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Auto Lawyer says professional friendships made the difference in Jackson case

Jury returns \$3.5 million on insurance company offer of \$1 million in record Jackson County auto verdict

BY: Douglas J. Levy

Auto law attorney Steven M. Gursten can identify with whoever once said, "Friendship isn't a big thing—it's a million little things."

Especially when it comes to both helping others in their practices, and being helped by them in his.

As an example, while many would visit Napa Valley to tour vineyards, he spent a week there last January working feverishly with Tennessee-based truck accident lawyer Morgan Adams on trial strategies for an extensive truck/motorcycle death case.

"We spent a week locked in a room, 16 hours a day, helping each other," recalled Gursten, of Farmington Hills-based Michigan Auto Law (Gursten, Koltonow, Gursten, Christensen & Raitt, P.C.).

And outside of having his meals paid for, Gursten did his part for Adams on his own dime.

Adams, in turn, would come to Gursten's aid some months later on *Fairley, et al. v. Schiber Truck Co., et al.*, a truck-accident trial in Jackson County. There, Adams and Gursten—both former presidents of the American Association for Justice Truck Accident Litigation Group—together reviewed both Schiber's and the truck driver's log books, analyzed the company's and driver's history of Federal Motor Carrier Safety Administration violations, and prepared the live cross-examination.

And Adams wasn't the only one from outside of Michigan who would lend a voluntary hand for the case. At least four more from other states contributed, providing traumatic brain injury expertise, witness preparation and order of proofs; while another Michigan attorney who handles many Jackson cases assisted with voir dire.

The only thing each trial attorney had in common was a willingness to help out without expecting to be paid for his or her part.

Gursten said that's because when professional friendships are established—and not just contacts made by way of business-card exchanges at seminars and legal association meetings—it becomes evident that using, but not abusing, each other's expertise helps the trial lawyer sector as a whole.

"I think something lawyers miss is, you're an absolute fool if you try to do it all yourself," he said. "You can't. We're not hard-wired in that way, where you can be excellent in both trial and appeal, or in the mechanics of brain injury and ERISA law. And that's where it really helps."

One good turn

Gursten is one of 50 members of The Taos Group, a New Mexico-based organization that has one attorney representing each state. The group, which meets once or twice a year, is made up of past presidents of the American Association for Justice and other trial lawyer groups.

It's not sanctioned by any other legal group, and Gursten said the collective's only stipulation is that members—who are elected based on their track record of

verdicts and settlements—need to be available to help one another on trials when necessary.

"You're not reinventing the wheel," Gursten said. "You really are standing on the shoulders of giants, and these are giants I can call my friends, who I can ask a [legal] favor, and I know they'll help me."

For his part, Gursten said he passes along his expertise in dealing with independent medical examiners. Because Michigan's no-fault law requires different, more stringent trial strategies in dealing with IMEs, he said such experience helps other Taos Group attorneys with their respective state's auto tort cases.

As an example, last August Gursten went to help Chicago injury attorney Kenneth Levinson with key expert depositions about a traumatic brain injury sustained in an auto accident.

Some months later, Levinson would assist Gursten with the Jackson County truck accident case by coaching the wife of the accident victim with psychodramatic techniques—particularly, her perspectives of when she entered the hospital following the accident.

It made a difference, as the jury was able to trace the wife's steps, from anxiously waiting in a small room only knowing the husband was in an accident that involved a brain injury, to her seeing his bloody shirt in the garbage in the room where he was taken.

Gursten said such volunteer assistance extends to using friends outside of groups like Taos. Chelsea-based personal-injury attorney Randy Musbach spent a morning helping with voir dire for the Jackson trial, only because Gursten wasn't too familiar with the county's juries.

If it weren't for Musbach being there, Gursten said he wouldn't have known that someone on the voir dire panel was family to a local insurance defense attorney, and could have made it to the jury.

When there's fire

Levinson, of Joseph, Lichtenstein & Levinson, said he knows the time-is-money adage well, but added that it only makes sense for the benefit of all trial lawyers to lend a hand to one another without expecting payment.

"Plaintiff's lawyers generally are in smaller firms, whereas insurance [companies] have 100, 200 lawyers, and have vast resources to fight to protect their clients," he said. "So for us to equal the playing field, we develop, for lack of a better term, loose-knit yet strong relationships with lawyers we trust and respect from across the country from which we can call upon."

He compares it to working at a firehouse, in that "when there's a fire, or in our business a trial, it's all hands on deck."

As a result of Gursten calling upon his experts for the Jackson case (see "Assembling the team," below), the jury returned a \$3.5 million verdict. The insurance company initially only offered \$1 million to settle.

The verdict, Gursten said, was an example of why it's not a good idea to keep

one's expertise too close to the vest from other attorneys who may or may not work in the same line of practice.

"I was really upset by someone asking me why we speak at all these seminars," he said. "Why are you helping your competition? And you either get it or you don't get it."

"The people who see it as helping your competition, they look at it as a zero-sum world, that I'm going to arm them and lose money. I look at it as, we have a bull's-eye on us as a profession, and the better off my brothers and sisters do as trial lawyers, the better off we're all going to do."

As a case in point, Gursten said insurance companies are implementing more widespread use of software to track regional and national verdicts and settlements, as a means of finding median settlements for which to aim.

"Now, if everyone is doing terrible and getting terrible settlements, it's going to affect my cases, too," he added. "That's why every great verdict and settlement really does help other lawyers."



