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Resolution Resistant Cases[1]**: Treating Conflict as an Addiction**

Overview

Successful claims resolutions are crucial to the claims handling process for the insured, claims professional, defense attorney, broker intermediary and underwriting company. While approximately ninety-five percent of all cases/claims settle, everyone in the insurance industry has those claims that appear to never disappear from the claims pending, caseload or loss run. The difference is that one or more of the primary2 and/or secondary actors involved in these remaining five percent have always been or have become addicted to the conflict.

Conflict

A conflict is defined as a "perceived divergence of interests; a belief that one's own aspirations are incompatible with other's aspirations". (Pruitt & Kim, 2004, p. 294). Conflicts transpire with siblings, spouses, co-workers, bosses, and neighbors, for a variety of reasons and for the most part are managed within societal norms. In some situations, the conflicts simply do not end (Coleman, 2000). Some interpersonal differences are "highly resistant" to resolution because individuals in their everyday lives can get entrenched in their positions3. These are the "resolution-resistant conflicts" (Burgess & Burgess, 1996, pp. 305, 306). Resolution resistance applies where resolutions, settlements, or agreements appear "seemingly" impossible (Coleman, 2000, p. 300). Based on the Burgesses' concept, Resolution Resistant Cases ("RRC") are the heavily litigated, protracted lawsuits; the ones that remain on caseloads and claims pendings year after year. The RRC is an interpersonal conflict.

Technically, there is a difference between the resolution and the settlement of a dispute. Resolution is a label indicating that a behavioral change occurred to resolve the underlying issue in dispute. A settlement, however, means the parties have come to terms with their dispute and ended it while not necessarily addressing the underlying cause (Rubin, 1989). In a perfect world, claims professionals, defense counsel and broker intermediaries would prefer a resolution. With respect to future claims, resolution of the underlying issues would limit future claims, benefiting the policyholders, and insurance

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[1] Burgess, H., Burgess, G. (1996). Constructive confrontation: a transformative approach to intractable conflicts. *Mediation Quarterly*, 13(4), 305-322.

[2] The primary actors involved in the Resolution Resistant Case are the disputants. For example, the plaintiff and defendant. Secondary parties are affected by the dispute but are not the actual party to it. Close friends, siblings, spouses, employers, employees, attorneys, claims representatives, and brokers are examples of secondary actors (Boulle, Colatrella & Picchioni, 2008).

[3] For clarification, intractable conflicts are those conflicts in the international arena like the Mid-East (Burgess & Burgess, November 2003).

carriers. Many organizations now label their claims professionals as resolution specialists. Practically, and especially in the case of the RRC, settlement is the goal. For the purposes of this panel discussion, the terms settlement and resolution may be used interchangeably at times.

Addiction

Hazelden Rehabilitation Centers' Family Program Literature defines addiction and chemical dependency as a "chronic, progressive, primary illness with genetic and environmental causative factors influencing its development and manifestation. Chemical dependency has been described as a pathological relationship with a mind-altering chemical" (Hazelden Family Program, 2010, Day One, p. 2). The term addiction has also been extended and is also used to describe individuals with a "pathological relationship" (Hazelden Family Program, 2010, Day One, p. 2) with sex, food, gambling, plastic surgery, and the internet" (Twerski, 2008 & Suissa, 2009 47-51). (Assa-Kass, 2011, p. 11). Addiction is also a process that develops to control the feeling of completeness and despite the specific addiction, all addictions share a common element "…to produce a desired mood change.." (Nakken, 1996, p.2). The mood changes that addicts seek are called "highs" and stem from "arousal, satiation, and fantasy… which is a part of all addiction" (Nakken, 1996, p. 3). Addictive thinking, which leads to addictive behavior has been defined by Doctors Twerski and Sedlak as a "person's inability to make consistently health decisions in his or her own behalf" (Twerski, 1997, pp. 37, 38).

While the Diagnostic and Statistical Manual of Mental Disorders- V (DSM-V) issued by the American Psychiatric Association updated its terminology related to substance-related disorders and substance use disorders, the basic definition remains the same (Center for Behavioral Health Statistics and Quality, 2016, p. 5). For the purposes of this panel discussion, substance dependence (addiction) "refers to a medical disorder characterized by loss of control, preoccupation with the substance, continued use despite adverse consequences, and physiological symptoms such as tolerance and withdrawal" (Oslin, 2006, p. 93). (Assa-Kass, 2011, pp. 20-21). Addiction is an "intrapersonal conflict" (Lewicki, Barry & Saunders, 2007, p. 17).

