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## Susman Head Calls For Changes To Civil Jury Trials

By **Jess Davis**

Law360, Dallas (January 17, 2014, 8:52 PM ET) -- For civil jury trials to survive and rebound from historical lows, lawyers need to be prepared to try shorter cases, consider larger jury panels and simplify jury instructions that can be "incomprehensible," Susman Godfrey LLP founder Steve Susman told Dallas lawyers Friday.

Susman, speaking at an American Constitution Society event, also said judges need to be more involved in advancing cases and that they should be more readily available to decide discovery disputes quickly, instead of sitting on motions. He says changes to current trial practice can help ensure future generations still have the right to have their cases heard by an impartial panel of jurors.

"We need to do something, or the jury trial is going to disappear," he said.

Susman says jury trials in civil cases are at serious risk of extinction, and that the few civil trials that do take place today are plagued by continual pressure to dumb down jury pools and by litigants who overuse challenges to expert witnesses who can better educate jurors about a case. Businesses also have an irrational fear of jurors because they think they'll award enormous punitive damages and have begun to rely too heavily on arbitration, Susman said.

To fix public perception of the jury system, Susman called for more education and said lawyers need to show real-world results that prove juries can be used quickly and affordably to try cases.

He told lawyers any dispute could be tried in fewer than 10 days, citing patent trials in the Eastern District of Texas with more than \$100 million on the line that are presented to juries in fewer than five days. Overly long trials can lead to jury panels that leave only the unemployed and retired able to commit that much time to serving on a jury, Susman said.

And he said lawyers were often to blame, as they may seek extended trial times in part because they aren't convinced they're getting their points across adequately to the jury. In practice, this leads to repetitious argument that can bore jurors, Susman said.

Also confounding jurors today are lengthy jury instructions, riddled with language plucked from case law, that end up being "incomprehensible" even to the lawyers in the room, he said, calling for shorter, simpler instructions in civil cases.

Other suggestions from Susman include expanding civil juries from 12 people to 20, and requiring only 16 jurors to reach a verdict, while eliminating preemptory strikes from jury selection. He says the larger panel would allow parties to "afford a few bad jurors," and this, along with adopting a routine jury questionnaire that would give lawyers more information about the jury pool, would

help jury selection run more smoothly and quickly.

He said courts should allow more questions from jurors during trial. And it could be beneficial, he suggested, to allow jurors to discuss the case with each other as the trial is ongoing, rather than waiting for all the evidence to be presented, as it would improve their understanding of the trial and keep them more engaged.

But getting to trial is often the biggest hurdle, and Susman said judges could do more to help advance their civil dockets. Trial continuances should be greatly limited, he said, calling nonmovable trial settings the "ultimate tool" in preventing discovery abuse because it forced parties to streamline their cases and focus on preparing for trial.

He said judges could play a huge role in speeding up discovery by making themselves more freely available by phone to settle disputes among parties as they arise, and by hearing more oral argument on motions and issuing rulings quickly afterward, instead of taking sometimes months to rule on a written motion that had never been argued to the court.

The veteran trial lawyer also took to task his peers who don't defend the constitutional right to a jury trial, saying too many lawyers care more about protecting the Second Amendment than the Seventh Amendment. He says jurors can be the last bastion of fairness and impartiality, especially in today's politically charged atmosphere, where more money and political maneuvering is flowing into judicial elections, unseating qualified judges and eroding public trust in the courts.

--Editing by Kat Laskowski.

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