



# The Compensability Conundrum

What if the law and your morals don't match?

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# This is a session about points of view

Because sometimes, **reasonable** people can disagree...



# Who remembers this controversy from a few years ago?

White and gold?



Blue and Gold?

# This is a session about points of view

Because sometimes, **unreasonable** people disagree, too...





# This session is designed to make you think...

...without it devolving into a shouting match.



# This session is designed to make you think...

1879



2019



# To challenge your thinking...

Beautiful lady

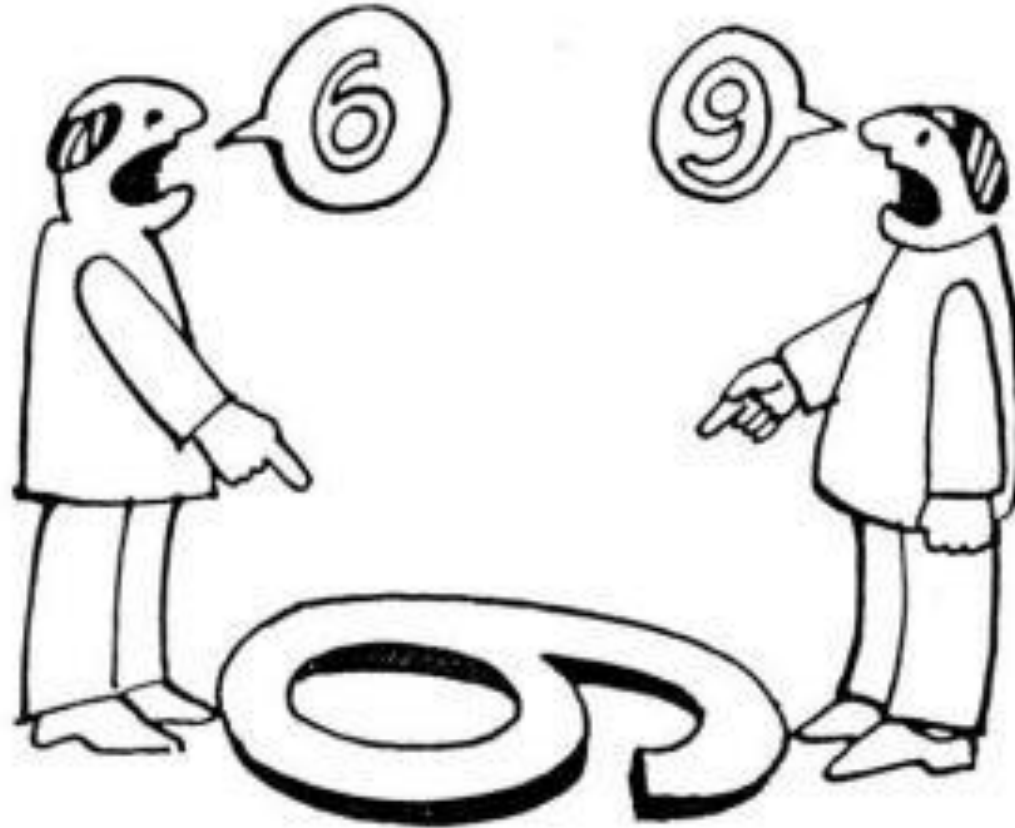
or

Old hag?

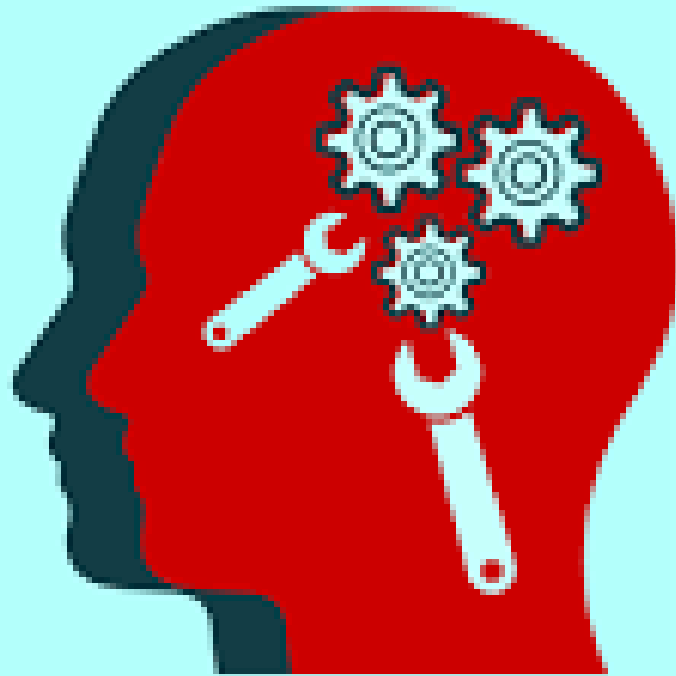




# To understand that people can look at the same thing and see it differently



This session is designed to make you think differently...



