

2016 HOSPITALITY LAW CONFERENCE

FEBRUARY 22-24, 2016,

REPTILE THEORY: WHAT YOU NEED TO KNOW IN 2016

Presented by:

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PRESENTER



Christian Stegmaier

Chair, Retail & Hospitality Practice Group

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- ❖ Represents the leaders in retail & hospitality doing business in SC
- ❖ Premises liability, loss prevention, alcohol liability, food claims, contracts
- ❖ Adjunct Professor, Hotel & Restaurant Law, University of South Carolina
- ❖ 30+ appearances before the South Carolina Supreme Court & Court of Appeals



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REPTILE STRATEGY: A PRIMER

The Plaintiff's Attorney's Traditional Approach

- **Focus has been on engendering sympathy**
- **“Day in the Life” Videos, emotional testimony from family members, etc.**

REPTILE STRATEGY: A PRIMER

The Plaintiff's Attorney's New Approach

- **Focus has gone from attempting to elicit sympathy for the plaintiff to a fixation on the defendant's conduct and/or behavior.**
- **Plaintiff's counsel seeks to invest the jury in the outcome and make them care about the verdict. It's about "community."**

THE REPTILE STRATEGY: THE FORMULA

- In the formula Ball and Keenan advocate
“Safety Rule + Danger = Reptile”
- Once the advocate is able to identify such a rule, and show the jury the danger to themselves and the community when it’s violated, then they’ve awakened those jurors’ reptile brains, motivating them to equate justice in this case with their own security.



REPTILE STRATEGY: PLAINTIFF'S STRATEGIES

The focus is on three main sections of the process:

- The deposition as the key to getting admissions from the company;
- The voir dire to prime the jurors with the themes before the opening; and
- The opening to capitalize on the groundwork set in each previous stage in an effort to steer jurors' responses to the case.



KEEPING THE CASE FROM GOING OFF THE RAILS


Strategies for getting things right include:

- Thorough preparation of all employee witnesses;
- Selecting the right/best Rule 30(b)(6) deponent or deponents (and not just the most convenient or accessible);
- Understandable (i.e., non-legalese) explanation to witnesses of Plaintiff's prospective Reptile Theory strategies; and

THEY WILL USE YOUR COMPANY RULES, INCIDENT REPORTS, POLICY AND PROCEDURES AGAINST YOU.

- Be prepared for trick questions on these.
 - Company policy is not usually *the law*.
- They will focus on accident reporting guidelines and investigation- were they followed?
 - Motions in limine will likely be required.

COMBATting THE PLAINTIFF'S STORY OR VERSION

- Constructing the strong case narrative;
 - Focus on responsibility, innovation, fairness, evidence, science, and facts;
 - Establishment of rules and standards: It cuts both ways; and
 - Proper objections to Plaintiff's shenanigans (discovery-related motions, pre-trial motions in limine, and motions at trial). See Hensley v. Methodist Healthcare Hospitals, 2015 WL 5076982 (W.D. Tenn. August 27, 2015); Pracht v. Saga Freight Logistics, LLC, 2015 WL 6622877 (W.D.N.C. October 30, 2015); Palmer v. Virginia Orthopaedic, PC, 2015 WL 5311575 (Va.Cir.Ct. June 19, 2016)
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THANK YOU

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