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From the Mouths of Millennials: Perceptions, Realities and Strategies for Dealing with Millennials in the Construction Industry

I. Introduction

A. Why Understanding Millennials in Construction is Critical in 2017 and beyond

At 53.5 million, millennials now make up the largest portion of the workforce. Generation X and the Baby Boomers are now surrendering the economy to a generation they are still struggling to understand, and there is more than a little trepidation. These older generations place a heavy emphasis on steadiness and workplace loyalty, and they see millennials as ephemeral and unreliable. In contrast, millennials are highly aspirational, and put a high value on growth, change, and a sense of social value in their work. In the construction industry, this disparity has the potential to change everything from client courtship and claim resolution to trial strategy and jury selection. To be effective, insurers and advocates will need a fundamental understanding of what makes this generation tick.

B. Experience/challenges with Millennials

As a general principle, Millennials don't like big corporations, and they are already re-shaping products liability litigation with more safety conscious verdicts. Almost eighty-five percent of millennials believe that corporations should take every precaution to protect the consumer—including those that are inefficient and expensive. Construction defect litigation is no exception. A plaintiff-friendly, millennial jury could easily throw huge verdicts against developers who are cast as greedy or exploitative. Defense advocates will have to posture themselves accordingly, otherwise they may be facing juries that already have big construction in their crosshairs.

As clients, they can be difficult to please because of their incredibly high expectations. They live in a world where immediacy and consumer satisfaction are worshipped by the market, and they are eager to supply it. They are generous with feedback, and will not hesitate to express dissatisfaction for service. Combine this with a nonchalance toward retirement and future catastrophe, and it can be the perfect maelstrom for insurers. Personal insurance is already seeing a large drop off in engagement from the millennial base, which does not bode well for the construction industry.

i. Workplace –Supervision, Mentoring, Retention

When it comes to their own careers, millennials have high expectations. As a deeply aspirational generation, they expect to be provided with a clear roadmap to success. They also expect flexibility, and a certain degree of autonomy. This entrepreneurial approach to work often clashes with traditional nine-to-five work environments. Usually, these traditional companies react with stricter **supervision** for millennials, only to see them leave for other opportunities. Instead of clamping down, the key is to provide a collaborative atmosphere with opportunities for creativity, growth, and social connection—trademark millennial values. If a millennial feels unappreciated, or that they are not contributing in any significant way, they are more likely to move to the next opportunity.

Under this looming generational gap, traditional **mentorship** has also proved difficult, and many companies are turning to alternative forms. In reverse mentoring, for example, younger millennial employees are asked for technological or marketing advice, which taps into their generational expertise and allows them to interact with senior administrative employees. In turn, older employees can provide training on efficiency and administrative philosophy that millennials may be lacking. This, along with group mentoring, and even anonymous mentoring are emerging as effective solutions to the millennial's intense aversion to bureaucracy. These methods seem to fly in the face of traditional mentorship frameworks, but many companies are embracing them because they see mentorship as the key to employee satisfaction and long term productivity.

Retention is another challenge. Millennials, will job hop an average of 20 times during their career, more than twice that of their baby boomer counterparts. While this may be partly attributed to a larger market, it is also symptomatic of a generation that values fit over consistency. Companies that are successful at retaining an effective millennial workforce take a holistic approach to their environments, attempting to provide a specific kind of lifestyle rather than a mere paycheck. Google, for example, saturates their campus with employee friendly benefits, i.e. segways, free cafeterias, sleep pods, automated cars, etc. These perks are designed to create a specific type of lifestyle that is attractive to its younger employees and will keep them satisfied long term.

ii. Claims –Issues with insured/client, communication, case resolution

When it comes to personal insurance, Millennials are the least likely generation to be engaged with their primary insurers. They typically buy insurance online, circumventing interaction with a specific agent. This makes it difficult for insurance companies to foster fruitful business relationships, and can lead to issues with future claims and litigation. To mitigated effect, this will likely be true of millennials with insurance in the construction industry. Ease of use, automation, and quick resolution of claims will be expected by future millennial builders. This poses a unique challenge to insurers who will need to make a concentrated effort to build healthy, communicative relationships with their clients that will effectively build trust and rapport. More focus will have to be placed on technological integration, feedback, and tech savvy communication like text or email. Applications that allow clients to upload pictures, progress reports, and on-site updates will likely be a necessity in the near future.

