



**2018 Midwest Conference**

**June 20 and 21, 2019 - Chicago, IL**

**Polarizing Politics and Contentious Claims**

**I. Hot Button Topics and Challenges**

*A. Red vs. Blue*

Charlie Brown once said there are three things to never discuss with other people – religion, politics and the Great Pumpkin. The sentiment behind those remarks is particularly appropriate today, as we live in an increasingly polarized society where certain topics can lead to antagonistic discussions and damage relationships. It seems that there are far fewer social and political issues these days that people simply have no opinion on. The issues which feature prominently in the news and on social media each day are issues which most people, regardless of ideology, have strong opinions about. Sometimes those opinions are easy to discuss and sometimes they are not. This impacts our everyday professional life, whether it is relationships with coworkers, colleagues, insureds or claimants.

We also live in a society where it is much easier to find out someone's views even if they are particularly reticent. A social media search of less than five minutes often tells you someone's political leadings, taste in music, favorite sports teams, and what toppings they like on their pizza. How do we manage relationships when we know the person with whom we are dealing has views we strongly disagree with? Trying to stay neutral is a laudable ambition, but sometimes it is easier said than done.

The trends in modern society also impact how we may look at claims. There are new issues impacting valuation and exposure which not too long ago never would have occurred to us. Valuing claims was difficult enough to begin with, and now it is more challenging than ever because there are more factors and variables to consider.

*B. Immigration*

No matter where you get your news, you cannot go a single day without there being a story about immigration. Even if you do not live in a border state, one way or another immigration will likely have some impact on a claim you are handling.

Immigration has already changed the face of the American workforce. The types of jobs immigrants are doing is expanding as well. For example, there is a shortage of truck drivers and many immigrants are now gravitating toward that profession. Resort towns often bring in foreign employees during the summer for jobs they cannot fill with American workers.

Working with an immigrant claimant or insured forces us to consider a number of things we may not have previously considered. Do you need a translator for both oral and written communications? If you know someone struggles with reading English can you send them a reservation of rights letter written only in English? How do you get someone to understand their rights and responsibilities if their English is limited? How far should we go to accommodate someone who is not a native English speaker?

Depending upon an immigrant's life experiences, they may be apprehensive about communicating with claims personnel or attorneys. There can be cultural differences too which can lead to miscommunications and misunderstandings. If you are working with a translator, they are often a good resource for being aware of issues you might not have considered otherwise. This can also help you build trust and alleviate any fears or concerns.

Immigration is also a factor when you are dealing with non-parties. What if you were dealing with an incident where a key witness is an immigrant and is highly mobile? What if you are dealing with a claim where a key witness is an undocumented immigrant? Will they be reluctant to become involved in a legal proceeding for fear that it could lead to adverse action being taken against them? Are they going to be apprehensive about appearing in court to testify because they may see a courthouse as an intimidating or unsafe place?

### *C. #MeToo*

The #MeToo movement has brought attention to serious issues which were not necessarily fully appreciated or openly discussed in the past. We are now more aware of abuse, harassment and discrimination in our society. The Weinstein, Nassar and Cosby cases have understandably generated a great deal of media coverage and public awareness. Are we seeing more claims now as a result?

These types of claims can be particularly challenging to investigate, regardless of which side you are on. People are far more likely to come forward to talk about an auto accident they witnessed than to discuss claims of abuse or harassment.

### *D. Social Media and Shaming*

Social media continues to impact not only the types of claims we see, but also how we look at claims. One key is understanding how social media use can vary greatly across generational lines. It has become increasingly common to question claimants and insureds about what social media platforms they use. If you are dealing with a younger person, there is a good chance they will mention a particular platform you may not have even heard of before. Younger claimants now snicker when asked about being on Facebook and comment that Facebook is for “old people.” Regardless of age or demographics, people continue to overshare on social media and your awareness of the different platforms is key.

Nearly all of us have used social media to assess a claimant or plaintiff. How many of us though also use it to size up an insured or a client before initially meeting them? What do you do if you discover the person you are to represent has views which are very different from your own, and so much so, that it could impact your relationship with that person? What if you discover your insured or your client possesses views or attitudes toward the particular demographic group that you belong to?

