

EAGLE INTERNATIONAL ASSOCIATES

PRESENTS



***Summitting New Heights in
Insurance and Defense***

September 15, 2026

***Brotherhood Mutual Insurance Company
Fort Wayne, IN***

2026 Sponsor



EAGLE INTERNATIONAL ASSOCIATES

MISSION STATEMENT

EAGLE INTERNATIONAL ASSOCIATES IS AN INTERNATIONAL NETWORK OF INDEPENDENT LAW FIRMS, ADJUSTERS AND CLAIMS RELATED SERVICE PROVIDERS THROUGHOUT THE UNITED STATES AND CANADA. EAGLE MEMBERS ARE DEDICATED TO PROVIDING INSURANCE COMPANIES AND SELF-INSURED WITH THE HIGHEST QUALITY LEGAL AND ADJUSTING SERVICES FOR COMPETITIVE AND FAIR COMPENSATION. AS MEMBERS, WE ARE COMMITTED TO THE HIGHEST ETHICAL STANDARDS AND ACT WITH PROFESSIONALISM AND CIVILITY IN ALL OUR ENDEAVOR. EAGLE MEMBERS EXCEED THEIR CLIENTS' EXPECTATIONS FOR QUALITY AND SERVICE. AT EVERY OPPORTUNITY, WE PROMOTE THE USE OF EAGLE AND ITS MEMBERS AND REFER EXISTING RELATIONSHIPS THROUGH ACTIVE PARTICIPATION IN EAGLE'S MEETINGS, PROGRAMS AND SEMINARS.

DIVERSITY POLICY

EAGLE INTERNATIONAL ASSOCIATES, INC. IS OF THE STRONG BELIEF THAT OUR ORGANIZATION IS STRONGER, MORE VALUABLE, AND MORE EFFECTIVE THROUGH THE INCLUSION OF ADJUSTORS AND ATTORNEYS OF DIVERSE GENDER, SEXUAL ORIENTATION, RACIAL, ETHNIC, CULTURAL BACKGROUNDS, AND ALL RELIGIOUS OR NON-RELIGIOUS AFFILIATIONS. EAGLE RECOGNIZES THAT THE INCLUSION OF SUCH DIVERSITY IS VITAL IN ORDER TO ACHIEVE EXCELLENCE AND TO SERVE ITS CLIENTELE EFFECTIVELY. EAGLE IS COMMITTED TO A FURTHER UNDERSTANDING OF ITS CULTURAL FILTERS AND THE ABSOLUTE NEED TO ACCEPT EACH PERSON AS A VALUED, TALENTED, UNIQUE INDIVIDUAL, WHICH, WHEN WORKING WITH OTHER EAGLE MEMBERS, WILL BRING THE ORGANIZATION AND ALL ITS MEMBERS GENUINE BENEFITS AND COMPETITIVE ADVANTAGE IN THE MARKETPLACE.

Summiting New Heights in Insurance and Defense

SEPTEMBER 15, 2026

PROGRAM

11:30 am **Registration and Lunch**

12:15 pm **Welcoming Remarks and Program Introduction**

Matthew L. Schrader, Esq., Reminger Co.

Chair, Eagle International Associates

12:20 pm **Pre Suit Auto Claims Panel Presentation**

Moderators:

Paul M. Finamore, Esq., Pessin Katz Law, P.A.

YA Group Reconstructionist

Sloan Abernathy, Esq., Deutsch Kerrigan

1:20 pm **Leveraging Experts for Results in Sexual Abuse Claims**

Moderators:

Jason Campbell, Esq., Gill Ragon Owen

William Mckenzie, Esq., McKenzie, PLLC.

Ted Waldeck, Esq., Waldeck & Woodrow

2:20 pm **Break**

2:35 pm **Cracking the Case: Effectively Investigating Claims
without Getting Egg on Your Face**

Moderators:

Lindsey Woodrow, Esq., Waldeck & Woodrow

Sean M. Sturdivan, Esq., Sanders Warren & Russell

Stephen J. Fields, Esq., Brinker & Doyen

3:35 pm **Defending Daycare Negligence Claims**

Moderator:

Jeremy D. Hawk, Esq., Taylor Wellons Politz & Duhe

Daniel J. Ripper, Esq., Luther-Anderson

David V. Hayes, Esq., Bendin Sumrall & Ladner

4:35 pm **Closing Remarks**

6:00 pm **Dinner – Tolon**

Summiting New Heights in Insurance and Defense

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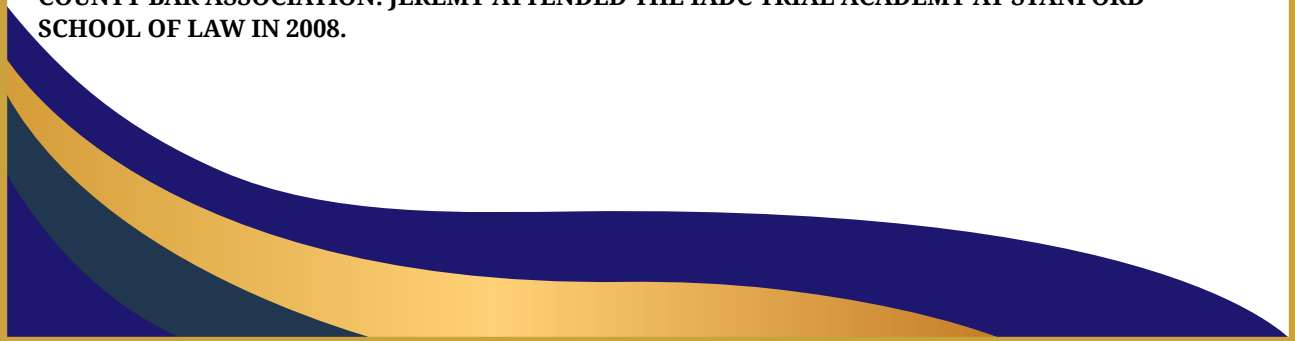
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Pre Suit Auto Claims Panel Presentation



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Pre Suit Auto Claims Panel

CLE NARRATIVE MATERIALS

BMIC Eagle 2026 | 50-Minute Presentation

Claim Investigation • Crash Reconstruction • Biomechanics • Digital Evidence

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Program Overview

A claim file is built long before a deposition is noticed or an expert report is exchanged. The earliest decisions—what to photograph, whom to interview, which vehicles or devices to preserve, and when to involve qualified experts—often determine whether the eventual liability and causation theories can be proved. This program presents a practical, staged approach to claim investigation using a motor-vehicle fact pattern to connect traditional investigative work with crash reconstruction, biomechanics, documentary evidence, and digital-evidence extraction.

As an overarching principle, it is imperative to investigate before the evidence changes, disappears, or becomes inaccessible. A thorough investigation does more than collect facts. It identifies the questions that must be answered, preserves the sources from which reliable answers can be obtained, and allows the claim professional and counsel to test competing theories against objective evidence. The goal is not to force the evidence into an early theory. It is to develop the evidence necessary to determine which theory the facts support.

I. Hypothetical fact set: *Insured's left-turning church bus collides with plaintiff vehicle on dusty road*

The fact set will be referencing during the presentation is based on an auto accident involving your insured's church bus and a sedan driven by the plaintiff. The impact occurred as the bus was exiting a dirt road and turning left onto a highway with a 55-mph posted speed limit. The plaintiff, who had the right of way, was approaching the dirt road on the highway and collided into the rear left corner of the bus. At the time of impact, the bus had nearly completed the left turn.

It appears the plaintiff should have had time to avoid the collision by braking sooner than she did, which would have allowed the bus to complete the turn. The plaintiff maintains, however, that a cloud of dust raised from the dirt road obstructed her vision. Cell-phone information suggests the plaintiff may not have been attending to the roadway. Weather data demonstrate the wind was blowing 5.7 mph away from the direction the bus was turning. Crash-related data downloaded from the plaintiff's vehicle indicates the plaintiff began braking 3.5 seconds prior to impact. The impact caused Plaintiff's vehicle to experience a negative longitudinal Delta-V (change in velocity) of -5.5. mph.

II. Inspections and Interviews

A. Scene Investigation

A prompt scene inspection is one of the highest-value steps in a roadway claim. Photographs supplied with a police report may establish general orientation, but they rarely capture all measurements, sight lines, roadway grades, surface conditions, signage, vegetation, lighting, or transient evidence needed for a later reconstruction. Conditions change. Skid or tire marks fade, debris is removed, shoulders are repaired, vegetation grows, signs move, and nearby surveillance systems overwrite their recordings. An early inspection preserves the scene in a form that can be studied after those changes occur.

The scene investigator should obtain wide establishing photographs, medium-distance photographs showing the approaches and potential sight obstructions, and close photographs of physical evidence. The survey should document the roadway geometry, lane and shoulder widths, curves and grades, traffic-control devices, pavement markings, final-rest locations, areas of impact, tire marks, gouges, fluid stains, debris fields, and any evidence of pre-impact braking. Measurements should be tied to fixed reference points so that the evidence can later be placed on a scaled diagram.

Visual description matters as much as measurement. The investigator should travel each relevant approach and record what becomes visible, from where, and under what conditions. When visibility is disputed, the inspection should account for time of day, direction of travel, sun position, shadows, weather, dust, fog, and artificial lighting. A daytime photograph taken from standing height may misrepresent what a seated driver could see at dusk through a windshield. A useful survey therefore documents the driver's eye-level perspective and, when feasible, repeats the observation under conditions reasonably comparable to the loss.

Drones, total-station equipment, and three-dimensional laser scanners can supplement conventional measurements. A drone survey can efficiently document a large roadway area and show relationships that are difficult to appreciate at ground level. A dimensional scan can capture dense spatial data suitable for measurements and demonstratives. These tools do not eliminate the need for disciplined documentation; they increase the amount of information preserved and permit later analysis of details that may not have seemed important on the inspection date.

The investigator should also canvass immediately for video. Nearby businesses, residences, buses, fleet vehicles, doorbell cameras, and traffic-management systems may have captured the approach or collision. Overhead traffic cameras may provide a useful view even if they did not record the precise point of impact. Because many systems overwrite data automatically, preservation requests should be sent as soon as a potential source is identified.

B. Vehicle Inspection

Vehicle evidence connects the roadway investigation to the reconstruction. Photograph each vehicle from all sides, including undamaged areas, before repairs or destructive testing. Document the principal contact area, crush profile, direction of force, paint transfer, tire and wheel condition, glazing, restraint components, lamps, and interior contact points. Damage should be compared across the involved vehicles to determine whether height, geometry, and direction are consistent with the reported collision sequence.

