

A photograph of several tall stacks of gold coins, likely 100 Euro coins, arranged in a row. The coins are stacked high, and the lighting is warm, creating a golden glow. The stacks are slightly out of focus, with the foreground stacks being sharper than the background ones.

# Higher Stakes Cases

By [Robert M. Anderson](#) | The Anderson Edge | Published June 7, 2021

## Years of consulting leads to seven valuable lessons about Higher Stakes Cases

Consulting and opining on over 100 Insurance coverage disputes has caused me to think differently about higher stakes cases and the demands they make on expert witnesses.

**Higher stakes cases** start around \$5 million in disputed amounts and represent 40% of my cases over the last ten years.



# Seven Lessons Learned From Higher Stakes Cases

**1. Written reports are increasingly the norm and 100% with Federal (Rule 26) Cases.**

Insurance Companies frequently remove cases from State to Federal Courts. Many experts who are good on their feet may lack the drafting skill or have a staff who can organize and edit the material into persuasive documents capable of withstanding expert rebuttal.

**2. Issues are more complex.** Engaging your expert during early discovery may help flesh out critical issues that usually can't be revisited with a follow-up deposition.

**3. High Stakes cases are more likely to get to trial as the stakes justify trial expenses.**

As a result, experts need to operate on two tracks, helping their counsel build a simplified trial presentation while developing a more rigorous written report and deposition preparation.

**4. An expert's reputation isn't enough.** No matter how comprehensive and expert's CV is, their opinions must survive the attack of bigger guns trained on them. This requires real expertise in producing corroborating research and often involves research assistants that most experts don't have on staff.

**5. Experts need to understand arguments on both sides.** They need to set aside egos and encourage criticism from attorneys at every turn. Ideally, an expert's attorney can pose questions in advance of those asked by the other side. It is so much better to face any shortfalls in a friendly camp than be ambushed at deposition or trial.

**6. Case law and insurance protocol lag behind new industries and technologies.**

Insurance experts are unlikely to have meaningful technology experience. Finding an expert conversant with new technologies is becoming increasingly important and having one who can lay out issues specific to each industry.

**7. More significant cases are likely to involve different coverages and policy periods.**

"Policies are complex, and the interaction between multiple coverage lines and policy periods is complex. How those coverage lines and policy periods interact with different losses is more complex still." David Klein, Pillsbury Winthrop Shaw Pittman LLP. Coverage may turn on a single paragraph or phrase.

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or federal cases involving

# insurance?

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