



Profile

TAYLOR ERNST

Advocacy is job one for
Central Coast traumatic
brain-injury specialist

by Stephen Ellison

Plaintiff

If there was such a thing as levels of advocacy, Taylor Ernst would be approaching the apex. His record in court speaks for itself, but it's his work outside the halls of justice that has elevated him into rare company.

Ernst, a trial attorney with the Ernst Law Group in San Luis Obispo, not only advocates for his clients, but he also advocates for other lawyers' clients – and even for the other lawyers themselves. As a leading traumatic brain injury (TBI) specialist in the U.S., Ernst has made it his bold mission to ensure any and all cases involving TBI patients are handled properly and the clients receive fair compensation.

To that end, Ernst has talked with thousands of lawyers and doctors about the ins and outs of traumatic brain injuries. He has conducted countless depositions of top experts in the field, perused science journals, attended seminars and studied medical books. And now he's writing his own book for other attorneys to study and learn how to successfully try a TBI case. The book is a culmination of thousands of lectures he's conducted and free consultations he's provided on the subject.

Simply put, Ernst is the go-to guy when it comes to plaintiffs' TBI litigation. He is often the first call when other lawyers need help with a TBI case. And most of the time, he obliges for the greater good.

"I've basically been building resources for lawyers to try brain injury cases better because the biggest problems for these more serious brain injury cases is (the clients) need care over the rest of their lives, and the case is worth more than a million or two million," Ernst explained. "The problem is a lawyer that doesn't like trial very much has the defense come in and say, 'We'll settle for \$1.5 million.' They'll say yes, and they shouldn't. But what lawyer's gonna say no to [a fee] of a couple hundred grand?"

"One of the questions I get asked more than anything else is: How do you settle cases for five or six million?" he continued. "When they offer you two or three, you say no. I don't think lawyers think about that. You need to figure

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out how much money you need for the rest of their (your clients') lives to be financially stable. And you need to hit that number or try the case."

Perhaps the most unusual part of Ernst's TBI consultations and lectures is that about 90 percent of them are done free of charge. His primary motive for providing such time and services is advocacy – making sure TBI patients are getting a fair shake and ensuring the lawyers who represent them are doing everything in their power to that end.

If those lawyers need strategic advice or tools or other resources, Ernst is more than happy to help, knowing the clients are receiving the best possible representation for their case.

"Most of the time, they don't need to bring us in (on the case)," he explained. "We just tell them, 'Hey, do this, do that.' The other thing that we've been offering as support to other plaintiffs' lawyers is saying, 'You want to square your trial away? This is how I would do your slides, and we have a couple of radiologists that will look at scans.' With the clients' permission, of course."

On top of the phone consultations and support, the Ernst Law Group's website has an entire section dedicated to traumatic brain injuries, providing a comprehensive overview of TBIs, along with basic facts and figures patients may need. It also includes a vast video library that answers many of the difficult TBI questions in a simple, user-friendly way.

And Ernst's office might be mistaken for a mini medical library. There are dozens of medical books about various mental disorders, from "How to Get Board Certified in Neuropsychology" to texts on radiology and neurology.

"I don't want a doctor to be able to hide behind test results that I don't totally understand," he explained. "I'm going to ask them questions until they understand I know what I'm talking about. ... It changes the outcome of the deposition."

Because of the medical and legal TBI knowledge he has gleaned from all that research, Ernst serves on the editorial board for Trial Guides, a legal publishing company that helps trial lawyers win cases by publishing cutting-edge strategies from the nation's leading trial lawyers.

From follower to leader

Ernst grew up on the Central Coast of California watching his father, Don Ernst, become one of the top plaintiffs' personal-injury lawyers in the state and president of the Consumer Attorneys of California. Ernst said he'd always had an interest in working with his dad but also worried about failure and whether he was smart enough to be a lawyer. As a youth, he considered professions such as astrophysics, the ministry and education – becoming a college professor.

For his undergraduate studies, Ernst attended UC Santa Barbara and earned a bachelor's degree in history of public policy. During that time, he also traveled to China to complete a course in Mandarin Chinese at the Beijing Language School. After graduating with high honors from UCSB, Ernst went to University of San Diego School of Law, where he clerked for two firms and a congresswoman, then began his career with the Ernst Law Group before graduating.