A qualified accident-reconstruction expert generally will be able to download any crash-related data, in the event a vehicle was equipped with an electronic control module (ECM) or airbag control module (ACM) and the impact was sufficient to trigger that device to record data immediately preceding the crash. As discussed further *infra*, such data can include: speed; braking; steering input; seatbelt usage; and impact-induced velocity change (Delta-V) over an accepted pulse duration, generally 1,000 milliseconds.

A qualified expert may use a FARO or comparable three-dimensional scan to preserve vehicle geometry. Where the vehicle is no longer available, photogrammetry can estimate crush deformation from properly scaled photographs. Accepted biomechanical research has found The a carefully performed photogrammetric analysis can provide a more accurate crush profile than a physical inspection of vehicle damage. The practical lesson is not that photographs are always sufficient, but that high-quality, properly oriented photographs with known dimensions can preserve analytical value when direct access is limited.

Specific components may answer particular disputes. Seatbelt use may leave abrasion on a D-ring, debris in a buckle, pretensioner activation, or belt webbing trapped in a damaged structure. Injury photographs and medical records may provide corroborating evidence. Tires should be inspected for pressure, tread wear, puncture, structural failure, imbalance, impact damage, cuts, and evidence of misuse. Conventional incandescent bulbs may display evidence of a hot or cold shock that assists in determining whether a lamp was energized at impact. LED systems generally require a different analysis, and physical filament examination is not available in the same manner.

A damage appraisal should be obtained and reviewed, but it should not be treated as a substitute for an expert inspection. The reconstructionist may need to speak with the appraiser or repair facility to identify removed parts, clarify photographs, locate the vehicle, and determine whether repairs have altered evidence.

C. Driver and Witness Interviews

Statements should be obtained early from drivers, passengers, eyewitnesses, investigating officers, appraisers, employers, and others with material knowledge. Early interviews capture

memory before it fades or is influenced by repeated discussion. They also identify additional witnesses, photographs, recordings, documents, devices, and potential sources of video. A completed interview should leave the investigator with a clear picture of what the witness personally perceived, what the witness inferred, and what remains unknown.

The interviewer should prepare from a topic outline rather than mechanically reading a fixed questionnaire. Preparation requires familiarity with the police report, photographs, known physical evidence, coverage issues, and competing accounts. The topic outline should address position and movement, speed estimates, visibility, attention, distractions, braking or steering, sounds, impact sequence, post-collision observations, injuries, communications, photographs, and other witnesses. The most important questions are often follow-ups prompted by an unexpected answer.

Recorded statements can preserve a witness's account and may be especially important when fraud is suspected, but the investigator should assume that the statement may later be discoverable. An unprepared or combative witness can create an inaccurate record that complicates the claim. In a contentious or high-exposure matter, counsel may be better positioned to coordinate interviews, preserve applicable privileges, and evaluate how the witness is likely to present in litigation. Regardless of who conducts the interview, the record should distinguish the witness's own observations from information learned from others.

In third-party claims, interviews of insured vehicle drivers generally should *not* be recorded or transcribed. To prevent disclosure during discovery, the best practice – depending on the state – generally is to conduct an oral interview and maintain internal notes of the information obtained.

III. Accident Reconstruction and Biomechanical Analysis

A. The Reconstruction Process

Crash reconstruction is a disciplined application of physics, engineering, vehicle data, scene evidence, and witness information. A reconstructionist typically begins by reviewing the police report, scene and vehicle photographs, video, statements, depositions, vehicle specifications, recalls, and service bulletins. The expert then inspects or digitally surveys the scene and vehicles, evaluates physical marks and damage, retrieves available electronic data, performs speed and timing calculations, and tests the proposed collision sequence against the complete evidence.

No single data source should be treated as infallible. Crush-energy analysis may require reliable vehicle stiffness information, documented deformation, the area of impact, final-rest positions, and pre-impact braking evidence. Momentum calculations require appropriate inputs

and assumptions. Video-based speed analysis depends on frame timing and known distances. Signal timing may validate or contradict a proposed sequence. Electronic downloads are powerful, but they should be compared with physical evidence and another calculation method when feasible. Agreement among independent methods strengthens the opinion; disagreement identifies an assumption or data problem requiring further work.

The reconstruction can address vehicle speeds, perception-response time, avoidance capability, right-of-way, traffic-signal compliance, roadway or vehicle defects, and causes or contributing factors. Its value is not limited to assigning fault. It can also quantify impact severity and supply the loading information used by a biomechanical engineer.

B. ACM, CDR, and ECM Data

Modern vehicles may contain several electronic systems relevant to a collision. An airbag control module, sometimes accessed through a crash data retrieval system, focuses on crash-event and occupant-protection information. Depending on the make, model, year, event, and system, retrievable fields may include pre-crash vehicle speed, brake status, throttle, seatbelt status, deployment information, and change in velocity. An engine or electronic control module generally tracks broader vehicle-operation information and may be particularly significant in commercial vehicles. The systems are complementary, not interchangeable.

The download must be preserved with appropriate documentation of the vehicle, module, equipment, software, operator, date, and acquisition process. The expert should identify what the system actually records, applicable thresholds, limitations, time intervals, and whether the data correspond to the subject event. A blank field does not necessarily mean an event did not occur. Likewise, the absence of a recorded crash event must be interpreted in light of the module's recording threshold and logic.

Where the module requires an approximately five-mile-per-hour Delta-V threshold to create a crash record, the absence of a record may support an opinion that the event was below that threshold (meaning the crash was below accepted impact thresholds generally identified as the minimum force needed to herniate a disc or cause other serious injury), provided the expert confirms the system and circumstances.

C. Perception-Response and Avoidability

Perception-response analysis separates a driver's opportunity to detect and understand a hazard from the physical response that follows. Perception is not merely the presence of an object somewhere in the visual field; it includes detection and comprehension of the roadway situation. Response is the act of braking, steering, accelerating, or communicating. The appropriate time

range depends on the circumstances, including whether the hazard was expected, conspicuous, moving into the path, or one of several competing objects.

Relevant factors include daylight or darkness, weather, glare, fog or dust, roadway curvature and grade, the number of objects demanding attention, vehicle lighting and contrast, lead-vehicle movement, crossing traffic, pedestrians, alcohol or drugs, passengers, and cell-phone distraction. The reconstructionist and human-factors expert should avoid selecting a response time in isolation. They should explain how the event presented itself to the driver and why the selected range fits the particular scenario.

Avoidability requires more than selecting a perception-response time. The expert must determine when the hazard became available to be perceived, the vehicle's position and speed at that time, the distance traveled during perception and response, and the distance required for the selected maneuver. The analysis should test more than one reasonable scenario. For example, if the church bus's left turn is visible for ten seconds, the expert can calculate the approaching driver's position when the bus first became a recognizable hazard, the distance traveled during a reasonable perception-response interval, the deceleration necessary to stop or slow, and whether steering or other options were available.

A simulated, videotaped turn can make the timing and visibility evidence understandable and easier to digest for jurors. The same or an analogous insured vehicle may repeat the maneuver under documented conditions. A second recreation from the claimant vehicle's perspective can show when the turning vehicle enters the field of view. In a case with facts analogous to the hypothetical provided for this presentation, the expert concluded that the tractor-trailer would have been visible when the approaching plaintiff-driver was at least 925 feet away and that, at 45 miles per hour, an average driver required approximately 227 feet to perceive the hazard, respond, and stop.

D. Human Factors: Dust, Fog, Darkness, and Distraction

The dust-cloud allegation in the controlling fact pattern is a human-factors question as well as a reconstruction question. The investigator should establish whether dust was generated, its location and duration, prevailing wind, road-surface condition, lighting, the contrast and lighting of the bus, and the point at which the bus or dust became visible. Witness descriptions should be compared with photographs, video, weather information, and physical geometry. Even if dust partially obscured the bus, the analysis should consider whether the cloud itself was a cue requiring an attentive driver to reduce speed or prepare to respond.

Cell-phone records or device data may establish activity, but the timing and nature of that activity must be correlated carefully with the event. A call-detail record may show a

communication but not necessarily every interaction with the device. Conversely, a full file-system extraction from a cell phone may reveal application usage, screen events, messages, or other artifacts that are not visible in cell-phone carrier records.

E. Impact Severity and Delta-V

Delta-V is the change in a vehicle's velocity during a collision. It is a measure used to describe impact severity. The direction and duration of the change, vehicle deformation, restraint use, occupant position, and contact environment all affect occupant motion and loading. A longitudinal Delta-V of negative 5.5 miles per hour means that the vehicle's forward velocity decreased by approximately 5.5 mph over a crash pulse duration of 1,000 milliseconds.

A reconstructionist may derive Delta-V from module data, crush deformation, momentum, video, or other physical evidence. Photogrammetry may assist in measuring crush when the vehicles are unavailable. The expert should explain the inputs, uncertainty, and whether independent methods corroborate the result. Translating Delta-V into acceleration requires collision duration and the shape of the acceleration pulse; a simplistic conversion should be avoided.

Biomechanical engineering addresses how the reconstructed event loads the body and how the occupant is expected to move. The analysis may discuss acceleration, shear, compression, restraint interaction, and whether the motion remains within ordinary physiological ranges. Comparative information about activities of daily living can help a jury understand magnitude—for example, comparing the impact's force on the spine to a comparable amount of force experienced by the spine from sitting quickly, hopping, walking, bending to tie a shoe, or using stairs.

The distinction between general and specific causation is critical. Some states only will permit a biomechanical expert to testify about general causation --- that is, whether the impact at issue was sufficient to cause a particular injury (e.g., L3-4 disc herniation) to average adults in the general population. Other states will allow a biomechanical expert to opine on whether the impact caused that particular plaintiff's alleged injury.

IV. Documentary Evidence

A. What to Obtain

The documentary investigation should begin with a source list tailored to the claim. In a motor-vehicle case, obtain police crash reports, supplements, diagrams, photographs, body-camera

or dash-camera recordings, 911 and dispatch materials, fire and EMS reports, towing and storage records, repair estimates, appraisals, photographs, maintenance records, inspection records, and relevant policies or procedures. Medical records and billing provide the chronology and claimed damages. Employment and personnel records may bear on training, scope of employment, earnings, attendance, or prior complaints, subject to relevance and privacy limits.

