PLUS Podcast Ep 2 Expanding D&O Knowledge The Experts' DOmain

PLUS Staff: [00:00:00] Thank you for listening to this PLUS Podcast, Expanding D&O Knowledge, The Expert's DOmain. Our host, Justin Kudler of ARC Excess and Surplus, a CRC Group company, will be joined by featured guest Doug Greene of BakerHostetler. Before we get started, we would like to remind everyone that the information and opinions expressed by our speakers today are their own and do not necessarily represent the views of their employers or of PLUS. The contents of these materials may not be relied upon as legal advice. With that said, I am pleased to turn it over to Justin Kudler.

Justin Kudler: Thanks, Tikeya. Welcome everyone to Expanding D&O Knowledge, The Expert's DOmain. I'm excited to drill down on today's topic by exploring with today's guest, Doug Greene, who will introduce himself.

Doug Greene: Hi, everybody.

It's an honor [00:01:00] to be here today. My name is Doug Greene. I lead BakerHostetler's Securities and Governance Litigation team. I've defended securities and governance litigation full time for more than 30 years. Part of my job, of course, is to win cases and to get successful outcomes for my clients, but I regard it as very, very important to keep them comfortable in addition to getting them through the litigation safely.

One of my main philosophies is, I can do that best when I work collegially with the broker and with the D&O insurers. Together we form a triad relationship. We put our common clients in the middle, and we keep them safe and protected that way, so thank you, Justin. It's a pleasure to be here.

Justin Kudler: We're happy to have you.

So, I am going to give a brief introduction to today's issue, which is skyrocketing defense costs in securities litigation -- what can be done? A brief introduction to the defense cost issue in securities litigation, so defense costs are covered [00:02:00] loss under a D&O policy. Policies typically say, "No insured may incur any defense expenses without the insurer's consent, such consent not to be unreasonably withheld or delayed or conditioned," something like that.

Insurers generally approve counsel, with occasional limited discussion of rates or other issues. Defense costs are paid inside the limit, so they erode the money that is available for settlement, and it's worth noting that there are no defense protocols typically in the policy, so there is an open-ended blank check model.

The only check here is reasonableness. There are no staffing or total hour constraints that are stated in most policies. Now, if the core purpose of D&O insurance is protecting individuals serving as directors and officers, the question we have to ask is whether the system protects them, so that is the issue in defense costs in securities litigation, and I will start, Doug, with a question to [00:03:00] you.

How do you break down the defense cost problem from the defense perspective rather than from the insurance perspective? And I'll toss in some things about the insurance perspective.

Doug Greene: That's a good question, Justin, because when we think about defense costs, often we think about it from the insurer's perspective.

We as defense counsel say, well, the insurer's trying to save money, but I would posit that it's really a significant strategic consideration for me and fellow defense counsel in defending our clients. I regard myself as a steward of my clients' D&O insurance proceeds. It's one of my jobs to handle those responsibly, so that I preserve enough money to defend the litigation on the merits, and then, if need be, to settle the litigation.

So it's a really important consideration on the defense side. Defense costs have skyrocketed in the last 15 years especially. There are different components of that. We tend to focus on billing rates, and obviously those [00:04:00] matter, but so too does staffing.

A lot of staffing is driven by law firm profitability. Law firms have leverage models where partners utilize other people and make money on their hours and so there is a natural tendency to staff people and to bill hours. Nature abhors a vacuum and law firms abhor unfilled productivity budgets and so, that's a component too. We just have to be honest about that. A key thing that people don't think about that much is that, in terms of skyrocketing defense costs, is the lack of strategic focus that a lot of lawyers unfortunately have. They do things and often don't think them all the way through, why they're doing them.

Every single task, every single person on a team needs to have a purpose grounded in a strategic goal of the litigation or a strategic work stream as part of the goal and the strategy in the litigation.

Justin Kudler: Yeah, good [00:05:00] point.

