Round Table Exercise

SCOTT OLDHAM – ICRMP CLAIMS MANAGER

BRUCE CASTLETON – DEFENSE PANEL ATTORNEY
Claims Data Analysis

- 2013-2016
- 167 Employment Practices Liability Claims
- Avg. of 42 claims/year
- Total Incurred = $8,597,149.78
Total Employment Claims = $8.6M

- Employee performance / attitude, $220,500.52
- Interpersonal Relationships, $6,356,046.47
- Substance Abuse, $202,945.86
- Unknown, $1,817,656.93

Total Employment Claims = $8.6M
Employment Claims 2013-2016

- Sex Discrimination / Harassment: $1,596,405.39
- Age Discrimination: $231,565.56
- Religious Discrimination: $225,694.30
- Racial Discrimination: $105,660.02
- USERRA: $227,807.45
- Other/Unknown: $1,012,054.15
- Due Process: $519,988.49
- Defamation: $75,000.00
- Retaliation / Whistleblower: $3,426,115.15
- Disability Discrimination: $1,176,859.27
Life of an Employment Claim

Phase 1: Pre-Termination

- Loss Control?
- Documentation, such as annual reviews, steps to train, etc.,
- FMLA or ADA or Whistleblower?
- **Decision Point***- terminate or retain, severance?
You’re Fired!

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Life of an Employment Claim
Phase 2: The Commissions

- Equal Employment Opportunity Commission-- or--
- Idaho Human Rights Commission

- Further Interviews and Investigation
- Commission Decision & Right to Sue Letter
- >75% of claims knocked out here

- Decision Point*
  - Did we see something the commissions missed?
  - How good is plaintiff’s attorney?
Life of an Employment Claim

Phase 3: Litigation

- Plaintiff’s Fees??
- Depositions
  - **Decision Point*** Witnesses Strength, Risk and Lowest Ultimate Cost?

- *Motion Practice*
  - Another 5% of claims get knocked out

- **Decision Point*** Claim Narrowed? Feedback on Judge? Court Assigned ADR?
  - ADR- Alternative Dispute Resolution, lowers court caseload

- **TRIAL!**
  - Up to Jury, Out of Your Hands
What is The Claims Roundtable?

Structured way to make decisions

1. Identify Potential Jury Award
2. Identify Risk of Losing
3. Determine Reserve
4. Decide whether to offer $$ (If yes, how much?)
Advantages of the Round Table

- Larger Group – Better Jury Interpretation
- Reduces Personal Bias
- Consistent Methodology
- Feedback loop for future training
Decision Points

Assessing Risk

Part 1 - Damage Value

Economic Damages
- *Lost Wages*
- *Doctor Bills*

General Damages
- *Emotional Distress*
- *Pain and Suffering*

Other Costs to consider
- *Attorney costs, experts, depositions, etc.*
Odds of Losing?
- Facts of the case
- Witnesses
- Unusual emotional factors

Informed Best Guess
- Experience and Precedent
Roundtable Exercise-Questions to Answer

1. What is the probable amount that a jury would award if Plaintiff prevails?

2. How many times will Plaintiff prevail if tried to 10 different juries?

3. Should this case go to trial or settle (for what amount)?