The insured should be asked specifically about records in its possession, including driver files, qualification documents, schedules, route information, logs, telematics, inspection records, maintenance, internal reports, communications, photographs, surveillance, and post-event testing. In a death case, biological evidence or DNA may become relevant to identification, survivorship, or another disputed issue and should be handled through appropriate legal and scientific protocols.

Documents should be evaluated together, not simply accumulated. Compare report narratives with timestamps, photographs, electronic data, damage, and witness accounts. Identify who created each document, when it was created, the source of the information, whether later corrections exist, and what foundation will be necessary for use in litigation.

B. How to Obtain It

Public records requests can obtain police, fire, EMS, traffic-camera, dispatch, roadway, and governmental materials, subject to exemptions and retention rules. Authorizations may be used for medical, employment, and other private records when properly drafted and executed. A medical canvas can identify providers and prior treatment that are not disclosed initially. Claim-index and ISO information can identify prior losses, carriers, injuries, or litigation requiring follow-up.

Compulsory pre-suit process varies by jurisdiction and context. Before issuing or relying on a pre-suit subpoena, confirm that governing law authorizes it and that notice, service, privacy, and scope requirements are satisfied. If process is unavailable, seek consent, an authorization, a public-record route, or prompt suit when appropriate. Particularly sensitive information—medical, financial, communications, location, and device contents—requires attention to proportionality, privacy, statutory protections, and data minimization.

C. Pre-Suit Disclosure and Preservation

Pre-suit disclosure obligations differ between first-party and third-party claims and among jurisdictions. The claim professional should identify early whether the claimant is entitled to a copy of the policy, declarations, or other coverage information and whether limits must be disclosed upon request or under specified conditions.

Preservation must begin before formal discovery. Send a tailored preservation notice to the insured identifying paper files, emails, text messages, mobile devices, photographs, video, vehicle data, telematics, logs, surveillance, social-media material, cloud data, and physical evidence. Suspend routine deletion, recycling, repair, or overwrite practices that threaten relevant evidence. Identify custodians and third parties whose data require separate requests. A generic instruction to preserve 'everything' is less effective than a practical list tied to the facts and the systems involved.

Spoliation can lead to evidentiary sanctions, adverse inferences, exclusion of testimony, additional expense, and loss of credibility. The response should be proportionate but documented: what was preserved, by whom, when, how it was collected, where it is stored, and what limitations remain. If an item cannot be preserved—such as a vehicle that must be released—provide notice and a reasonable inspection opportunity, and create a thorough substitute record before disposition.

V. Electronic Sources of Information

A. Social Media

Facebook, Instagram, TikTok, and other platforms may contain statements, photographs, videos, location information, activity evidence, relationships, and posts relevant to claimed limitations or the circumstances of a loss. The first task is identity verification. Common names, shared accounts, changed surnames, and copied photographs can produce false matches. Information gathered during statements—nicknames, usernames, email addresses, work history, schools, hobbies, family members, and associated businesses—can help confirm the correct account.

Preserve relevant public content promptly because it may be deleted, made private, or altered. Capture the full screen with the account identifier, date, surrounding context, URL when available, and the date of collection. Preserve video in a usable native format when lawful rather than relying only on a screenshot. Investigators and counsel should not use deception, improper contact, or circumvention of privacy controls to gain access.

B. Cell-Phone Collection

The level of mobile-device collection should match the issue. Photography is the most limited method and records only what is visibly displayed. A backup or logical collection can acquire data exposed through operating-system and backup interfaces, such as selected messages, contacts, call information, media, and application data. A full file-system collection is more comprehensive and may include databases, application artifacts, system logs, deleted remnants,

and metadata unavailable through a logical acquisition. Device model, operating system, encryption, credentials, application design, and legal authority affect what can be obtained.

For the cell-phone distraction theory in the controlling fact pattern, define the relevant time window before collection. The forensic examiner should preserve time-zone information, clock offsets, source metadata, and the distinction between device-generated and server-generated timestamps. Carrier records, cloud data, paired-device data, vehicle infotainment, and the handset may each answer different questions. A carrier record may show calls or network messages but ordinarily does not provide a complete history of on-device activity. The examiner should correlate artifacts rather than drawing a conclusion from a single timestamp.

C. Public and Commercial Sources

Public dockets and record systems may reveal prior civil actions, judgments, criminal proceedings, bankruptcies, marriages, divorces, property records, licensing, and business affiliations. Availability varies by state and court. Prior claims and litigation should be investigated for legitimately relevant information such as earlier injuries, inconsistent sworn statements, overlapping wage-loss claims, or other accidents; their existence alone should not be treated as proof of fraud.

Claim-index reports, SIU resources, social-media search tools, advanced skip traces, and license databases can identify leads requiring verification. Google Maps and historical imagery can assist with location orientation and show material changes to a roadway or property. These sources are investigative aids, not self-authenticating proof. Preserve the source, date, context, and methodology, and confirm significant facts through primary records whenever possible.

VI. Outside Investigators and Early Defense Counsel

A. Private Investigators

A private investigator can serve as the claim professional's local eyes and ears. Appropriate assignments include locating witnesses, conducting in-person interviews, contacting investigating officers, speaking with employers and obtaining authorized employment or pay information, canvassing for cameras, documenting scenes, preserving public social-media content, and conducting lawful surveillance.

Select an investigator who can do more than gather a statement. A useful report describes demeanor, confidence, ability to perceive, inconsistencies, potential bias, and how the witness may present. The investigator should distinguish observation from opinion and preserve original media and notes in accordance with the engagement. Assume that statements, photographs, reports, and

communications may become discoverable, and avoid instructions that suggest a predetermined factual outcome.

B. When to Involve Defense Counsel

Early counsel involvement is particularly valuable when the claim is contentious, litigation is likely, fraud is suspected, damages are high, liability is questionable, significant physical or electronic evidence may disappear, or an expert inspection must be coordinated quickly. Counsel can help frame preservation notices, retain and direct appropriate experts, manage inspections, evaluate privilege and work-product issues, obtain lawful process, and avoid inconsistent communications.

Attorney involvement does not automatically cloak every investigation in privilege. The purpose of the communication, the role being performed, the jurisdiction's law, and the handling of the material matter. Claims undertaken in the ordinary course of business may remain discoverable even when counsel participates. The file should therefore be organized deliberately, with legal advice separated where appropriate from routine factual materials, and communications should be written with the expectation that a court may later examine the basis for any privilege claim.

Leveraging Experts for Results in Sexual Abuse Claims



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I. Introduction: The Abuse Claim Landscape for Religious and Educational Institutions

A. Why These Claims Are Different

Sexual abuse claims asserted against churches, camps, parochial schools, and public school districts present a claims-handling and litigation profile unlike any other line of liability exposure. The alleged events frequently occurred years or even decades before first notice of the claim. There is often no physical or forensic evidence, no prior investigation by the insured or law enforcement, and knowledgeable defense fact witnesses are often unavailable due to the passage of time. The claim notice often arrives in the form of a letter of representation from claimant's counsel with a policy limits demand and threats of disclosure to the press.

Reviver statutes, extended limitations periods, and the “nuclear” verdict trend have compounded the problem, increasing both frequency and severity for the carriers who insure churches, camps, and parochial and public schools. Liability is typically premised not on the conduct of the alleged perpetrator — who may be deceased, jailed, judgment-proof, or long separated from the institution — but on institutional theories such as negligent hiring, supervision, and retention, failure to report, and “hierarchy liability” allegations asserting that national or regional bodies exercised governance over local affiliates. The practical consequence is that the defensibility of the claim rarely turns on whether the institution did something; it turns on what the institution knew, when it knew it, and what a reasonable institution would have done — all of which must be reconstructed long after the fact.

B. The Central Role of Experts

In this environment, the plaintiff's case is fundamentally an expert-driven case. Plaintiff's counsel will rely on mental health professionals to explain delayed disclosure, to account for repressed or recovered memory, to causally connect present-day psychological symptoms to decades-old events, and to support PTSD and permanency claims that anchor non-economic damages. The defense response must be equally expert-driven.

Quality defense experts provide claims professionals and defense counsel with “settlement currency” for resolving difficult claims before trial, and for those matters that can only be resolved by verdict, they are essential for explaining the significance of evidence to jurors and combating reptile-theory strategies while promoting defense themes. This paper addresses the claims

professional's first-notice investigation and coverage analysis; the mechanics of working with consultants and experts while protecting privileged communications; the timing and structure of retention; the types of consultants and experts available to the defense and the claims each is suited to; the scientific literature that should inform their work; and the strategies for dismantling plaintiff expert proof.

II. The Claims Professional's Investigation

A. Why the First Days Matter

The scope and severity of abuse claims call for early retention of defense counsel, and nothing in this section is a substitute for that step. When a claim professional is notified of an abuse claim from the insured or their insurance broker, memories are freshest, documents may still be in place, footage has not yet been overwritten, and the insured's cooperation is at its peak. Evidence gathered in that window supplies critical puzzle pieces and a starting block for the later work of defense counsel and defense experts, whose opinions will only ever be as good as the record assembled for them. Evidence not gathered in that window is frequently gone for good.

B. Early Coverage Analysis and Determination of Coverage Periods and Potential Limitations Defenses

Abuse claims routinely span lengthy periods, with potential dates of loss falling across multiple policy periods, multiple carriers, and multiple layers. The claims professional or the coverage department should identify every potentially triggered policy at first notice rather than after suit is filed. Confirm as well that the insured or its broker has taken the steps necessary to notify other potentially implicated carriers; a late-notice problem created at the outset of an abuse claim can be worth more than the underlying liability.

Reconstruct the insured's historical policy record — old policies, declarations pages, broker files, ledger entries, and board minutes referencing insurance purchases — and review each located policy for abuse and molestation exclusions or sub limits; occurrence versus claims-made triggering language; per-occurrence and aggregate limits; self-insured retentions where applicable; and notice conditions. Churches and small schools rarely maintain organized archives, and the absence of a policy is not the absence of coverage; secondary evidence of the terms of a lost policy is frequently available and frequently dispositive.

Map the alleged event dates from the working timeline onto a coverage chart. Trigger theories vary by jurisdiction, and pleaded dates are often strategic rather than precise — a complaint alleging abuse “from approximately 1985 through 1989” may have been drafted with a particular policy period in mind. The chart drives notice, the reservation of rights, allocation among periods, and the potential for defense cost sharing among multiple carriers where an agreed-upon defense counsel can be identified.

