

Litigation Strategies: Employer Participation Makes a Difference

The Pennsylvania Workers' Compensation system is claimant oriented. The mere fact the claimants are present, testify and are invested in the outcome of the proceedings brings an emotional element to their cases that often missing from the defense.

Especially, since much of the defense strategy is developed around communications with the insurance adjuster. You develop a relationship with the insurance adjuster. You update and communicate with the adjuster regarding the litigation. However, in developing this relationship with the insurance company, it is easy to become distanced from the employer the insurance company represents. But, in neglecting the employer, defense counsel often overlooks an important litigation tool: the emotional pull that an employer can bring to the table. It's easy for a judge to look at the defense as a faceless insurance company, often thousands of miles away, who views every case purely as dollars and cents. But when faced with an employer, who contributes to the community, works hard to make a profit for the company and its employees and knows and has a relationship with the injured employee, a judge's attitude can change.

Recently, I was involved in a case where the employer was a small business that was just opening. The owners were deeply invested in growing their company, and cared about their employees. As soon as I met with the owners, I became aware of something that was not included in my file. The owners were upset about the incident and scared about the litigation process. After speaking with them, I realized they had a compelling story to tell too, one that could have easily been overlooked if I had not taken the time to speak with them.

Recognizing which employers are invested in the outcome is the first step towards integrating the employer's side of the story into your defense strategy. How to use the emotions of the employer in the litigation process becomes a bit trickier. You first must determine whether you would like them to testify. Some small business owners can make very credible fact witnesses. I recommend considering fact witness testimony if the employer personally saw the event occur, spoke with the claimant following the event, or witnessed the claimant return to work with no problems.

Fact witness testimony is not the only way to bring the employer into the litigation. The employer has every right to show up at hearings as an interested party. The employers attending the claimant's testimony in front of the judge is helpful. First, the appearance shows not only the claimant, but also the judge that the employers are impacted by the outcome of the litigation. It reminds the judge that there are people beyond the insurance company who are affected by his or her ruling. Second, the employers come with a wealth of knowledge. Let's say the claimant testified that a certain machine looks and operates one way. Having the employers present allows you to consult with them regarding the specifics and makes for a more effective cross examination.

While employer involvement is not always something you can count on, it can be an effective tool in litigation when you have an employer who is invested in the outcome of the case.

By [Caroline Diehl](#)