Conflict Addiction

Based on Oslin's characteristics of substance dependence as described in DSM-IV (which now falls under substance use disorder in the DSM-V), it is possible for individuals to have an abnormal relationship with conflict generally, or with a particular conflict, (Oslin, 2006). For the purposes of our discussion, a conflict addiction is an individual who has developed a "pathological relationship" with his or her dispute" (Hazelden Day One, p. 2). (Assa-Kass, 2011, p. 12).

Comparing an individual who has an abnormal relationship with a particular conflict to Oslin's DSM-IV characteristics, these individuals experience "the loss of control, preoccupation with the conflict, continuation with the conflict despite adverse consequences, (financial, emotional, social) and physiological symptoms that result from emotional stress on the body" (Oslin, 2006, p. 93). Individuals addicted to his or her particular conflict may experience similar feelings of "arousal or satiation" while engaging in combative behavior (Nakken, 1996, p. 3) in lieu of drugs or alcohol. (Assa-Kass, 2011, p. 12). Conflict addiction can also reduce one's incentive to achieve a settlement or resolution (Coleman, 2004). Kressel's (2006) explanation of divorce mediation failure based on one's spouse's "continuing psychological attachment to the other partner or refus[al] to accept the decision to divorce" may be an addiction (p. 731). Instead of a pathological relationship with alcohol or drugs, the addiction is the continued "attachment" or inability to let go of or live without a person who no longer has interest in an on-going relationship with the other (Kressel, 2006, p. 731).

Conflict Resolution Theory

Ripeness and Readiness theories play important roles in the resolution of conflict. Professor Jeffrey Z. Rubin (1991) compared ripeness in conflict to fruit on a vine, where there is a "certain right or best moment to pluck a conflict or to wait" (pp. 237, 238). Rubin (1991) argues that if one attempts to settle

a conflict too soon, the parties will be "insufficiently motivated" so that the parties will not take the negotiations seriously enough to settle (pp. 237, 238). In contrast, an overripe conflict would be one where the parties waited too long and have become "entrenched" in their positions. Rubin (1991) believes that there is no "wrong time to settle" and instead believes that settlement or de-escalation should always be attempted, since no party is really worse off for trying as there are "multiple ripe moments" (pp. 237-238). (Assa-Kass, 2011, p. 23). Readiness theory is an adaption to ripeness theory where readiness is distinguished as a variable that refers to one party instead of the situation between two parties (Pruitt, 2005, p. 255). Seeking consent from an Insured and buy-in from defense counsel to commence informal settlement discussions or attendance at mediation is a practical application of readiness theory.

I.William Zartman (2003) has explained that parties resolve conflict "only when they are ready to do so" and that the parties only become ready to do when both parties believe that is their only alternative to ending the conflict (p.1). Zartman (2003) defines this moment as a "Mutually Hurting Stalemate" ("MHS"), which is a "situation in which neither side can win, yet continuing the conflict will be very harmful to each" (p.1) and is determined through a cost/benefit analysis (Aggestam, 2005). "It is important to stress that an MHS consists of a perceptual event which is formed on the basis of an intolerable and escalating situation" (Aggestam, 2005, p. 272). (Assa-Kass, 2011, p. 24). The scorched-earth litigation approach to settlement is a MHS practice.
A "Mutually Enticing Opportunity" ("MEO") differs from an MHS based on potential gains instead of losses (Aggestam, 2005, p. 272). In Zartman's earlier work, he explained that a stalemate was not an "impasse but a deadlock" and the pain that both sides would eventually endure during this deadlock would be too impossible/uncomfortable to live with, therefore forcing the parties to jointly think about ways to end the pain. (Zartman, 1987, p. 177). (Assa-Kass, 2011, p. 24). A talented mediator through the mediation process looks to create a MEO.

Medical Model-Disease Pathology

Viewing resolution resistant conflicts and cases as an addiction, frames the RCCs as an illness based on the DSM characteristics. The Medical Model-Disease and Pathology is an approach to understanding the resolution resistant case. This framework views RCCs as "pathological diseases-as infections or cancers of the body politic that can spread and afflict the system-and therefore need to be correctly diagnosed, treated and contained" (Coleman, 2004, p. 212). The medical paradigm is based on the following three approaches: (a) "targeting malignant social processes, (b) exposing internal, unconscious motives and hidden agendas, and (c) targeting deep-rooted emotions, trauma and societal-level destruction" (Coleman, 2004, pp. 212-215). When faced with a RRC, using the Medical Model-Disease and Pathology approach to "expose internal, unconscious motives and hidden agendas" (Coleman, 2004, pp. 212-215) - the under the surface feelings and actions- by or between the primary parties may be a means by which claims examiners, underwriters, defense counsel and brokers assist in the settlement of the never-ending dispute.

