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# DAILY REPORT

A SMART READ FOR SMART READERS

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## Litigation Is Like an Ultra-Endurance Race

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WHILE COMPETING in the Leadville 100 and Tatanka 100—which are 160 km, ultra-endurance mountain bike races— I realized that the approaches to the optimal outcome in my work, as a trial attorney, and my play, as a cyclist, are closely aligned.

The lessons learned from the challenges I overcame in these races apply to litigating challenging cases. They include:

### Set Realistic Goals

Assessing strengths and weaknesses and understanding their influence on the likely outcome allows you to set goals and manage expectations.

After competing in a race, my son always asks “Daddy, did you win?” As a practicing lawyer and father of five, it is unlikely that I will ever “win,” and as I explain that I “won” simply because I competed, he loses interest. Similarly, he often asks “Daddy, did you win?” about a trial result.

The cases we try are those where liability is probable and damages are potentially very high. So a “loss” of \$2 million, on a case where the demand was 10 to 20 times greater, is a huge victory. The sooner one manages expectations regarding realistic outcomes—whether in a trial or in a bike race—the better the experience.



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### Be Prepared

The race or case is won (or lost) in the preparation. You can't go from the couch to riding a bike

10 hours straight without serious pain and risk of injury.

Litigation is no different. If you go to trial without proper preparation, it will be a very painful experience and may result in serious injury to business for both you and the client.

Clients, especially, need to be advised early. In a high-value case, every significant event requires strategic planning, thought and preparation to be successful. Clients often want to postpone litigation until the last minute because it's expensive, and it doesn't add to the bottom-line, or they don't want to face the inevitable.

Ignoring the case or doing the minimum, in terms of preparation, is a guaranteed way to lose big.

## Focus on Solutions

Resist the very human urge to focus on problems instead of solutions. Any energy not directed to the end goal is wasted.

Every race involves preventable problems, like crashes or

flat tires, and focusing on those problems after they occur can ruin a race.

In litigation, after a problem occurs, it is important to complete an objective review, learn what you can, and move on quickly. There is little benefit to living in the past. All energy should be directed to preventing future issues and obtaining the best result possible.

## Don't Quit

Achieving the best results in an ultra-endurance race requires discipline and perseverance. In the Tatanka 100, I was on pace for a sub-10 hour time and a Top-20 finish. That was, until my first flat tire at mile 40, less than halfway into the race. Three more flats and a broken chain followed.

It would have been easy to quit in the face of any of those problems, and many of my competitors with similar issues did. But I would have missed out on a great experience, which is always

my primary goal. Everything I learned about myself and all of the good experiences I had that day resulted from overcoming adversity.

Litigation also favors those willing to persevere in the face of adversity. Races are usually won late, when everyone is tired and spent. And the later stages of the race are when you will likely see the most personal benefits—and learn the most about yourself.

Litigation is similar. The overwhelming majority of parties and lawyers, no matter what they say, want to avoid trial, when the risk and intensity increase dramatically. For this reason, my clients usually see the best results very late in the process.

The time to press advantages and negotiate the best deals occurs as trial approaches, or during the trial itself. This takes discipline, courage, and confidence in your plan—just like in a long, long bike race.



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