

Best's Insurance Law Podcast

[Repelling Reptile Strategies and Establishing Boundaries in Expert Witness Testimony – Episode #199](#)

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Guest Expert: Dr. Janine McCartney of [HHC Safety Engineering Services](#) and [HHC Safety Consulting Services, Corporation](#)

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John Czuba: Welcome to the *Insurance Law Podcast*, the broadcast about timely and important legal issues affecting the insurance industry. I am John Czuba, managing editor of *Best's Recommended Insurance Attorneys*, including Expert Service Providers.

We're very pleased to have with us today expert service provider Dr. Janine McCartney of [HHC Safety Engineering Services](#) and [HHC Safety Consulting Services, Corporation](#) of Wilmington, Delaware with an office in Houston, Texas as well. The companies provide safety consulting, safety engineering consulting, and expert witness services to law firms and the insurance industry.

Dr. McCartney is a senior safety engineer and expert witness. She has a certified safety professional and a construction health and safety technician designation with 30 years' experience in safety. Her professional career has spanned over 40 years in private and government service with OSHA consultation.

She has worked in the oil and gas industry and in the pipeline and construction industry as a regulatory expert. In safety, she worked her way up from safety representative to the safety manager to safety officer II to manager and then to expert.

She has extensive OSHA policies knowledge and has technical and historical knowledge in construction, telecommunication utilities, manufacturing, food processing, distribution, oil and gas exploration and production, and property management.

Dr. McCartney is also an editor of ScienceDirect, "Heliyon," and "Data in Brief" and an editor and reviewer of "Science of the Total Environment." She also works as an expert and consultant on a day-to-day basis.

Dr. McCartney, we're very pleased to have you with us again today.

Dr. Janine McCartney: Thank you, John. I appreciate the opportunity.

John: Today we're going to be discussing repelling reptile strategies in the courtroom and establishing boundaries in expert witness testimony. Now we've covered this topic before from an attorney's perspective but never from an expert service provider's point of view.

Dr. McCartney, can you tell us why this topic is of importance to experts, claim examiners, and our attorney members?

Dr. McCartney: Certainly, John. Since 2009, Mr. Ball and Mr. Keenan, they're authors, they have published and sold the book, *Reptile: The 2009 Manual of the Plaintiff's Revolution*. Originally, the book was unavailable to all except plaintiffs' attorneys. The book can now be found in used booksellers.

It's quite revealing. The information contained in the book helps me as an expert in safety and safety engineering understand the strategy of the plaintiffs' attorneys who use this reptile method.

The material in the book also helps me to understand why I find these cases so tedious to rebut and why these cases, in most instances, need to be reframed using the correct regulations and standard cited in the well explained report.

It's important for claims examiners to understand the reptile plaintiff's strategies and how these strategies can take a case to a place where the facts of the case and the applicable regulations must be reframed by a good expert.

It's important for the attorney to understand that the accusations in the case and pleadings might not be accurate because either the wrong standards and regulations have been cited or the standards and regulations have been misapplied based on the facts of the case.

I once had a case which was a workplace injury case in offshore Brazil, where the plaintiffs' attorney was using OSHA regulations in their pleadings. OSHA regulations don't apply in offshore Brazil. Hence, the case took an inordinate amount of effort to reframe it and apply the correct regulations, which were the Brazilian safety regulations.

John: Dr. McCartney, can you tell us about the reptile strategies that you found that impact your expert report and expert testimony?

Dr. McCartney: Certainly. The book's premise is that the strategies are based upon the science of the reptilian brain as it is identical in function to the brain of reptiles. Dr. MacLean's theory is that, ironically, human beings are most similar to each other, all but identical at the reptilian brain level.

The first axiom in the book is that when the reptile sees a survival danger, even a small one, she protects her genes by impelling the jurors to protect himself and the community. The greater the perceived danger to you or your offspring, the more firmly the reptile controls you. In other words, the reptile invented and built the rest of brain she now runs.

