## Best's Insurance Law Podcast

### How Deposition Providers Help Control Claims Expenses - Episode #186

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**Guest Expert:** Ron Carey, chief revenue officer with Esquire Deposition Solutions, LLC

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**John Czuba:** Welcome to "Best's Insurance Law Podcast," the broadcast about timely and important legal issues affecting the insurance industry. I'm John Czuba, Managing Editor of *Best's Insurance Professional Resources.*

We're pleased to have with us today Ron Carey from expert service provider, Esquire Deposition Solutions. Ron is the chief revenue officer with the company. His focus is on building customer value and offering innovative solutions to the growing demands of the legal industry, utilizing his more than 25 years of executive leadership experience.

Ron has a BS in Business Technical Management and recently completed the Business Leadership Program at Harvard Business School. Ron, thanks so much for joining us today.

**Ron Carey:** Thanks for having me, John. Appreciate it.

**John:** Ron, for our first question, there's been a lot of changes over the past couple of years with COVID and the lockdowns and everything. What changes in particular have you seen in the litigation process over the past two years?

**Ron:** First and foremost, the shift to a remote or virtual proceeding has changed because of, of course, COVID. Esquire launched remote deposition services back in 2018 in December, and very candidly had a very small amount of traction prior to March of 2020.

In fact, in that time, between the launch of remote deposition services and the start of COVID, we did about 150 depositions remotely. Conversely, since the time of March 2020 through today, we've done about 180,000 remote depositions.

We've seen the deposition space really go from highly in person, which has associated costs for travel, attorneys' times, etc., to basically almost completely remote 90 percent virtual. Right now, we're normalizing to about 80 percent virtual.

We decided to survey the industry and find out what our attorneys, both our clients, our attorneys, as well as folks in claims, as well as our court reporters were saying about their experience in remote versus in-person proceeding.

We were very surprised and pleased that 78 percent of all attorneys -- and the sample size, it was almost 800 attorneys -- said they all can continue to conduct a 50 percent of their depositions remotely/ As well 60 percent of the attorneys and claims management said they'll conduct more depositions virtually post pandemic than even during the pandemic.

What we're seeing is a shift to potentially not just in person or remote but more of a hybrid model, where the court reporter, the witness, any participant claims personnel, as well as the litigating attorneys may be in some combination of remote and/or in person.

**John:** Ron, with all the changes, what in particular should claims managers be most concerned about?

**Ron:** It's been interesting. We've talked a lot with the claims departments and folks that are analyzing their risk and settlement of different types of claims.

What they're starting to look at is data that will actually start to help them make decisions based on the time, as an example, that the deponent is under oath, both in lower exposure cases, as well as in higher exposure cases.

Whether it be staff counsel, whether it be panel counsel, there's a lot of analytics that are looking at how long was someone on being deposed and then what is the output of that claim and how can we use some of the data that we're seeing across this entity to become more successful and lower the cost.

It's been interesting that when you look at the cost of claims, it's highly unstructured from a legal expense perspective, because law firms aren't usually providing data back to claims managers or insurance companies about the deposition itself. Loosely, in an in-person deposition, a court reporter may generally know how long a deposition occurred, but not accurately capturing the length of time someone's on record.

Using tools, we're able to have access down to the second of how long a deponent was being questioned. As well, as we grow data sets, we can start to look at how we can help control the ALAE or the variable costs associated with litigation.

When you look at the overall cost to claims, at the top of the pile is the legal cost. It's been really interesting because I mentioned legal cost, and one of the things we're helping our clients do is write their claims policies that their law firms they work with must follow.

As an example, there are things like, what is the exposure of the claim? Does the claim -- is it tied to a larger matter case? Are there a lot of exhibits involved in the claim? Does the deposition require the attorneys to travel?

There's a lot of determining factors that we could help guide and provide guidance to the law firms that support the insurance companies, so the insurance company cannot have a delay in claim, and the law firms can operate with as much throughput as possible.

The other interesting things that claims managers have really felt is a compression due to the court reporter shortage. Prior to COVID and prior to the remote deposition process, there was a large …. really a reduction in court reporters and availability for claims management to handle the deposition.