Doug Greene: Taking it one step further, I think the root cause of the skyrocketing defense cost problem is that the defense bar is splintered. There are I'd say 10 to 20 full-time defense lawyers who dedicated their lives and their careers to securities and governance litigation defense, but I would guess that there are more than 100 lead lawyers defending securities class actions right now. That means 80 or 90% of the lawyers leading the defense of a securities class action, currently, pending cases pending in courts, are not full-time securities litigators.

They do other things as well. They do commercial litigation, IP litigation. They do white collar work primarily, but they're venturing over into securities class action litigation, and that's unfortunate.

Justin Kudler: I was just going to ask obviously the securities, the federal securities litigation atmosphere is governed today [00:06:00] by the PSLRA, which came into law in 1995, I believe over President Clinton's veto, so that's the current state of affairs. What was it like before the PSLRA? I don't want to date you. I don't know whether you were practicing before the PSLRA was passed or not.

Doug Greene: I was. I started practicing securities litigation before the Private Securities Litigation Reform Act, which I call the Reform Act because it was meant to reform.

Justin Kudler: I come in just after, by the way.

Doug Greene: Yeah, we've been around for a long time, you and I. Before the Reform Act, and then in the wake of the Reform Act for maybe 10 years before, after the Reform Act, there was a relatively small defense bar that defended cases. I can go into the whole history of it, but there were really about a dozen lawyers or so, lead lawyers who focused on securities litigation, and it makes a big difference, in the outcomes. It makes a big difference in the budgets, and here's why the fringe players or randos, as my kids would say, why they impact defense costs. [00:07:00] First, people who don't do this for a living have to reinvent the wheel.

They have to research things that I, and other people who are also full-time securities litigators, know by heart. They've been through all sorts of things, so they tend to go in a straight line, and that's part of the strategic focus that I talked about a few minutes ago.

Those folks, it's not their fault, they just lack it because they haven't developed it because they don't do this work full-time. The splintered defense bar also creates another problem. There are some of us who have robust practices, who have plenty of work, and who litigate with what I would call an abundance mentality.

We have plenty of work. We litigate everything in a straight line. The small cases are small. The big cases, we do our best to keep manageable, but there are securities litigators with good practices, but they don't have an abundance of work, and I don't presume anybody overbills on purpose, but sometimes I think in those [00:08:00] situations, people stretch the cases to fit their budgets or fit their internal expectations or their own expectations for how big their practice ought to be.

And then I'd be remiss if I didn't throw in a third defense cost problem, which is that there are some firms that just have very, large economic structures. I don't need to name names. We all know who they are. Going into a little bit more depth on the splintered defense bar, why is the defense bar splintered?

And I think there are two problems. One is that there's no single buyer of defense counsel legal services in securities class actions, and second, D&O insurers who are in the best position to manage defense counsel don't have any control or have minimal control over defense counsel selection because it's not a duty to defend policy for public companies.

Justin Kudler: Well, clients presumably control the defense as well.

Doug Greene: Clients do and I'll [00:09:00] make this point now since you brought it up. That's a good point. The vast majority of companies that are sued in a securities class action have never been involved in one before.

Justin Kudler: Right and the general counsels likely have never been involved in one either.

Doug Greene: That's right. I would guess that fewer, less than 10% of the general counsels or heads of litigation, of public companies who get sued in a securities class action have never been through one before. And undoubtedly those folks know good lawyers. They work with a corporate firm and they have worked with other lawyers that they like, that are litigators, and sometimes they think, "Well, those people can do just fine in a securities class action." But the most important strategic decision in the whole litigation is defense counsel selection. It determines so many things.

Justin Kudler: Interesting. That's a hot take, Doug. That's a hot take.

Doug Greene: Well, it is. It's true. It determines so many things. It's certainly the first one, and I think it's the most important one because it dictates how so many things go, and because the policies are non-duty to defend, the [00:10:00] defendant company makes the defense counsel decision unless they seek broker and insurance, but they do it without that. Unfortunately though, public companies, unfortunately there's no real organizing mechanism for companies to choose defense counsel in these cases.