General reptile strategies state to make everything about safety. As a safety engineer and expert witness, this requires a very focused and comprehensive approach to rebutting expert reports and other improperly placed safety language in pleadings and depositions.

What I have found is that the regulatory obligations of the parties are misplaced most of the time in these pleadings. Everything is usually not the defendant's fault. Here are some passages from the book that might be helpful for claims examiners and attorneys to take a look at.

"The greater the perceived danger to you or your offspring, the more firmly the reptile controls you." When our gene survival chances can be affected, the brain shifts into reptilian mode, and nothing else matters. In trial, your goal is to get the jurors' brains out of the fritter mode and into survival mode.

Another passage from the book, "The reptile has a darker and more potent force, anxiety and terror, which he uses to keep from doing what she does not want. When you make or contemplate a decision the reptile rejects, she makes you feel really bad, in fact, or emotional mostly so we could feel enough terror or pleasure for the reptile brain to control us" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009. p. 18-19). In this particular case, the expert report of the defense liability expert did not analyze all the technical issues in the manner in which an expert would normally do so. The defense liability expert report contained pictures, charts, and diagrams that were the same as the defendant council Bailiff's legal brief.

"The terror is so powerful that someone whose brain is forced to make an endangering decision despite a flood of terror can end up with a permanent brain damage, such as post-traumatic stress disorder, which often involves physical shrinkage of the brain" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009. p. 19)

"When we face decisions that could impact the safety of our genes, the reptile is in full control of our emotions as well as what we think in our rational logic" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, page 19).

"Trial justice helps mainly when you show that justice equates with safety for the jurors' reptile. To show this, you need not violate the Golden Rule restriction. You will bring jurors to figure out that community safety is enhanced by means of justice. You are not asking jurors to sacrifice for the sake of safety. You instead show that justice creates safety" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, page 19).

John: Dr. McCartney, are there any basic tenets of the reptile strategies that claims examiners, claims managers, and our defense attorneys should be aware of?

Dr. McCartney: Yes, John. I found a few in the manual on this strategy. The first tenet is the reptile speaks.

1. "I want to kill whatever threatens me. Justice is no interest to me except when it can help my genes survive" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, page 21-22).

2. "I waste no time or energy. I do the easiest things. I work only when I have the chance of overcoming a survival threat. Otherwise, that snoring you hear in trial is me. I don't get angry. I make you angry so you will do what I want you to do. I don't get scared. I make you scared so you will do what I say" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, page 21-22).
3. "I am not smart. I invented smart for you to be able to do what I want. I have no feelings. I invented feelings to make you do what I want. I run the show, you do not. I am not moral. I invented morality to make you do what I want" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, page 21-22).
4. "The reptile prefers us for two reasons. First, the reptile is about community and thus her own safety, which in trial is our exclusive domain. The defense almost never has a way to help community safety. The defense almost never has a way to help community safety. The defense mantra is virtually given danger a pass" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, page 21-22).
5. Then lastly, "The courtroom is a safety arena. Trials were not invented by the safety conscious ancient Greeks, not the burn 'em at the stake early English for the purpose of making the public safer. When we pursue safety, we are doing what the courtroom was invented and maintained for. That puts the honestly informed reptile on our side. All we have to do is honestly inform her" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, page 21-22). When analyzing the defendant's liability expert's invoice for his expert report, the expert spends only 15 to 20 hours on the case. That included attending meetings. This point is something for a claims examiner to note. If they are paying the bills for an opposing expert's report, they should also take a look at the number of hours that that expert spent preparing the case.

John: Dr. McCartney, do you have any information about the reptile strategy when it comes to a defense expert testimony?

Dr. McCartney: Yes, John. It's a great question. I'd like to first tell you what the reptile manual says about the strategy and then provide some firsthand information on going through a deposition with an attorney who imparts the reptile strategy.

