

## Best's Insurance Law Podcast

### [How the Corporate Representative Can Influence Litigation Outcomes – Episode #205](#)

Posted: Thurs., July 27, 2023



**Hosted by:** John Czuba, Managing Editor

**Guest Experts:** Dr. Steve Wood and Sean Murphy from [Courtroom Sciences, Inc.](#)

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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 very pleased to have with us today expert service provider Dr. Steve Wood and Sean Murphy from [Courtroom Sciences, Inc.](#) a national litigation, consulting, and litigation support firm based in Irving, Texas.

Dr. Steve Wood is a senior litigation consultant at Courtroom Sciences. He uses his social psychological expertise to help clients understand the jury decision making process and maximize the likelihood of favorable case outcomes.

He also assists with a myriad of case related activities, including pretrial research, witness effectiveness training, case theme development, supplemental jury questionnaires, as well as jury selection. His work has been published in various peer reviewed academic journals as well as several scholarly magazines. He also serves as co-host of the "Litigation Psychology Podcast."

Sean Murphy is a strategic communications counselor with extensive corporate reputation and litigation and crisis communications experience. He has worked with numerous leading organizations across a wide range of industries on public communications challenges presented by high stakes, high-profile crises.

Sean's crisis experience includes working with companies targeted by special interest groups and handling situations involving allegations of executive misconduct, product performance and liability issues, hostile work culture, regulatory violations, environmental contamination, data breach, and hostile M&A.

His career includes 10 years at a global public relations firm where he was corporate practice leader. A social organizational psychology practitioner, he is expert at analyzing and influencing group attitudes and behaviors.

Steve and Sean, we're very pleased to have you both with us again today.

**Dr. Steve Wood:** Thanks, John, for having us. Happy to be here.

**Sean Murphy:** Thank you, John. Glad to be with you.

**John:** Thanks again very much. Today's discussion is how the corporate representative can influence litigation outcomes. Steve, we're going to start the questioning with you today. For context for our audience, can you talk about the corporate representative, and the role they play in litigation, and why they have so much impact?

**Dr. Wood:** Sure. A corporate representative, or a 30(b)(6) witness, or a PMK, person most knowledgeable, or PMQ, person most qualified, they have various names that they go by depending on jurisdictions. Regardless of the title, their role is to speak on behalf of the company as it relates to specific designated topics that they receive from opposing counsel.

For example, if there were a case in which it was a case against a trucking company, plaintiff's counsel would submit various topics and designate topics that they want someone at that company to be able to speak on. That company would then have to identify someone who could speak on those topics.

If it was training, hiring, supervision of truck drivers, the company would have to find someone or several individuals who could actually speak to those topics. The reason why they have so much impact is because that person essentially becomes the face and the voice of the company.

What they say binds the company versus a fact witness. A fact witness might say something in their individual capacity. When a corporate representative says something, a corporate representative is essentially speaking on behalf of the company.

That makes them a prime target of opposing counsel, because it becomes opposing counsel's top priority to make that corporate representative look non credible.

They're going to want to attack them. They're going to want to do things in the deposition to make that person look like they're hiding the ball or that they're doing something nefarious. Then, what ends up happening is jurors use that perception of the corporate representative as a lens through which they see the rest of the case.

If you think about it, the jurors are going to be asking themselves, "What kind of company [is this]," if that corporate representative does really, really bad or shows poorly in the deposition, jurors are going to say, "What kind of company would put that person up? What kind of company would use that person as their spokesperson?"

It pulls away from the credibility and it makes the company look bad. That's why they [corporate representatives] have a lot of impact. The corporate representative's deposition and testimony could be the difference between a nuclear verdict, nuclear settlement, or settling the case for a more reasonable and appropriate amount.

**John:** Steve, what should be a company's priorities in selecting a corporate representative?

**Dr. Wood:** I look at several key aspects of corporate representatives that make someone an efficient, effective witness. The first one is humility. The humility to say, "I don't know," within reason.

Obviously, as I said earlier, the company gets a list of topics that they have to designate someone to be able to speak on. That corporate representative is going to have to be able to speak to those designated topics.

However, sometimes, you might get a question that is outside of the scope of those topics, and maybe that witness doesn't necessarily have the answer. It takes a lot for that witness then to say, "I'm the person most knowledgeable on these certain topics. This is outside of my wheelhouse."

