



Jury Trials in 2024: Seyfarth's Employment Trial Team on Lessons from the Front Lines

Part 1: Trying Cases in a Polarized
Environment

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April 30, 2024

Seyfarth Shaw LLP

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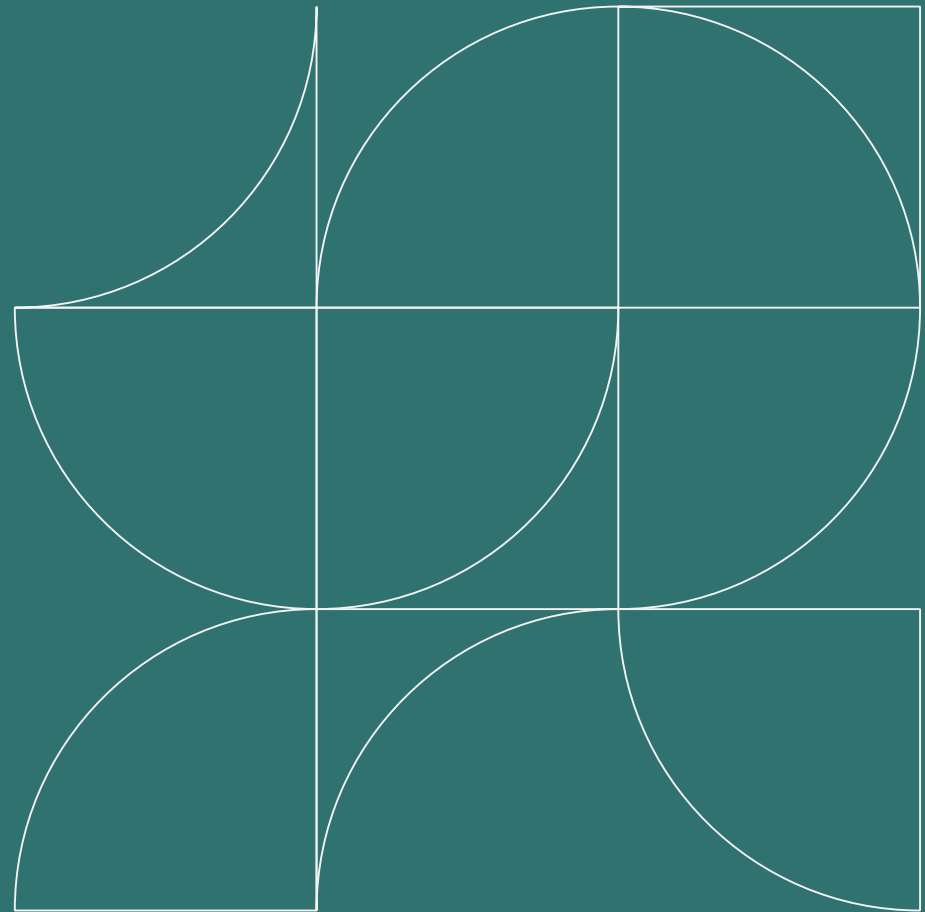


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Jury Impact

Agenda

- 01** Trend Toward Explosive Verdicts
- 02** Say What? Jurors Don't Necessarily Agree with What the Law Says
- 03** Connecting with the Modern Juror

Trend toward Explosive Verdicts





Explosion in Huge Verdicts

- Large verdicts are getting more common, including “explosive verdicts” that are irrational and disproportionate
 - Correspondingly explosive settlements
- Normalization of huge verdicts

Your New Jury



- Don't underestimate how raw most people are from COVID disruptions, fears and divisions
- Increased prejudice against "other" and stronger bonds with people of same/similar background
- In times of stress, people are prone to intuitive rather than logical processing
- As a country we are increasingly polarized
- Anti-corporate sentiment in both major political parties