Justin Kudler: And maybe we'll get to this, but there certainly could be the insurance policy, or the insurance process, certainly lends itself to that, and maybe we'll get to that later.

Doug Greene: Yes. Let's talk about that in more detail in a little bit, but let me first explain another issue about why the splinter defense bar impacts defense costs. So let's take a hypothetical company, Acme Corporation. Acme has a lot of commercial litigation, okay? Acme can do a couple of things that public companies and D&O insured litigation can't do.

Acme knows the right lawyers to put in its cases, so it has a lot of commercial litigation. It has relationships with various litigators and it can pick the right lawyer for the [00:11:00] particular case. We can't do that. You know, D&O insurers and brokers have a good feel for who would fit well in a particular case.

There's some cases where you have to send 20 associates to Germany for a month. There are few firms that can do that. That's not something my firm does, but there's other kinds of cases that have different characteristics that are really good for other firms. There's no one size fits all in this.

Justin Kudler: Sure, but before you go on, another thing about defense counsel selection, I think, is that you talk about the relationship that ACME has with its firms. Well, ACME trusts their counsel, and they want their firm to do the work, and I think that sometimes plays a big part in counsel selection as well.

Doug Greene: Yeah, that's right, and the lawyers who work for ACME have an incentive to make the small cases small, so that they can continue to get a volume of work, and every once in a while, ACME will have a really big case, and so lawyers have the incentive to really make the economics work in all the [00:12:00] cases in the spectrum, from big to small. Do you know when securities class actions are filed, the median market cap is about $2 billion of a securities class action defendant company? That's very small, and then 50% of those are below $2 billion market caps.

Justin Kudler: That's very small in the context of publicly traded companies, maybe. It's not very small in the context of all companies.

Doug Greene: Correct, of all companies, but yeah, in publicly traded companies, a $2 billion market cap company is not very big, so half are against very, very small companies, and about two-thirds are against under $10 billion. And so ACME has the ability to scale and to put the right lawyers in the smaller cases and lawyers have an incentive to do those smaller cases in an efficient way. That's a little bit more of a breakdown on why the splintered defense bar impacts defense costs.

Justin Kudler: Sure, so now another observation here though is that sometimes they don't. You say that ACME doesn't know who's who in the securities litigation world, but I always wonder [00:13:00] whether there's an issue with general counsel not wanting to go in front of the board if the case doesn't turn out the way everybody wants, and having to defend hiring a firm that nobody's heard of.

And so they say, "Oh well, you know, look, I hired the best firm." And the board is maybe not sufficiently sophisticated to realize that even though such and such may be the best firm, it may not be the best firm for this particular case, but at least, I feel like maybe that gives the general counsel some cover.

Doug Greene: You know, in my view, and I've advocated this for a long time and I have a paper that focuses on defense counsel selection, that goes through the steps that a company should take in engaging defense counsel. The first thing is, involve your broker and involve your insurers in the defense counsel selection process because they know who's who.

Another is, involve your board. Involve your board in the decision-making here. The directors are going to be defendants in related derivative litigation that gets filed alongside most securities class actions.

Justin Kudler: Sure.

Doug Greene: And there's a [00:14:00] director oversight function, so what I would say, Justin, is I agree with the cover that the general counsels want to have. On the other hand, I think if they do it right, they're getting board buy-in early on, in explaining why a particular lawyer is right for this case, and why another firm, that maybe has a bigger brand name, may not be right for the particular case.

Justin Kudler: Right, so if any general counsel is listening to this, then on the one hand, yeah, you want to, when you involve the board, that is your cover.

You can then, to the extent that somebody were to come to you and say, "Oh, you know, you didn't hire the right firm" it's like, “Well, we didn't hire the right firm, right?” Because if you have their involvement...

Doug Greene: Right.

Justin Kudler: That's an interesting point, so let's move on. Doug, how does this defense cost problem impair the outcomes of these cases?

