

**OPENING STATEMENTS:
DEVELOPING YOUR THEME AND CONDITIONING THE
JURY TO AWARD THE FULL MEASURE OF DAMAGES - - - FOCUSING ON
OPENING STATEMENTS FROM JURY TRIALS INVOLVING \$25.5 MILLION
DOLLAR VERDICT FOR UNCRASHWORTHINESS OF CHEVROLET ASTROVAN
AND \$256,000,000 MILLION DOLLAR VERDICT FOR COLLISION IN A
DEFECTIVELY DESIGNED INTERSECTION UNDER CONSTRUCTION**

By:

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CHRISTIAN D. SEARCY is President and CEO of Searcy Denney Scarola Barnhart & Shipley, P.A. For 33 years, he has litigated cases involving primarily catastrophic personal injury and wrongful death in venues throughout Florida. At age 30, he had the distinction of being the youngest lawyer in the United States to achieve a verdict of \$1 million for a single personal injury lawsuit. This year, Mr. Searcy was one of only two lawyers in the country to receive the “War Horse Award” from the Southern Trial Lawyers Association, honoring his outstanding skill as a trial advocate and his extraordinary contributions to the cause of justice. In 2005, The Academy of Florida Trial Lawyers honored Mr. Searcy with its Perry Nichols Award, the highest honor it bestows, in recognition of a lifetime of outstanding service to the cause of justice. Mr. Searcy is a member of the prestigious International Academy of Trial Lawyers, a worldwide organization limited to just 500 attorneys, and is named in *The Best Lawyers in America*, an independent study by Harvard trained attorneys. He is also recognized in *Law and Leading Attorneys*, is listed as one of the “legal elite” in *Florida Trend* magazine, and is named as one of the top lawyers in *South Florida Legal Guide*.

A past President of The Academy of Florida Trial Lawyers, Mr. Searcy is a diplomate of the American Trial Lawyers Association and is a member of the International Society of Barristers. He is an advocate of the American Board of Trial Advocates, and a member of the Board of Overseers of Stetson University College of Law and on the College Foundation Board of the University of Virginia. Board Certified in civil litigation by the National Board of Trial Advocacy and by the Florida Bar Association, Mr. Searcy writes and lectures extensively about civil trial practice, personal injury, and wrongful death cases.

After earning a B.A. with distinction from the University of Virginia, Mr. Searcy received his Juris Doctor from Stetson University College of Law, graduating in the top ten percent of his class.

Mr. Searcy’s personal philosophy of advocacy for those in need has made its mark on South Florida, where he supports numerous non-profit organizations committed to helping the disabled, improving education, and advancing community causes.

I. **INTRODUCTION:**

"...In a few moments, the attorneys for the parties will have an opportunity to make opening statements, in which they may explain to you the issues in the case and summarize the facts that they expect the evidence will show..." Florida Standard Jury Instruction 1.1.

In every case we try in Florida, our jury will hear the above language shortly before we begin our opening statement. Our opponents will have a difficult time successfully objecting to any portion of our opening statement, so long as it is explaining the issues in the case and summarizing the facts we expect the evidence to show with respect to those issues. We should be able to forcefully and dramatically set forth the justness of our client's cause within the framework of fulfilling those two purposes.

- II. Opening Statement and to some extent Voir Dire are to prepare the trier of fact intellectually and emotionally to listen to our evidence in a receptive and focused frame of mind, knowing where each witness or piece of evidence will fit in the context of the case as a whole.
- III. The framework and context of our opening statement will vary with the persuasive challenges of each particular case. In many civil injury and death cases it is helpful to include explanations and examples of the following concepts:
 - A. Greater weight of evidence;
 - B. Believability of witnesses;
 - C. Definition of negligence;
 - E. Legal cause;
 - F. Elements of damage;
 - G. Aggravation of preexisting injury;
 - H. Although economic damages are reduced to present value, human damages are not; and
 - I. Explain each of our opponent's contentions as an issue and show why we expect the evidence to debunk that contention.

