CHAPTER 1
THE TRUTH

Our justice system aspires to yield the truth. This chapter presents a candid discussion on what you can expect as you submit your claim to the truth-finding process.

WHAT IS THE TRUTH, AND HOW IS IT DETERMINED?
My understanding of the litigation process grew immeasurably when, after giving a deposition as an expert witness in a medical malpractice case and participating in the post-event colloquy, the lawyer who took my deposition matter-of-factly declared: “The truth doesn’t matter. What matters is what the jury believes.”

I initially recoiled when I heard those words, spoken by an officer of the court, and a sense of offense and righteousness overtook me—not only in the moment but for years afterward. How could someone ostensibly dedicated to finding the truth make these statements and pursue a career driven by this pedagogy?

Although I never embraced the statements on a surface level, over time, I came to appreciate the pithy insights they embody. The two simple sentences continue to haunt me. For better or worse, and in my opinion worse, they are laden with profound implications for those pursuing and defending damages claims.

These sentences—“The truth doesn’t matter. What matters is what the jury believes.”—separated by a period yet fused, require conjoint consideration with respect to the philosophical question What is truth?

In a judicial context, truth—or, alternatively, the final word on an issue in dispute—is ultimately what the trier of fact discerns. The word discerns is key. It implies a dynamic, evaluative process, mediated by human perception. This process unfolds in an adversarial forum where skilled, creative litigators and others with a stake in a claim’s outcome advance competing, self-serving motives. The discernment process is complex, manifold, and subject to manipulation.

A closer analysis of these two sentences provides perspective on the forum in which your claim will be evaluated.
THE TRUTH DOESN’T MATTER
Throughout the ages, humankind has been indoctrinated with the moral righteousness of the truth. Religious faiths worldwide command their followers to honor the truth, and, during the jurisprudence process, those proffering testimony must first undergo a ritual in which they pledge to tell the truth.

In view of our heritage—anchored by the mistruth that started it all, the whopper Adam and Eve failed to pass—the notion that the truth will not prevail in a forum supposedly dedicated to finding it is akin to heresy. This is especially so when one has internalized colloquialisms such as “The truth will come out in the wash.” Subliminal messages of this sort are the antithesis of the statement “The truth doesn’t matter” and likely drive the dissonance we experience when fathoming the truth as irrelevant.

Mistruths throughout the millennia—such as the world is flat, and the earth is the center of the universe—once regarded as gospel and since dismissed, have proved to be artifacts of the lack of human sophistication necessary to comprehend and evaluate the truth. This deficiency contributes to errant judgments. Taken literally, in the context of litigation, the statement “The truth doesn’t matter”—especially when coupled with the trailer statement, “What matters is what the jury believes”—has, in my view, proved accurate.

In a nutshell, the assessment of truth during the litigation process (i.e., judgment of the validity or truth of a claim) is predicated on perceptions generated during that evaluative process. Of course, from a moral perspective, the truth does matter; however, what ultimately matters, in terms of a disposition on your claim, is how those charged with finding the truth (i.e., the merits of your claim) perceive it.

WHAT MATTERS IS WHAT THE JURY BELIEVES
Claims settle before and during the course of litigation. If a claim does not settle, however, evidence supporting and refuting your claim will be presented during a trial. A trier of fact, typically a jury in cases involving disabling problems, will hear and eventually deliberate and render a verdict on a claim’s merits and value.

In the life of claims that do not settle, the jury has the final word. Those with a stake in your claim—including lawyers, adjusters, and tortfeasors—are inordinately mindful of this. Their assessments and decision making on managing and negotiating your claim invariably consider how a prospective jury will interpret and react to your claim’s nuances.

The overwhelming majority of claims settle and do not go to trial. Nevertheless, like one’s omnipresent conscience, the anticipation of a hypothetical jury evaluating your claim serves as a formidable touchstone, guiding decisions about your claim’s management. Awareness of potential jury reactions and the binding authority of a jury verdict often drive settlement decisions.

From beginning to end, expect that all involved in your claim will carefully cull evidence and assess and monitor the damages asserted. The bigger, more complex,