Doug Greene: Yeah, in a couple of ways. The first is higher defense costs than necessary takes away defendants' leverage in the litigation. Let me explain. Most securities class action defense [00:15:00] practices, without strategic focus, can't organically litigate many cases through class certification and summary judgment and still leave enough left on the D&O insurance policies to settle the case.

Justin Kudler: Enough money...

Doug Greene: Not enough money to settle the case. The outcome is that if a case gets past the motion to dismiss, the economically rational thing to do, if the wrong firms are defending the litigation or firms that have defense costs that are too high, you need to settle the case rather than defend and win.

Which is really unfortunate because we have great law on class certification that we as an industry have spent a lot of money to develop. We can win summary judgment motions in securities class actions. Well, for about the first 15 years of my career, if we didn't win the motion to dismiss, we moved for summary judgment. We litigated the case, tried to get things adjusted.

Justin Kudler: You can't move right away. You have to conduct all the discovery which, obviously with the PSLRA, is [00:16:00] stayed until after the motion to dismiss is decided.

Doug Greene: That's right, so now the defense costs associated with discovery, in a great many cases, are just too much to be able to litigate down the road, make a summary judgment motion, and then settle the case at that point.

So it's unfortunate because our practice has become a motion to dismiss and settle practice, which is not satisfying for defense lawyers, but more importantly, it's not satisfying for clients. They want to win the litigation, right? And, so we have class certification and summary judgment that we seldom use.

And you can win summary judgment in securities class actions. Like, I won summary judgment a year ago in a securities class action, and they're very, very winnable, but you have to have the right strategic focus, and you have to have the right economic discipline to do it. So, let's take an example, one of my median $2 billion market cap companies that has a 20% stock drop, or a $400 million market cap drop.

Let's assume that after running damages, the damages are [00:17:00] 300 million and let's say that company has $30 million of insurance. In that case, let's assume it has a $20 million settlement value, so not quite 10% of its market cap drop. About 10%, a little less than 10% of its plaintiff style damages, and it has $30 million of insurance, so the settlement value is only $10 million less than the available D&O insurance proceeds. It is very difficult for a great many defense firms to litigate the case through summary judgment for less than $10 million, especially considering related derivative litigation that erodes the policy.

Justin Kudler: Keep in mind also potentially sizable, retention or deductible as well.

Doug Greene: Yeah, but in the context of a $30 million tower, we have a 2 million, maybe, retention in today's market.

Justin Kudler: Sure.

Doug Greene: So, there's really not enough money for a lot of defense practices to defend the case through summary judgment and still have enough money to settle, at least not comfortably.

It may work out, [00:18:00] but it's very difficult, so we throw in the towel. And so the impact is that it leaves clients insufficiently defended and we don't have leverage when we go to mediation because the plaintiff's bar knows that. A great number of defense firms literally can't defend the case down the road, and so the plaintiffs have all the leverage, the defendants have none, and the settlement value becomes the lowest amount the plaintiff's lawyers will take.

Justin Kudler: But, don't we also know that the plaintiff's firm may not have the ability to try the case either?

Doug Greene: I think that is what we think a lot of times, but it's not really true. The plaintiff's firms are banding together now. The Reform Act specifies that there's to be lead plaintiff and lead plaintiff's counsel, but plaintiff's lawyers now are putting in additional plaintiffs and additional plaintiff's firms.They have more resources than I think, a lot of times, we on the defense side assume, and they have litigation funding that can help them in the right cases

Justin Kudler: And, to our point earlier where the post PSLRA, [00:19:00] there has been this splintering of the defense bar, and there used to be a smaller collegial defense bar, a more focused. I think the PSLRA probably did the opposite for the plaintiff's bar. There were a bunch of people. Whoever could win the race to the courthouse would be the lead plaintiff. Now, because you need what some people call the largest loser, and a lot of times, it is an institutional entity as opposed to an individual. All by design, it has focused the work on certain firms.

