

# RISK & INSURANCE

## Why the Jury Is (Still) Out

*What lessons does the Blagojevich trial hold for risk managers staring down a case that's gone to a civil jury?*

It finally happened. After years of being able to resolve most disputes before lawyers even got involved, and after either winning the rest of your cases on motions or settling before trial, there was one case that the judge wouldn't dismiss and that you couldn't settle. It actually went to trial. Your record as a risk manager is no longer perfect.



And it was a jury trial. You sat through the whole thing. It was a new experience. You had to look interested, caring and compassionate, even if you knew the other side was lying. You couldn't scream, "Oh, you have got to be kidding me," even though you wanted to. You couldn't even pull out your BlackBerry to check the hundreds of e-mails you knew were piling up.

Now the jury is deliberating. The waiting really is the hardest part.

As I am writing this, the Blagojevich jury, which is trying to decide whether the former Illinois governor broke a bunch of laws by allegedly offering to sell Barack Obama's senate seat, has been deliberating for 14 days. What could they possibly be talking about?

Having talked to jurors after their deliberations, I am happy to report that most of them really do focus on the highlights of the case. True, they don't pay attention to everything (remember when you reached for your BlackBerry), but they do remember quite a bit, and they keep asking themselves whether what they heard made sense.

Jurors usually aren't concerned with minor inconsistencies. With that being said, if they decide a witness' testimony doesn't pass the "smell test" or that a witness is trying to deceive them, they have no problem disregarding everything that witness said. In fact, if they decide that a witness is trying to deceive them, they often decide that the opposite of what that witness said is true. While we have all met someone who can pull the wool over people's eyes, it is hard to pull the wool over everyone's eyes at the same time. That is the point of a jury. One of the jurors should pick up on everything.

Admittedly, civil juries rarely deliberate for long. Most trials are shorter than Blagojevich's 39-day trial and have fewer counts. More importantly, civil juries can (and do) compromise. If some jurors think the defendant is liable and others think that the defendant is not liable, they can compromise by finding liability but not much in damages. It is a rare juror who will keep arguing against liability if the remaining jurors say, "Let's give the plaintiff \$1,000 and go home." Jurors also compromise on the amount of damages. While jurors rarely just "average everyone's number," very few people stand on principle over how much something is worth.

The most nerve racking thing is when the jury asks a question. Jurors' questions inevitably raise the issue of whether you should settle before the jury returns a verdict. The problem with changing your settlement posture based on jurors' questions is that you don't know why the jurors are asking the question. They could, after all, be trying to rule something out. They could also be trying to appease one juror, or convince her that she is wrong on a particular point.

The bottom line is, if you had a crystal ball, you wouldn't be sitting around waiting for a jury to come back. Instead, you would either be picking stocks, or better yet relaxing on a beach

because you picked last week's PowerBall numbers. Until you get a crystal ball, you have to stick to your guns and wait for the verdict. Unless, of course, you are a defendant and the jury asks for a calculator.

**AARON KRAUSS** is a trial lawyer in Cozen O'Connor's Philadelphia, Pa. office. He is writing in place of our regular The Law columnist, Philip G. Kircher. Kraus didn't actually write this while waiting for a jury to come back, but a jury once make him wait so long that he could have done so.