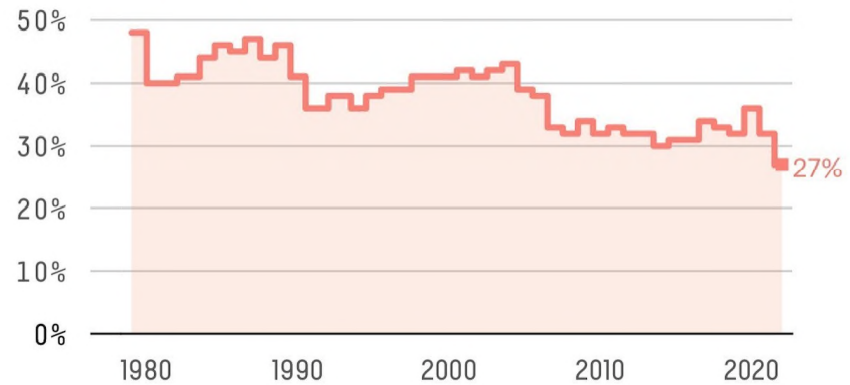
Social Movements

- Black Lives Matter
- Income Inequality
- Quiet Quitting
- Pay Equity

Loss of Trust in Institutions

Americans' trust in major institutions reaches a new low

Average share of Americans who have a "great deal" or "quite a lot" of confidence in 14 institutions* Gallup has consistently asked about, since 1979

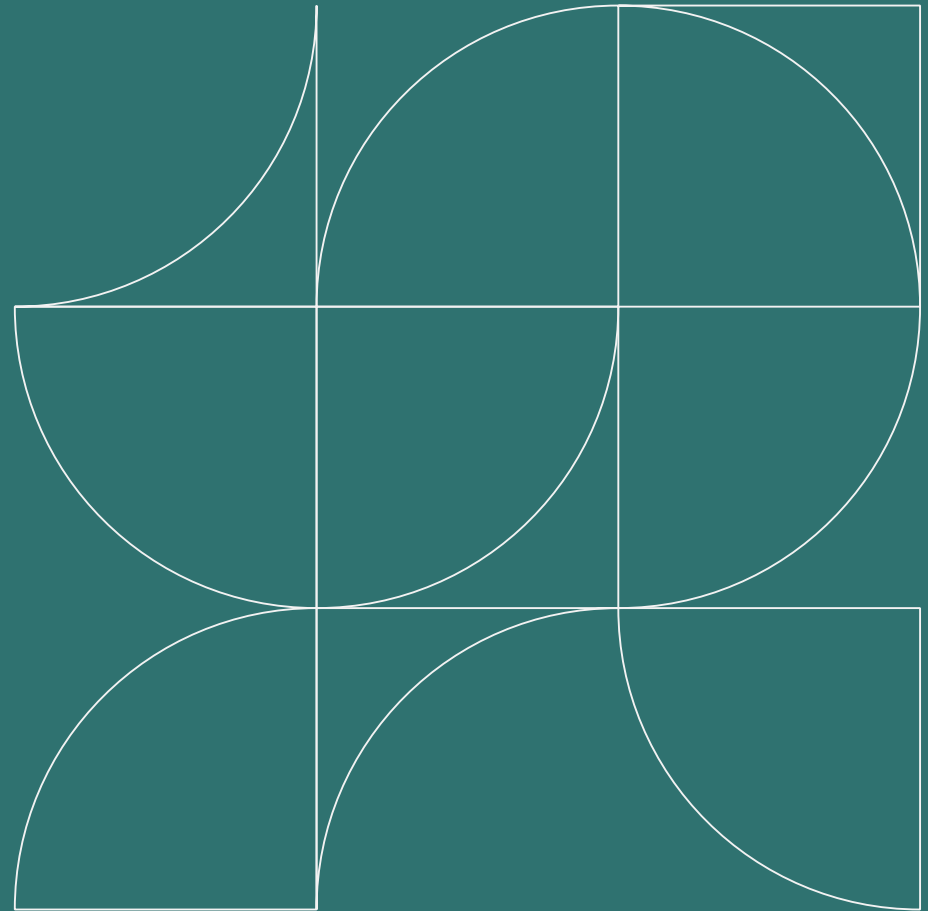


* Since 1979, Gallup has consistently asked about nine institutions, and in 1993, they expanded the list to include five more — meaning 14 institutions overall — which they've consistently asked about ever since.

FiveThirtyEight

SOURCE: GALLUP

Say what? Juror Don't Necessarily Agree with What the Law Says



Jurors Are Skeptical of At-Will Employment



Jurors are skeptical of termination of an employee who had good performance reviews, recently received a raise, or was a long-time employee.