Limitations analysis belongs in the same early workstream. Jurisdictions vary widely in their current treatment of limitations periods for abuse claims, and the landscape continues to move: discovery-rule formulations, tolling for minority and for repressed memory, revival

windows of fixed duration, and outright elimination of the limitations period for certain claims all coexist across the states, and several jurisdictions have changed positions more than once. Consult panel counsel early for current information on the governing limitations regime rather than relying on the last memorandum in the file.

Finally, a small minority of jurisdictions require pre-suit disclosure of coverage information. Arkansas continues to recognize charitable immunity, which protects a qualifying charitable organization from suit in tort.¹ The corollary is Arkansas's direct action statute, which supplies the injured party a direct cause of action against the immune entity's liability insurer, and which further obligates the organization and its officers, upon request of a person claiming injury, to disclose the existence of liability insurance, the name of the insurer, and the terms, amounts, and limits of the policy.²

C. Documents to Request from the Church or School at First Notice

Many abuse claims originate with an evidence preservation and spoliation notice embedded in claimant counsel's letter of representation. Treat that letter of representation as the beginning of the document collection process rather than a ministerial note for the file. Notify the insured of its obligation to preserve the items requested to avoid potential spoliation and have the insured place a litigation hold on pertinent records.

Obtain the alleged perpetrator's complete personnel or volunteer file: the application, background check results, reference checks and the notes of those checks, training records, discipline history, transfers between campuses or congregations, any prior complaints of any kind, and the circumstances of departure.

Collect the abuse prevention policies and procedures actually in effect at the time — screening requirements, reporting protocols, and supervision standards — together with proof of implementation. A written policy without training records, signed acknowledgments, or evidence of enforcement is often worse than no policy at all, and the gap between the policy and the practice is where institutional liability is generally established. In the event that the insured was aware of allegations of abuse and reported the allegations to law enforcement or investigative agencies, ask the insured to gather up all information concerning date and manner of reporting so that defense counsel can determine compliance with statutory Mandatory Reporting laws.

¹ Arkansas charitable immunity is a judicially created doctrine rather than a creature of statute; the protection extends to immunity from suit, not merely from execution. *See* *Low v. Ins. Co. of N. Am.*, 364 Ark. 427, 440, 220 S.W.3d 670, 680 (2005).

² Ark. Code Ann. § 23-79-210(a)(1) (creating a direct cause of action against the liability insurer of an entity not subject to suit in tort); *id.* § 23-79-210(b) (the immune organization “and the officers of those organizations or entities upon the request of any person so injured or damaged shall disclose the existence of any liability insurance, the name of the insurer, and the terms, amounts, and limits provided by the policy or policies”). Note that the disclosure obligation runs to the organization and its officers rather than to the carrier, and it is triggered by request rather than by suit.

Request incident reports, prior complaints, board and committee minutes, internal investigation materials, rosters and schedules establishing who was present, facility diagrams and floor plans bearing on sight lines and supervision, and security footage before it is overwritten. Text messages are often the single most critical category of information in an abuse case, and they may exist on devices that are neither owned nor controlled by the insured; identify custodians immediately and address preservation before phones are traded in or wiped.

Finally, obtain any reports made to law enforcement or child protective services, along with the insured's prior claims history and any earlier complaints involving the same program, facility, or personnel. Prior similar complaints are the backbone of a negligent retention claim, and the carrier should learn of them from the insured rather than from plaintiff's counsel.

D. Building the Timeline

The single most useful product the claims professional can generate is a working chronology. The timeline is often the starting point used by defense counsel and experts in developing an investigation and defense strategy.

The insured should assist in this process in developing an initial timeline or narrative that should capture the alleged perpetrator's employment or volunteer dates; the claimant's participation dates in the relevant program; photographs, bulletins, newsletters, and announcements of church- or school-sponsored activities involving the claimant; the alleged event dates and locations; the outcry chronology; who inside the institution knew what, and when; and every report made to authorities.

E. Social Media and Public Records Searches

Search and preserve publicly available online material concerning both the alleged perpetrator and the claimant: social media posts and photographs, connections between the parties, public statements about the allegations, and — equally important — the absence of post-incident indicators of trauma or impairment in the period the claimant now describes as debilitating. Public criminal docket sweeps and civil filing histories are available through commercial vendors and often locate prior claims, prior allegations, or prior litigation of which the insured was unaware.

Capture this material early and with dated screenshots that include the source and the capture date. Accounts are routinely deleted or locked once suit is filed, and frequently earlier. Of course the search must be confined to genuinely public sources, and there must be no pretexting, no fictitious accounts, and no contact of any kind — including “friend” or “follow” requests — with the claimant, the claimant's family, or represented persons.³ The evidentiary value of a well-preserved public post is substantial; the cost of obtaining material improperly is the potential loss of the entire line of proof.

³ See Model Rules of Prof'l Conduct rr. 4.1, 4.2, 4.3, 5.3, 8.4(c) (Am. Bar Ass'n).

III. Working with Defense Experts

A. Consulting Versus Testifying Experts

There is a legal distinction between consulting experts and testifying experts which governs the manner in which defense counsel will communicate with the expert and often the types of services the expert will perform. A clear understanding of the expert's role must be established at retention, in the engagement letter, before any substantive communication occurs. Is the expert retained solely in a consulting capacity — to conduct an initial records review and advise the carrier and counsel on liability and damages strengths and weaknesses — or is the expert intended to offer opinions and testimony at trial, with the attendant disclosure obligations? Consulting-only experts generally enjoy robust work-product protection; testifying experts do not, and caution must be exercised in communicating with potential testifiers because those communications are not absolutely protected from discovery.

A consultant who is later designated as a testifying expert may carry the entire history of the consulting relationship into discovery, including materials, communications, and preliminary impressions generated when everyone assumed the relationship was protected. Counsel should therefore decide in advance which experts are candidates for conversion and manage those relationships from day one as though the conversion will occur. Where a genuinely candid, unvarnished evaluation is needed, retain a consultant who will not be converted to a testifying expert.

Vetting should precede retention, not follow it: qualifications, publications, prior testimony and transcripts, retention history and plaintiff-to-defense ratio, social media footprint, and any history of exclusion, impeachment, or judicial criticism. In abuse litigation more than most fields, the expert's prior writings and testimony are readily available and will be used.

B. Communications and Draft Reports

In federal court, Rule 26(b)(4)(B) protects draft expert reports and disclosures regardless of the form in which the draft is recorded, and Rule 26(b)(4)(C) protects communications between counsel and testifying experts, subject to three exceptions: communications relating to compensation; communications identifying facts or data the attorney provided and the expert considered in forming opinions; and communications identifying assumptions the attorney provided and the expert relied upon.⁴ Litigation over the reach of those exceptions continues in the federal courts, and the protection is narrower than practitioners often assume — the facts-and-data and assumptions exceptions swallow a great deal of what counsel might otherwise want to put in writing.

State courts are considerably less uniform. A number of states have adopted the federal approach by rule; others continue to treat draft reports and expert communications as discoverable, and some permit inquiry into the entirety of the expert's file. The practical consequence is that

⁴ Fed. R. Civ. P. 26(b)(4)(B)–(C).

clear communication protocols — what will be put in writing, how drafts will be handled and whether they will be retained, what materials will be transmitted and logged — must be established with each expert at the initial stage of retention and calibrated to the rules of the governing jurisdiction. This is a question worth asking panel counsel expressly at the outset of the engagement.

C. Feeding the Expert

All available counseling records, testing results, investigative materials, and testimony should be submitted to defense experts and consultants for review — including prior-provider records, so that inconsistencies within the post-incident records can be evaluated against the other evidence and the event history. The expert should decide what is relevant to the expert's own process, and whether to conduct initial testing without the influence of the balance of the file. Document the transmittal: what was sent, when, and in what form. Curated inputs are a standing invitation to cross-examination; documented, complete transmittals are their antidote.

IV. Early Expert Retention Strategy

A. The Case for Early Retention

In ordinary liability litigation, the decision whether to retain a defense expert can often await until the discovery phase of litigation. Sexual abuse claims warrant a different approach. Settlement and verdict values in abuse litigation have climbed sharply, driven by social inflation, broad institutional distrust, and claimants who present sympathetically, and carriers can no longer treat expert spend as a trial-only cost. The exposure is established early, and the evaluation must be established early with it.

Early involvement of defense consultants and experts permits meaningful evaluation and development of liability and damages defenses before positions harden, before mediation postures are set, and before critical evidence degrades or disappears. Early-retained consultants can identify curable investigative gaps: preservation demands for counseling and school records, strategies for obtaining agency and law enforcement investigative files that may be shielded from Freedom of Information Act requests by privacy regulations, and early identification of the fact witnesses — outcry witnesses, first responders, teachers, and family members — whose recollections will define the case.

Early retention also directly serves resolution strategy. A credible, well-documented defense evaluation — anchored by a qualified consultant's review of the forensic interview, the counseling records, and the testing data — is frequently the difference between resolving a questionable-liability claim at a defensible number and funding a policy-limits demand supported by an unrebutted plaintiff expert narrative. Retaining the mental health professional, SANE nurse, or investigator initially in a pure consulting capacity preserves work-product protection and strategic flexibility; testifying designations can be made later, once counsel knows what the expert's opinions will be. In multi-claimant matters or claims spanning multiple policy years, early

coordination of the expert team across claims avoids inconsistent defense positions and duplicative legal spend.

B. “Depositions Are the New Trials”

Very few abuse claims are tried. A majority of abuse claims resolve at mediation. Plaintiff counsel routinely conduct focus groups and mock trials to determine their “walk away” case valuation number in preparing for mediation. Video deposition clips taken from plaintiff and defense expert testimony are presented by plaintiff counsel both during focus group/mock trial exercises and during the mediation itself. The practical consequence is that the expert deposition — not the trial — often has the greatest impact on a favorable claim resolution.

Defense expert selection must account for performance, not merely credentials. A highly credentialed university housed expert may be less impressive than a similar private practice expert accustomed to depositions and the litigation process. Similarly, “hired gun” experts who focus solely or primarily on legal consulting will often carry less credibility than those experts who continue to practice in their chosen field. An impeccably qualified expert who is defensive, evasive, or condescending on video is a liability whereas a well-credentialed expert who explains methodology plainly and concedes the genuinely conceded points will afford the defense a powerful weapon.