II. Fact or Fiction: Millennials, Claims and Litigation (15 minutes)

1. Lack of Loyalty

If a millennial is dissatisfied with their work environment, they won't hesitate to leave. For them, lifestyle and quality of experience are ranked higher than consistency and longevity. This tendency is often interpreted as flakiness or a lack of loyalty that is not worth indulging. However, when one considers the advent of online marketing, customized advertising, tech startup billionaires, and social media scrolling, it seems that millennials may be more a product of their environment than a catalyst. The commercial market picks winners and losers at a crushing pace, and media content is being produced at higher volumes than ever thought possible. A millennial's seemingly ephemeral loyalty is only a reflection of the speed at which the appetite of the modern market moves. A savvy employer or service provider will attempt to create the type of environment that a millennial will want to stay in rather than relying only on a sense of reciprocal loyalty.

2. Money is everything

As stated before, millennials put a heavy emphasis on lifestyle over longevity. This can manifest itself in a tendency too seek quick money instead of saving for retirement or settling down. With heavy student loans, most are broken in to the idea of saddling debt in exchange for a more immediate lifestyle. From a millennial perspective, there is little reason to defer gratification to later years because you likely will not be able to even enjoy it at that point.

In the context of insurance and litigation, this could lead to an expectation of higher claim awards and verdicts. Since longevity is not always emphasized, an insured millennial would likely be quicker to sever ties with an insurer if they were unsatisfied. Similarly in litigation, a millennial would probably opt for a quicker resolution of a claim be it arbitration or settlement.

3. Import of learning, training, experiences in workplace

Millennials are the most educated generation in history, and feel most at home in a classroom type setting. In the workplace, they are expecting an environment rich with feedback and collaboration. If they don't find it, they often become discouraged. Job training programs that do not resemble a classroom type setting are more likely to be ineffective. For better engagement, many companies are finding that taking on the role of a teacher is an effective way to engage and train. Assignments accompanied by consistent feedback and a kind of grading system is often effective. Group projects that involve a lot of collaboration and inter-employee interaction are proving more effective than isolation and self-motivation.

4. Technology Driven

Millennials expect work to move at the speed of the modern world. The lean, entrepreneurial spirit of silicon valley has become an expectation rather than an ideal. While their parents idealized Ford and Coca-Cola, millennials look to Google, Facebook, and the tech giants of Palo Alto as the models of efficiency and employee satisfaction. These types of companies are constantly seeking to make their company frameworks more technologically integrated and suited to their employees needs. Modeling that spirit, millennials have come to expect faster systems and a higher degree of software integration into their daily lives. As clients, these expectations will be unchanged. A world of faxes and voice mails

will be foreign to them, and as customers they will expect technological savvy otherwise they will simply move on. As stated earlier, however, these expectations are a mere reflection of the modern world. To assume that millennials lit the match would be anachronistic.

III. Perils and Pitfalls of the Millennial insured/client/juror (25 minutes)

A. Client Communication (5 minutes)

i. Before and During the Claim

Because their expectations are so high, regular communication with millennial clients before a claim is a necessity. Almost universally they show a heavy preference for electronic, user-friendly policy frameworks that give regular updates and regular electronic communication. In a world of text and email, millennials have little patience for unresponsive insurance providers. Their customer satisfaction ratings consistently rely on the speed and ease of use.

Similarly, during the claim, the expectations are largely the same. They will be expecting quick resolutions, and are largely concerned with speed and efficiency of payment. Likely they will be willing to overlook niceties and professionalism in exchange for speed. Thus, having accounts technologically integrated and user friendly will be a necessity for competitive firms and insurers.

B. How Millennials View Evidence (10 Minutes)

For advocate, when it comes to presenting evidence, the best practices for persuasion will work for any generation. Millennials, like all people, are persuaded by logical, well-reasoned arguments book-ended by coherent conclusions. However, when it comes to the medium of presentation, there are certain generational nuances that need to be considered. Millennials are extraordinarily opinionated, independent, and have a deep sense of societal fairness. Traditional lifestyles of early marriage and religion are no longer in vogue, and they have been replaced by a kind of modern tribe mentality. Consequently, appeals to traditionalism are the least likely to be effective and should be avoided. Specifically in construction defense, concepts like contractual indemnity, while still effective, should not be relied on alone. Advocates should also emphasize their clients good will and desire to create effective buildings that add value to the community. This kind of statement should be in tandem with a narrative driven, visually oriented presentation. As a general rule, if evidence is described, it should also be shown. Similarly, verbally intense expert testimony should be broken up with pictures or diagrams to avoid monotony.

i. Import of Technology

Millennials are largely visual learners, and with evidence presentations the goal should be to show and not tell. Thus, whenever possible, multimedia should be incorporated. If a presentation to a millennial jury is technologically illiterate, they may question its quality, efficiency, or even veracity. Traditional methods, if inefficient, will likely be seen as stubbornly archaic and unworthy of attention. Use of CDs and mass paper discovery, for example, will strike a millennial as odd in a world of cloud storage and heightened environmental concern. To a visually oriented generation, impressions are key. Simple changes like using slides on a screen instead of whiteboards or verbatim enlargements may contribute to an impression of savvy and up to date professionalism. Conversely, if a presentation is riddled with technical difficulties, a millennial will interpret it as all around incompetence.

ii. Likelihood of Not Following Judge Admonitions, what does that mean to case?