- IV.** Why is our client's desired result the just result? Of course, we must answer this question to ourselves as a basis for our trial preparation. Once we have marshalled the evidence and legal theory to support our desired result as being the just result, how do we persuade the trier of fact? Many experts in persuasion suggest we need to create or identify a need in the audience and then show the audience how to fulfill that need by reaching our desired result. Some of the categories of need in the audience of a jury are:
- A. Need for justice;
 - B. Need for fairness;
 - C. Need to right a wrong;
 - D. Need for happy ending; and
 - E. Need for cognitive assonance.
- V.** To have a chance to persuade the jury of anything, we must first capture their attention and hold it. An effective technique for opening statement is to grab the attention of the jury with a forceful and dramatic capsule of the case in the first minute or two of our opening and to then go back and set the framework of issues and expected evidence that support the dramatic lead off summary of the case.
- VI.** Tell the story!
- A. One of the most effective forms of communication is story telling. Once the jury becomes engaged in our story, they visualize the events of that story in their mind and tend to sift the ensuing testimony and evidence through the visual framework of the story they have seen;
 - B. With modern discovery we should be well aware of the salient facts that help and hurt our case when preparing for opening statement. If we can take those salient facts and blend them into a story that flows smoothly and causes all of the pieces of the puzzle to fit without having to force them, emphasizing the good points and explaining away the bad points, we will have largely won our case by the conclusion of opening statement. (Presuming we can then establish the facts as stated in our opening statement.);
 - C. Experts in persuasion believe people have a need to remove cognitive dissonance. They are very uncomfortable with pieces of the puzzle that do not fit. Where we have told the jury a logical story supported by the evidence in which all the pieces fit, there is a likelihood that they will later tend to reject argument and evidence that do not fit into that story.

VII. Attached to this outline is my Opening Statement on Damages in the case of Therese Hunter by and through her father and guardian, Jesus Carmona v. General Motors Corporation. This was an action for damages for product liability involving lack of crashworthiness of a 1990 Chevrolet Astro Van. Therese Hunter, with her two sons in the car, was driving her Chevrolet Astro Van south on Blanding Boulevard when a gentleman in a pick-up truck westbound on an intersecting street ran a stop sign and T-boned the Astro Van with a glancing blow to its left side. This side impact redirected Therese Hunter's vehicle off the west side of Blanding Boulevard head-on into a concrete light pole at a speed of 29 mph. The steering column of the Astro Van came upward and rearward into Therese Hunter's face like a battering ram, crushing her face and causing severe brain damage. The boys were not seriously hurt. Although Therese Hunter's brain injuries were severe, by the time of trial she was not abnormal in appearance. However, she suffered from expressive aphasia where she could speak fluently, but her speech rarely made any sense. General Motors contended the injury was all the fault of the other driver, that the severity of the crash into the light pole rather than any product defect was the cause of the injuries, that Therese had recovered well from her injuries, that her future care needs were basically the cost of a residential facility to enable her to lead a happy life with her communication impairments. Therese's husband had stayed beside her night and day in the hospital for 3 months, when he learned she was not going to make a substantial recovery, he took their two sons and abandoned her, leaving her in the guardianship of her father, 78 year-old, Jesus Carmona. At the time of trial we represented not only Therese Hunter in her claim for damages, but her two sons, Richard and Damien, in their claim for damages.

I have chosen this Opening Statement as an example due to the case result. On final argument I requested the jury to return a verdict between \$15 million and \$22 million. The jury returned a verdict for \$25.5 million.

NOTE THE FOLLOWING:

- A. Dramatic capsule, Pages 37 and 38;
- B. Issues, framework and creating or identifying the need, Pages 38 and 39;
- C. Time machine, Page 39;
- D. Importance and uniqueness of human brain, Pages 40 and 41;
- E. What the evidence will show about uniqueness of Therese Hunter with her undamaged brain, Pages 41 through 44:

- F. Telling the story (emphasizing the strong points and smoothly incorporating and explaining away the stumbling points), Pages 44 through 58;
- G. How to fulfill the need, Pages 58 through 60;
- H. Debunking defendant's contention, Page 59;
- I. Compensating for economics is just paying expenses that would not have existed but for the injury, they do not begin to compensate for the ruination of Therese's life, which is a much greater damage, Page 60.

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Attachment