

## On Becoming the Most Successful Dolphin

Predatory trial attorneys are commonly dubbed with the uncomplimentary moniker of “sharks.” In my experience as a products liability expert witness, I have seen these aggressive, relentless, non-discriminatory attacks leveled on witnesses and experts. Since plaintiff’s attorneys are often working on contingency that can lead to huge paydays, the wrath of their jagged white teeth is aimed at me more often than from defense attorneys. This depiction is not judgmental, it is a viable component of the adversarial legal system.

Part of the shark metaphor includes the attraction to blood in the water. Another is that sharks have almost no other marine species that are capable of stopping their attacks. Those who we consider the most successful trial attorneys are those whose cunning assault permits little chance for the opposition to effectively defend or rebut.

In nature, however, the seemingly benevolent dolphin may be the shark’s most lethal opponent. When threatened by a shark, dolphins are known to ram a shark with their reinforced rostrum (nose). If they are successful, the impact stuns the shark; the shark sinks to the ocean floor and dies of asphyxiation. Since the dolphin’s vertebrae are not connected, this concussive blow does not harm the dolphin, but, at the very least, knocks the wind out of the shark.

Granted, there are more dolphins eaten by sharks than sharks rendered harmless by dolphins, but (and you probably see the allegory coming) wouldn’t you have the exterior of a dolphin while having the ability to blind-side the sharks? There is more to being a successful dolphin than having a hard nose and a becoming smile. The secret may be in an innovative approach to prosecuting and defending products liability and organizational negligence cases.

While other experts are pawing over charred remains under an electron microscope, our experts are performing an analysis of the company that manufactured the subject product. Mostly from specific documents obtained through discovery, we can do an audit of the business, manufacturing and quality processes resulting in compelling evidence that the organization did or did not exercise a reasonable standard of care that should have prevented the alleged disaster or accident. Mainly through document audits, we examine the infrastructure of the organization accused of product defect and/or negligence. This process gathers evidence that determines if they were or were not careless in their management, policies, standards, practices, training, inspection or testing processes. From this research, compelling, structured narrative is generated that maps an objective series of events leading to the alleged incident and its consequences.

As expert witnesses, we have been involved in products liability suits involving electrical outlets, titanium metal, stereo boom-boxes, gate valves, motorcycles, box fans, tractor-trailer trucks, contract disputes, golf carts and computer printers. The product is almost irrelevant to the outcome of our research. We typically provide undeniable evidence that the organization either was careless in its practices, or, that their quality processes could not reasonably have allowed the alleged defect.

While the forensic issues may be open to dispute, our findings are seldom refutable because we use the company's own documents to make our case. If a defendant does not produce quality and manufacturing documents that prove their diligence and stewardship, the result is just as compelling that they have not met consumer care obligations typical to their industry. Moreover, they may have also violated statutory and regulatory requirements for product safety.

Using our methods, we can show attorneys how to become the Most Successful Dolphin. Sharks almost never see us coming.

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Tom Taormina was a Quality Control Engineer at NASA's Mission Control Center for 14 years. He was part of the Apollo 13 recovery team and heard the words "Houston, we have a problem" first hand. His 40-year career has been dedicated to hands-on proactive business excellence and he has written ten books on quality and business process improvement. Since 2001, he has become a preeminent expert witness in product liability and organizational negligence litigation.

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