

Things Civil Litigation Made Me Fear: A Litigator's Hell

By Alan Nelson

This title is not polite. It is not sensitive or caring. Or macho. Very well. But I have fears as a civil litigator that I would not have if I was an oil and gas lawyer.

You may have mixed feelings admitting what the law has made you dread. You may turn away and pretend not to notice, like an ugly argument between a man and a woman at the next table at a nice restaurant. As their voices rise, you focus on the dessert menu, or cut your food with precision.

I used to be afraid of being blinded from bottle caps exploding from carbonated drinks into my eyes, but the industry has redesigned the containers. Unfortunately, most of my fears remain and grow the more I'm in litigation.

I'm afraid of utility workers and service people around homes where there are children or women. I'm afraid of swimming pools because people love them, and I've handled one too many drowning cases. I'm afraid of mixed dogs that DNA testing may reveal as part wolf, therefore inherently dangerous. I'm afraid of chemicals slowly released over the years from the building materials in my home. I'm afraid of the sovereign immunity enjoyed by cities that encourages such a careless bureaucratic attitude towards blaming victims hurt by city property.

Many fears are in the health arena: These fears started when a doctor was sued for letting an infant die from dehydration in a hospital. She was most concerned, she mentioned during the deposition, if her Mercedes might be taken away.

Medical records - I'm careful of what I say, and what I seek help for at the doctor, knowing these medical records can be thrown back in my face.

Medical Devices - Breast implants which rupture, heart defibrillators that either fail to defibrillate, or continue over and over again, and hernia patches that open up in the gut. Need I say more?

Prescription Drugs - Fosomax. Norplant. Fen-Phen. Vioxx. The list goes on and on. The extreme economic incentives and pressures on pharmaceutical companies make great portions of the population take the place of testing on animals, where it's impossible to separate the effective new drugs from the dangerous new drugs.

Emergency rooms - I've even wondered if negligence can be imputed to a lawyer for taking someone to the emergency room since the health provider is protected from negligence.

Nursing Homes - The law has lost much of its teeth, and the dentures keep falling out. Don't get sick, don't get old.

But unfortunately, fears from litigation merely grow exponentially. Some of the others include:

People without assets and insurance as a Defendant. For practical reasons, there's no way to bring closure to these cases.

People with Allstate insurance. Nothing more needs to be said. People who get injured by slip and falls. The slip and fall case has a taint to it that stains legitimate cases of people with serious injuries. I caution everyone walking into and outside of my home and office to watch where they're walking, and be careful.

Plaintiff attorneys who call defense attorneys Nazis. This always catches my full attention. There's a dangerous lack of perspective here.

Defense attorneys who call plaintiff attorneys unethical and sleazy as a class, and use the phrase trial lawyer as an expletive. Same problem as plaintiff attorneys.

Driving cars - So many car wrecks, so many ways, so many different types of injuries and deaths. These fears manifest themselves whenever I see vehicles pulling up behind me (whether they'll stop in time, or even see me), vehicles traveling the other way (head on collisions due to drink, sleep or changing the radio station), cars in the lanes beside me (blowouts, axle failure, drifting), and even overpasses (whether the bridge will fail due to old age and fall on me, or whether the bridge will collapse under me due to a sleeping or drugged truck driver hitting a support column). The fears that connect with these are whether the airbags will malfunction, or burn me with chemicals, or the roof will collapse and crush me, or the cruise control will start a fire, or the seat belts will fail. Will the ambulance have another wreck on the way to the hospital, or will I end up in an emergency room with doctors exiled from practicing in other states? Will synthetic blood be used in case of a transfusion, or will the real blood bring a disease worse than the injuries I've received? Am I going to the emergency room on a week day or a weekend, in the middle of the day or the middle of the night?

Watching an idealistic young lawyer rapidly become a cynical, ruthless not-so young lawyer, or a broken man/woman. Most of us have seen over time young friendly law clerks become scary lawyers.

Then there are fears that become extremely personal. These include:

Cross examining my kids, knowing that non-lawyer parents don't do this to their kids.

Knowing that when certain relatives call, it's for advice on how to solve a legal issue right then, right there because you are family, aren't you?

Knowing that every contract I sign I'm held to a higher standard than a nonlawyer. Knowing that if I'm ever a plaintiff or defendant in a courtroom, the jury will have a bias against lawyers.

Yes. I have these fears. Unfortunately, they're founded on evidence seen by my own eyes. Yes. I will not suppress them. Hopefully, I'll face them, and pick my way around these dangers as knowledge and random fate allow. New horrors lie just around the corner.