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Modern Trial Prep: A Client's Perspective

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Whether defense or coverage, our panelists are well-suited to advise of the most strategic and innovative methods for trial preparation.

I. The First 60 Days: What is important and why consider it now?

For some counsel, the tendency during the first 60 days of a case is to prepare responsive pleadings and basic discovery. Yet, the first two months in a matter is the time to understand the case and the client's expectations for the litigation. Our panelists will address what issues are most important to embrace at the outset of a lawsuit to ensure it is on the right track for trial.

Outside counsel should understand the client's business objectives. This is not the same for every client or every case. Yet, without this information in hand, counsel cannot adequately serve the client or the carrier, if the two are different. Outside counsel and the client should also discuss and define reporting channels and procedures to ensure the key individuals are involved in strategic decisions that affect the trajectory of the matter.

The client, carrier or outside counsel may want to harness recent innovations to streamline costs or efforts during discovery or trial. These can be new and unexpected to the non-suggesting party. As such, these items should be discussed early before any expense or misunderstanding takes place.

All parties should sign off on a litigation road map that is guided by the applicable jury instructions. Causes of action, relevant evidence and problematic areas should be identified at the outset before these issues actually come to a head in motions or at trial. Predictability is key for both a carrier and the insured.

II. Witnesses, Documents, and Experts: Who and what do we need and why?

The right witnesses, documents and experts are vital during discovery, motions and trial. Our panelists will discuss how they approach bad documents, problem witnesses and experts.

As for witnesses, outside counsel and the client should discuss and identify the relevant witnesses early on during the litigation. Key individuals should be informed of their role in the case and contacted often just to ensure that they are still onboard.

The status and progress of discovery should not be a mystery to the client. Carriers handle a large volume of litigation across the country and often have their finger on the pulse of the most innovative document management systems, vendors and service providers. Such vendors can streamline discovery and depositions and present a product that is trial ready often at a savings to the carrier. Carriers are often a great resource for reliable (and unreliable) experts. Our panelists will discuss who they use and why they consider these folks to be a vital member of the trial team.

III. The Judge, Jury and Media: How do we influence real and virtual opinions?

Our in-house panelists will share their best and worst experiences at trial. Case themes should be developed early on that can be reinforced during voir dire, opening statements, witness testimony, and jury instructions. Judges and juries have a short attention span. Keep the story short and simple. Just as important, judges and juries should not be left to fill in the blanks on any aspect of the case. It is counsel's responsibility to provide a complete story.

When an insurer is on trial, the trial team must address the implicit bias against insurance companies. Case themes should include an explanation as to why it is fair to find for the insurer. While costly, jury consultants can be useful in crafting themes as well as identifying areas that can be highlighted, deemphasized or bolstered.

The virtual world and social media are two new wrinkles to utilize and manage at trial. Our in-house panelists will share their best tips to both embrace and minimize the risks of modern media.

IV. Putting It All Together: How do we bring home a win?

Our panelists will explain key factors that led to their trial "wins" and how these experiences shaped the way they practice today. Blending all of the right ingredients to obtain a winning verdict is certainly a team effort. Outside counsel may have a tendency to take the laboring oar on most tasks but client involvement is key and should be maximized where possible. Carriers bring experience and expertise to the trial team, and clients bring a depth of knowledge on case facts.

The carrier, the client and outside counsel should agree on what constitutes a "win" in the case. Effective reporting ensures everyone is prepared for the result, win or lose.