What has happened is claims litigation is on the increase and the demand for court reporters is on the increase and the supply of court reporters is on the decrease with a lot of court reporters retiring. What that's created is calendar delays. With those calendar delays, time is the enemy of a claim.

We've also seen that remote depositions have given greater throughput for the average court reporter. He or she can sit in their house, not travel to different offices between depositions, and take more testimony. That, again, reduces the amount of time that we're waiting for coverage on a deposition for our claims manager.

It also gives the claims manager meaningful litigation insight. We can start to look at the average number of time a deponent is on the record. We can start to look at all the outcomes of those claims. We can start to draw some analysis to say that, when a deponent is being questioned for this amount of time, and this is the output with high predictability, this will be the output, etc.

There's a lot of technology differences, as well, that really enable us to capture a more accurate record using technology and some of the remote platform capabilities like eLitigate that I'd be happy to discuss as well.

**John:** Ron, we talked about how COVID has impacted the legal market. What type of impact is that having on cases? Are even more cases settling these days as opposed to going to trial?

**Ron:** We have seen more cases settling and ironically or at least counterintuitive to the what I initially expected, we saw some of the larger cases settling first. Some of the nuclear verdict-type of cases of $20 million or more, which we've seen an increase of almost 300 percent.

One of the things with the insurance business is we've seen a lot of the increase in different lines of insurance business like, of course, all the businesses that were impacted through COVID.

We have seen an effort as courts have been slow to open. It's getting better now, but there still are markets in the country where the courts are not fully open yet, where either that claim is

going to age, or there's going to be a broader attempt to settle the claim prior to waiting for courts to open. Yes, we have seen more settlement.

**John:** Ron, what are you seeing in terms of how data has changed the litigation process?

**Ron:** We work with many national carriers and they each manage it slightly differently. As we look at the larger verdicts that are out there with exposures that are out there, certainly each of the organizations manage their own philosophies around the risk associated with those claims.

Depending on where the case is being heard and/or the accessibility and availability of courts, if the perception of time is going to be an inhibitor to a successful outcome, we're going to see an acceleration of those claims.

In other areas where we've seen … and there's been some great examples with some unfortunate disasters that have happened with things like construction defect in some of the markets we've all heard about, where insurance companies were immediately coming to the table with maximum payout of policy to avoid further exposure and/or delays in helping the people out that were impacted.

**John:** Ron, how are technologies in particular impacting the legal process?

**Ron:** Everyone used Zoom as a remote platform initially, and BlueJeans, Zoom, WebEx, a host of other solutions and devices. At the end of the day, those solutions are all cobbled together. They have some sort of exhibit management tool. AgileLaw is one tool as an example that can be piled on top of Zoom to make exhibit management easier in cases like construction defect.

We've really been lacking what we would call a purpose-built platform for quite some time. Esquire is very excited about eLitigate, a very purpose-built platform that we've launched in partnership with vTestify.

What eLitigate does is it brings all the functions of the deposition together in one place with one-single sign-on. It's been interesting, with the dynamics of the attorney, some .attorneys that are more senior in their careers are less technology capable, very candidly, and more comfortable with the traditional deposition experience.

What we've done with the eLitigate is provide that exact traditional deposition experience in a virtual environment that doesn't become an inhibitor to an attorney's effectiveness in a proceeding but actually becomes an enabler.

As an example, when two attorneys are talking passionately over each other, today, a court reporter in a in-person proceeding tries to capture what each attorney saying to the best of his or her ability. With eLitigate, everyone's in separate audio tracks.

Post-proceeding, the court reporter can go back and listen to and isolate each audio track to get exactly what was said, even at the same time as other audio tracks. What that really means it's a great representation in accuracy of the record.

The other thing that purpose-built platforms has brought in is integrated exhibit management tools. It's so impactful to have a witness draw a circle and the intersection where the car was first hit or to X where they were standing or to highlight their interpretation of a specific part of a contract.