A performance rating form titled "RATING" is shown. It features five rows, each with a checkbox and a corresponding performance level. The first row, "Exceptional", has a red checkmark in its checkbox. The other rows, "Exceeds requirements", "Meets requirements", "Needs improvement", and "Poor", have empty checkboxes.

RATING	
<input checked="" type="checkbox"/>	Exceptional
<input type="checkbox"/>	Exceeds requirements
<input type="checkbox"/>	Meets requirements
<input type="checkbox"/>	Needs improvement
<input type="checkbox"/>	Poor

Jurors Don't Like the "Equal Opportunity" Nasty Boss



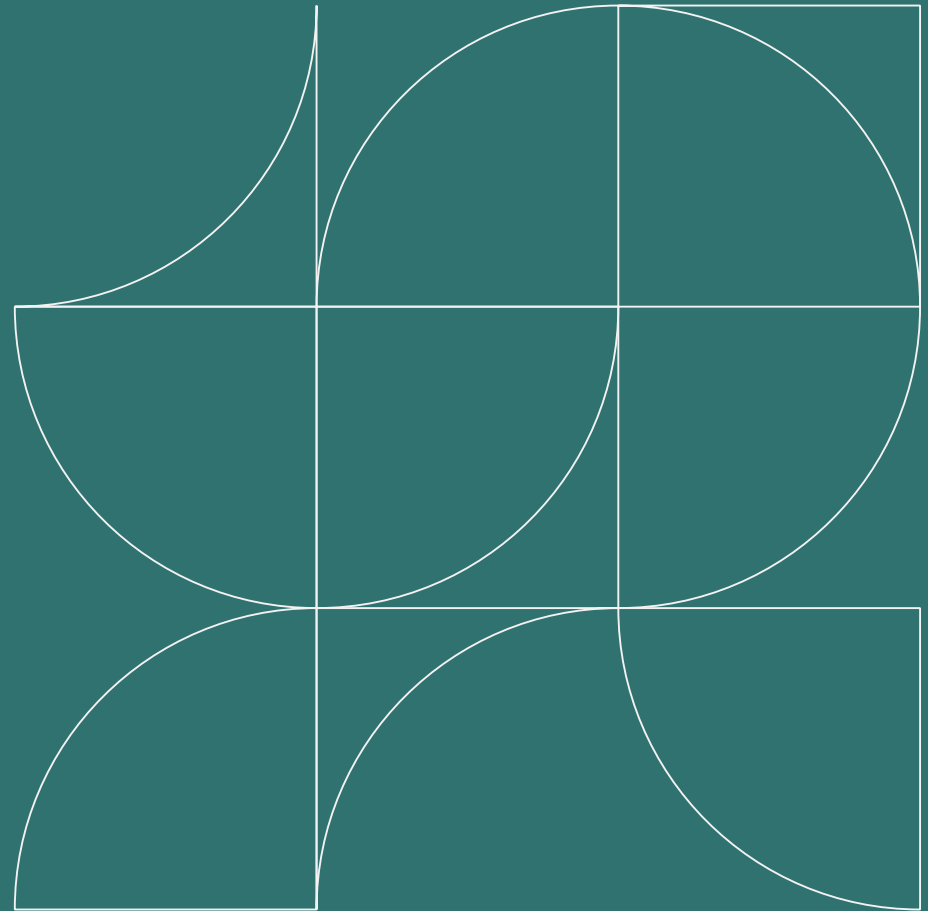
Jurors Like to See Progressive Discipline



Jurors Are Skeptical About Treating Companies Equally with Individuals



Connecting with the Modern Juror



If you haven't done research since before the pandemic...

Your data is outdated.

Your numbers are skewed.

You don't know your jury.



What has shaped today's jurors?