Doug Greene: That's right, so we have a double whammy. We have a splintered defense bar and we have a very focused plaintiff's bar. Seven, eight years ago, I wrote a blog series called, *Who's Winning the Securities Litigation War, Plaintiffs or Defendants?*

And I concluded that the plaintiff's bar is ahead of the defense bar because of that dynamic. They're focused and are splintering.

Justin Kudler: Well, and to your point, also the PSLRA doesn't limit the number of lawyers you have in the case, or the number of firms, so whoever is lead plaintiff's counsel can bring in whoever they want.

Doug Greene: Yeah, and they're doing that more and more.

Justin Kudler: With [00:20:00] additional expertise and/or additional bodies, and obviously this isn't a place for you to comment, Doug, or for me either, but they obviously split their fees. They come up with some kind of an arrangement.

Doug Greene: Yeah and so, I think we can't assume that the plaintiff's lawyers in any particular case can't litigate a case, can't withstand the barrage of defense work and all that. And again, one of the things we're talking about is the negative impact on our clients of too high defense costs.

Justin Kudler: Sure.

Doug Greene: We can't just try to bury the plaintiffs, and really, we can't do that.

Justin Kudler: Sure.

Doug Greene: It just doesn't work. So then another really negative impact to me on outcomes of high defense costs, is that it creates friction among the insurers, broker, and defense counsel.

Justin Kudler: When what we need is collegiality.

Doug Greene: Exactly. You know, we're all on the same side. We're in a triad relationship and we're trying to keep our clients protected. And when we start to fight about billing and things like that, the tips of the triangle split apart, and we leave our clients less protected. So, it's really unfortunate. You know, insurers [00:21:00] work to try to impose discipline on defense work and on billing through billing guidelines, but that doesn't get to the root of the problem. That just cuts around the edges.

Justin Kudler: That's right.

Doug Greene: And it frustrates defense counsel, and it leaves brokers in this awful position where defense counsel are asking their clients to make up the difference between what's billed and what the insurer pays. And it strains the broker's relationship with insurers and their clients. And it's just a mess for everybody. It's no good.

Justin Kudler: Alright, so what are the short and long-term solutions, Doug, to this problem? And then, I guess this is what we'll end with.

Doug Greene: Alright yeah, I think that in the short term we need to be able to put litigation back in securities litigation. As we've been talking about, we don't have the ability as an industry overall. We do in particular cases from time to time, but not overall to litigate securities litigation when a case gets past the motion to dismiss.

Justin Kudler: So how do we do that?

Doug Greene: Yeah, that's the [00:22:00] $64,000 question. And I think the right first step to do that is what I call a Strategic Summit. At the beginning of every case, what I advocate is that after defense counsel does some background review sufficient, to be able to size up the case, that we sit down, defense lawyer, broker, insurers and individual defendant clients. Not just the general counsel, much less just the risk manager, but individual defendant clients, and let's talk through the litigation.

Defense counsel can discuss the background facts and how he or she views the case. Is it a really difficult case? Is it a really defensible case? There are some cases where if God were our judge, we'd win, and we would just win. We know. You know, we have a human being for a judge, so we have a risk of losing.

And then we have some cases in the middle. You know, 50% of all motions to dismiss are denied, so let's try to really, honestly project where this one is headed, subject to judicial, the fact that judges are human. And then [00:23:00] let's make a strategic plan for what we do if the motion to dismiss is denied.

Is there a good economic issue for class certification? Now, we have to look at all the documents and everything later, but is the structure of the case one that's very, very defensible? And figure out what we're going to do if the motion to dismiss is denied. And then also get a budget, a viscous budget, a real budget where defense counsel has some responsibility for it.

A couple months into the case, we can do this through summary judgment, so that we can figure out the economics and how much through class cert, and how much past class cert to summary judgment, so we can make good decisions, strategic and economic decisions about what to do about the litigation, should we lose.