Couple awarded pain, suffering in crash

Driver says he suffered fractured vertebrae, TBI and depression

In a lawsuit filed in Jackson County Circuit Court, plaintiffs James W. Fairley and Kim Fairley sought compensatory damages from defendant Schiber Truck Co. and defendant Roy D. Kissick for injuries sustained in an auto-truck accident.

On April 4, 2008, James Fairley was stopped on Spring Arbor Road at Emerson in Jackson County, waiting to make a left turn. His turn signal was activated. At the same time, a semi-truck, owned by Schiber Truck and driven by Kissick, was driving west on Spring Arbor. As Kissick approached the intersection of Emerson, he failed to stop and struck Fairley's vehicle in the rear, causing it to spin around and cross the center line, where Fairley was struck by another vehicle.

Fairley suffered a traumatic brain injury, depression and two fractured vertebrae. He walks with a cane and cannot dance, bowl or read as he once did.

Defendant's insurance company Zurich, took the position that a Jackson County jury would not award significant pain and suffering damages, essentially forcing the case to trial.

Plaintiffs waived an \$800,000 excess economic loss claim, as plaintiff was on Social Security Disability, and the amount after the set-off would have come to approximately \$160,000.

The jury returned a \$3.5 million jury verdict solely for pain and suffering, and there will be no collateral source reductions from the verdict amount.

Type of action: Third-party auto negligence in truck accident

Type of injuries: Traumatic brain injury, depression, two fractured vertebrae

Name of case: Fairley, et al. v. Schiber Truck Co., et al.

Court/Case no./Date: Jackson County Circuit Court; 08-2759-NI; Dec. 15, 2010

Tried before: Jury

Name of judge: Thomas Wilson

Demand: \$2.4 million

Highest offer: \$1 million

Verdict amount: \$3.5 million

Insurance carrier: Zurich

Attorneys for plaintiff: Steven M. Gursten, Thomas W. James

Attorneys for defendant: John Gillooly, Robert A. Obringer

Status: The parties agreed to waive appeal in exchange for a "high-low," no-appeal agreement placed on the record on the last day of trial.

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—Steven M. Gursten, Michigan Auto Law

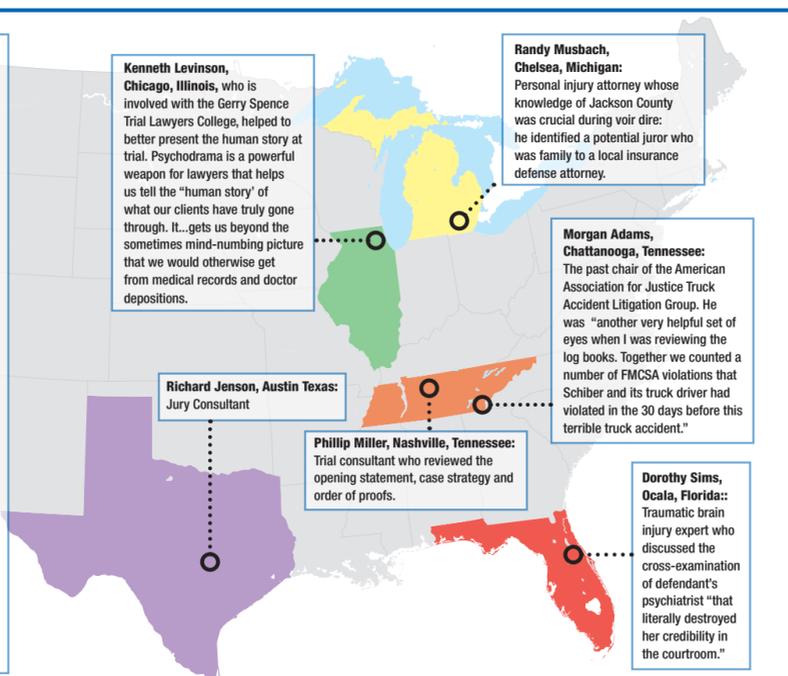
Assembling the team

When auto- and truck-accident specialist Steven M. Gursten was preparing for a Jackson County trial, he knew he couldn't do it alone.

It only took asking friends across the country, who also deal with injury matters, to assist with the strategy, based on each one's strongest area of expertise.

"Getting ready for trial, there's so much being thrown at you," he said. "And to be able to break it down, be the quarterback, then talk to the people you respect, to help with these specific issues, it's really a nice luxury to have."

Here's a breakdown of Gursten's national team and what each member did to help lead him to a \$3.5 million verdict.



Kenneth Levinson, Chicago, Illinois: who is involved with the Gerry Spence Trial Lawyers College, helped to better present the human story at trial. Psychodrama is a powerful weapon for lawyers that helps us tell the "human story" of what our clients have truly gone through. It...gets us beyond the sometimes mind-numbing picture that we would otherwise get from medical records and doctor depositions.

Randy Musbach, Chelsea, Michigan: Personal injury attorney whose knowledge of Jackson County was crucial during voir dire: he identified a potential juror who was family to a local insurance defense attorney.

Morgan Adams, Chattanooga, Tennessee: The past chair of the American Association for Justice Truck Accident Litigation Group. He was "another very helpful set of eyes when I was reviewing the log books. Together we counted a number of FMCSA violations that Schiber and its truck driver had violated in the 30 days before this terrible truck accident."

Richard Jensen, Austin, Texas: Jury Consultant

Phillip Miller, Nashville, Tennessee: Trial consultant who reviewed the opening statement, case strategy and order of proofs.

Dorothy Sims, Ocala, Florida: Traumatic brain injury expert who discussed the cross-examination of defendant's psychiatrist "that literally destroyed her credibility in the courtroom."