The successful defense of a corporate defendant often requires personalizing the impersonal or humanizing the corporation. Not surprisingly, most jurors do not feel a natural affinity towards corporations the way they might towards an individual litigant. It’s hard for jurors to identify with corporations - corporations don’t have kids, they don’t have jobs, they don’t coach little league and they don’t go to church. Corporations are not like jurors. Unfortunately, often times the personal interactions jurors have had with corporations have been largely negative.

Plaintiff’s counsel, particularly counsel for an individual plaintiff, will seek to play to juror biases against corporate defendants. Those biases may be particularly ingrained in certain jurisdictions known to be especially hospitable to plaintiffs. Counsel will seek to paint corporate defendants as impersonal, nameless, faceless deep pocket conglomerates motivated by greed and indifferent to the safety and welfare of real people. Plaintiff’s counsel can be impassioned and aggressive in his or her efforts to capitalize on anti-corporate biases and inflame the jury.

Counsel for the corporate defendant face a number of challenges in such a situation, particularly when litigating against an individual plaintiff. First, defense counsel must lower the temperature in the courtroom and even the playing field so that jurors view the dispute as one between people. An individual plaintiff versus a corporation is often not a fair fight. But by successfully changing the framework and recasting the players as individuals, defense counsel can take away the natural edge a plaintiff often has when litigating against a large corporation. Defense counsel must work to enable jurors to see the good people who make up the corporation – people the jurors can identify with and trust.

The process of humanizing the corporation starts by introducing jurors to the people who work at the company. Counsel can do this by having corporate employees take the witness stand and by use of opening statements to introduce and describe to the jury the people who are the corporation. Showing jurors that the company is made up of real people just like them, people who drop their kids off at school in the morning and go to work every day, trying to do a good job working to provide for their families is critical. Allowing jurors to get to know the people who make up the company gives them actual people to whom they can relate. All of a sudden, the big bad corporation that plaintiff’s counsel attacked in his opening statement becomes a bunch of folks just like the jurors, folks who are working hard to do a good job. The following are some techniques and strategies that will further help to humanize the corporate defendant.
Public Relations or Press Issues

In the litigation context in significant cases, much of the battle plays out first in the media before the parties even get into the courtroom. The days of “no comment” as a viable strategy for a corporate defendant when reputational issues and huge dollar amounts are at stake are over. Real people speak. Real people say something in their defense. Corporate defendants and their counsel must work to get the story straight and get it out early and consistently. The choice of spokesperson for the company on key issues relating to the litigation can also impact potential jurors’ perception of a company – is it a PR firm or a scientist or engineer? Does the spokesperson look like the potential jurors? In addition, a corporation can pro-actively develop brand or reputation building ads. Such ads can assist in humanizing the corporation when it is faced with litigation. For example, ads about patient assistance programs offered by a pharmaceutical company for free medicines for the poor, or publicity about what work an energy company has done to help in the community may be very helpful in shaping perceptions. Of course, counsel must be mindful of the timing and placement of such ads in the context of local rules.

Discovery: Depositions of Company Witnesses

The identification and preparation of company witnesses is vital to a successful defense. Defense counsel must prepare corporate witnesses to be truthful, polite, concise and firm. An evasive, hostile or blabbering witness will do more harm than good. Often appearance is as important, if not more important, than substance. Does the witness appear trustworthy, honorable, and likeable? Can the jurors relate to the witness? A stiff, robotic witness or a combative, aggressive or evasive witness will only reinforce jurors’ biases about corporations.

Counsel should provide special instructions for videotaped depositions of company witnesses, including advising the witness that a videotape picks up every facial expression, sound, or body movement. To that end, the witness should avoid grimacing, covering his or her face with hands, sighing, laughing inappropriately, or taking inordinately long pauses. Corporate witnesses should look directly into the camera instead of looking down or away, or worse, at counsel. Attire should be neat and appropriately related to the nature of the employee’s job. Except for compelling reasons, a trial direct exam should be conducted so that it may be played at trial to counter the testimony designated by plaintiff or introduced should the witness becomes unavailable by the time of trial. Defense counsel should not assume anything will be excluded at the time of trial (no matter how compelling counsel believe her motion in limine to be) and should adequately address and counter in the direct exam all potentially harmful testimony elicited by plaintiff’s counsel.