Mediation

Generally, mediation is the assistance by a neutral third party in a dispute or conflict. The mediator's role is to assist the disputing parties in addressing and voluntarily resolving their issues to create a

lasting settlement. The mediator has no decision-making power. Mediation is a voluntary, informal, and confidential process and mediation is based on fundamental principles of neutrality, impartiality, confidentiality, and self-determination (Frenkel & Stark, 2008).

Historically, mediation in the United States was born to resolve community-based conflicts (Frenkel & Stark, 2008). Mediation was viewed as an alternative to the court system, and lawyers were considered a hindrance to the process (Goldfien & Robbennol, 2007). The process was intended to create an environment where the participants were "empowered" (Kovach, 1997, p. 607). As a result of its success on the community level, attorneys began using mediation in the mid-1980's as an alternate way to settle legal disputes, but only once litigation was commenced (Boettger, 2004). The court system noticed the benefit mediation had on reducing the docket and easing judges' workloads (Boettger, 2004).

The Mediation Process

Mediation, although in-formal as compared to the judicial process, is organized by stages or steps. Through these steps the mediator assists the disputants to potentially resolve or settle their matter. The first stage is the initial, intake or pre-mediation phase which often takes place prior to the mediation session, by phone. During the phase the mediator and disputants and/or attorneys make introductions and give background to the matter. Generally, the mediation session is divided into five basic steps: (1) mediator's opening statement; (2) the parties' initial statements; (3) defining the problem; (4) problem solving and negotiation and (5) final decision and closure (Boulle, Colatrella, Jr., & Piccioni, 2008). The structure of a mediation session differs depending on the complexity of the matter, and the style of the mediator.

A.A. and the 12 Steps to Recovery

The first edition of Alcoholics Anonymous, The Story of How Many Thousands of Men and Women Have Recovered from Alcoholism, was printed in 1939- "to show other alcoholics precisely how we have recovered [was] the main purpose of this book" (A.A., 2001, p.xiii)- and it is referred to as the "Big Book". The 12 steps described in the Big Book frame the recovery program for the alcoholic and is the framework for all other self-help groups. For example, Overeaters Anonymous, Smokers Anonymous, Co-dependents Anonymous, and Workaholics Anonymous are based on the original 12 steps (Robbins, 1992).

Readiness/Ripeness Theory-Mediation

Ripeness/readiness is important to both mediation practice and A.A. In conflict resolution generally, and mediation specifically, ripeness/readiness is the willingness to settle or resolve the particular dispute (Pruitt, 2005). Aggressive litigators understand the MHS concept when they use/abuse the procedural process in litigation to wear out the opposition through motion practice, discovery requests, and depositions. Unnecessary litigation is also very costly financially and emotionally to both sides (Aggestam, 2005). Mediation is seen as a negotiation strategy by a third party that triggers ripeness. The mediator, as a neutral third party, is often in a position to identify "ripe moments" during the negotiation process that the participants might not recognize (Aggestam, 2005, pp. 277, 280). Zartman (2005) links ripeness to mediation by explaining that ripeness caused by MHS does not insure settlement or resolution:

The other additional measure is mediation. As it often the case in conflict resolution, even the presence of all the elements of pre-negotiation, including ripeness, are not enough to persuade the parties to overcome their fixation on the pursuit of the conflict and instead seek settlement and reconciliation. They need help (p. 180).

According to Zartman (2005), the missing ingredient is mediation. The mediator's presence is critical. As Dr. Twerski (1997) stresses: "Remember this, for it is important: Identification of addictive thinking must come from outside the addict" (p.17).

