

TRIAL OF THE COVERAGE BAD FAITH CASE

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JUDICIAL CLIMATE

- Verdicts are increasing
- Juries are more liberal
- Judges are more liberal
- Examples

VENUE/WHICH COURT

WHERE CASE IS FILED MATTERS

- First to file
- Federal vs. State Court
- Motions for Summary Judgment
- Focus on coverage question to reduce exposure
- Mediation/Mediator

CORPORATE REPRESENTATIVE

Who Will Be the Face of the Company?

- Grandma/Grandpa
- Cool, calm, collected
- Presents well

TRIAL COUNSEL

- Understand the landscape: 2 strikes against insurer already
- Attributes for Trial Counsel:
 - Can relate to a jury
 - Trial Experience/Comfortable in front of jury
 - Likeable
 - Sense of humor

JURY SELECTION

THIS IS WHERE THE CASE WILL BE
WON OR LOST

Goal is to strike jurors with bad insurance experiences
and who will not be impartial

TRIAL THEMES

- Insured turned down the right coverage
- The protection of other policy holders
- Insured is greedy
- Credibility

EXPERTS

- Designated for bad faith – will morph into coverage
- Explain policy and the purpose
- Local
- Experienced
- Likeable
- Check Westlaw for Daubert Motions/Limitation on Opinions
- Testimonial history – inconsistent/conflicting opinions
- Age

CONDUCT THE TRIAL AS IF APPEALING

- Treat appeal as a backstop – do you have one?
 - Make up of appellate courts
- Build in error on points that count on appeal
 - Jury charge
 - Evidentiary rulings
- If policyholder side, emphasize standard of review and rules of construction

QUESTIONS?

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