



Good Counsel

The Domino Theory and Proximate Cause

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“**P**roximate cause” describes an event in a natural and continuous sequence of events that brings about the resulting harm and damages. Although, in its purest form, that concept may not seem too difficult, a court’s proximate cause charge is often long and confusing.

There was one common denominator in my first 30 trials: The jurors asked the judge to reread the proximate cause charge during their deliberations. This continued to happen despite the increasing amount of time I spent on proximate cause during my closings. Frustrated, I stood in the hall during that thirtieth trial reading the jury charge again, when something jumped out: The phrase “a natural and continuous sequence of events” sounded like a line of dominos falling.

After court that day, I went to the local evidence store and asked the owner whether he could make dominos the

PAIN, FUTURE MEDICAL BILLS, ONGOING PAIN, and MEDICATION. I explained to the jurors that but for the defendant’s negligence, none of these events would have occurred. I told them that the defendant’s negligence—running the stop sign—set in motion this natural and continuous sequence of events. Then I knocked over the “negligence” domino, which set the other dominos in motion. “That,” I explained, “was proximate cause.” The jury returned a verdict in our favor in 20 minutes. The domino theory had worked.

I went on to win dozens of trials using the domino theory, and the jurors never again requested that the judge reread the proximate cause charge. The domino theory can be used for premises liability cases, medical malpractice cases, and even to prove economic loss.

“The negligence—running a stop sign—set in motion this continuous sequence of events. Then I knocked over the ‘negligence’ domino, which set the other dominos in motion.”

size of cereal boxes and print the facts of the case on them. I explained that I wanted to line them up on the jury rail in chronological order during my closing to show that the car crash and my client’s injuries were a natural and continuous result of the defendant’s negligence. He looked at me like I was crazy but agreed.

The first trial with the dominos was a difficult one—the defense argued that my client’s soft tissue injuries, which she sustained in a vehicle crash caused by the defendant running a stop sign, were pre-existing. In my opening, I explained that my client had lived for 40 years without ever experiencing neck pain or ever seeing a doctor for neck pain. But after the crash—during which the air bag deployed and struck her in the face—and several months of medical care, she found herself having a surgical consult for a herniated disk in her neck. During trial, the plaintiff and several doctors testified that the crash was the cause of her injuries.

During closing, I lined up the dominos: NEGLIGENCE, COLLISION, AIR BAG, IMMEDIATE ONSET OF PAIN, AMBULANCE, EMERGENCY ROOM, PRIMARY CARE PHYSICIAN, MRI, EMG, PAIN MANAGEMENT, EPIDURALS, ORTHOPAEDIC SURGEON, SURGERY, LOSS OF INCOME, MEDICAL BILLS, NO MORE SPORTS, DAILY

In a recent case, the plaintiff was injured and unable to work on numerous occasions while he was undergoing medical treatment. He missed even more time when he underwent surgery. Before the injury, he had received stellar employment reviews bi-annually for 13 years. After the injury, he began to receive unsatisfactory reviews and ultimately was laid off from his job. The defendants claimed that he was laid off because of the recession and not because of his injury.

During the closing at trial, I used the following dominos to prove it was the defendants’ negligence that caused the plaintiff’s loss of employment: 26 STELLAR REVIEWS, 13 RAISES, 3 PROMOTIONS, NEGLIGENCE, MISSED DAYS FROM WORK, UNABLE TO PERFORM PHYSICAL WORK, FIRST UNSATISFACTORY REVIEW, EXCESSIVE ABSENTEEISM, SURGERY, DEMOTION, SECOND UNSATISFACTORY REVIEW, FIRED, and REPLACED BY NEW HIRE.

Regardless of the type of case, the domino theory can prove proximate cause and make it an easy issue for jurors to evaluate. ▣

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