

Hidden Biases among Jurors in Accounting Malpractice Cases

By Louis Genevie, Ph.D.

Lawyers preparing accounting malpractice cases should try to gain a good understanding of the attitudes and predispositions of jurors. This knowledge can help them present their case better by enabling them to concentrate on issues that can be conveyed easily, and avoiding those arguments that conflict with the jurors' beliefs and propensities. Research on the behavior of juries reveals that jurors tend to have high expectations of accountants and the accounting profession. They are also likely to have no personal experience with accounting practices and procedures, and are inclined to assign the responsibility for accounting malpractice to the accounting firm, the client management and the client's lawyers. Recommendations for dealing with these predispositions are offered.

Understanding these predispositions will help counsel preparing for trial to develop the most persuasive case by focusing on arguments that are easily communicated while avoiding arguments that confront jurors' basic beliefs and tendencies. Without this information, counsel can unknowingly run up against hardened, preexisting opinions that can spell defeat even before the trial begins.

Accountants are perceived as experienced, knowledgeable, honest, law abiding, and competent; jurors see accountants as having a moral duty to be accurate and to dig beneath the surface; few jurors believe that professionals in a big accounting firm would conspire to cheat their clients.

Therefore, defense witnesses will be under considerable pressure to meet jurors' high expectations. Whether the principal witnesses are viewed as knowledgeable and trustworthy will strongly affect the outcome of the case.

Recommendations

* Given the importance of witnesses and the fact that key witnesses are likely to be inexperienced in court, more than usual attention should be paid to witness preparation.

* If time and budget allow, juror reaction to mock direct and cross examination of key witnesses can be a useful tool in final preparation and as a means of fine tuning case strategy.

* Most jurors believe that lawyers and accountants together have the responsibility to advise clients regarding the risks of accounting advice.

* Jurors believe that accountants sometimes do a poor job, however,

* Their work is only as good as the information the client provides and,

* The client is responsible for the accuracy of that information.

“Jurors’ perception of responsibility for accounting errors is likely to be divided among the accounting firm, the client and the attorneys involved in the case.”

About one in five believe the client is fully responsible for mistakes; 50% think that both the client and the accounting firm are equally responsible; the rest are not sure.

Most jurors are likely to see some justification for both sides' positions in an accounting malpractice case. Since these cases usually involve impersonal business transactions, jurors are unlikely to be

strongly committed to either side on an emotional level. Thus, escaping responsibility entirely will be difficult for most defendants, although strong facts and witnesses could overcome jurors' tendency to spread blame among the participants.

Recommendations

* Develop compelling demonstrative evidence to illustrate the chain of responsibility for financial information.

* Since escaping responsibility entirely will be difficult, focus on the de-selection of possible punitive jurors during voir dire.

Most are not interested in learning technical auditing and accounting terms and will ignore them during deliberations.

Recommendations

* Simplify technical language in opening, and minimize technical explanations during testimony by focusing on the purpose of accounting and auditing standards.

In addition to these fundamentals that apply to most malpractice cases, it is also important in developing overall strategy to focus on the key facts and issues in the case as perceived by jurors. Jurors create their own hierarchy of case issues that can only be determined by analyzing deliberation groups on a case-by-case basis. Thus the best possible trial strategy is achieved by combining an understanding of how jurors are likely to perceive the specific issues in the case with the broad-based attitudes and beliefs outlined here.

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