Obtaining concessions from plaintiff’s experts at deposition is equally critical to successful resolution. The defense expert or consultant should be engaged in defense counsel’s deposition preparation efforts and pertinent questioning of plaintiff’s expert should be scripted in advance of the plaintiff’s expert deposition. Common themes to be explored in abuse case deposition preparation include: the expert’s qualifications and experience in abuse cases; inconsistencies in the timeline put forth by the claimant/plaintiff; assumptions or logical fallacies made by the expert to arrive at his or her opinions; psychological testing batteries administered to the claimant or the lack thereof; suggestibility and malingering research in the field; and the requisite professional standards and guidelines. Each concession obtained from a plaintiff’s expert serves as both a basis for attacking the credibility of the expert’s opinions and a building block for both motions in limine and “*Daubert*” or “*Frye*” motions. Deposition strategy should be built to serve those motions. Defense counsel’s goal should be to lock the plaintiff’s expert into methodology, materials reviewed and not reviewed, and the governing literature before trial.

The claims professional’s leverage over this process is exercised through both proper initial selection of defense counsel and in case development and analysis discussions with retained counsel. Questions worth asking, early and directly:

- What experience do you have in litigating similar cases and what knowledge do you have about claimant/plaintiff counsel’s use of experts?
- What defense experts are needed to defend liability and/or damages for this case?
- How many times have you deposed/cross examined a (similar) _____ expert?

- What background information do you have regarding plaintiff’s experts or potential experts?
- What is the trial judge’s proclivity towards granting/denying motions to exclude plaintiff’s experts?

C. Mapping Out Evidentiary and Dispositive Motion Strategy with Experts

Expert work should be planned backward from the motions it is meant to support. *Daubert* or *Frye* motions to exclude expert testimony are driven by testimony suggesting lack of expert qualification/foundation and methodology: the unknown error rates of forensic interview protocols; damages opinions built on self-report without validity testing; causation opinions that ignore alternative explanations; and opinions from treating therapists offered beyond the scope of treatment. Motions *in limine* should target the recurring category of “consistent with symptoms of abuse” testimony — opinions that a child’s behavior or symptom presentation is “consistent with” sexual abuse — which smuggles a credibility endorsement into clinical packaging even though the same behaviors are consistent with numerous non-abuse causes. Syndrome evidence offered as substantive proof that abuse occurred should be challenged on the same ground. There is a wealth of online literature and legal writings on the proper limits of expert testimony in child sexual abuse litigation.⁵

Expert work also supports dispositive motions. Where the claim depends on a recovered or repressed memory to survive the statute of limitations under a discovery-rule theory, the reliability of that memory is not merely a damages issue but a threshold one, and the defense expert’s analysis becomes the evidentiary foundation for limitations briefing. Similarly, causation opinions attributing the claimant’s entire psychological presentation to the alleged abuse can be tested against pre-existing conditions and intervening stressors in an effort to narrow or eliminate categories of plaintiff’s damages claims before trial.

D. Evaluating the Claim

Not all abuse claims present the same defense problem, and the expert team should be assembled to the claim type rather than to a standard template. Several recurring categories of abuse claims are worth distinguishing at the evaluation stage.

Peer-on-peer claims. Student-on-student, camper-on-camper, and youth-on-youth allegations generally do not involve an institutional agent as the alleged perpetrator, so liability turns almost entirely on notice, supervision, and the adequacy of the institution’s/insured’s response. The relevant experts are correspondingly different: school and church safety and policy consultants who can address supervision ratios, sight lines, and industry standards, and child or adolescent psychologists who can address developmental capacity, the distinction between age-

⁵ Myers, J.E.B., *Expert Testimony in Child Sexual Abuse Litigation*, 68 Neb. L. Rev. (1989); Myers, J.E.B., *Expert Testimony in Child Sexual Abuse Litigation: Consensus and Confusion*, 14 U.C. Davis J. Juv. L. & Pol’y 1 (2010).

typical sexual behavior and abuse, and the reliability of accounts given by minors on both sides of the allegation.

Clergy, teacher, and volunteer on student or parishioner claims. Where the alleged perpetrator held a position of trust and authority, the power differential is assumed and consent is generally unavailable as a defense where the claimant was a minor. These claims are litigated on hiring, screening, supervision, retention, and response, frequently supplemented by grooming allegations that convert otherwise innocuous conduct — gifts, rides, private messaging, extra attention — into evidence of institutional notice. Hierarchy liability theories against regional or national bodies raise separate questions of governance and financial control.

Repressed memory versus false memory. Many abuse claims are based on sincerely held, subjectively genuine recollection of events that did not occur. There is extensive literature regarding science and research of false-memory. Decades of misinformation-effect research demonstrate that post-event information supplied by others becomes incorporated into a witness's recollection, supplementing or altering the original memory.⁶ For example in the often cited “Lost in the Mall” study, approximately 25 percent of adult subjects developed rich, detailed false memories of an entire fabricated childhood event — being lost in a shopping mall — after the suggestion was introduced through a trusted relative. Replications of the study resulted in even higher rates of false memory of the fabricated event.⁷

For child claimants, suggestibility research concludes that there are reliable age differences in suggestibility with preschoolers being the most vulnerable. The research has identified the cognitive, social, and biological “factor” families that determine when children's reports are reliable and when they are not.⁸ The research has examined that science directly to litigation, using day-care prosecutions of the 1980s and 1990s to demonstrate how questionable adult interviewing techniques can generate confident but false child testimony, and proposes scientifically grounded standards for evaluating children's statements in legal investigations.⁹ The literature cited below provides a rough framework for the defense to respond to plaintiff experts who invoke delayed or inconsistent disclosure as itself corroborative of abuse.¹⁰

The literature further identifies the mechanisms by which a false statement may arise even absent deliberate lying: parental misinterpretation and suggestion; misinterpreted physical

⁶ Loftus, E.F. & Pickrell, J.E., *The Formation of False Memories*, 25(12) *Psychiatric Annals* 720 (1995).

⁷ Loftus & Pickrell, *supra*; Murphy, G. et al., *Lost in the Mall Again: A Preregistered Replication and Extension of Loftus & Pickrell (1995)*, *Memory* (2023).

⁸ Ceci, S.J. & Bruck, M., *Suggestibility of the Child Witness: A Historical Review and Synthesis*, 113(3) *Psychol. Bull.* 403 (1993).

⁹ Ceci, S.J. & Bruck, M., *Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony* (Am. Psychological Ass'n 1995).

¹⁰ London, K., Bruck, M., Ceci, S.J. & Shuman, D.W., *Disclosure of Child Sexual Abuse: What Does the Research Tell Us About the Ways That Children Tell?*, 11(1) *Psychol. Pub. Pol'y & L.* 194 (2005).

conditions; parental delusion; parental indoctrination; interviewer suggestion; fantasy; delusion; misinterpretation; miscommunication; confabulation; and pathological lying.¹¹

Long-tail claims and the credibility contest. Most institutional abuse claims are long-tail claims: notice of the claim arrives years or decades after the alleged incident, and the claimant did not report the incident to institutional leadership or to law enforcement at the time. There is no contemporaneous record to test the account against, no physical evidence, and frequently no surviving or available witness. These claims involve a “battle of the experts,” and credibility is key. The defense evaluation must therefore focus early on the sources of the account and the conditions under which it emerged — the therapy, the litigation environment, the family dynamic, the prior interviews.

Physical-evidence claims versus no-evidence claims. Where a contemporaneous examination, (rape kit) forensic testing, photographs, or digital evidence exists, the claim may be supported or disproven based on the initial diagnostic workup of hospital physicians, nurses and medical staff usually designated as non-retained “treating experts” by plaintiff’s counsel. Typically, evidence and testimony of SANE nurses, physicians, toxicologists, and forensic technologists drive the case. The rate of error and contamination of evidence inherent with physical evidence claims is often high and plaintiff’s “treating experts” must be challenged through retention of equally credentialled defense experts. Where no such direct evidence exists — the typical institutional claim — the forensic interview and the therapeutic record become the entire evidentiary foundation, and the defense strategy shifts to auditing that foundation, as described above.

Adult claimants versus minor claimants. The distinction between an adult and minor claimant matters in terms of both the science and the strategy in defending abuse claims. Minor claimants implicate the suggestibility and forensic-interview literature and often require child-specialized examiners and diagnostic testing protocol. Adult claimants implicate the false-memory and recovered-memory literature, therapy-induced recollection, and, in claims arising from adult conduct, questions of capacity and consent. An expert whose practice is limited to adult populations should not be evaluating a claim by a minor claimant and the reverse is equally true.

V. Building the Defense Expert Team: Types of Experts and Consultants and Their Use Cases

A. Psychologists, Psychiatrists, and Neuropsychiatrists (Liability and Damages)

Mental health experts are the core of the defense team in nearly every institutional abuse claim, and they can provide guidance as to both liability and damages issues. Their functions include challenging witness recall and credibility; exposing confirmation bias and planted memory in the investigative and therapeutic record; refuting emotional damages, PTSD, and permanency claims; and conducting effective independent medical examinations.

¹¹ Bernet, *supra*; O’Donohue & Cirlugea, *supra*, tbl. 1.

A central function is exposing the methodology and assumptions of less-qualified sources. Treating therapists and counselors are frequently used by plaintiff's counsel to "chin the bar" for expert opinions. Their notes commonly absorb the allegation as established fact at intake and proceed from there; the treatment relationship is not designed to test the history, and a counselor or therapist has no professional obligation to consider alternative explanations. A qualified defense expert can draw that distinction for the factfinder without attacking the counselor or therapist's good faith.

The same expert is the vehicle for exposing unreliable entries in counseling and medical records. Intake statements are paraphrased into later records, a differential diagnosis is recorded by a subsequent provider as a final diagnosis, and a hedged observation becomes a categorical finding three records downstream — the "telephone game" by which the file acquires certainty it never had. Identifying those transmission errors, and tracing each assertion back to its origin, supplies the factual predicate for motions in limine to exclude the derivative records and the opinions built on them.

The strategic value of the mental health expert extends beyond the substance of the opinions. Jurors may be offended by perceived "victim blaming" or "family blaming" delivered through defense counsel's cross-examination of a sympathetic claimant or family member. A credentialed neuropsychiatric expert can serve as both a buffer and a vehicle for those same defense themes — for example, the opinion that a claimant's PTSD presentation is attributable to pre-existing conditions, family dysfunction, or other life stressors rather than the alleged abuse — in a clinical register that jurors can accept without feeling that the claimant has been attacked.