Long before he established his high expertise in traumatic brain injury cases, Ernst helped develop a strategy for the firm to follow when trying such cases.

"We have systems our office follows getting ready for brain injury trials, and they focus around three main things: gather, focus and reveal," he said. "For injury litigation or brain injury litigation, you have to gather significantly more facts on just about every aspect of their (the client's) life. They suddenly can have issues with hearing, swallowing disorders and just getting around the house. You have to evaluate the case and prepare the case for trial. And then focus on the facts that are the most truthful, that the defense is going to have a difficult time disputing because they are true. Then when you present your case to the jury, you're not really trying to present the best spin on your case; you're trying to present the facts in a way that educates the jury, to make them understand the brain injury. You're just trying to reveal the truth that is already there."

Success and failure

Recently, Ernst's approach worked in a big way, helping him win a \$5.65 million jury verdict for a TBI client after the defense offered nothing. The case involved an unwitnessed incident in which a plumber driving his truck along a street saw something unusual occurring with a sewer system cover, rolled down his window to get a better view and was hit in the eye by a high-pressure water stream used for cleaning sewers, Ernst explained.

The defense argued the truck wasn't wet, the plaintiff wasn't wet, and no one saw it. Plus, the client didn't go to the emergency room, didn't show a lot of brain injury symptoms for three years and didn't receive treatment, Ernst said.

"They had more experts than us and more medical experts," Ernst said. "We had four defense experts to cross – a neuropsychologist, neurologist, neuro-ophthalmologist and a neuroradiologist at trial. I crossed all of them and got all of them to admit his brain was abnormal, and he had moderate to severe cognitive dysfunction. ... The defense tried to say all the usual stuff – that it's not a real injury, that the MRI scan doesn't show a real brain injury, and he didn't have symptoms at the time of the incident. The other interesting thing is ... we waived both past and future medicals and still got that large of a verdict, which is pretty shocking."

In another case Ernst tried with his dad, they were brought in a number of weeks before the trial started. The case involved a woman whose TBI was so severe, she couldn't do anything but move her eyes, Ernst said. The lawyer who brought them in had stage four pancreatic cancer and passed away during jury selection.

Ernst and his dad determined the assisted life care plan for their client's brain injury was \$20 million.

"The biggest plaintiffs' lawyers don't like talking about their losses very much, and I think it should be talked about more," he said. "Because we were talking about a trial that was to secure (a client's) financial future. We really needed to win, and we didn't, and that still bothers me."

“I don’t like failure at all; I have a strong fear of failure,” Ernst continued. “That’s what pushes me to go learn all the stuff that I’ve learned. ... As you know the case is that you don’t forget your losses more than you remember your wins. ... You really want to make sure you do everything you can to get the best shot to get the jury to understand what happened, but unfortunately, we did get some rulings against us, a lot of motions that made it really tough to do. We did do everything we possibly could.”

Play and more work

When he’s not working or consulting or lecturing, Ernst enjoys spending time with his family and is an avid surfer and runner. He also loves to read and, like his dad, is a certified pilot. But perhaps his most time-consuming outside activity these days is writing the definitive book on trying TBI cases.

“I want to just get in there, talk about whatever is in my talks,” he said. “There’s a lot of medicine that goes into these injuries. Like, if the MRI was negative, can you still have a brain injury? Yes. Why some brain injuries are actually worse if you don’t have a skull fracture because you’re still going to get the intercranial pressure. There’s just a lot of medicine that I want to pass on to other lawyers so they can litigate these things well and take care of their clients.”

As for the one piece of advice Ernst would pass along to the next generation of lawyers, he opened by saying the practice of law is a lifestyle one must love to reach its highest levels.

“You meet lawyers who you can tell love law, and you meet lawyers you can tell are just going through the motions,” he said. “Over the number of years that you end up with a legal career, the compound interest of doing a little bit extra every day – read a couple of articles or a couple of medical journals – at the end of the night, over the years, it ends up being an exponential advantage to you later in your career. ... You’ve got to figure out a way to enjoy what you’re doing because you’re going to work a lot.”

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