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She refused the settlement offer until I prepared her for trial

I got her a great offer, a great settlement offer. She didn't even thank me. She refused it outright until I prepared her for trial. Come join me for a moment as I share with you what it was that I discussed with her during her trial preparation that made her change her mind. Hi, I'm Gerry Oginski. I'm a New York medical malpractice and personal injury attorney practicing law in the State of New York. Now this was a medical malpractice case and towards the end of the case, as we're getting closer and closer to trial, I entered into negotiations with the defense attorney. Now the defense attorney finally came back and made a significant offer. I thought it was a terrific offer and now I go to my client to discuss that offer with her which I am obligated to do.

Now I'm also obligated to give her my opinion about whether or not she should accept the offer or reject the offer. Ultimately it's her decision. This is her case, so she has the final say and you know what she said? She said, "Absolutely not. I will not accept that offer. That's insufficient for me to go ahead and settle this case." Fine, no problem. Now in the days and weeks leading up to trial, I had her come into the office and the whole purpose of that is to prepare her for what would happen in a trial. Now you should know that trial preparation is to try and stimulate what it's going to be like at trial. Now I'm going to have her sit in the conference room. I'm now going to be asking her questions as if we are at trial.

When I question her to notice a direct examination and I'll be asking her open-ended questions that gives her the opportunity to go ahead and explain. Tell us what happened next, what did you do next, what happened then, explain to us what you did, what did the doctor say, what injuries did you suffer as a result of whatever happened and now she can go ahead and explain. We go through this process and it's designed to make them feel more comfortable, to make the witness feel more comfortable because now when we get to trial, I'll be asking them very similar questions if not the same questions. In addition to asking them the open-ended questions, my questions I also have to prepare my witness for cross-examination.

Every attorney does this, whether it's for the plaintiff, the injured victim or for the defense. They always have to prepare their witnesses. Now preparing witnesses doesn't mean we tell the witness what to say, instead we give them an idea of the type of questions that they can expect to be asked by the opposing attorney. We give them ideas about what to wear. We give them ideas about how important it is to be honest and truthful and to look at the jury when they answer their questions. All of those things are critical in preparing a witness for trial. Now during the course of my cross-examination, during the preparation session, my client started to get nervous. She started to get anxious. She started to get very worried. Why? Because she was having difficulty answering these basic questions.

Now I was asking her pointed questions and I was showing her contradictions between what she has said during her pre-trial testimony and answers that she was giving to me in my office. I told her, I said, "If the defense attorney asked these questions, he's going to point out and highlight these inconsistencies. You know what else? At the end of the case, at the end of the trial during closing arguments, he will turn to the jury and he will show and highlight every one of these inconsistencies, and then he's also going to ask the judge for illegal instruction to give to the jury. You know he's going to say? He's going to ask the judge for a special instruction known as *falsus in uno*."

That's a fancy Latin phrase which basically says hey jury if you find that a witness has lied about one thing, you have the right to disregard all of their testimony because they lied about one small little thing. That is a really important factor. Now during the course of my pre-trial preparation, I was able to show to my client who is refusing to do anything to settle this case that not only did she have one inconsistency, but she had 2 and 3 and 4 and 5. Five inconsistencies that she really couldn't explain very well about why her testimony was different during her pre-trial question-and-answer session compared to the questions that I was asking her now in my conference room.

Because of that, because of putting her through the stages of what was likely to happen when we got to trial, she finally turned to me and says, "You know what, I don't want to go through this. I don't want him to make me out as a liar. I want to settle this case." Now what do you think we did? I was able to settle this case, but only after I prepared her for going to trial. Why do I share this quick story with you? I shared it with you just give you an insight and an understanding into what goes on in these medical malpractice cases, these accident cases and these wrongful death cases here in New York. I realized you're watching this video because you likely have questions or concerns about your own particular matter.

Well if your matter did happen here in New York and you're thinking about bringing a lawsuit but you have questions that need answers first, what I'd invite you to do is pick up the phone and call me. I can answer your

legal questions. This is something I do every single day and I'd love to talk to you. You can reach me at 516-487.8207 or by email at gerry@oginski-law.com. That's it for today's video. I'm Gerry Oginski, have a wonderful day.