- COVID
- Skeptical, distrustful
- Get hurt, get paid
- Elevated expectations
- "Woke"
- Anti-corporation
- Angry, fed up
- Polarized

Angry: 90% believe America is "on the wrong track"

Polarized: 77% of Americans agree the country is more divided now than it was before COVID

Crisis of Confidence



Distrust

- Healthcare Providers – Trust: 74%, Distrust: 26%
- Media – Trust: 32%, Distrust: 68%
- Government– Trust: 42%, Distrust: 58%
- Corporations– Trust: 35%, Distrust: 65%
- Other People – Trust: 72%, Distrust: 28%

Conspiracies

- Ex. 18% (1 in 3 Republicans) believe Taylor Swift is involved in a covert government effort to help Joe Biden win the 2024 presidential election

- Reluctance to accept anything at face value
 - AI, filters, bots



Today's Jurors: Angry, Skeptical, Distrustful

VIDEO PLACEHOLDER

Today's Jurors: More Plaintiff-Friendly Perspectives

- If a case gets to trial, plaintiff's case has at least some merit (78%) **(up 8% since 2019)**
- Filing a lawsuit is too difficult (39%) **(up 7%)**
- Jurors sometimes ignore jury instructions (72% **(up 11%)**) will decide a case based on law, vs. 28% who will decide based on "fairness")
- "I have **no trust** in the justice system" (17%) **(up 9%)**

5/1/2024

Seyfarth Trial Team's Recent Experience



Increase in Aberration Verdicts

- Unbelievable is the new normal. Verdicts and settlements in high-exposure cases have increased dramatically.
- Trend has trickled down to lower-value cases and claim costs in general.
- Jurors decide cases based on emotion and perceived credibility rather than facts, law, common sense and experts.
- Fighting these verdicts requires a revised approach: proactive and early identification and management of claims that have the potential to turn nuclear.

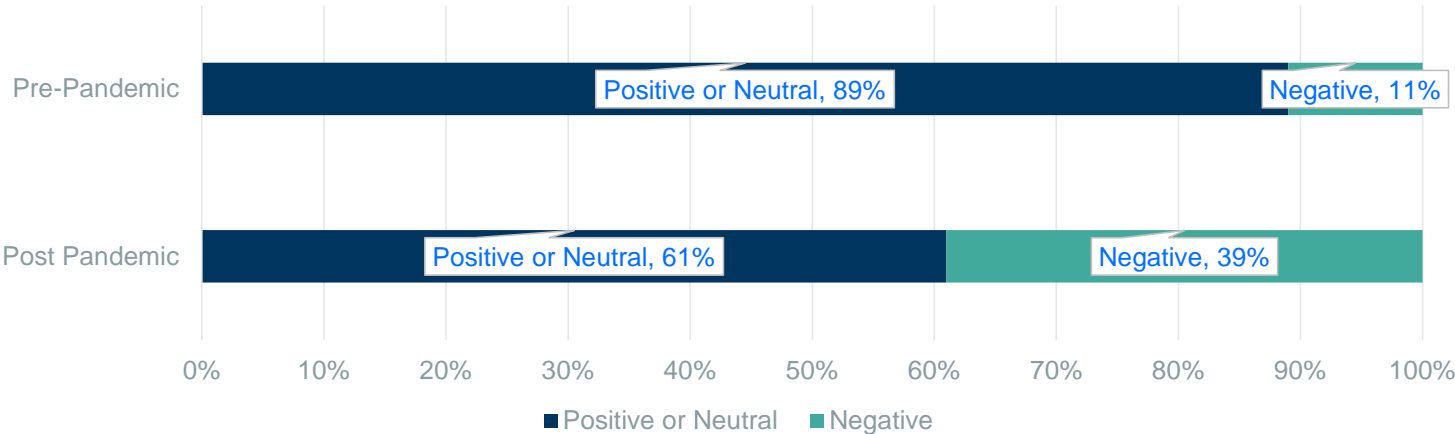
Predicting Aberration Verdicts



- Failure to honestly review case facts
- Unrealistic view of damages
- Documentation and spoliation issues (including emails/texts/video)
- Cross-fighting among defendants or criticism from non-defendant third parties
- Facts that support defendants ignoring or dismissing plaintiff concerns or well-being