Voir Dire

Provided your jurisdiction allows for a meaningful voir dire of potential jurors, this process can prove critical. Probing anti-company bias and identifying or eliminating those jurors who will never give your client a fair shake is outcome determinative. The extent of permissible lawyer questioning varies widely from jurisdiction to jurisdiction. In those courts where the voir dire process is comparatively limited, it is imperative to at the very least identify those jurors who are the absolute worst for your client. For example, prospective jurors who have been terminated or downsized by corporations or have members of their family who have been terminated or downsized are “red flags”. Push hard for jury questionnaires which often provide significantly more “red flags” (e.g., those who have filed lawsuits against a corporation or those who think your company’s product should be banned.) Where permitted take full advantage of individual juror questioning to further uncover bias. When time and court rules permit, internet searches on potential jurors will allow you to learn as much as possible about them so as to use your strikes wisely.
Corporate Representative

As a general matter having a corporate representative—ideally, a key witness who has knowledge of the relevant facts in dispute—sit in court throughout the trial is another helpful weapon in “humanizing” the company. Thus, selection of your company representative should reflect judgments about whom your strongest witnesses may be—the last thing needed is to have your company representative discredited on cross-exam and then sitting at counsel table for the jury to see as the face of the company for the rest of the trial. Factors such as likability, presentation, ability to communicate and diversity issues should be considered in the selection analysis.

In certain jurisdictions, however, plaintiff’s counsel is permitted to call the corporate representative to the witness stand and cross-examine him or her about anything relevant to the case whether or not he or she has personal knowledge of the issue. Thus, in those jurisdictions, whether or not to have a company representative is a closer question and the pros and cons of need to be carefully evaluated.

Trial

The corporate representative should be present and introduced during jury selection and opening statement. During the trial, the corporate representative should be advised to refrain from looking at her iPad, iPhone, blackberry, etc. and to remain attentive while the jury is present. The corporate representative should also be instructed to be aware that the jury will be watching so she should avoid grimacing, head shaking or otherwise reacting to the testimony/evidence, rulings or argument. She should act in a way befitting the face of the company - courteous, respectful and calm.

Counsel for the company will also be viewed by jurors as the face of the company. Thus, the company will benefit from, or be penalized by, counsel’s actions and demeanor. The use of plain spoken language, folksy and conversational, as well as relating to jurors in demeanor and dress (no expensive clothes or jewelry) will assist in humanizing the corporate defendant. Opening statement should include, to the extent permitted, a discussion of the ties the company has to the local community, state and country, numbers of employees, kinds of employees and the economic benefits and the human benefit the company’s business and services or products have provided. Counsel should refrain from referring to the company as “my client” and instead discuss the “folks at x” or the “people of x.” Where there is an unrelated guilty plea or some other type of harmful evidence about the company that counsel has successfully excluded in limine, or that otherwise would not be admissible, counsel must be very careful that the “good company story” presented in opening or in witness examinations does not open the door to an attack from plaintiff’s counsel with the very evidence that was successfully excluded.

Direct exams of company witnesses should include personalizing the witnesses with brief asides or discussions of their families and other background subjects that enable jurors to relate to them as human beings. Stories that assist jurors in visualizing in a positive way how colleagues interact at work can also be helpful.

Conclusion

Humanizing the corporation is often critical to a successful defense. Corporations are made up of real people and, if presented in the right way, jurors should be able to relate to and identify with them. By presenting the corporation, not as a nameless, faceless conglomerate, but as a bunch of folks just like the jurors, defense counsel can successfully even the playing field and cast the dispute as one between people. Doing so can dismantle jurors ingrained biases against corporations and allow jurors to like the corporate defendant in the same way they might like an individual plaintiff.
(Attached to the presentation are examples of graphics used by the author in opening statements in an effort to “humanize” corporate defendants).
ESPN Shows Premier Sporting Events

[Image of various sports events handled by ESPN]

The Jury Trial: Strategies for Humanizing the Corporation
Rigorous Science
Breakthrough Medicines
AstraZeneca’s Good Name is Critical to its Business

- Doctors’ trust is critical to AstraZeneca’s business
- AstraZeneca relies on its good name for its business
- Safety is survival
The Men and Women of Philip Morris

- Philip Morris has been in business for more than 150 years
- Employs over 10,000 people throughout the United States
- Headquarters in Richmond, Virginia
GE’s History

- In Business over 125 years
- Pioneer in electric power technology
- Nobel Prize Winners
- Leading provider of power and energy in the world
• Founded in 1886 as a manufacturer of band aids and surgical dressings
• Headquartered in New Brunswick, NJ
• The majority of its 120,000 employees are in the United States
• Part of the Johnson & Johnson family of companies

• Researches and develops medicines for infectious diseases, Alzheimer’s disease, epilepsy, mental illnesses, pain management, and women’s health

• Develops more FDA-approved medications than any other pharmaceutical company

• Headquartered in Titusville, NJ