

MICHIGAN PRACTICE

HUMANIZING GOLIATH

Softening the perception of the corporation as a defendant

By Patrick M. O'Keefe

Why are corporations perceived so poorly in the public eye?

Public opinion polls show that 84 percent of all people believe corporations care only about the bottom line. Mass media feeds this perception by portraying corporations as dishonest and focused only on spread sheets, often to the detriment of its people.

This perception versus reality can often lead to challenges in the courtroom.

Many jurors are employees of corporations and often have an adversarial relationship with their employer. Their attendance on a jury is often a chance to get back at the corporation and right a wrong that most likely was not inflicted by the defendant.

To combat this dynamic, it is vital that corporations humanize themselves. Demonstrate to the public that they possess shared values. That they follow the law.

Company spokespersons must also be humanized: "I was at my son's soccer game when I got the call." It is often best for a company to have a single spokesperson.

There is also a question of whether a corporate spokesperson should be at counsel's table during trial. Some believe that a corporate representative can be distracting. For some jurisdictions, a corporate representative can be called as a witness. Sometimes the corporate representative could be identified as a wrongdoer for the company and have his credibility as a key witness hurt.

In litigation with large defense budgets, mock jurors are often used. This exercise of trying the case for practice in front of a sample jury pool allows the attorney to better understand what will satisfy actual jurors and the best approach to take overall.

Back to negative perceptions. For corpo-

rations trying to play a positive role in their community, jurors might think, "Yeah, you bring jobs, but you don't care about anything but profits."

Sometimes corporations can mount a goodwill campaign to improve their image in the community. This can backfire, however, if the public (or juror) views this as something the company has not done before or is conducting for less than sincere reasons or ulterior motives.

The physical appearance of attorneys and corporate representatives also matters in court. A jury consultant once learned from a juror, "We knew this was a wealthy corporation because their corporate representative had a nice new dress every day."

Many times defense counsel overdoes. The typical jury pool shops at Walmart and JC Penney. Trial consultants will often recommend that counsel buy their trial attire at these stores in order to better relate to the jury. Fancy silk kerchiefs, Armani suits and expensive ties often spell a level of arrogance and aloofness, which often leads to the perception that the company has deep pockets and should pay.

Defense counsel is recommended to stay at a Marriott rather than a Four Seasons. Sometimes defense counsel shows up with three tables of counsel against a single plaintiff's attorney. Who doesn't prefer David over Goliath? Such an atmosphere can needlessly favor the plaintiff and handicap the defense.

Some of the worst witnesses for corporate defense are CEOs. If you think of the environment CEOs often operate within, it is hard for them to shift gears. They are used to controlling the boardroom and often try this tactic with juries. This often undermines the case.

CEOs bring a level of arrogance that is not appreciated by jurors. It is important for witnesses to be humanized as people



over a faceless corporation.

Personal references during testimony assist in this effort.

In prepping witnesses, it is important that the witness understands how a juror views the company. Trial attorneys should spend time with the witnesses on how to discuss facts that will address juror concerns.

Taped depositions are used for focus groups to solicit this type of feedback. Recent studies have shown plaintiff attorneys are using this tool more than defense counsel.

It is funny sometimes how plaintiff's attorneys are often viewed as being able to better relate to the jury. Maybe it's because they have more information on the jury and are better prepared.

Patrick M. O'Keefe is founder and CEO of Bloomfield Hills-based O'Keefe, specializing in corporate reorganization, financing and litigation support.