



2014 CLM Annual Conference

April 9, 2014 – April 11, 2014

**Boca Raton Resort
501 E. Camino Real
Boca Raton, FL 33432**

Roundtable 3: Thursday, April 10, 2014 (3:30 pm – 4:30 pm)

Know When to Say When: Managing High Exposure Lawsuits

This session will dissect effective claims handling for high exposure lawsuits. The analysis will focus on different stages of the claims handling process, from the inception of the claim, pre-litigation, litigation, through trial. Claims professionals will learn the importance of attempting to limit exposure from the first contact with the opposing party to an in-depth understanding of the legal implications of each phase of claims mitigation, litigation, and resolution. At each of the above stages, plaintiffs' tactics will be exposed, explained, and most importantly, combated. This program is interactive and hinges on the analysis of one real life case study, with names changed to protect the guilty!

CASE STUDY

FACTS:

This is a personal injury auto accident in San Francisco involving a New York based plastic surgeon, Dr. Lookgood. Dr. Lookgood, a plastic surgeon on the Upper East Side of Manhattan, was broadsided while in a cab in San Francisco by an employee driving a large truck for Brick House Construction Company, a major construction company. The cab was totaled and the cabbie was injured as well. The accident occurred on June 18, 2009.

As a result of the accident, Dr. Lookgood was taken to San Francisco General Hospital, observed for approximately an hour and a half, given a prescription for Vicodin, and discharged. Six days later, plaintiff saw his primary care physician for a previously scheduled physical exam. Dr. Lookgood did not mention the accident and did not complain of neck pain. Subsequently, Dr. Lookgood began an investigation and treatment for his neck pain for a year and a half.

Dr. Lookgood's life was completely changed by the accident. Prior to the accident, he was an avid weightlifter and surfer. Since the accident, he could no longer perform these activities and gained weight. Due to his chronic neck pain, Dr. Lookgood was physically unable to continue his practice at the rate he did before the accident. He had to lie down in a back office and receive ice packs from his assistant to be able to continue his plastic surgery practice. Sometimes he had to cancel his remaining patients for the day and often not work for a number of days. Additionally, the injuries caused by the accident interfered with his plans to ramp up his practice to focus more on high-cost surgeries rather than just injectables, like Botox.

Plaintiff claimed past medical expenses of \$29,721.9 and no future medical expenses. Experts testified the 50 year old plaintiff would not be able to continue working as a plastic surgeon or at best, only at a reduced earning capacity. Experts testified that if Dr. Lookgood was able to continue in a limited post accident capacity his loss would be \$10,000,000. However, a plastic surgeon expert and an economist opined that if plaintiff had continued on his career path and was able to perform the more lucrative surgeries, his total economic damages would have been in excess of \$28,000,000. Dr. Lookgood was also seeking significantly more than these numbers in pain and suffering from a San Francisco jury.

Brick House Construction Company had a \$2,000,000 primary CGL policy and \$20,000,000 in excess insurance.

THE STAGES OF A CLAIM

PRE LITIGATION:

What should you do with this claim?

Do you try to settle before suit?

If so, how?

What say to claimant's counsel?

What do you need to resolve this claim?

Any insurance issues?

Excess v. Primary

LITIGATION:

Suit is filed, what do you do now?

Defense counsel-Who?

Discovery - What type?

Experts - What kind?

Offer to Compromise? How much?

Settle now?

How?

Private mediation?

Solicit a demand?

Make an offer?

How do you settle this case?

At what point would you have aggressively tried to settle?

Why do we always solicit a demand from plaintiff?

Why not start negotiations with your own floor or ceiling?

TRUST RELATIONSHIP:

What role does “trust” between defense counsel and the client play in the economical resolution of lawsuits? (expert discovery?)

Who thinks lawyers always settle the case for the full authority they are given?

Who feels uncomfortable when the client suggests you do not turn over every stone?

INSURANCE ISSUES:

When give notice to excess carrier?

TRIAL:

First day of trial, too late to settle?

How settle it?

What do you do for trial?

What is importance of researching similar jury verdicts in same State or County?

What is importance of a jury pool in evaluating a case?

What is importance of who plaintiff's counsel is in valuing a case?

THEMES:

What are plaintiff's themes going to be in this trial?

What would “The Reptile” theme be?

What ultimately will motivate the jury to award a large sum in this case?

Based on past experience, what do you think defense counsel should do?

What are defense themes in this case?

LIABILITY:

When do you stipulate?

What to do once you stipulate?

JURY CONSULTANTS:

Do you need them?

Do you want them?

What is their scope of services?

WHAT DID THE JURY DO?

\$28,000,000 plus pain and suffering?