Giving the rights to the witness and/or snapping everyone to the same page of complex exhibits becomes very simple for the attorney. As an example, again, if I walk in with a briefcase full of paper in a traditional proceeding, I'm asking everyone to go into a specific exhibit, and then within that exhibit, a specific page within exhibit.

If you think about an attorney who's questioning a witness, when that witness might be kind of back on their heels a little bit, the attorney would like to continue to question to drive to a purpose and what happens sometimes is, "OK, is everybody on exhibit four? Are you on page 73? Can you see the blue car?" Certainly, that ruins that momentum.

With snap to page, what that means is the attorney can just click a button in everybody that's remote will be snapped to that one-single page without the questions of, "what can you see, where are you at," etc. Anyone can mark that document up, give them permissions, and then that document is saved and stamped as an exhibit.

Probably the third part of the technology platform that's really been changing, specifically, very, very powerful for the insurance companies enhances the communication between the claims handlers and the attorneys, and that is a speech to text component, where it's not just a long diatribe of recording of 30-minute conversation, but instead 30 second snippets captured by each audio line.

If we were in a deposition, John, and you had previously stated in the deposition, as the witness, that the blue car proceeded through the intersection at a high rate of speed and never paused, and an hour later in the deposition, you say that after stopping, coming to a complete stop the blue car, then proceeded to the intersection. It's a complete contradiction of testimony, which could be very material to the finding.

Searching just for the word "blue car," every time you mentioned blue car in the 30 seconds of speech, I can see the words and text in the context of what you said. I can then click any of those clips and play that back real time in your voice.

It becomes very impactful to say, "John, that's not consistent with what he said a half an hour ago. Let me play it back for you." Click. You hear yourself give a different answer.

It becomes very powerful. A lot of the attorneys that we speak with will use a paralegal or a second co-chair. They'll be constantly listening to that testimony looking for those contradictions and testimony and then bringing those up specifically.

I mentioned the communication between claims handlers and attorneys. Post-proceeding, it's also great for an attorney to be able to send two snippets to a claims handler and say, "Hey, listen to the first time they answered the question and listen to the second time they answered the question. For this reason, I feel the best course of action, and the risk is X."

It gives them very actionable communication with claims handlers and attorney. That communication is always had room for improvement and technology bridges that.

**John:** Ron, you've touched a lot about how the evolution of the legal process has really changed over the last couple of years. Now what do you see ahead in terms of the future for the litigation process?

**Ron:** I see us getting all smarter as it relates to using data, as it relates to using technology for better outcomes. When we look at the productivity either from the profit per partner from the law firm side or the cost per claim on the insurance side, both organizations can lend themselves to better outcomes.

If we can reduce the cost of legal that's associated to claims, we know the insurance companies with the increase in insurance claims will have better outcomes and be able to return better profits.

When you look at the impact of the law firm, if I'm a billing client or a billing attorney and my relationship with an insurance company doesn't allow me to bill for my time and there's travel required to go in and out of these depositions, I, as an attorney, can work fewer hours or work more productively and handle more claims because I'm able to do it leverage technology remotely.

As you look at what's happened though, our whole focus is ensuring access to justice. At the end of the day, what we want to do is make sure that something as simple as a litigation calendar isn't delayed because of the bandwidth of someone available to capture the record.

For that, you'll see continued technology innovation come to the business in order for us to help move things forward. The best example that's actually in market today is remote depositions using eLitigate, as an example. That innovation will not stop, and there'll be future innovations available as well.

For quick case review type tools, that would give both the attorney as well as the adjuster access to deposition content within five minutes of the end of a deposition for quick case assessment. A lot of tools focus to accuracy, access, and speed.

**John:** Terrific. Ron, thank you so much for joining us today.

**Ron:** My pleasure. Thank you.

**John:** You've just listened to Ron Carey from expert service provider, Esquire Deposition Solutions. Special thanks to today's producer, Frank Vowinkel.

To subscribe to this audio program, go to our web page, www.ambest.com/claimsresource. If you have any suggestions for a future topic regarding an insurance law case or issue, please email us at lawpodcast@ambest.com.

I'm John Czuba, and now this message.

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