Millennials don't like being lectured, and this can be a problem in the context of judge admonishments to ignore certain types of information. In an age of google omniscience, millennials are not accustomed to cutting off the flow of information. This can be a serious problem for trial attorneys who rely on a tight control of information. Googling clients and posting to social media about the trial are common, and difficult to prevent. Depending on the juror, judge admonitions may or may not be effective, and the risk of a juror encountering spurious information can be a serious risk.

Stricter and more frequent and frequent judge admonitions can help. In a recent trial, an attorney had the jury, under penalty of perjury, sign a statement agreeing not to look up anything on the internet connected to the trial. In the same vein, California Assembly Bill 141 puts jurors who research information about the case in contempt of court. As a precaution, attorneys should also google themselves and their clients to know that kind of information is being circulated. During jury selection, a good technique for spotting overly ambitious researchers is to ask who has already posted on social media about the trial.

C. Trial Issues: Jury Selection, Consultants, and Arguments that Resonate

i. Jury Selection and Consulting

Now that age based dismissals are no longer acceptable, the jury selection process is paramount in determining whether a millennial is an *a priori* friend or foe. Fortunately, because millennials are so opinionated on social media, voir dire can become remarkably simple. With a simple search, selectors could easily find a treasure trove of information on personal viewpoints. While direct interaction on social media is anathema, any information that is shared on a public profile is fair game.

During *voir dire*, asking pointed questions about their beliefs is also helpful. In construction, a millennial would likely see a big company as an institutional power. Thus, asking their feelings about rule following, societal structure, or the duty to fulfill contractual obligations would be helpful. If the answers skew towards a sense of unity or community awareness instead of consistency and loyalty, they will likely be hard to win from a defense perspective. Furthermore, because millennials desire to be appreciated, questioners should show genuine interest to responses as a dismissive attitude could quickly damage rapport.

The question of hiring a jury consultant remains the same. Other than providing insider information on local judges and community standards, they are unlikely to provide any silver bullet for winning a millennial's good will. The need for their expertise is still best determined on a case by case basis.

ii. Arguments that Resonate

Traditionally, defense attorney's could appeal to a juries sense of duty and obligation, since older generations were on the whole more pious and deferent to traditional institutions of power. Millennials, however, are on the whole less religious, and have a natural aversion to what they perceive as established institutions of power—i.e. big business, organized religion, binding contracts, etc. Appeals

to their inner rule follower are likely to fall on deaf ears, and attorney's will need to appeal to different instincts.

Fortunately, a millennials deep seated sense of community is a two way sword. Fair play and equal treatment are axioms that will likely resonate. Story telling is also a powerful technique that is quite familiar in the millennial vernacular. Personalized, authentic, narrative focused arguments are more likely to resonate. Heavy reliance on expertise, titles, or bureaucratic opinions will most likely fall short.

iii. Attention spans, sound bites and impactful evidence

When it comes to persuading millennials, more concise statements are always stronger, because their attention is an expensive commodity. In the world of advertising, for example, the average price per impression of prime time advertising has skyrocketed from \$1.50 in 1966 to over \$22 today.¹ When it comes to news, millennials mostly digest major headlines 140 characters at a time while scrolling social media. This makes punchy, entertaining, story-oriented advertising most effective. For trial strategy, brevity should be preferred over volume, and visual evidence should be seen as more potent than oral. On the whole, presentations should be kept lean and trim, and lengthy cross examinations are likely more effective if they are kept to the key points. Furthermore, enveloping evidence into a broader narrative is a particularly potent technique since millennials consume marketing narratives on such a regular basis.

iv. Avoiding the Runaway Jury

Millennials don't like to be lectured, and telling them what to decide would be a cardinal sin in a jury situation. They have a serious aversion to condescension, and like to come to conclusions based on their own interpretations of the evidence. Giving heavy-handed suggestions will more likely push them away than persuade them, and could potentially lead to a runaway jury situation. The key is to treat them like peers, whose opinions are valued and appreciated in the discussion. Authenticity and even vulnerability are much likelier to be effective.

Their plaintiff friendly tendencies can be attributed to their strong sense of community. This unity-oriented posture makes them particularly susceptible to the ever popular reptile strategy used by plaintiff lawyers. Before a millennial jury, a defense strategist would need to stifle this technique as quickly as possible. In California, defense lawyers can rely on *Regalado v. Callaghan*, 207 Cal. Rptr. 3d 712 (Ct. App. 2016), in which an appellate court disapproved of the reptile strategy in dicta.

¹ Adjusted for inflation it is roughly double.