was so liberating when I finally internalized that. I'd read it but when I finally internalized it, because I don't have to go and be so brilliant that I convince everybody. I just have to go arm people to do their job and then that's their job.

And so, my job is just to go in the court, have fun, present the case, arm my people, and then I let go. And yeah, it's just been so much more fun and so much less stressful. Believe it or not, at least from me. I don't know. I can't speak for you since I've accepted that.

Brandon Thompson:

No, absolutely. I mean, look, trying cases is fun and I hope that if you've made your career out of being a trial lawyer, that it is fun for you, because let's be honest, it's a really hard and stressful way to make a living. So it better be fun because if it's not, you got a long miserable path ahead of you.

And so much of that too, it's something else that you said a minute ago, Michael. And it really rung true with me, the importance of really being authentic and being yourself. And that's part of having fun. If you're up there trying to play the role of somebody who you think is the lawyer that you're supposed to be, not only are you unlikely to be successful, you're not going to have any fun at all.

Michael Cowen:

That's absolutely true. One of the thing that warms my heart about your story is you hear so much and I'm not saying there's not some truth to it, but jurors don't care about their client. You have to make it about them and about making the defense threaten them. And they just selfish animals that don't care. So it is nice to know that at least some jurors really do care and are motivated by the fact that it was a good person who had his dreams taken away and it didn't move them.

Brandon Thompson:

Yeah, that's an interesting point. So I like probably many of us just about every case now get a motion and lemony to prevent us from using the reptile strategy. See it in just about every case now. And my response to that is always, "Well, you know what? I read the book, I get it. Don Keenan is an amazing lawyer and a brilliant guy, but I don't subscribe to that philosophy and that's not the way that I try cases."

I've thought about this a lot over the years. And I've thought about whether I'm making a mistake by not trying cases that way. I think there's a place for that kind of strategy and that kind of approach. Maybe in the right trucking case, for example. This idea of triggering the reptilian part of your brain is an effective way of doing it. And it's all about safety rules and safety regulations and things like that.

I think that MedMal cases are a little bit less well suited to that. And I'm sure Don Keenan has tried many malpractice cases using that strategy and has been a heck of a lot more successful than me. So that's just one guy's opinion, but for my style and the types of jurors that I see in the types of cases that I have, I think that there's a different pathway. And I think at least for the way that I try cases, I just don't think that I can authentically tell that piece of the story and also give the impression to the jurors that I'm not

here trying to say that these doctors or these folks in the hospital are bad people doing bad nefarious things.

Michael Cowen:

Absolutely. And I was going to ask you this earlier, but we just got into the story, and I was enjoying the story. So I'm going to ask a little out of order. So I've heard, you've mentioned Don Keenan, Rick Friedman, David Ball, you've been really, really successful in trial. What have you done through your career to develop your skills and knowledge as a trial lawyer?

Brandon Thompson:

Yeah, so lots of trial skills, seminar and I've referenced a couple of books. I mean, I read just about every book I can get my hands on. Listen to Trial Lawyer podcasts, watch videos of people who I think have a lot to offer. I mean, there's so many incredible trial lawyers out there. But outside of the traditional learning things, just talking to people, just talking to people and some of that, I think harkens back to my own personal background.

The reality of it is a lot of times when I'm thinking about how am I going to tell this story to a jury? I think about how would I get my uncle Leon to find in my favor on a case like this, right? Uncle Leon hates lawyers, he hates lawsuits, but there's a way to get through to him and understanding how to talk to regular people is such a critical thing for us.

And as you pointed out, Michael, there's lots of different ways to be a successful trial lawyer. And there are people who have had tremendous success, trying cases, wearing a bow tie, and a three-piece suit and talking like an egghead professor. People can do that, I've found that that's not me. And I've found that for me the way I like to try cases, just being able to talk like a regular human being and act like a regular human being, I think is a big part of the success that I've had.

You got to be able to connect with these folks. And the only way that you know how to connect with the folks who are in the jury box is to be able to authentically connect with people like that outside of the jury box. And part of that is personality and part of its practice, the way you learn, how to talk to people is by talking to people.