B. SANE Nurses, Physicians, and Toxicologists (Physical-Evidence Claims)

Where the claimant underwent a contemporaneous examination for suspected abuse, the post-incident medical records, photographs, and sexual assault forensic exam results are the critical evidence. A sexual assault nurse examiner (SANE), emergency physician, or internist retained as a consultant can orient counsel to the certification requirements, the examination protocol, and the meaning and limits of the findings; expose unsupported assumptions or shortcuts by the examining team that produced "pre-determined" findings consistent with abuse; and address the significance of normal or non-specific findings, which are common even in substantiated cases and are routinely mischaracterized in both directions. These consultants also assist in crafting cross-examination for treating witnesses and opposing experts and in framing *Daubert* motions and motions in limine to exclude unreliable records and opinions.

Toxicologists add value where forensic testing exists or where capacity is at issue. A toxicologist can disprove particular factual scenarios based on the forensic evidence — testing results inconsistent with the alleged sequence or timing of events — and, in adult claims involving consent, can establish drug and intoxicant concentration thresholds bearing on impaired capacity to consent.

C. Other Liability Experts

Retired law enforcement officers, premises liability experts, and sex-crime investigators can audit the underlying criminal or child-welfare investigation against accepted investigative standards — identifying failures to pursue alternative suspects or explanations, contamination of witness accounts, undocumented interviews, and departures from protocol that undermine the reliability of the investigative file on which plaintiff's experts will rely.

School and church safety and policy experts address the institutional standard of care directly, and they are indispensable where the claim is pled as negligent supervision or failure to implement adequate protective policies. A qualified consultant can establish what screening, training, supervision, and reporting practices were actually recognized within the relevant sector at the relevant time. The same expert can address supervision ratios, facility design and sight lines, background check practices and their availability in the relevant era, two-adult rules, and the reasonableness of the institution's response once a report was made.

Certified public accountants and forensic accountants serve two narrower functions. First, they are effective in rebutting hierarchy liability allegations against national, regional, or state church bodies premised on purported financial governance over local affiliates, by demonstrating the actual independence of local entity finances and operations. Second, in the minority of jurisdictions still recognizing charitable immunity, they can establish the financial predicates necessary to carry the immunity defense.

D. Supporting Consultants

Forensic technologists have become indispensable as digital evidence has proliferated. Using specialized extraction tools, they can recover and analyze device data, text messages, mobile phone metadata, and GPS location history to reconstruct the movements of the claimant and the accused, test the alleged timeline, and evaluate witness credibility. Analysis of internet search history and social media activity may reveal — or refute — evidence of grooming behavior or contact between the parties, and may surface impeachment material bearing on the claimant's account. Their work is used throughout discovery and again at trial for authentication of the digital exhibits.

Witness preparation consultants — many holding advanced degrees in the neurosciences — study modern plaintiff deposition tactics and litigation themes and train institutional witnesses to respond effectively. Given that abuse claims are valued on the deposition record, these consultants can offer valuable services to the defense.

VI. Psychological Testing and Diagnosis: The Defense Toolkit for Repressed Memory Claims

A. The Diagnostic Framework

Where the claim rests on a recovered or long-delayed memory and a present-day psychological injury, the diagnostic and testing workup is the defense's most objective line of attack — it substitutes validated instruments for the credibility contest. The Diagnostic and

Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) serves as the principal authority for psychiatric diagnoses, and defense experts should hold plaintiff's experts strictly to its criteria — including the requirement of an identified index traumatic event and the full symptom-cluster requirements for a PTSD diagnosis. For child and adolescent claimants, the Clinician-Administered PTSD Scale for DSM-5, Child/Adolescent Version (CAPS-CA-5) is the recognized clinician-administered instrument: a 30-item scale keyed to DSM-5 criteria for children ages seven and above, with age-appropriate items, picture response options, and recommended trauma-history measures to identify the index event. A plaintiff expert who diagnoses PTSD in a child without administering a structured instrument of this kind, or without identifying an index trauma, is exposed on methodology.

B. Validity and Malingering Instruments

Three instruments anchor the defense damages workup. The Trauma Symptom Inventory–2 (TSI-2) is a 136-item adult self-report measure of posttraumatic stress and other psychological sequelae of traumatic events; critically for the defense, it contains built-in symptom validity scales that monitor response bias and alert the assessor to non-credible symptom profiles. Its scales assess intrusive experiences, anxiety, autonomic hyperarousal, and defensive avoidance. The instrument should not be used in isolation to determine the validity of a symptom presentation, and the defense expert who situates the TSI-2 within a complete battery is insulated from that criticism while the plaintiff expert who relied on self-report alone is not.

The Structured Inventory of Malingered Symptomatology (SIMS) is a 75-item true-false screen, administrable in approximately fifteen minutes, designed to detect feigned psychopathology; its five fifteen-item subscales are each designed to identify persons malingering a particular type of disability. The Minnesota Multiphasic Personality Inventory–2 (MMPI-2) is the standardized clinician-administered test of adult personality and psychopathology for examinees eighteen and over, with the MMPI-A available for adolescents; its embedded validity scales provide a further, well-normed check on over-reporting and inconsistent responding.

C. Strategic Use of Testing

The defense IME should be designed to withstand attack. All available counseling records, testing results, and testimony — including prior-provider records — should be submitted to the defense expert, and the expert should be permitted to decide what is relevant to the expert's process and whether to conduct initial testing without the influence of other records. Expert autonomy over test selection and sequencing forecloses the cross-examination theme that counsel curated the inputs.

The testing battery should be aimed not only at malingering but at alternative causation: pre-existing conditions, family dysfunction, prior trauma unrelated to the insured, substance use, and other life stressors that provide competing explanations for the claimant's symptom presentation and undermine permanency claims. In the long-delayed claim in particular, the intervening decades will almost always contain material stressors, and the plaintiff expert who has not accounted for them has not performed a differential etiology at all.

VII. Challenging Plaintiff's Experts: Attacking the Foundation by Challenging Forensic Interviews, Suggestibility, and Demonstrating Confirmation Bias

A. The Science of Confirmation Bias in Abuse Investigations

In the non-physical-injury claim — the typical institutional abuse claim — the forensic interview of the child is frequently the foundation of the entire case: it drives the agency finding, shapes the criminal investigation, and feeds the therapeutic record that plaintiff's damages experts rely upon in support of their opinions. The defense strategy, accordingly, is to examine that foundation against the scientific literature and obtain concessions undermining the reliability of the interview and subsequent report. The controlling concept is confirmation bias: selectively seeking out, focusing on, and attaching greater weight to evidence that supports rather than refutes one's existing beliefs.¹² Confirmation bias is one of the most important sources of error in clinical assessment and judgment, and that it is structurally embedded in child abuse investigations because forensic interviewers are hired by the state and work for the prosecution.¹³

The literature establishes that investigative professionals are predisposed to seek incriminating evidence while ignoring exculpatory evidence. A related concept — “adversarial allegiance,” describes the bias of forensic experts toward conclusions favoring the side that hired them, and it applies with equal force to the state-retained interviewer and to the plaintiff's retained expert.¹⁴ The problem is compounded by examiner overconfidence: a global survey of 403 forensic examiners across 21 countries found that examiners regarded their own judgments as nearly infallible, with most believing themselves immune to bias or able to overcome it by willpower alone.¹⁵ And a national survey of 784 child sexual abuse interviewers found that interviewers were far more concerned about false denials (83%) than false allegations (11%) — while conceding their own interviews were “slightly” leading — a striking asymmetry of priorities that defense counsel can develop on cross-examination.¹⁶

Defense counsel should not assume that this bias is self-evident to the factfinder or, for that matter, to the defense team. In a study providing 130 defense attorneys with information pointing to confirmation bias in a forensic medical evaluation, the vast majority failed to detect it and consequently failed to construct cross-examination questions that would reveal the concern to

¹² O'Donohue & Cirlugea, *supra*.

¹³ O'Donohue & Cirlugea, *supra*.

¹⁴ Dror, I.E. & Murrie, D.C., *A Hierarchy of Expert Performance Applied to Forensic Psychological Assessments*, 24 Psychol. Pub. Pol'y & L. 11 (2018), discussed in O'Donohue & Cirlugea, *supra*.

¹⁵ Kukucka, J. et al., *Cognitive Bias and Blindness: A Global Survey of Forensic Science Examiners*, 6 J. Applied Res. Memory & Cognition 452 (2017), cited in O'Donohue & Cirlugea, *supra*.

¹⁶ Fessinger, M.B. & McAuliff, B.D., *A National Survey of Child Forensic Interviewers*, 44 Law & Hum. Behav. 113 (2020), cited in O'Donohue & Cirlugea, *supra*.

jurors.¹⁷ Preparation with the defense expert — who can annotate the interview transcript question-by-question against the professional guidelines and the suggestibility literature — closes that gap.

B. The Suggestibility Research

Case studies demonstrate that biased adults produce false statements from children. In a frequently cited developmental study, children ages three to five who experienced an identical, innocuous play event were later questioned by either a biased interviewer — who inserted false statements suggesting the child had interacted with a man in the playroom — or a neutral control. Children questioned by the biased interviewer gave significantly more incorrect responses.¹⁸ In a pediatrician study, five-year-olds re-interviewed a year after a checkup and fed misleading reminders became grossly inaccurate: half incorporated the misleading suggestions into their reports, and 38 percent added further non-suggested but inaccurate events, while non-misled children remained highly accurate.¹⁹

In another study, interviewers who had questioned three children who attended a birthday party wrongly assumed a fourth child had attended as well and unintentionally engaged in biased questioning to confirm that preconception; sixty percent of the non-attending children falsely claimed to have been at the party, and 85 percent of interviewers wrongly concluded that all four children attended.²⁰ Contamination also occurs before any formal interview: professionals given false information about a play session repeatedly used suggestive questions, and children falsely agreed they had engaged in roughly 30 percent of activities that never occurred — some involving bodily touch — with initial deniers later changing their accounts and supplying false details.²¹

Parental coaching and pre-interview contamination deserve particular attention, because they occur outside the record and are almost never documented. Parental and peer witness contamination is prevalent in minor abuse cases. Undersigned counsel has handled several abuse cases wherein law enforcement or investigator depositions revealed parental coaching of the minor victim even though those critical facts were absent in the official investigation findings.

¹⁷ Despodova, N.M., Kukucka, J. & Hiley, A., *Can Defense Attorneys Detect Forensic Confirmation Bias? Effects on Evidentiary Judgments and Trial Strategies*, 228 *Zeitschrift für Psychologie* 216 (2020), cited in O'Donohue & Cirlugea, *supra*.

¹⁸ Quas, J.A. et al., *Developmental Differences in the Effects of Repeated Interviews and Interviewer Bias on Young Children's Event Memory and False Reports*, 43 *Developmental Psychol.* 823 (2007), cited in O'Donohue & Cirlugea, *supra*.

