

Persuasion in Insurance Cases

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A small collection of discordant materials

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Persuasion at the insurance adjuster level (What you've done doesn't mean much)

An attorney's standing in the legal community has little influence over adjusters; they have unique criteria by which they judge for themselves:

- Adjusters have virtually no idea of your estimation among your peers – they don't run in legal circles; they have their own tight little community.
- Adjusters don't know or keep track of your win record; it's immaterial to their line of reasoning since they see each new case as a clean slate. In some instances a recent "big win" can actually make the adjuster more adamant because he sees victory more as a matter of statistical probability than skill. From his occupational viewpoint, he may reckon that the law of averages will swing against you on this case.
- Most adjusters are unimpressed by a large law firm with prominent partners. Many adjusters actually are more stringent in their offers in these situations because they expect a large firm to be more inclined toward a lesser settlement to avoid the diminishing returns of litigation. In many adjuster circles, the generalization that a small firm or a single practitioner is hungrier than a large firm and, therefore, more likely to "hit the long ball" gives more credence to their impending litigation.
- Credentials and background mean little to an adjuster. Beyond the fact that an attorney is a member of the bar and thereby can take his case to court, his education and work history mean nothing to an adjuster. Adjusters add no value to a graduate of a prestigious law school and take nothing away from an attorney who finished last in the class of an unknown institution. Likewise, adjusters are unconcerned with how many times an attorney failed his bar exams. Adjusters often see politically prominent attorneys as so far removed from the trenches as to have lost their fighting edge. On the other hand, attorneys who have come up through the ranks as police officers and claim adjusters enjoy advantageous reputations as "street fighters" and are handled with more deference by the adjusters.
- Adjusters have their own "grapevine" which keeps them apprised of an attorney's ability and willingness to take a case through the litigation process. For example, an attorney who develops a reputation among adjusters as primarily a pretrial litigator (one who habitually settles in mid-litigation) will find adjusters cooling to his settlement overtures as the life of a claim approaches that stage. The opposite is true of attorneys known to break off negotiations at a prescribed point and then roll the dice for a jury verdict.

Strange as it seems, adjusters rely more on their perception of an attorney's apparent willingness to take a claim through litigation than the attorney's past history as an indicator; they are more concerned with possibility than probability. Actually, this view is consistent with an adjuster's proclivity to attach more importance to form than to substance. We can't discount the impact that the signature of a nationally prominent attorney at the bottom of a representation letter would have on an adjuster's view of the worth of that claim. All the same, the view remains consistent in that the attorney's nationwide exposure likely came about through a succession of headline-grabbing trials.

Taken from Kaufman,
How Insurance Companies Value Claims (1992)
§§232.1 § 232.2

Edited Deposition of Loretta Gold

Q. Would you state your name, please?

A. Loretta Gold.

Q. And you are employed by whom?

A. Federal Home Life Insurance Company.

Q. In what capacity?

A. Claim examiner.

Q. How long have you been a claims examiner?

A. 18 and ½ years.

Q. What medical resources in the way of books, treatises, publications do you have here that you can refer to that assist you in making medical decisions?

A. It's basic systems and anatomy, it doesn't really get into diagnosis or anything like that. It's just the dictionary is what we refer to most often so that we can know what part of the body, or whatever, that we are dealing with.

Q. Other than the dictionary, do you have anything else? Do you understand what I'm talking about, written materials you can refer to, resource material?

A. Primarily the dictionary is what we refer to when we handle claims, if we have questions on it.

Q. Do you have any other medical reference books in your claims office?

A. No.

Q. When you run into problems you can't solve with a medical dictionary, you pass it on to your medical director who is an M.D., is that correct?

A. That's correct.

Q. Now, did you have an opportunity to review the plaintiff's file?

A. I have reviewed it, yes.

Q. You basically handled this file throughout the various claims that were filed, is that correct?

A. Yes.

Q. At any time was your medical director asked to take a look at that file?

A. No.

Q. You thought your experience and whatever help you needed from the dictionary were sufficient to address the medical issues in this case?