Changes in Attitudes Toward Corporate America

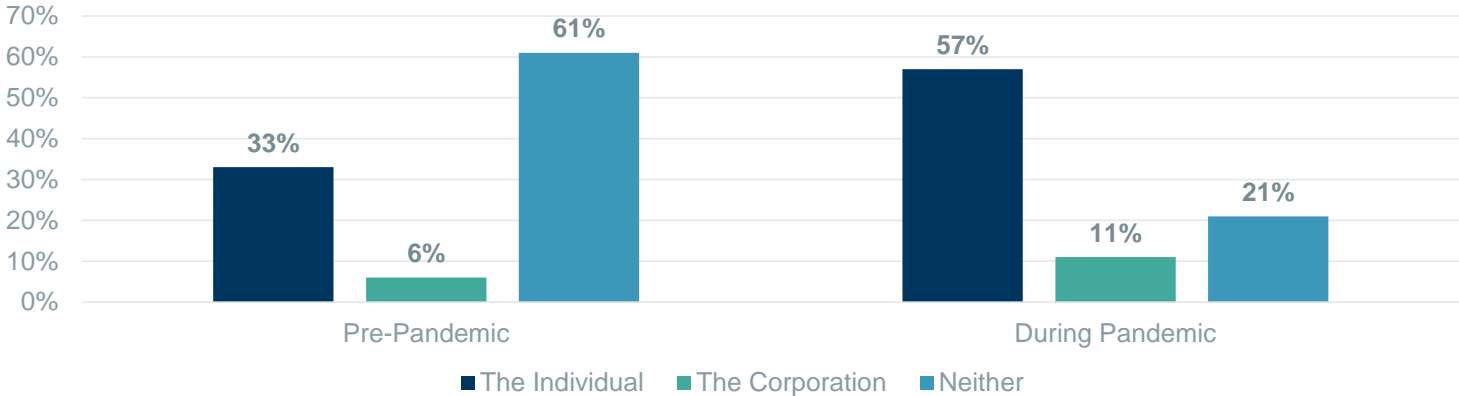
In general, what is your impression of lawyers who defend corporations sued in lawsuits?



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Changes in Attitudes Toward Corporate America

In general, in a lawsuit between an individual and a large corporation,
which side would you probably tend to lean in favor of?



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Key Difference #1

***Jurors will
redefine
“reasonable.”***

- Distrust, skepticism of authority means jurors want to redefine “what a reasonable person would do in the same or similar situation.”
- “Might have helped” or “could have changed the outcome” is the new standard

Key Difference #1: ***Jurors will redefine “reasonable.”***

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Key Difference #2

***Expectations
are (even more)
elevated.***

- Caregivers, employers and insurance companies expected to go above and beyond just to meet the standard
- “Reasonable” might be enough for some jobs, but not corporations with “unlimited” resources or those with lives in their hands

Key Difference #2:
Expectations are (even more) elevated.

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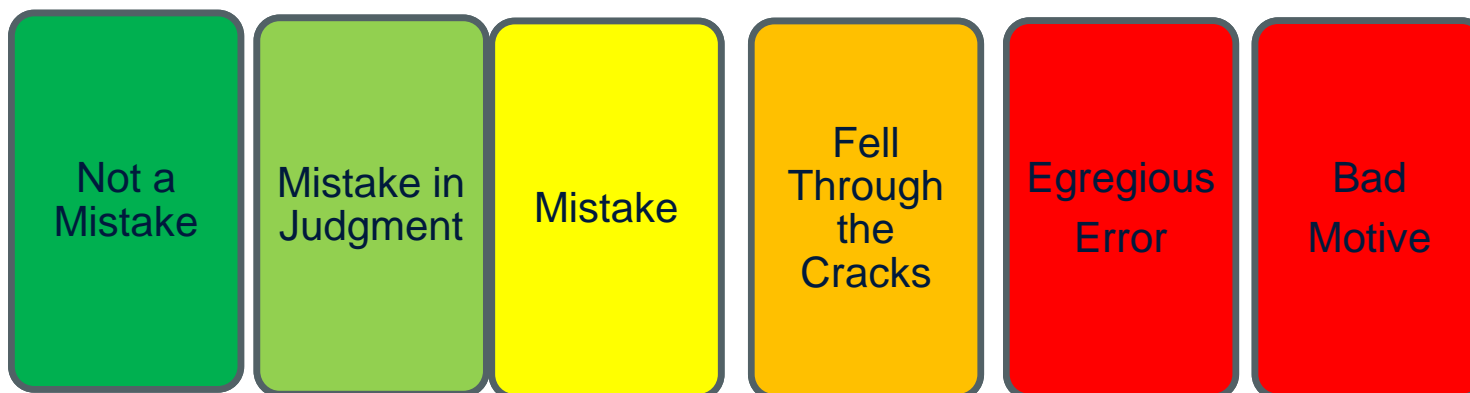
Key Difference #3

Jurors look for fault in “the system” and believe a big verdict can fix a broken system.