¹⁹ Bruck, M. et al., *"I Hardly Cried When I Got My Shot!": Influencing Children's Reports About a Visit to Their Pediatrician*, 66 *Child Dev.* 193 (1995), cited in O'Donohue & Cirlugea, *supra*.

²⁰ Bruck, M. et al., *The Effect of Interviewer Bias on the Accuracy of Children's Reports and Interviewer's Reports* (Soc'y for Res. in Child Dev. 1999), cited in O'Donohue & Cirlugea, *supra*.

²¹ White, T.L., Leichtman, M.D. & Ceci, S.J., *The Good, the Bad, and the Ugly: Accuracy, Inaccuracy, and Elaboration in Preschoolers' Reports About a Past Event*, 11 *Applied Cognitive Psychol.* S37 (1997), cited in O'Donohue & Cirlugea, *supra*.

In one study on the potential for forensic investigation contamination 71 percent of minors studied maintained that a fabricated event really happened even when directly asked whether it occurred or their mother had merely read it to them.²² The practical implication for the defense is that the interview transcript is not the beginning of the account. What the child was told, asked, and rehearsed before walking into the interview room is a discoverable and frequently decisive subject, and the failure of the original interviewer to explore it is itself a methodological defect.

The McMartin Preschool prosecution — at the time the longest and most expensive trial in California history, ultimately ending in acquittals after some defendants had spent years in prison — in which empirical study later confirmed that the interview techniques used, including repeated questioning and social conformity press (“Other children reported abuse, how about you?”), were suggestive and produced false reports from children.²³ The defense point is not that children lie; it is that adult error — biased interviewing, parental suggestion, and contamination — can and demonstrably does manufacture false narratives in a subset of cases, and that the facts of each claim or case must rigorously be examined during the investigation, discovery and deposition process.

C. Auditing the Interview Against Professional Standards

The APSAC Practice Guidelines supply the professional standard against which the forensic interview in any given claim can be measured. The Guidelines require interviewers to maintain a neutral, objective stance; to be open-minded and consider all possible explanations for the allegation; to avoid stereotype induction; and to use developmentally appropriate language.²⁴ They prescribe a phased, structured interview — introduction, ground rules, narrative practice, open-ended substantive questioning, and closure — and direct that open-ended “funnel” questioning be maximized while closed-ended, recognition-based prompts be minimized because they encourage guessing, rely on interviewer-supplied (and possibly biased) information, and produce increased inaccuracy.²⁵ The Guidelines caution that interview aids tap less-accurate recognition memory: anatomical dolls may not be used as a diagnostic tool or to elicit disclosures; anatomically detailed drawings introduced early in the interview carry an increased risk of erroneous reports of touch; and puppets, doll houses, and similar media are not recommended at all.²⁶ Video recording is recommended whenever possible, and the Guidelines acknowledge that a child’s statement cannot be evaluated apart from what preceded it — including what the child was told before the interview.²⁷

²² Poole, D. & Lindsay, D., *Children’s Eyewitness Reports After Exposure to Misinformation From Parents*, 7 J. Experimental Psychol.: Applied 27 (2001), cited in O’Donohue & Cirlugea, *supra*.

²³ Garven, S. et al., *More Than Suggestion: The Effect of Interviewing Techniques From the McMartin Preschool Case*, 83 J. Applied Psychol. 347 (1998), discussed in O’Donohue & Cirlugea, *supra*.

²⁴ APSAC Taskforce, *Forensic Interviewing in Cases of Suspected Child Abuse: Practice Guidelines* (Am. Prof’l Soc’y on the Abuse of Children 2012).

²⁵ APSAC Practice Guidelines, *supra*.

²⁶ APSAC Practice Guidelines, *supra*.

²⁷ APSAC Practice Guidelines, *supra*.

Every departure from these standards in the claim under evaluation is defense material: an unrecorded interview, an interviewer without specialized training, leading or repeated questions, early use of body maps, failure to explore alternative explanations, or a caregiver present and prompting. An interview that never explored rival plausible hypotheses — that never asked, for example, “Tell me everything you can remember about when you and your mom talked about this” — failed a basic test of objectivity. And the literature shows such departures are common in practice.

Finally, the psychometric gap is itself a defense argument. Little is known about the error rates of the prevailing forensic interview protocols — their rates of false positives (specificity) or false negatives (sensitivity) — a deficiency that O’Donohue and Cirlugea expressly connect to the Daubert standard of admissibility, under which known or potential error rate is a core reliability factor.²⁸ A plaintiff expert who vouches for the reliability of the interview, or opines that abuse occurred based on it, can be pressed to concede that the field cannot state the error rate of the very instrument on which the opinion rests. Current forensic interview practice, often hides the warts of the interview: unexplained inconsistencies in core details, illogical logistics, and even fantastical elements are omitted from conclusions rather than weighed.

At trial, the defense expert is the courtroom translator of this science. Voir dire of the plaintiff’s witness on qualifications and foundation, methodology-focused cross-examination, and exposure of adversarial allegiance are all more effective when a credentialed defense witness has already framed the standards for the jury. Presented properly, the critique is neutral and methodological rather than an attack on the claimant — which preserves claimant dignity, avoids the victim-blaming perception that alienates jurors, and keeps the jury’s attention on the reliability of the process that produced the allegation.

VIII. Conclusion

Sexual abuse claims against churches and schools are often won or lost on the quality of the evidentiary record and the quality of the experts who interpret it. The claims professional who moves quickly at first notice by preserving evidence and retaining qualified defense counsel to assemble the appropriate team of experts creates the foundation for a successful claim resolution.

²⁸ O’Donohue & Cirlugea, *supra*.

Cracking the Case: Effectively Investigating Claims without Getting Egg on Your Face



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Tips for Effectively Investigating Claims

There is no substitute for a thorough investigation into a claim. While each claim may present different circumstances, some basic investigative skills and considerations may just get you to the last chapter of your claim faster and with a better result.

I. STATEMENTS & INTERVIEWS.

“I just know that any time I undertake a case,
I'm apt to run into some kind of a trap.”
Nancy Drew: The Clue of the Broken Locket

A. Unrecorded Statements and Interviews.

One of the first steps in any claim investigation should begin with obtaining statements from those immediately ascertainable individuals with knowledge of the claim. Statements serve multiple purposes both for claims investigation and for future potential litigation. At the commencement of a claim, statements can provide basic information about the circumstances surrounding the loss and the damages likely to be asserted and can open doors to other areas of investigation. While taking a statement, it is important not only to find out what someone observed, heard and understood as an eyewitness but also to learn if they know of any other witnesses, potential claimants, potential tortfeasors or other sources of information including whether any documents, recordings or photographs exist with respect to the loss. When the statement is complete, you should have a clear mental picture of what that witness knows and if he or she will be a favorable or adverse as the claim progresses.

B. Recorded Statements.

The benefit of obtaining a recorded statement is that it is a simple and effective way to lock a witness into their story. Beware, however, that these recorded statements can be discoverable. Disgruntled, angry or combative witnesses (and insureds) can provide unfavorable and potentially inaccurate information that can create problems for future litigation. If you are not comfortable with the information or prior (unrecorded) statements that have been provided by your insured, you should think twice about taking a recorded

statement. However, if you suspect the claim has an element of fraud, a recorded statement should be obtained and can often be useful during a subsequent Examination Under Oath.

C. Who Should You Obtain a Statement From or Interview?

Statements can and should be obtained from everyone who may have relevant information to a claim. Consider not only the standard eyewitness statement but also individuals with information related to liability; those who may have information with respect to a claimant's purported damages; those who may be deposed; any police officer who investigated a claim may be willing to provide additional information about their recollection of an event; and first party claimants on coverage issues.

D. Timing a Statement.

Timing can be everything. For liability witnesses, it can be significant to obtain a statement early on in the claims process. That is when someone's memory is the freshest and is oftentimes before statements can be sanitized or altered by talking to others, including counsel. For damage witnesses, consider taking multiple statements. In bodily injury cases, an initial statement can be useful in determining the scope of injury while statements later in the process can help evaluate status of recovery and permanency.

E. How to Obtain Statements.

The most obvious and reasonable method to obtaining a statement or interview is by the adjuster handling the file in a phone call. However, there may be some cases where it would be beneficial to observe the witness as you are discussing the claim. Consider using Skype services and Facetime if the witness is agreeable and those options are available to you. If not, retention of an investigator to go out and personally conduct an interview may give you the additional insight you need. That said, when choosing an investigator, make sure it is someone you are comfortable with and who you think can provide a good analysis on the presentation of the witness and can give you an understanding of how the witness may present at trial. If it is a contentious case that you believe is likely to be litigated, consider hiring counsel to complete the

interviews or obtain the statement—especially if you are concerned with your insured or representatives/employees of your insured. These witnesses in particular need to be fully vetted as potential witnesses in order to properly evaluate the claim. If it is a first-party claim, counsel can also conduct an Examination Under Oath to further investigate the claim and any potential coverage issues.

F. How to Prepare for Taking a Statement.

“Read, read, read. That's all I can say.”
Nancy Drew—The Secret of the Old Clock

Preparation for taking a statement should begin with a full and complete understanding of your file. The importance of knowing and understanding your claim file, potential areas of concern for both liability and damages and coverage issues which can all come up during an interview or statement cannot be underestimated. Knowing your file allows you both the ability to focus in on specific areas of inquiry, but it also provides a basis for an immediate understanding of inconsistent statements or confusing statements which can then be addressed directly.

While drafting questions prior to the interview may provide some comfort to the adjuster, it often results in an ineffective interview. An outline of topics that need to be addressed can be much more effective. It allows the questioner to really listen to the answers that are being provided and formulate follow-up questions as the conversation progresses. The most common mistake in conducting interviews is failing to ask the follow-up questions. Inevitably, this stems from either not knowing your file or a feeling of being tied to a list of questions.

II. INSPECTIONS.

“The world is full of obvious things which nobody by any chance ever observes.”
Sherlock Holmes Quote-The Hound of Baskervilles

Inspections can be critical in both understanding and investigating the claim. Scene investigations can be crucial in determining how a loss actually occurred. Though photographs are useful, often they misrepresent the actual

condition at the time of the loss. For example, shadows can diminish lift discrepancies in concrete and poor angles can fail to accurately show the curve of a road. If the physical conditions surrounding a loss are significant in the claim, consider retaining an investigator who can provide full and complete descriptions and ask that they take a video of the scene. It may also be important to complete the site observation at the same time of day as when the loss occurred. The location of the sun throughout the day can considerably change what the claimant/tortfeasor may have been able to observe at the time of the loss (think shadows and blinding sun).