Ripeness and Readiness and Addiction

Ripeness and readiness theories are critical to the success of an individual in a 12-step program. In order to recover from an addiction, an individual must abandon the abnormal thought process and replace it with one that does not include (Twerski, 1997) "negative thinking, secretive about their thoughts and feelings and [cutting] themselves off from the natural helping and healing process of their loving relationships" (Nakken, 1996, p. 5). This will not occur unless triggered by an important incident or episode that forces the addict to doubt the legitimacy of his or her viewpoint (Twerski, 1997). Readiness/ripeness in the self-help world is called "hitting bottom" (Kurtz, 1982, p. 48) or "low bottom" (Tournier, 1979, p. 235) and is necessary as preparation to Step One. An individual must be ready/ripe to admit one's life is "unmanageable" as a result of being "powerless over alcohol" (A.A., 2001, p.59), and hitting "rock-bottom" (Twerski, 1997, p. 101) "fosters ripeness" (Coleman, 2000, p. 301). Thus, in A.A. and a 12-step approach there must be a MHS. "Rock bottom is nothing more than a change of perception, where abstinence is seen as a lesser distress than use of chemicals" (Twerski, 1997, p. 104).

Key principles of A.A. and Mediation

The core principles of mediation, neutrality, impartiality, confidentiality, and self-determination are also key elements in the 12-step process. Confidentiality, called anonymity in the A.A. world is the cornerstone of all A.A. traditions. The beginning A.A. groups were fearful of public contempt, and before the Big Book's publication, the only way to find a group was through close friends. In addition, as the A.A. groups grew, the confidentiality issues increased. Members, proud of their fellow alcoholic, might discuss particulars of his/her case that should have remained between the member and the sponsor or member and group. Therefore, not only the members' names but their stories too must be confidential (A.A. World Services, 2009).

In addition, like in mediation, confidentiality creates an environment where participants are free to share. "An emphasis upon anonymity and confidentiality supports a striking level of self-revelation. Fellowship participants are often heard to comment that the group is a place where you can be open and honest without fear of recrimination or penalty" (Robbins, 1992, p. 5).

Self-determination is the foundation of both A.A. and mediation, where it is evidenced in the participant's fundamental right to say "no" (Kurtz, 1982, p. 45). It is the participant's decision whether to choose to resolve the particular conflict (Boulle, Colatrella, Jr. & Picchioni, 2008, p. 95). In A.A., premise of Step One is that the individual admits his/her powerlessness over alcohol and then chooses to practice the 12 steps (A.A. World Services, 2009).

A.A., like the mediation process, is a neutral and impartial organization. A.A. does not endorse nor is it affiliated with any other organization regardless of its worth. The focus of A.A. should always remain with its primary purpose, recovery (A.A. World Services, 2009).

Applicability in Claims Litigation Management

Claims litigation management professionals are tasked with the responsibility to settle/resolve claims[4]. While prompt resolution is the goal, it is obviously not the outcome in the Resolution Resistant Case. Perhaps settlement remains elusive because one or more of the parties involved in the case suffer from conflict addiction.

When diagnosing a RRC, the claims litigation management professional should review the primary and secondary parties' behavior throughout the history of the claim and the situation leading up to the claim. Examples of the most at risk secondary parties suffering from a conflict addiction process are the

[4] in the best interests of the insureds and insurance carriers in accordance with best claims handling practices.

plaintiff's attorney(s), the insured/defendant's attorney(s), and the primary actors' spouses, families or business partners. Plaintiffs' attorneys may derail a settlement because they are the "true believers" and see themselves as "fighting the good fight" whereby they continue churning their client. In addition, these plaintiffs' attorneys may be using the litigation as an attempt to position themselves as the next big "expert" in a field. Sadly, some plaintiffs' and some defense lawyers do not have enough work from other clients so they cling to the claim for as long as possible. Defense attorneys (of course, not the ones present today) cannot bill for work on a closed file. Ideally, attorneys should be part of the solution and not the problem.

When diagnosing the primary actors' behavior in the RRC, look to see if one or more of the parties exhibit a pathological relationship with their conflict based on Oslin's four characteristics; "loss of control, preoccupation with the conflict despite adverse consequences, (financial, emotional and social) and physiological symptoms that result from emotional distress on the body" (Oslin, 2006, p.93).

After the diagnosis, claims professionals, defense attorneys, and broker intermediaries will need to have the delicate, or not so delicate, conversation with the insured/client and pose Oslin's four characteristics of a pathological relationship with conflict/ addiction as questions to be answered by the insured/client. These characteristics are used as a method of reality-testing and a means to trigger ripeness. Ideally, mediators, as third- party neutrals, would be the best suited to have these types of discussions in the mediation session. The mediator makes the observation to the insured/client regarding his/her conflict addiction and discusses the potential risks of remaining in the conflict. The mediator discusses in detail, the real consequences of the MHS, but not just for themselves but their loved ones.