Again, it's a coin flip. 50% of the time, we're not going to win the motion to dismiss, and we have to figure out a plan. The worst time to do it is right after the motion to dismiss is denied, a year and a half, sometimes two years down the road because then we don't have our feet set.

Let's do that at the beginning. So that's the first near-term thing. And then second, [00:24:00] in the longer term, we have to figure out how we can get input from brokers and insurers to help get the right lawyers in the right cases. And I, for years, I've advocated small panels of defense lawyers where insurers have some more control.

It doesn't need to be duty to defend, but insurers have more control over defense counsel selection. And I think ultimately, I predict that's ultimately going to be the way things go. And with the smaller defense panel, there's more economic discipline. There's more collegiality. You get the more specialized lawyers defending more cases, and everybody would be better off if that were to happen.

But, that's a longer term thing, but in the near term, there are things we can do at policy inception that start to create that dynamic. One is that up front, the insurer and the insured company can write in potential lawyers that would defend a case, should a case arise, and include rates or even staffing expectations.There's all sorts [00:25:00] of things that could be agreed upon.

Justin Kudler: Sure.

Doug Greene: There also could be in the policy, a requirement that before hiring defense counsel, that the insureds consult the primary carrier about defense counsel before engaging anyone. All too often I understand. I hear from insurers that they just are presented with defense counsel.

Now, the insurer has a right to consent, but it would be way better for everybody, especially the insureds, if the primary insurer could have a say in defense counsel selection before they engage anyone. And then, here's an idea that I've had for a long time. As part of that, what I just described, a requirement that the insureds conduct an interview process of three or more firms, and that the primary insurer can recommend one of those firms or one of the lawyers.

Justin Kudler: Right. You're saying put one on the list.

Doug Greene: One on the list, and they need to interview them. Companies do interview processes for copiers [00:26:00] and coffee makers and all sorts of things. To take a day, and interview three defense firms, or half a day and interview three defense firms results in tens of thousands of dollars of free legal work, great strategic input.

Justin Kudler: Right, from the insurance perspective, I'll say that the idea of consulting with the primary carrier about who the counsel is or conducting interviews, those things are easier to get done than, agreements on certain firms. And, you know, it allows for a flexibility.

I like this idea. It allows for a flexibility of, the insured can still pick who they want.

Doug Greene: Yeah, and, they need to entertain, a name, or even not. I mean, even just an interview process, requiring an interview process, which probably doesn't, I would guess happens in less than 50% of all cases.

Thinking back in time, it used to happen in virtually all cases, and it was a broker-run process, but it went back, around the time of the Reform Act, and after the Reform Act for a [00:27:00] decade or so. Brokers ran it. It would be a competitive process in the vast majority of cases, and we've gotten away from that, and I think we need to get back. That we'd be better off if we did.

Justin Kudler: Okay, now how about alternative fee arrangements?

Doug Greene: Yeah, so alternative fee arrangements can be economically helpful, help keep down defense costs. A couple of them that I think are important: One is either a motion to dismiss fee cap or a success fee on a motion to dismiss.

So, I think a fee cap is a good way for a company to go because it helps them compare the economics of different bids that they get. Bid isn't really the right word, but proposals. And, they can see the risk firms are willing to take. A success fee on a motion to dismiss where you get some upside is an intriguing thing. I have mixed feelings about it

Justin Kudler: I think insurance companies do as well.

Doug Greene: Yeah, but certainly a motion to dismiss fee cap is important. I [00:28:00] think the problem with motion to dismiss fee caps is that you have to beware of bids that are so low that they're just designed to get the case. And you if you win the motion to dismiss, great. If you don't, then you have a case that's going to generate…

Justin Kudler: Also great for the law firm. Yeah, generate more bills.

Doug Greene: And I think companies need to be careful about that. I also think that motion to dismiss work is a lost art. I really care about the quality of motions to dismiss. A good reform act motion to dismiss tells a story. It tells a narrative and you need to know the internal facts to be able to tell that story well with the incorporated documents and the judicially noticeable facts. And I think what I see unfortunately, I hate to say this, but it's true, increasingly is low quality motions to dismiss and you kind of get what you pay for, unfortunately. And it goes back to the splintered defense bar.