A. Yes, because that type of claim is not that unusual.

Q. What type of claim?

A. The claim for the ear problem.

Q. Meniere's Syndrome is not very unusual?

A. We have a fair number of claims regarding that.

Q. Will you tell me what the symptoms of Meniere's Syndrome are?

A. The symptoms are up to the doctor to determine. When we see a claim, it already has a diagnosis.

Q. Do you know any of the symptoms of Meniere's Syndrome?

A. I understand that it involves some dizziness.

Q. Do you know anything else about it?

A. No, I know what it affects.

Q. What does it affect?

A. It's an ear problem.

Q. Do you know anything else about Meniere's Syndrome other than it affects the ear?

A. Meniere's Syndrome, when it involves a disability claim, ordinarily involves a short period of disability.

Q. How did you come to learn that?

A. Just experience with the number of claims for it over many years.

Q. Has a doctor ever told you that?

- A. Doctors have documented short periods of disability for it on our various claims.
- Q. So you've reasoned, inductively, from the fact you had seen relatively short periods of disability in your past claims to an ultimate conclusion that Meniere's Syndrome usually results in a short period of disability?
- A. Usually, yes.
- Q. I want to point out to you what's titled "Rider Excluding Specific Conditions". It indicates there is an exclusion...for "any disorder of the lumbosacral area of the back or spine."
- A. Correct.
- Q. Could you define disorder for me as used in the context of that particular statement?
- A. Any disorder means any kind of malfunction, disease, or injury.
- Q. All right. With that exclusionary rider, if you were to receive a claim from claimant, indicating somebody had stabbed him in the lumbosacral spine with a knife, would you exclude coverage?
- A. Yes, sir.
- Q. If somebody smashed him in the back with a baseball bat and fractured several lumbosacral vertebrae, would you exclude coverage?
- A. Yes, sir.
- Q. You consider a direct stab wound, and a direct impact with a baseball bat to be within the definition of the word disorder?
- A. Yes, disorder includes any kind of malfunction, injury, or sickness involving that particular defined area.
- Q. Is it true this particular policy is a policy which pays benefits to a person when he can't do his particular job?
- A. Okay. The policy defines total disability if injured within 30 days after accident or sickness totally and continuously disables and completely prevents the insured from engaging in his occupation or employment.
- Q. Doesn't that indicate to you this policy will pay a person who is unable to do his particular job?
- A. Yes.

Q. You say you accepted what the plaintiff's orthopedic doctor said, and what he said is the plaintiff was totally disabled by a back injury from performing his regular activities as a blacksmith at the time his ENT physician diagnosed Meniere's Syndrome, right?

A. Yes.

Q. You accepted it for what purpose?

A. For establishing that he has been totally disabled from his duties as a blacksmith.

Q. Why was that significant to the company?

A. Because this indicated to me that the Meniere's Syndrome had not caused his disability, that he had already been disabled at that time and he had an additional condition which arose after he was already disabled due to the excluded back problem.

Q. Well, if this man, instead of developing Meniere's Syndrome, had been in a car wreck and suffered a depressed skull fracture, would you have paid him disability benefits given the fact he was already totally disabled from his back?

A. No, sir, because he was disabled from the excluded condition.

Q. Well, would you assume for me that he was in a car wreck when he was still totally disabled from his back and in this car wreck he suffered a depressed skull fracture as a result of which he had irreparable brain damage and he was virtually a vegetable. Would you have paid him benefits?

A. No, because he was disabled at the time from the back condition.

Q. Do you consider the loss of both legs to be totally disabling under the terms of this policy?

A. Depending, are we still given the fact that he is a blacksmith?

Q. Yes.

A. That depends on how motivated a person is and if they can use prostheses and some people do remarkable things, so I really can't honestly –

Q. How about if he lost both arms and both legs, would you consider that totally disabling as to being a blacksmith?

A. Arms would be probably more so than legs.

Q. What if he lost both arms and both legs; do you think he would be totally disabled from being a blacksmith?

A. Probably.

Q. If that happened, and he lost both arms and legs at a point when he was already totally disabled from working as a blacksmith by a back injury, would you pay him?

A. That is a question that I think I would refer to the medical director, because that would be something that would need looking more deeply into.

Q. It's a close question at that point, right?

A. Yes.

Q. If it would take something as bad as losing both arms and both legs before you would consider paying this man for anything once he was disabled from his back, would you tell me what he was receiving in exchange for his monthly premiums from this company as far as disability benefit insurance was concerned?

A. I'm not sure I understand what you have asked me.

Q. Isn't it true that, as long as he was disabled from his back, he could get nothing from the policy?

A. Yes.

Q. But the company kept accepting his monthly premiums?

A. Yes.

Q. Even after the company knew it would never pay as long as he was disabled from his back?

A. Yes.

Q. And even after the company had medical information he was permanently, totally disabled from his back.

A. Yes.

Q. Do you have a problem with that?

A. Not me.