

# **Federation of Defense and Corporate Counsel Winter Meeting**

February 24-28, 2026

The J.W. Marriott Desert Ridge Resort, Scottsdale, AZ

## **Psychological Warfare – Positioning Yourself as an “Advocate” for the Plaintiff**

### Outline

#### **Summary/Description:**

It is no secret that plaintiffs’ counsel in personal injury cases operate on a contingency-fee basis. Typically, those fees range from 33% to 40% depending on how quickly the case is resolved, including whether the case is resolved pre-suit. This type of fee arrangement entices a wide-range of clientele who may not have the funds to pay a retainer and fees throughout litigation but who have a sound case. While the payoff can be immense, the risk is also great. All of this matters because it helps defense attorneys understand the psyche of a plaintiff’s lawyer. In this presentation, we’ll focus on identifying “pressure points” in the motivations, incentives, and business models of plaintiff’s attorneys; appealing to and leveraging these pressure points to seek amicable and favorable outcomes; and how to work with our clients using this knowledge and wisdom, including becoming an “advocate” for the plaintiff in many circumstances.

#### **Presenters:**

- Melanie Cheairs – Partner, Mayer LLP (Moderator)
- Maxwell Brusky, Assistant General Counsel - Litigation, Transdev North America
- Jennifer Mauer Lee – Partner, Fee, Smith & Sharp
- Carolyn Ramos – Partner, YLAW Attorneys

#### **Target Audience:**

Insurance and corporate defense attorneys, and in-house/general counsel attorneys.

#### **Course Length:**

60 minutes

I.	<b>Taking a Look into Plaintiff’s Mind: The Pressure Points of Plaintiff’s Counsel</b>	
	<b>A. Business Models and Business Concerns</b>	10 minutes
	<ol style="list-style-type: none"> <li>1. Feed the Firm</li> <li>2. Client management</li> <li>3. Illustrative numbers and concrete examples</li> </ol>	
	<b>B. Motivations and Incentives for Plaintiff’s Counsel</b>	10 minutes
	<ol style="list-style-type: none"> <li>1. Competition</li> <li>2. Reputation</li> <li>3. Out-of-pocket Expenses</li> </ol>	
II.	<b>How do we appeal to Plaintiff’s counsel’s pressure points in tangible ways during the litigation process?</b>	
	<b>A. Pre-suit demands</b>	5 minutes
	<ol style="list-style-type: none"> <li>1. Analyzing the demand and discerning what’s really at issue</li> <li>2. What would litigation look like and what will those milestones be?</li> <li>3. Fee structures and up-front expenses by plaintiff’s counsel and their clients</li> </ol>	
	<b>B. If Litigation Occurs, What can be the impact of certain milestones?</b>	5 minutes
	<ol style="list-style-type: none"> <li>1. Initial pleadings</li> <li>2. Fact discovery – expenses, logistics, costs</li> <li>3. Expert discovery – expenses, logistics, costs</li> </ol>	

<b>III.</b>	<b>Resolution Methods Based on Psychological Understanding</b>	
	<b>A. Early Resolution Strategies</b>	10 minutes
	<ol style="list-style-type: none"> <li>1. Early offers, including in catastrophic events</li> <li>2. Early settlements for minors where possible</li> <li>3. Continued negotiation and picking up the phone</li> </ol>	
	<b>B. Mediation</b>	5 minutes
	<ol style="list-style-type: none"> <li>1. Effective use of discovery – limited period prior to mediation and longer period prior to mediation</li> <li>2. Creative settlement strategies - structured settlements, vocational and educational support</li> <li>3. Alternative arrangements should litigation proceed - high-low agreements, and bracketed proposals</li> </ol>	
<b>IV.</b>	<b>Case Example</b>	
	<b>A. Scenario Of Accident With Known Aggravating Factors</b>	5 minutes
	<b>B. Advocacy for Plaintiff Internally</b>	5 minutes
	<ol style="list-style-type: none"> <li>1. Explication of business model, incentives, and motivations of plaintiff’s counsel to the client</li> <li>2. Identifying process milestones and process-related pressure points internally and to client/business</li> <li>3. Identification of resolution methods and they can help both sides quickly, efficiently, and amicably</li> </ol>	
<b>TOTAL TIME</b>		<b>60 minutes</b>