Justin Kudler: Well, I don't know that we want to say, I'm sorry, Doug. I don't know that we want to say you get what you pay for. I mean, I think that a lot of quality work is done at lower prices.

Doug Greene: That's true, I agree with that, [00:29:00] Justin. What I mean to say is that sometimes, firms don't put as much effort into the motion to dismiss as they should, or they don't treat it as the really important strategic thing that it is, and that's what I mean to say.

Justin Kudler: Okay, on those, you talk about capping it through the motion to dismiss, but then also, you need to look beyond the motion to dismiss, right? Because that's where the fees really pile up. Not so much before the motion to dismiss.

Doug Greene: That's right. And as I mentioned, in the strategic summit process, I encourage companies and insurers to require the defense firms to do a meaningful budget at that point. It's hard to do a full case budget before you get into the company and know how the documents are stored, know how many witnesses there are likely to be, etcetera. But that doesn't take long to do, and by a month or two into the case, a good defense lawyer who's certainly one of the specialized ones that I've been talking about, can meaningfully budget the case through summary judgment, at least. And I think we need to start doing [00:30:00] that.

Well, two things: One, I think we need to start getting an indicative budget at the audition process. I think companies need to ask for an indicative budget from the firms they're interviewing, and then a refined one at the strategic summit process because you need to know what your, ultimately, economics are going to allow for you to do and that's where you can police whether you can defend the case economically through summary judgment and still leave enough money to settle the case should you not win or should you want to use the leverage of summary judgment to settle then.

Justin Kudler: Sure, I'm going to throw out a few other ideas here, and I don't know if we're running out of time, because I don't think we're time limited, but we have been going for a while. One idea, and I know I've seen it out there in the wild, is premium credits or retention reductions, depending on if you hire certain firms or whatever. Those have pluses and minuses, and I would say they've never really fully caught on but those are possibilities. Another possibility, and this I think goes to your interviewing process, [00:31:00] is, if you could create some kind of a standardized reasonableness review, in other words, based on some or all of these characteristics, the venue, the claim size, like you were saying, maybe the severity, if you could make some kind of a standardized assessment.

What is the firm's experience, the rates, the staffing model. All these things we've discussed. If there could be some kind of a standardized reasonableness review as part of the, maybe as part of the interviewing process, I think that would go a long way toward ferreting out, for example, the people who lack strategic focus that you talked about earlier.

Doug Greene: I like that.

Justin Kudler: Another possibility, or maybe I guess just something that should be kept in mind, is the strategy discussions, or I guess you call it a Strategic Summit. You know, you have to remember, and this is, maybe a bit self-serving in all of my roles, although, to be honest, I've actually played four-roles.

I've litigated these cases on behalf of defendants. I've litigated these cases on behalf of plaintiffs. I spent many years as a claim [00:32:00] handler on these cases, and now I'm a broker on these cases. So having seen it from so many different perspectives, I will say that insurers see more of these cases than basically any defense counsel.

There are certain lawyers who represent insurers, and they see even more, I would say. So it's worth keeping this in mind during strategic discussions or a strategic summit. Everyone in the game shares the common interest of defending and helping the insured, so by staying positive and working constructively, we can all make a difference.

Doug Greene: Absolutely.

Justin Kudler: So we'll end on that positive note. I hope everyone learned something new, from an expert on this defense cost issue. I hope the listener picked up some defense expertise and some understanding of this issue, which I think is a key driver on both the claim side and the underwriting side because ultimately, if these things cost more, the policies will cost more. Thanks, Doug. [00:33:00]

Doug Greene: Thank you, Justin, very much. I appreciate you having me.

PLUS Staff: Thank you for listening to this PLUS Podcast. If you have ideas for a future PLUS Podcast, please complete the content idea form on the PLUS website.