Rather than say, "I don't know," they want to speculate, they want to go out on a limb. A lot of times, the information they provide is inaccurate. Someone who has the ability to say, "I don't know," and the humility to say they don't have the answers to everything.

Second thing, patience. I mean patience to wait for the question to end, patience to deal with the whole training process.

The type of person who is going to be able to wait for the questioner to finish, and then be able to process the question, think about it before they actually respond versus the person who's very impatient, and wants to get to the answer immediately.

Third one, emotional poise. This is a really important one, too. Emotional poise as far as not getting frustrated, not getting upset, not becoming sarcastic, not being snarky with opposing counsel. We talk about a lot of the mistakes that get made by witnesses being cognitive, behavioral, and emotional.

One of the emotional mistakes that I always see, and that's one of the key factors, is when people get flustered, then they start wanting to explain or they start going on and on and on. If they get upset, they get snarky and they fire back at opposing counsel, and it looks really, really bad.

Another one, confidence. The confidence, what I mean by that is the confidence to say, "I disagree," or, "It depends," or, "That is correct." in the face of opposing counsel often being incredulous at the response.

You get opposing counsel, plaintiff counsel to say, "You'd agree with me that safety is a company's top priority?" You need your corporate representative to say, "I would agree that safety is one of the corporation's priorities." You're going to get a response from [opposing counsel] that says, "What do you mean? What could be more important than safety?"

You need that witness to have confidence in their answer that's intellectually honest and accurate to push back and say, "Yeah, it's one of them. We have several different ones," and not feel the pressure to, "Yeah, but, yeah, but, yeah, but," and start pivoting.

A couple more, open mindedness, and I mean open mindedness to the process of the witness training. Several things need to be discussed during the training process. There are several factors that need to be considered.

There are several things that we go through in the training process that some people may think are a waste of time, some people think may not be useful. Being open to the process and understanding that the things they're doing is going to make them a more effective witness.

Last is the ability to focus. The reason why I talk about that is because a lot of times, these corporate representatives tend to be people who are higher up in an organization. Trying to get them blocked off for six to eight hour's worth of training time can be very, very difficult.

Trying to get them to stay off their phones, trying to get people from interrupting the meetings to talk to these individuals. You need that person to be able to say, "I'm going to set aside my phone, I'm going to block off this time, and I'm going to devote it to the process."

Even on the day of the deposition, they're going to leave their phone behind and they're not going to be checking emails consistently at breaks so they can focus on the process and on the question at hand. Those are the main priorities when looking for a corporate representative.

**John:** Steve, what are some mistakes you've seen corporate representatives make during their testimony?

**Dr. Wood:** A couple of the most common ones. I mentioned it before about the humility to say, "I don't know." A lot of times, I see corporate representatives speculate too much. They think they need to know, have the answer to everything.

Speculation ends up leading to bad testimony because more often than not, what you're 90 percent sure on, that 10 percent inaccuracy is where the danger lies. That 10 percent inaccuracy is where there's a document showing that you're incorrect.

If you remember, the goal of opposing counsel is to make you look not credible. Imagine what it would look like if you say that a document exists or a policy is a certain way, only to find out that you're wrong and now it's on videotape or it's on the record of you being outright wrong.

The second one goes back to that emotional poise that I talked about. A lot of times, corporate representatives are in a position of power. They're usually in a position of being leaders.

They're usually in a position of leading groups of individuals, and doling out orders, and having people defer to them and look to them for their leadership. In a deposition, opposing counsel doesn't care about any of that.

Opposing counsel is going to press you and poke you and try to make you feel stupid, call into question your competency. A lot of those times, it ends up being a new area, a new experience for the corporate rep.

What ends up happening is they want to fire back because they've never been in that situation before, so they want to get angry, they want to get upset and say, "Look here, basically no one talks to me like that." They lose their cool in the middle of the deposition. Those are the two big ones I see more often than not.

**John:** Thanks, Steve. We're going to pivot over to Sean for the next few questions. Sean, how important is the corporate representative in influencing the public's view of the litigation and its impact on the company's reputation?

**Sean:** John, the company's reputation is dependent on the corporate representative, particularly in a high profile trial. As Steve mentioned, when you choose a corporate representative, you're deciding who will be the face of your company.

That's important, because every stakeholder, whether customers, investors, or employees, will be judging the company's character and credibility based on the corporate representative's performance at the trial. They'll be looking for things like, do they have command of the facts?