The 2000 manual states the following. "In a deposition and, again, on the stand, first have the defense expert affirm how important she believes the science to be used with integrity and honesty. Get her to the point where she is indignant at such questions. That makes her a hypocrite when her faulty methods are exposed. As chapter nine explains, hypocrites are the reptile's favorite food" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, page 142-143).

For more help discrediting defense opinion witnesses so that she can show that they are a reptilian menace, see Rick Friedman's "Polarizing the Case" and Dorothy Sims' "Exposing Deceptive Defense Doctors." They help you show jurors how bogus defense testimony is not a difference of opinion but an intentional lack of science and thus the kind of violation that endangers the public (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, page 142-143).

The next principle is defense experts and the rules. "Remember that a rule must be danger related and that the defense must agree with it. Every defense must agree with every rule and then get them all to say why violating that rule is dangerous" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, p. 143).

"When you can, get them to say that all danger is exactly why they would never violate such a rule. That makes their violation not only dangerous per se to the reptile but also moves them into hypocrite territory" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, p. 143).

"Get defense experts to admit that the safety rule violation, in this case, can cause immense harm in an analogous situation. The defense expert will waffle. Good, reptiles don't like waffles" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, p. 143).

Another tenet from the book states that when the reptile takes defense depositions, one of your main tasks is to establish a reptilian theme. This will infuse the entire trial.

1. "Establish your general safety rules. Get every defense witness to agree with your safety rules. Just paraphrasing, the plaintiffs' counsel asks outrageous, hypothetical questions and outrageous questions in general (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, p. 209-224).

Gilbert developed the "Ballsy Deposition." My comment to that is so I ask how far is too far. The goal for the plaintiffs in the reptilian type trial and deposition is to be as outrageous as possible.

2. The worst that can happen, according to the reptiles, is that the defense expert will agree with you. The best thing is that they won't and seem so stupid or dishonest and thus dangerous to the reptile (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, p. 209-224).
3. "We're not saying to limit your deposition to these questions though, in some situations, you might. Jim Gilbert's skeleton shows you a good way to establish the reptile in deposition. It is where to start any deposition (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, p. 209-224).
4. "Did a car manufacturer allow you to fake its safety tests?" This gets you an effective testimony about the dangers of the violation. It's effective because it comes from the defense" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, p. 209-224).

5. "The next tenet is related general safety rules to specific safety rules. This connects a specific violation to a general rule. Simultaneously, it helps you spread the tentacles of danger onto everyone in the courtroom. It also moves the case from a complex medical battle to a simple manner of whether the defendant followed the rules he agreed" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, p. 209-224).
6. "Show the reptile how this can happen to her. Use the defense depositions to develop a major theme that the result of violating these rules can hurt anyone, not just someone who was in your client's particular situation" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, p. 209-224).
7. "Get the witness to agree that the plaintiff was acting like everyone else, doing day to day chores or errands, going to work, picking up the kids. The reptile believes that anyone doing what they do every day should not be hurt by someone else violating safety rules" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, p. 209-224).
8. "Next, emphasize safety first, last, always. Your negligent case is about safety and danger, not medical and technical information. The defendants want a pass despite having made a choice less than the safest. The reptile, bless her cuddly little scales, allows only the safest. No prudent person needlessly endangers anyone. Violating a safety rule is never prudent" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, p. 209-224).
9. "Next, establish that the defendant did not care about safety to start with. The focus stays on danger. Establish that the defendant did not care about the person he hurt and does not care now. Establish that what happened taught the defendant nothing" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, p. 209-224).
10. "Establish that the defendant did not have the knowledge necessary to do the job safely. Expose the defendant as a liar. Show that the defendant did not do his job and establish that the plaintiff did her job" (*The 2009 Manual of the Plaintiff's Revolution*, Ball, Keenan, Fitzgerald and Johnson, 2009, p. 209-224).

John: You just listened to [HHC Safety Engineering Services and HHC Safety Consulting Services, Corporation](#) in Wilmington, Delaware. Special thanks to today's producer, Frank Vowinkle. Thank you all for joining us for the *Insurance Law Podcast*.

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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