

Explaining the Significant Use of Experts in Personal Injury, First-Party, and Third-Party Litigation

Returning for another podcast segment, Attorney Jon Halaby of Halaby Law Group, P.C. joined Kim Calvi, host of Communication Commandments, to expand on the previous discussion surrounding the litigation process. During this podcast, we explored two different practice areas of expertise as it relates to personal injury claims, in which Jon is well-versed and how experts in various fields substantiate an insurance claim disputed by the parties, the value of involvement of these experts, as well as Jon's established background of representing personal injury litigants on 'both sides of the table' and what that entails. True to Jon's articulate nature, he explains in great detail many of the common nuances and policies attributable to these practice areas.

Halaby Law Group, P.C. owns a full Rolodex of named experts in every professional vertical from the medical community to accident reconstruction to other vocational experts, such as law professors, from which they've had to call on for a multitude of cases. "Experts have become more and more critical to the litigation process in terms of establishing who is going to be responsible for a particular claim. They're also relevant to a question of damages. In other words, what's the value of the case?" Jon states. Emphasizing this further, he says, "Expert testimony is a critical component of allowing the fact-finder to discover who may be responsible and what the amount is in a particular dispute."

Even before a lawsuit is filed, Jon articulates what needs to happen and where an expert fits into that advance preparation. It's understood that before the applicable statute of limitations tolls, all of the relevant facts of the case are gathered by talking to the relevant people and collecting all of the necessary documents, and then, from that preliminary review, determining if an expert needs to become involved.

Most often in personal injury cases, this applies to requiring a medical expert. Jon says that the base questions posited include: How badly is the person injured? What is the cause of the injury? And, what is the future prognosis and possible residual limitations? By way of illustration, he talks about a claimant being in an auto crash and they suffer a fractured ankle. A year and a half later, it's still causing them problems and has impacted their ability to work, because they have a particular occupation where agility is needed to fulfill their duties. The treating physician is going to be called on to offer a specific narrative explaining in detail what their patient can no longer perform, as it pertains to the functions of the patient's job. Presenting a statement of this nature from an expert, Jon points out, puts opposing counsel on the defensive, specifically how to combat that commentative evidence.

Such testimony provided by an expert can make a big difference in a lawsuit to a plaintiff who has suffered an injury, that otherwise imposes far-reaching personal detriment.

Additionally, Jon mentions that reconstruction experts are brought in to identify what occurred in an auto crash or other transportation accidents. These can involve aviation losses, train accidents, or other large-scale losses.

These personal injury cases stemming from pure accident follow the path of litigation differently from personal injury cases involving alleged negligence. For the latter, Jon points out that, “There’s often insurance coverage for those losses. Sometimes there’s some relatedness, but they are actually two different areas of the law and two different types of cases.” For these cases where there’s a claim for negligence, Jon has been on ‘both sides of the table,’ advocating one position. “Typically, state law insurance covered events include negligence in the third-party context. If I’m a business owner and maybe didn’t clear the snow adequately, somebody fell and was injured, and is alleging that I failed to clear the snow, then I would be sued for that. I would look at my insurance policy—a business policy—to confirm third-party protection under the liability portion of the coverages,” he articulates.

Jon further explains a difference between third- and first-party claims. For a first-party claim, he offers up a scenario where a business owner files a claim with their own insurance company, for example, because the pipes in the building burst, causing damage to the computer equipment in the office, resulting in loss of revenue for a period of time until new equipment is procured.

To further delineate differences between the two types of cases, Jon highlights, “In either of those scenarios, the accident reconstruction and the medical experts are more often used in the third-party claims. For first-party claims, you’ll have an insurance expert. That’s a claims handling expert.” A claims handling expert is sometimes a law professor who teaches insurance law.

There’s more to it than that, though. It’s still a lawsuit with opposing sides, each looking to either be reimbursed for loss or find facts that support negating the claim. Jon says an insurance company might not believe that the loss was not the fault of the business owner or party filing the claim. The insurance company may suggest that the heat wasn’t properly maintained, which would provide an exclusion for coverage, and therefore absolves them of protection. The business owner may call on the fire department, who had to come out and stop the disruption. They would have written a report, which becomes part of the investigation. Each insurance company has their own attorney, who will question, under oath, the business owner. The transcript produced from that deposition is reviewed, and the insurance company might still maintain that the exclusion applies. This is when a lawsuit ensues, Jon relays. At this point, the insurance handling expert might be brought on to determine if the insurance company engaged in a proper investigation.

“That person looks at all the facts and decides whether or not reasonable claim handling conduct was engaged in. And if not, then if the fact-finder were to believe that this expert’s analysis is correct, then damages beyond just the amount of the insurance policy can be

awarded, such as double or treble damages and attorney fees. That's the value of having an expert," Jon concludes.

He cautions that hiring experts can get expensive, but reinforces that, "They can be very compelling to assist you in making your claim or your defense."

Commenting again on first-party disputes, for issues which fall under a homeowner's policy, such as fire damage to a private residence, Jon notes that if the matter can't be resolved, there's a provision in Massachusetts which allows the matter to be heard before the arbitration board. Public adjusters are not attorneys, but participate in arbitrations to testify. Their goal is to get the most money under the policy for the homeowner. Construction experts or engineers are good examples of experts who testify in a first-party claim, since they can offer a knowledgeable opinion about the structure in question.

Before our segment finished, one caveat Jon mentioned regarding experts, is finding out how often they have advocated for a particular client. Occasionally it comes under scrutiny if their opinion is biased. This point was a natural segue into another area of Jon's past experience: police liability cases. Earlier in his career, the firm he worked for had an exclusive contract with the police in that municipality, protecting against alleged police violations, such as speed chases, wrongful arrests, and excessive force.

This segment showcases Jon's expansive proficiency regarding the use of experts in litigation, whether it's for personal injury cases caused by accidents or as a result of negligence, the specific differences between those two types of cases, as well as for first- and third-party cases.

An ideal client for Jon and his team includes policy holders, such as individuals and businesses. Jon represents insurance companies, as well. In the area of employment law, most recently, he has been representing the interests of employees; those who have been terminated because of age or medical condition, or who have been wronged by employers in the workplace and their career has suffered as a result.

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