Vehicle inspections and product inspections can also provide a great deal of information required for a complete evaluation of the claim. Consideration should be given as to whether the damages are consistent with the story given by witnesses.

III. ELECTRONIC SOURCES OF INFORMATION.

“It is a capital mistake to theorize before one has data. Insensibly one begins to twist facts to suit theories, instead of theories to suit facts.

Sherlock Holmes Quote-A Scandal in Bohemia

While the “data” Holmes is referencing may not be electronic sources of information, his sentiment remains correct. An investigation should not be completed without a full evaluation of electronic sources of information. This “data” can come in many forms and has become more and more accessible and prominent in recent years.

Google Maps or similar websites can provide a general satellite view of a loss location. There is also the ability to look back historically at some locations which may prove to be beneficial in identifying any material changes to the location at issue. For bodily injury claims, consider accessing a satellite view of the accident site during a recorded statement or interview. It can help put the facts of the case in perspective.

Facebook can contain a plethora of information but the first hurdle is to ensure you have the correct account identified. When taking statements or conducting interviews, make sure to ask about any nicknames, hobbies, work

history, spouses names and children's names. This information can help confirm you have identified the correct social media account. Social media license search tools can also be useful.

Prior litigation history provides a plethora of information that may be useful in investigating claims. Many state court websites allow searches by individual personal legal names and business names for judgments, civil actions, criminal actions and bankruptcy proceedings. Some states also provide marriage and divorce information which can contain extensive personal information.

IV. EXPERTS, INVESTIGATORS AND OUTSIDE COUNSEL.

"Nothing clears up a case so much as stating it to another person."
Sherlock Holmes Quote—Silver Blaze

Even Holmes relied on others—use Watson! Experts, investigators and outside counsel can provide invaluable insight and information into claims.

Outside investigators, as discussed above, become the local eyes and ears of adjusters who cannot complete in person evaluations, inspections or interviews. Remember, however, that recorded statements and photographs taken by investigators may be discoverable.

Defense counsel should be involved early to assist in conducting and supervising investigations where the claim is contentious, where it is likely litigation will ensue, where there are fraud concerns and in cases of high damage with questionable liability. These are all claims where care should be taken in the investigation process to ensure attorney/client privilege is maintained and protected and where defense counsel would be in the best position to set the stage for future litigation.

V. CONCLUSION.

"How often have I said to you that when you have eliminated the impossible, whatever remains, *however improbable*, must be the truth?"
Sherlock Holmes Quote—The Sign of the Four

Conducting a thorough and complete investigation into all claims is the foundation for effective claim management. Invoking basic investigative skills can help limit exposure, gain control of liability and damage concerns and help efficiently evaluate and settle claims.

Defending Daycare Negligence Claims



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Daycare Claims: Investigation, Defense, and Resolution Strategies for Insurers

Understanding the Daycare Claim Landscape

Claims involving daycare facilities present unique challenges for insurers, claims professionals, and defense counsel. Unlike many commercial liability claims, daycare claims involve vulnerable children, heightened emotions, increased regulatory oversight, and significant reputational concerns. As a result, even relatively minor incidents can escalate into complex, high-exposure matters requiring immediate attention and careful handling.

One of the primary reasons daycare claims are different is the nature of the population involved. Young children often cannot clearly communicate what occurred, creating evidentiary challenges and increasing reliance on witness testimony, documentation, and physical evidence. Jurors are frequently sympathetic to injured children and their parents, making these claims particularly sensitive. In addition, state licensing authorities, child protective services, and law enforcement agencies may become involved, creating multiple layers of scrutiny beyond the civil litigation process.

Daycare claims typically involve numerous stakeholders. Parents seek accountability and reassurance that their children are safe. Daycare providers and facility owners face potential liability exposures, licensing consequences, and reputational harm. Regulators investigate compliance with childcare rules and standards. Medical providers may be involved in evaluating injuries, while law enforcement and child protective services often investigate allegations of abuse or neglect. These overlapping interests frequently result in parallel proceedings occurring simultaneously. A single incident may trigger civil litigation, administrative investigations, criminal inquiries, insurance coverage issues, and licensing reviews.

Several categories of claims arise repeatedly within the daycare environment. Physical injury claims remain among the most common and include playground accidents, falls, transportation-related incidents, choking events, ingestion of hazardous substances, and nap-time injuries. Neglect and supervision claims commonly involve allegations that staff failed to properly monitor children, allowed children to wander away from the facility, delayed responses to injuries, or ignored known safety risks. Standard-of-care allegations often focus on failures to follow internal policies, state regulations, health and safety protocols, or individualized care plans. Staffing-related claims frequently involve allegations of understaffing, improper teacher-to-child ratios, inadequate employee qualifications, or insufficient staff training. misconduct, aims involving employee misconduct—including

rough handling, inappropriate discipline, emotional abuse, physical abuse, and sexual misconduct allegations—tend to generate the highest exposure and potential damages.

The daycare claims environment continues to evolve. Surveillance videos are increasingly available and often becomes the most important piece of evidence in a case. Social media can rapidly amplify allegations and influence public perception before facts are fully developed. Insurers also face concerns regarding “nuclear verdicts,” reptile-theory litigation tactics, and expanding theories of liability such as negligent hiring, negligent retention, and corporate negligence claims against facility owners and management companies.

Investigation and Claim Handling Best Practices

Successful claim resolution often depends on actions taken during the first few days after notice of an incident. Insurers and daycare operators should treat the initial 24 to 48 hours as a critical evidence preservation period. Immediate steps should include securing incident reports, identifying witnesses, preserving surveillance footage, safeguarding electronic communications, and collecting relevant records. Delays during this stage can result in the loss of critical evidence and significantly weaken the defense of a claim.

Litigation hold procedures should be implemented immediately whenever serious injury, abuse allegations, or likely litigation is anticipated. This process should include preserving surveillance recordings, emails, text messages, personnel records, training materials, attendance records, and other potentially relevant documents. Coordination between the insurer, defense counsel, and daycare operators is essential to ensure that privileged communications remain protected while maintaining compliance with preservation obligations.

A thorough investigation requires collection and review of several categories of records. Child-specific records may include enrollment documents, medical information, incident reports, behavioral histories, and communications with parents. Facility records such as policies and procedures, licensing records, inspection reports, prior complaints, and safety audits often provide important context regarding operational practices and historical issues. Employee files should also be reviewed carefully, including background checks, certifications, training documentation, disciplinary records, and performance evaluations. These materials frequently become critical exhibits during litigation.

Several key liability issues should be examined in every daycare claim. Supervision remains a central focus. Investigators must determine where staff members were located, whether supervision was active or passive, and whether the incident was reasonably foreseeable. Compliance with teacher-to-child ratio requirements is equally important. Accurate classroom counts, staffing schedules, and records regarding break coverage can prove

decisive when evaluating liability. Hiring and retention practices should also be scrutinized to determine whether employees were appropriately screened, whether references were checked, and whether management ignored prior complaints or warning signs. Lastly, policy compliance must be assessed by determining whether applicable procedures were followed, whether policies were reasonable, and whether staff received adequate training.

Witness development is another crucial component of claim handling. Employee interviews conducted early in the investigation often produce the most reliable recollections and help establish accurate timelines. Parent communications should be handled professionally and carefully to avoid unnecessary admissions while maintaining transparency and setting realistic expectations. In complex cases, consultation with childcare administration experts, pediatric specialists, regulatory experts, and human factors professionals can provide valuable insight regarding standards of care and causation.

Defending and Resolving Daycare Claims

After completing the initial investigation, insurers should conduct an early liability assessment. Effective evaluation begins with answering three fundamental questions: What happened? What should have happened under the circumstances? Can any difference between the two be reasonably explained? This assessment allows professionals to identify strengths and weaknesses before positions become entrenched.

Strong defenses often center on evidence demonstrating compliance with facility policies, adherence to regulatory requirements, appropriate supervision, and a lack of causal connection between alleged deficiencies and the reported injury. Conversely, cases become significantly more challenging when evidence reveals ratio violations, incomplete documentation, prior similar incidents, or inconsistent witness accounts. Early recognition of these weaknesses allows insurers to make informed reserve and settlement decisions. [

Developing a persuasive defense narrative is critical. A central theme in many daycare cases is that childcare providers are held to a standard of reasonable care, not perfection. Children can be unpredictable, and not every injury results from negligence. The defense should focus on whether supervision was reasonable under the circumstances rather than whether an accident theoretically could have been prevented. Foreseeability analysis is equally important. Defense counsel should evaluate whether the risk was known, whether the conduct was expected, and whether the incident could realistically have been prevented through different actions.

Another important consideration is distinguishing regulatory violations from negligence. Licensing deficiencies may provide plaintiffs with persuasive evidence, but not every technical violation causes an injury. Effective defense strategies focus on causation and

avoid allowing jurors to assume that a regulatory violation automatically establishes legal liability.

Certain categories of claims require heightened attention. Catastrophic injury cases involving traumatic brain injuries, permanent disabilities, drownings, or severe playground accidents may expose insurers to substantial damages and aggressive plaintiff strategies. Abuse and misconduct allegations often require crisis management planning, independent investigations, careful coverage analysis, and active reputation management. Wrongful death claims demand immediate response protocols, strategic media considerations, and prompt retention of qualified experts.

Resolution strategies should be tailored to the facts and exposure presented by each case. Early settlements may be advantageous when liability concerns are significant, and litigation costs are likely to exceed the value of an efficient resolution. Mediation can provide a structured opportunity to communicate risks, present key evidence, and facilitate negotiated settlements. When trial becomes necessary, insurers and defense counsel must carefully address jury perceptions, utilize demonstrative evidence effectively, retain qualified expert witnesses, and thoughtfully evaluate issues related to testimony from child witnesses.

Conclusion

Daycare claims present a uniquely challenging environment due to the vulnerability of the children involved, the emotional nature of the allegations, and the extensive regulatory oversight governing childcare operations. Successful claim management depends on rapid evidence preservation, comprehensive investigation, detailed documentation, and early evaluation of liability and exposure. Video evidence, staffing records, training documentation, and employee conduct frequently determine case outcomes. Perhaps most importantly, insurers must distinguish regulatory issues from actual legal causation while developing a clear and credible defense narrative. By conducting timely investigations and making informed early assessments, insurers can improve claim outcomes, control costs, and better manage the significant risks associated with daycare liability claims.