**What I'm  
doing works,  
why should I bother  
thinking differently?**

# Maybe, to even act differently...





**The Case of Robbie Littleman  
v.  
Integrity Masonry**

# The case

The facts in this case are not real...

...but they could be.

In this case Mr. Littleman was killed at work...

...in the course and scope of his work.

Compensable claim, right?

Unfortunately, it isn't that easy...



# The case

This claim isn't a simple one.

- Did Mr. Littleman violate a safety rule?
- If he did, was it willful or accidental?
- Since you can't interview him:
  - How do you determine willfulness?
  - How do you **know** if it was accidental or not?
- Are there other factors that you may consider?



# The Conundrum?

Is Mr. Littleman's claim compensable?

There is no doubt that the injury arose out of and in the course and scope of his employment.

Should other factors be considered?



# Employer Defenses

## 50-6-110. Injuries not covered -- Drug and alcohol testing.

(a) No compensation shall be allowed for an injury or death due to:

- (1) The employee's willful misconduct;
- (2) The employee's intentional self-inflicted injury;
- (3) The employee's intoxication or illegal drug usage;
- (4) The employee's willful failure or refusal to use a safety device;
- (5) The employee's willful failure to perform a duty required by law; or
- (6) The employee's voluntary participation in recreational, social, athletic or exercise activities, including, but not limited to, athletic events, competitions, parties, picnics, or exercise programs, whether or not the employer pays some or all of the costs of the activities unless:
  - (A) Participation was expressly or impliedly required by the employer;
  - (B) Participation produced a direct benefit to the employer beyond improvement in employee health and morale;
  - (C) Participation was during employee's work hours and was part of the employee's work-related duties; or
  - (D) The injury occurred due to an unsafe condition during voluntary participation using facilities designated by, furnished by or maintained by the employer on or off the employer's premises and the employer had actual knowledge of the unsafe condition and failed to curtail the activity or program or cure the unsafe condition.

(b) If the employer defends on the ground that the injury arose in any or all of the ways stated in subsection (a), the burden of proof shall be on the employer to establish the defense.





# Important factors for this case

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# Goal of the presentation

This session isn't designed to determine the right answer.

- The “right answer” likely depends on your point of view
- Or possibly the point of view of a judge.

This session is designed to help us respect the different perspectives held by each stakeholder and to try to see them from their point of view.

If there were only a way to make that happen!!!

Oh, wait---maybe there is...



# Point-of-View Gun



Let's learn the points of view of the primary stakeholders in Robbie Littleman's case:

- Business owner
- Supervisor
- Claims Handler
- Widow

What can we learn from each other?



Again, the facts in this case are not real.

But, if the facts were real, and this were your case, what would be your decision?



# The owner's point of view

**VERNON PRESCOTT**

*BUSINESS OWNER OF INTEGRITY MASONRY*







# What do you believe impacts the owner's point of view?

## Possible considerations:

- Potential Costs?
- Effects on his company?
- Likely TOSHA investigation?
- Impact on co-workers?
  - Some would be sympathetic
  - Need to send them a message—follow the rules.
- Shock and disappointment with the accident?
- Possible sharing the blame?
- Not completely unpredictable?

