



# Expert view

Q&A with Max Koonce,  
Chief Claims Officer, Casualty, Sedgwick

The "Expert view" column presents a wide range of topics offering valuable insights and information for customers.

**edge:**

What trends are we seeing in litigation management?

**Max:**

There are probably three main reasons people reach out to attorneys for workers' compensation or liability claims. First, they may have a general fear or lack of understanding of the process. Second, they

may get frustrated with the claims administration process. These are the two reasons we have some control over. With advocacy and technology, we're working to ensure people have prompt and appropriate communication and the needed information in front of them through our examiners and/or mySedgwick.

Litigation avoidance comes through increased awareness and support. We're supporting people through communication, empathy and understanding from the start of their process with us through every step along the way – something that ties into the basic **caring counts**<sup>®</sup> beliefs and values of Sedgwick.

And then sometimes people are just intent on having legal representation through their claim. We steadily achieve positive movement with our clients' casualty expense, yet litigation continues to occur. In turn, it must be managed, taking into consideration all aspects of the immediate lawsuit and its associated expenses, as well as determining the value with respect to overall claims resolution. We must manage the expenses associated to help drive toward a resolution that attains the best value for each individual claim.

**edge:**

How is Sedgwick addressing litigation management trends for our clients?

**Max:**

Clients expect us to ensure appropriate management of litigated matters, focused on driving the best outcomes. They turn to Sedgwick because of our expertise and results. Our focus, first and foremost, is to prevent litigation, yet when it does occur, to ensure we have the best resources available.

The role of data and its importance in changing the trajectory of a claim is something we have always focused on. With analytics, we continually look to find the pinch points and apply best practices to prompt better outcomes for all parties in the process. As we continue to accumulate data, we're able to build improved litigation scorecards, allowing us to conduct analysis on attorneys and overall management of the matters they're responsible for. With new litigation management partners, we now will be able to track even more data points that will allow us to further refine our methodology and generate enhanced modeling for attorney selection.

**edge:**

How is advocacy evolving as a tool in the claims management process?

**Max:**

It's centered on communication. It's about empathy, it's about understanding. And that must be conceptualized in every aspect of the claims process. We must recognize how our actions impact the individual customer who has been involved in a liability claim or employee involved in a workers' compensation claim.

At best, we're dealing with five different generations in the workforce today, approaching six, and each has a completely different viewpoint on communications and expectations, as well as the relay of information. Our mySedgwick tools support this, allowing us to expand communication avenues for the claims process better suited to each person's expectations. The challenge is ensuring there's a level of comfort with not only the process, but how the process is working and that we are meeting needs of the individual.

Advocacy is intrinsic to our business. The manner in which we manage a claim is very different now compared to even 10 years ago. Then, one approach could handle the vast majority. Now, we must view things through an individual's different life stages and expectations for the future. Today, we have to be adaptable; every claim has to be evaluated on its own idiosyncrasies. Our examiners' approach is tailored, supported by focused training. We are continually evolving the process to help them recognize the right steps to take. Data and decision optimization are helping us look at specific types of claims and the individual involved, and put the right resources on claims at the right time. The process is event-driven vs. task-driven. We are moving beyond general best practices to best practices for each scenario.

**edge:**  
What other trending topics are you seeing in the market?

**Max:**  
Several things we know are top of mind for our clients. One is cyber resilience; we have technology in every aspect of our daily and professional lives. With a greater number of areas of exposure, everyone must be evaluating how to prevent, cover, mitigate and remedy the risks. Our liability experts regularly address this topic, and recently shared some great advice<sup>1</sup> in the last issue of the edge.

Another trending topic is the definition of "independent contractor" – we've seen differing decisions by various jurisdictions across the country as to what is considered an independent contractor vs. an employee. California recently passed legislation<sup>2</sup> that invoked

a new three-point test for the state, while the National Labor Relations Board earlier this year published a conflicting, more employer-friendly opinion<sup>3</sup>, relying on its "common law" test to classify independent contractors. With more and more employers considering the use of gig employment, how do these conflicting decisions play into your overall casualty program from a risk standpoint, as well as a coverage and compliance standpoint?

With recent, groundbreaking federal court decisions<sup>4</sup> as a backdrop, clients are also talking about product liability exposure. To what extent is a retailer responsible for the products sold in their physical locations, as well as in an online marketplace? The courts are opening up a realm of possibility for lawsuits and challenges, as well as increased exposure for retailers and third-party vendors, particularly those who do not have adequate coverage. We'll watch as the appeals process continues.

Also, with the expiration of the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) nearing in 2020, employers are starting to consider how future TRIPRA renewal could potentially impact their individual risk management programs from the standpoint of exposure

and coverage, particularly as they approach property and casualty renewals. We're paying attention and we advise clients to do the same. To learn more, you can read a recent blog<sup>5</sup> from our expert Chris Mandel, who is keeping a close eye as things develop.

## MAX KOONCE

Max is regarded as one of America's foremost experts on workers' compensation and retail risk management. Prior to joining Sedgwick in 2015, he served as senior director of risk management for Walmart Stores, Inc. — the nation's largest private-sector employer — and as president of Claims Management, Inc., Walmart's wholly owned third-party administrator. An attorney by trade, Max was previously an administrative law judge for the Arkansas Workers' Compensation Commission and an appellate court justice for the Arkansas Court of Appeals. He has been an active player in our industry throughout his career, serving on various state self-insured association boards, along with the National Council of Self-Insurers (NCSI) and Strategic Services on Unemployment & Workers' Compensation (UWC). Max continues to serve as a board member for several non-profits and industry risk management advisory committees. He holds a bachelor's degree from Harding University and a JD from the University of Arkansas at Little Rock, and he is a member of both the Arkansas and American Bar Associations.

## REFERENCES

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