

**VOIR DIRE CONSIDERATION
AND THE PROPERTY DAMAGE
SUBROGATION CASE**

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VOIR DIRE CONSIDERATIONS IN THE PROPERTY DAMAGE

SUBROGATION CASE

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I. CONSTITUTIONAL/LEGAL BASIS FOR VOIR DIRE

- A. The right to a fair and impartial jury is guaranteed in both civil and criminal cases, Pennsylvania Constitution Article 1 Section 6, 9; Schwarzbach v. Dunn, 252 Pa. Super. 454 (1977), Commonwealth v. Futch, 469 Pa. 422, 366 A.2d 246 (1976);
- B. Litigant may inquire into bias or other subject which bears on juror's impartiality, Commonwealth v. Futch, 469 Pa. 422 (1976).

II. CONDUCT OF VOIR DIRE

- A. Conduct of Voir Dire is within discretion of trial court in both Pennsylvania and Federal Court, Star v. Allegheny Hospital, 302 Pa. Super. 215 (1980);
- B. Trend is for court to conduct Voir Dire in order to expedite proceedings;
- C. Trend in Philadelphia is to provide additional written demographic information regarding prospective jurors as a result of a questionnaire filled out by the juror in the assembly room;
- D. Court may conduct Voir Dire without counsel, Commonwealth v. Williams, 221 Pa. Super. 352. Counsel should submit requested Voir Dire.

III. TRADITIONAL PURPOSES FOR VOIR DIRE

- A. Bonding with jury;
- B. Finding friends among jurors;
- C. Educating panel regarding theories;
- D. Exposing prejudice and bias; and
- E. Explaining burden of proof.

IV. PROPERTY DAMAGE SUBRO CASE

- A. Unique in some way;
 - i) Damages usually liquidated;
 - ii) No pain and suffering;

- iii) Can be technical, engineers/fire experts;
 - iv) Almost always involve insurance company employees as witnesses.
- B. No sex appeal except for impact of plaintiff's property loss which can be significant;

V. AGE OLD NOTIONS ABOUT JURY SELECTION

- A. Middle age jurors better for plaintiff;
- B. Ethnic jurors better for plaintiff;
- C. Round face, friendly manner, jovial temperament better for plaintiff;
- D. Touchy feely/liberal types, artists, musicians, laborers, carpenters, etc. better for plaintiff;
- E. Suburban housewives good defense jurors;
- F. Young people and old people better defense jurors;
- G. German, English and any of the Scandinavian countries better defense jurors;
- H. Meticulous types, better defense jurors;
- I. Generalizations probably wrong.

VI. JURY SELECTION AS A CRAP SHOOT

- A. Age old notions don't apply;
- B. Difficult to pigeon hole people because of mobility both socially, economically and physically;
- C. Marcia Clark tells jury selection consultants that she can relate to black women and rejects their advice;

VII. INSURANCE AS ISSUE IN LITIGATION

- A. How to deal with in Voir Dire;
- B. Two different cases;
 - i) Insurance company as a named litigant

- a. Often name the insurance company as a plaintiff to obtain federal jurisdiction
- b. Company as a defendant in a coverage case;
- c. May be required by court to name real party in interest.
- ii) Insurance company is subrogated or is defending but is not named.
 - a. Information regarding insurer may come inadvertently through a witness or as a result of a witness' job description;
 - b. Witness may blurt out the fact of insurance;
 - c. Try to hide fact but it's obvious;
 - d. Defense may get to cross examine an insurance employee to show bias during investigation.

VIII. WHEN INSURANCE COMPANY IS LITIGANT

- A. Must be addressed in Voir Dire;
- B. How to handle;
 - i) When you get lemons, make lemonade;
 - ii) Charlie Manson is a human;
 - iii) Everybody has insurance and everybody hates their insurance company
Americans love to be fair in the face of such a situation;
 - iv) Don't hide from the facts;
 - v) Ask for a show of hands of perspective jurors as to who has insurance, who likes their insurance company, and who can be fair to their insurance company - three different concepts and the difference is important.

IX. WHEN INSURANCE COMPANY IS NOT A NAMED LITIGATION

- A. Reasonably intelligent juror will probably figure out that insurance is involved;
- B. Reasonably intelligent juror may not like the fact that the issue of insurance is being hidden;

- C. Jurors don't really care about insurance companies at litigants anymore;
- D. A careful Voir Dire can educate jury as to the status of insurance on both sides of the courtroom;
- E. Be sensitive to the issue but don't stress it, not something to discuss ad nauseam in closing.

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