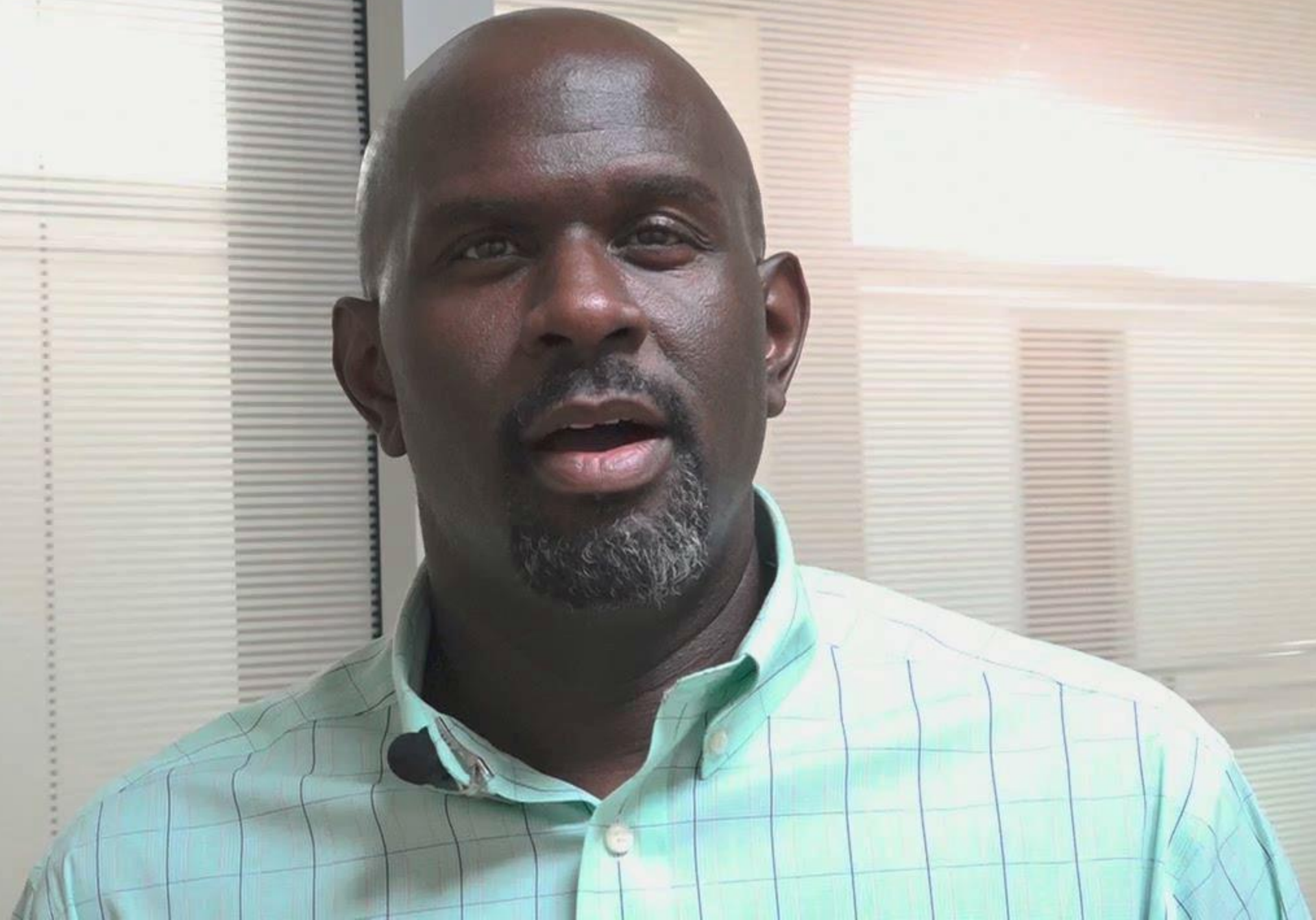




# ROY HANSON

*SUPERVISOR*





# What do you believe impacts the supervisor's point of view?

Possible considerations:

- Personal relationship?
- “Simpleness” of the employee?
- Not completely unpredictable?
- Impact on his role as a supervisor?
- Shock and disappointment with the accident?
- Possible sharing the blame?



# CANDICE SOWDER

*CLAIMS PROFESSIONAL*







# What do you believe impacts the adjuster's point of view?

## Possible considerations:

- Perceived lack of respect for her role in the process or for her opinion about the case?
- No personal connection with the worker?
  - Third-hand information
  - Little empathy
  - Viewed worker as a comedian rather than as being simple—intent?
- Hardened by the pressures to keep her 197 claims moving?
- Impact on her ability to address other claims if this one requires a lot of work?



# MARGARET LITTLEMAN

*WIDOW*







# What do you believe impacts the widow's point of view?

Possible considerations:

- Fear of impact on family?
- Anger?
- Lack of understanding of the process?
- State of denial?
- Mix of pride/shame/embarasment
- Not completely unpredictable?
- Lack of control?



# Are they the only factors to consider?

- What other factors might deserve consideration?
  - The meaning of “willful misconduct”
    - Weekly meetings to stress safety
    - Signed acknowledgement of understanding the rules
    - But also:
      - Pressure from above to do the job quickly?
      - Peer pressure from co-workers to do it without help?
  - The meaning of “willful failure or refusal to use a safety device”
    - Lack of adequate or proper training?
    - What is the impact of having the word “willful” in the law mean?



# Are they the only factors to consider?

- What about socio-economic considerations?
  - Good guy, liked by everyone
    - Would it be different if he was disliked by most?
  - Has a family
  - Seen as one of “us”
  - Your role:
    - Business owner
    - Supervisor
    - Claims handler
    - Surviving spouse





Final thoughts?



Questions?



Thank you!