Are they composed under pressure, or do they get rattled under cross examination? Do they seem credible, or do they come across as evasive? Are they relatable, or do they seem arrogant or out of touch?

It's not just the trial. The corporate representative can have a major influence on a company's reputation over the long-term coming out of the trial. This also ensures that you do not have to legislate people in the workforce, but rather, the market is naturally creating those opportunities.

**John:** Sean, how can a company best leverage the corporate representative's testimony in communicating about the litigation?

**Sean:** John, litigation communications is about getting your message across in the court of public opinion and controlling the narrative. People often think about winning the trial, but don't always consider that the company's reputation is won or lost based on public opinion and not necessarily the trial itself.

Think about it like this. If the corporate representative is capable and well prepared, you can highlight their testimony through the media. If it's a major case, you can give reporters a heads up about the importance of the testimony so they can come see it for themselves and report on it.

If the testimony is compelling, you can be the one to grab the headline and have the company's messaging dominate that news cycle. However, if the corporate representative isn't well prepared, then the reporters can seize on that, and it could be a negative turning point in the narrative and how people think about the company.

As you know, it's very difficult to turn around a negative image, particularly given the power of social media and how quickly stories like that travel. We see in high profile litigation how one side often dominates the narrative and how quickly an echo chamber can form.

Depending on how high profile the litigation is and how many people are affected by it, a bad or shaky performance from the corporate representative can damage a company's reputation.

You see it a lot in trials involving the public interest, like environmental disasters, major accidents, or misconduct by a company or its leaders. Any situation where the company's character is also on trial.

**John:** Steve, we'll pivot back to you for our final question today. What's the most important insight our listeners should take from this discussion about the corporate representative?

**Dr. Wood:** One of the key things is that careful thought needs to go into the selection of a corporate representative. A lot of times, when I'm talking to people, they'll say, "This individual is the most knowledgeable person in our company, therefore they're going to be the corporate representative."

The problem is they don't have a lot of the other key skills and abilities that I talked about earlier. In that situation, you're probably better off to say, "This person is not quite as knowledgeable as the other one, but they have all those key attributes, and I think that they would show as a better witness."

We can then train them and get them up to speed on the topics that they need to talk about. You need to think about that. The other thing to keep in mind is just because they've been a corporate rep before doesn't necessarily mean they need to be corporate reps in the future.

The reason why I say that is there have been multiple times where I've worked with individuals and companies where they were the corporate rep before, and the thought being, "Maybe they aren't the best corporate rep for us, but we've used them in the past, so we're going to continue to use them." Just because you've used them in the past doesn't necessarily mean you need to continue to use them in the future.

The other reason why that becomes important is that plaintiff counsel, as we always talk about, is very good at sharing and they're very good at sharing depositions of corporate representatives. If you have a corporate representative who's been deposed six, seven times, and maybe they weren't the best corporate representative, you can imagine that those depositions are being passed around to other plaintiff attorneys.

Just because they've been [a corporate rep] before doesn't necessarily mean they need to continue to be it if you don't think that they have the skill set, after listening to this, that they have the skill set that's needed.

It also is important to understand the witnesses who have testified multiple times, the corporate representative who's testified six or seven times maybe has some of the good attributes. A lot of times, you think, "This person doesn't need additional training because they've done it so many times."

I've seen plenty of witnesses who get very complacent when they've done things six or seven times, and they end up getting too comfortable with the process. Before you know it, they're answering too quick, they're giving long winded explanations, because they don't feel the pressure. They're almost too comfortable.

I can tell you that I just recently had a situation where I had a corporate representative who had testified no less than 10 times, and I repleited him in five questions. It was because he got to a point where he got too comfortable.

I fired off questions, and before you know it, I said, "All those answers were wrong." He looked at me shocked that all the questions were wrong, but it's because he wasn't listening, because it got to the point where he thought he knew more than he really did. He got too comfortable with the process.

Those are all things that need to be taken into consideration. Those are the take home messages. Careful consideration, extensive training, and making sure that you take the process seriously.

**John:** Steve and Sean, thanks so much for joining us today.

**Dr. Wood:** Thank you.

**Sean:** Thank you, John. We appreciate being here.

**John:** You've just listened to Dr. Steve Wood and Sean Murphy from qualified member expert service provider, [Courtroom Sciences, Inc.](#) Special thanks to today's producer Frank Vowinkel.

Thank you all for joining us for Best's Insurance Law Podcast.

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