



ALFA International
THE GLOBAL LEGAL NETWORK

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Up and Down the Ladder – Excess Outlook

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ALFA INTERNATIONAL TRANSPORTATION TOWER TALK

UP and Down the Ladder – Excess Outlook

Our excess tower panel will discuss how they determine whether to try or settle cases including their perceived key predictors in a nuclear world, as well as best practices for their insured motor carriers and defense counsel.

An underlying objective is for our group to help lawyers, clients, and insurers to better deal with “tower cases” by setting guidelines for cooperation and goals in dealing with the Plaintiff’s tactics to divide the tower and to cause nuclear settlements.

Ultimate objective – To have better understanding of tower case defense strategy and for clearer communications in tower case.

- A. How do each of you define a Tower Case?
 - a. What factors do you base your decision to open up to the tower and to what level?
 - b. What factors does the tower want to have open up to them?
- B. What problems or predicaments have each of you faced in tower cases?
 - a. Tower splitting
 - b. Last second panic
 - c. A source of the problem is the number of insurers in a 100 million tower versus 15 years ago
 - i. Number of \$5 million policies
 - ii. No \$25 million policies
 - d. Resulting problem when 6- \$2.5 to \$5 million policies roll over.
 - i. A \$10 million case becomes a \$30 million case
- C. What factors do each of you look for in determining if a case has potential for a nuclear verdict or nuclear settlement?
 - a. Define nuclear settlement
- D. How does the industry counter plaintiffs’ tactics?
 - a. Aligning the tower
 - b. Touch point calls
 - i. Early frequency

- ii. Late frequency
- c. How do you handle jump calls?
 - i. That is when the plaintiff calls someone higher in the tower to put pressure on the lower level
- d. Associating trial counsel
 - i. Insurers perspective and goals
 - ii. Insureds perspective and goals
 - iii. Best practices for handling associated counsel
- e. Associating monitoring counsel
 - i. Insurers perspective and goals
 - ii. Insureds perspective and goals
 - iii. Best practices for handling associated counsel
- f. Recommended practices in handling “hammer letters”
 - i. Who should be the outward face?
- g. Advice to trial counsel
- h. Ultimate goal
 - i. Externally facing “to be on the same page”
 - 1. Successful examples
 - 2. Advantages
 - ii. Handling Panic
 - 1. Expectation
 - 2. Tactics to handle.

PRACTICE IDEAS AND RECOMMENDATIONS

- A. Initially reach out to plaintiff's counsel for early resolution efforts. If no interest in resolution, which seems to be the norm today, move to part 2.
- B. Gear up for protracted litigation to make it as difficult a procedure as possible. Why? The plaintiff's bar is going to make life miserable for us with overbroad discovery and requests to depose dozens of client witnesses. Their whole strategy is to make life miserable for the defense, try to discover wholly irrelevant, but inflammatory material to press up value, and they have the trial judges in their back pocket. Consequently, the following:
 - a. Move to federal court if possible.
 - b. Prepare to move a second time to federal court because in many instances they have fraudulently joined parties to defeat diversity.
 - c. Transfer venue if possible.
 - d. In federal court, do 12(b)(6) motions to have gross negligence and weakly-pled direct claims thrown out.
 - e. File special exceptions or 12(b) motions to clarify how much the plaintiffs are suing us for. This effort, if successful will be beneficial at trial.
 - f. Fight to keep discovery as narrowed as possible.
 - i. Push for hearings fighting plaintiffs motion to compel.
 - ii. Mandamus overbroad discovery orders.
 - g. Fight against overbroad deposition requests.
 - i. Try to limit the number of employee witnesses if you can.
 1. Push for in-person depositions.
 2. Mandamus deposition orders if wholly unrelated.
 - h. Develop our own push for depositions.
 - i. Don't settle for just the plaintiff.
 - ii. Look for medical witnesses in the records who could be good witnesses for us.
 1. i.e. if a nurse wrote in a report about how conversant the patient is, etc., depose that nurse.

2. i.e. take employer depositions, particularly if the plaintiff is back at work. First receive the employee file and look for all good stuff.
 3. Don't be afraid of surveillance. (Even in death case, if you catch the grieving widow out partying, yea!)
 4. Do thorough social media search.
- i. Have early tower calls.
- i. Get the tower on board with the above plan.
 - ii. Build towers trust in the plan and incorporate tower ideas.
 - iii. Conduct monthly/quarterly tower calls.
 - iv. Based on damage information, and recent verdicts, develop a consensus value of the case.
 - v. Trust that most plaintiff's attorneys are going to follow the model that they will get their best day at the courthouse steps.
 - vi. Don't get excited about a mediation. It is plaintiffs' tool to bring our floor up.
 - vii. Have the number pegged that the tower feels the case is valued.
 - viii. Hold together as best as possible and trust that your reasonable value will do one of two things.
 1. The plaintiff will settle on the courthouse steps – knowing that they will have a hard time guaranteeing their client greater than \$20 million (whatever the offer may be). But it will be at the courthouse steps.
 2. If plaintiff has a much higher value, then trust your process, and try the case. The process may include mocks, focus groups, etc.
 - ix. If someone in the tower disagrees with the consensus value, please let it be known, and why, and set forth your own value.