Michael Cowen:

That's great. I was going to ask you what advice you have to give. And I think you just gave it.

Brandon Thompson:

Go seek out my uncle Leon and talk to him about your next case. He lives in North Carolina.

Michael Cowen:

I live in Texas. There are lots of people here that don't like lawsuits or lawyers. And we had a great jury. She got off her cause, but on our last, I say great jury. It was in jury selection. She got up at one point and said, "I'm 71. And I didn't have to be here. I'm old enough, where I could have excused. And if I knew it was a personal injury case, I would've done that. It was great. Thank you so much. Who else feels that way?"

Brandon Thompson:

Right. I appreciate your honesty.

Michael Cowen:

But talking to those kinds of people, I think some people get the mistake of living in a bubble and only talking to people that agree with them and think like them. And I think for what we do for a living, we need to learn how to talk to all kinds of people.

Brandon Thompson:

Yeah. There's no question about that.

Michael Cowen:

Is there anything else you want me to ask you?

Brandon Thompson:

Oh, Michael, I don't think so. I think we've covered the topics that I was expecting that we cover. This is really been a pleasure. We talk about just wanting to talk to people. It's been great talking with you.

Michael Cowen:

You too. Well, one last thing. If someone wants to get ahold of you, either they've got a question or maybe they've got a medical negligence or other big case in Minnesota, how do they find you?

Brandon Thompson:

The easiest way to get in touch with me is just send me an email. And I don't know if you want me to give my email address or-

Michael Cowen:

Yeah, give it. And we'll put it in the show notes, but a lot of people just listen. So go ahead and say it to you.

Brandon Thompson:

So it's B-E-T, just my initials, although I never used my middle initial excepted in my email address. Because I think it's pretentious.

Michael Cowen:

Bet. That's awesome. I mean, it's easy to remember. Yeah.

Brandon Thompson:

Right, right. So bet@ciresiconlin.com. C-I-R-E-S-I-C-O-N-L-I-N, dot com.

Michael Cowen:

So all the benefits of having the easy to remember and spell bet is just destroyed by the Ciresi Conlin, but a great firm.

Brandon Thompson:

I love my partners. Mike Ciresi and Jan Conlin are tremendous people and tremendous lawyers. Man, I wish they had easier to spell last names.

Michael Cowen:

But a great firm, y'all get great results. And I really enjoyed talking to you. Thank you for coming on. Do you go to AJ conventions or anything like that?

Brandon Thompson:

It's been a while since my last AJ convention, but I've been meaning to get back and I certainly plan to do it in the future. So I'd love to see you there, Michael. This was a real pleasure.

Michael Cowen:

Yeah. If you do find me, we'll go grab a drink or have a cup of coffee or something. I'd love to talk to you some more and keep knocking out of the park.

Brandon Thompson:

Sounds like a plan. Thanks much.

Michael Cowen:

Okay. Thank you.

Thank you for joining us on Trial Lawyer Nation. I hope you enjoyed our show. If you'd like to receive updates, insider information and more from Trial Lawyer Nation, sign up for our mailing list at [triallywernation.com](http://triallywernation.com). You could also visit our episodes page on the website for show notes and direct links to any resources in this or any past episode. To help more attorneys find our podcast, please like, share, and subscribe to our podcast on any of our social media outlets. If you'd like access to exclusive plaintiff lawyer only content in live monthly discussions with me, send a request to join the trial lawyer nation insider circle Facebook group. Thanks again for tuning in. I look forward to having you with us next time on Trial Lawyer Nation.

Voiceover:

Each year, the law firm of Cowen, Rodriguez, Peacock pays millions of dollars in co-counsel fees to attorneys nationwide on trucking and commercial vehicle cases. If you have an injury case involving death or catastrophic injuries and would like to partner with our firm, please contact us by calling 210-941-1301, to discuss the case in detail and see where we can add value in a partnership. This podcast has been hosted by Michael Cowen and is not intended to nor doesn't create the attorney client privilege between our host guest and any listener for any reason. Content from the podcast is not to be interpreted as legal advice. All thoughts and opinions expressed herein are only those from which they came.