One of the challenges with social media is things may not always be as they first appear. Old school football coaches always insisted “film doesn’t lie.” There are times though now even though something is documented on video, that people viewing the video still reach very different conclusions. There continue to be very strong reactions and discussions to the Washington D.C. incident involving students from Covington Catholic High School. Even with the release of extensive video footage, people remain strongly divided about that transpired and who bears what level of responsibility. In the minds of some people there was a rush to judgment. In the minds of others, there is just greater skepticism.

#### *E. Gender and Sexuality*

Gender and sexuality issues are something else which are unavoidable in our daily media coverage. Those issues can appear in even the most basic claim. What do you do on a claim where one of the parties does not identify specifically as male or female and the case is venued in a decisively conservative jurisdiction? Obviously, this may impact how you assess what a jury might do, but should it impact your assessment? There is also a risk in misjudging how a juror in a particular community might react. Just because you identify a particular jurisdiction as liberal or conservative, your analysis should be more nuanced. For example, a jurisdiction may be known as politically conservative, but it may also have a base of constituents who because of their faith, may actually have attitudes you might not suspect. By you simply looking at how a particular county votes in a particular election, or are you drilling deeper?

If you suspect this may be an issue on a claim, then there is great value to an early meeting with the insured or client. This is generally a good practice to begin with, that may be even more value in these types of claims. In addition to helping you assess them as a witness, this also allows you to reassure them and put them at ease about how they will be treated, and how their claim will be handled.



## II. How do These Issues Impact Claim Handling, and Should They?

### A. *Staffing and Assignments*

Knowing that these issues exist, the question then becomes not only how they impact our claim handling practices, but also whether they should impact these practices. We have a duty to put the best team together for every claim and every lawsuit. Not only do we want the most capable people working on the matter, but we also want those people to build a rapport with the claimant, insured, or client. If you know that a claimant has strong views about a particular racial or ethnic group, and the person you are going to assign the matter to belongs to that group, should you reconsider that decision? There is no easy answer to this question.

Obviously, you want to have a team in place that will achieve the best possible result on the matter. On the other hand, though by not assigning someone to a claim because of their race, ethnicity, or gender, you are discriminating against that person and perpetuating a great problem in our society. What about specifically assigning a claim to a specific attorney because of what they have in common with the insured or claimant?

### B. *Claim Investigations*

As part of this process we need to push aside stereotypes and preconceived notions. For example, truck drivers tend to be perceived as conservative white men with less education than the average person. That perception though is not always going to be correct as the face of the workforce continues to change.

One of the best examples of not judging a book by its cover is an experience I had during the 2008 presidential campaign. While driving through South Carolina I passed a large pickup truck with a gunrack. The truck had several bumper stickers, proudly and clearly proclaiming the driver's candidate of choice. The bumper sticker I will always remember is the one that said, "Rednecks for Obama!"

These issues make investigating claims more difficult at times. There may be questions we are not comfortable asking. There may be information we do not want to gather as part of our investigation because it will not help our representation of that particular person. For example, on an auto accident claim, what do you do if your insured has bumper stickers on their vehicle which people are going to clearly find offensive? Our natural reaction on all claims is to take as many photographs as possible, and document everything. Are there going to be times though where maybe we do not want to document certain things because we know what the photographs is going to look like if it gets blown up in front of a jury. Some claims necessitate asking difficult questions and there is no way of avoiding them.

### *C. Claim Evaluations*

A host of moral and ethical issues arise when we think about how to value a claim. Are issues like these likely to impact how a jury may value a claim? Should we allow this possibility to impact how we evaluate a claim? Is it moral and ethical to change how we value a claim because of what we know of a person's background and what we think we know about a particular venue?

It is particularly challenging when you are trying a case and these issues present themselves. Perhaps the biggest challenge is when you actually are selecting a jury. If you ask potential jurors if they are biased toward a particular group or on a particular issue, odds are you will get not much of a meaningful response. Similarly, if you ask the jury panel to consider themselves to be fair, pretty much anyone who is not trying to get out of jury duty will agree that they are fair. So how then do you get potential jurors to open up about attitudes which may shed some light on their views. One good source of information is asking what magazines they read. Another good icebreaker is asking what bumper stickers they have on their vehicles. If you are defending a shooting case, bumper stickers are often very telling about how someone feels about firearms.

Claim investigation and handling was an inexact science to begin with. It is becoming all the more complicated and involved. These points though raise not only practical considerations, but also moral and ethical questions to consider as our society continues to change.