- Plaintiff lawyers (and jurors) blame corporations and institutions for “systemic issues”: staffing, communication, policies, security, documentation, logistics
- Assumption that money is the driver behind “subpar” corporate behavior
- Jurors view large verdicts as the best way to “get the system’s attention” and effect change
- This allows jurors to circumvent a “missing” punitive damages claim.

How jurors evaluate egregiousness of an error

Juror Feelings and Verdict Size



How plaintiff attorneys will tell their story

- Greed
- Dishonesty (In Care or Case)
- Disrespect or Indifference
- A Dangerous Person Enabled
- Breach of Trust

Seyfarth Trial Team's Recent Experience



Key Difference #3:
Jurors look for fault in “the system.”

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Key Difference #4

Trust has eroded in the wake of COVID.



- Inconsistencies and changes produced distrust in healthcare, government, media – and each other
- People believe hospitals and doctors profited from COVID

Halo Effect: The Good

VIDEO PLACEHOLDER

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Key Difference #4

Trust has eroded in the wake of COVID.



- 48%: lost trust in medical field due to COVID-19 response
- 25%: COVID was intentionally planned
- Striking differences along lines of:
 - race (33% Black, 34% Hispanic)
 - education (48% HS, 38% SC, 24% CG, 15% PG)
- 21%: vaccines “definitely”/“probably” contain tracking chips
- 15%: COVID was a hoax

Seyfarth Trial Team's Recent Experience



Halo Effect: The Bad and the Ugly

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Key Difference #5

Jurors are more aware and concerned about existence and correction of inequity toward POC.

- Jurors believe people of color receive subpar treatment (especially pregnant women, un- and underinsured, incarcerated patients)
- Applies to every marginalized community
- Media coverage of inequities has increased awareness
- Higher expectations for care for POC

Key Difference #5:
Jurors are concerned about inequity toward POC.

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Key Difference #6

Damages have ballooned due to social inflation.

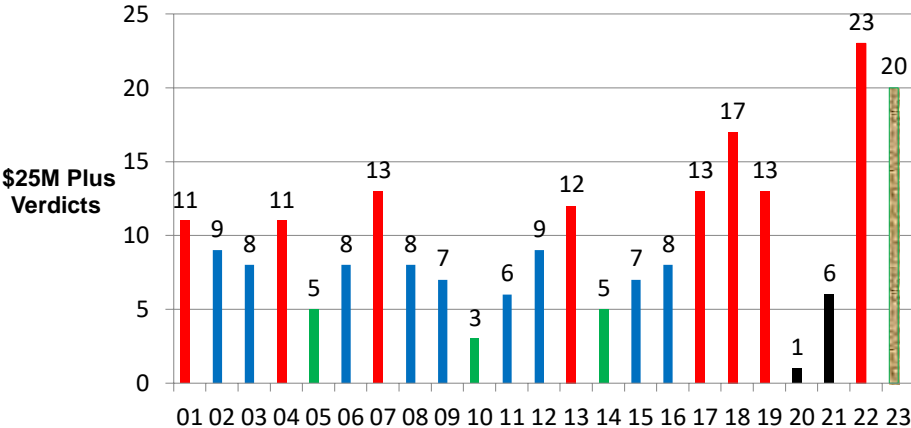


- People do not intuitively understand the difference between scaled verdicts (\$1,000,000 vs. \$1,000,000,000 vs. \$1,000,000,000,000)
- Desire to correct wealth inequity and punish corporations
- Heightened immunity to large numbers
- 2021: Biden proposes American Rescue Plan, a \$1.9 trillion COVID relief package
- 2022: Elon Musk buys Twitter (X) for \$44 billion
- 2023: CA man claims \$2 billion Mega Millions prize
- 2023: Taylor Swift's Eras Tour grosses \$1.04 billion
- 2023: Ohtani signs 10-year, \$700 million contract with the Dodgers

The numbers keep going up and up...and up!

\$25M+ Verdicts, 2001-23

Data known as of 10/31/2023

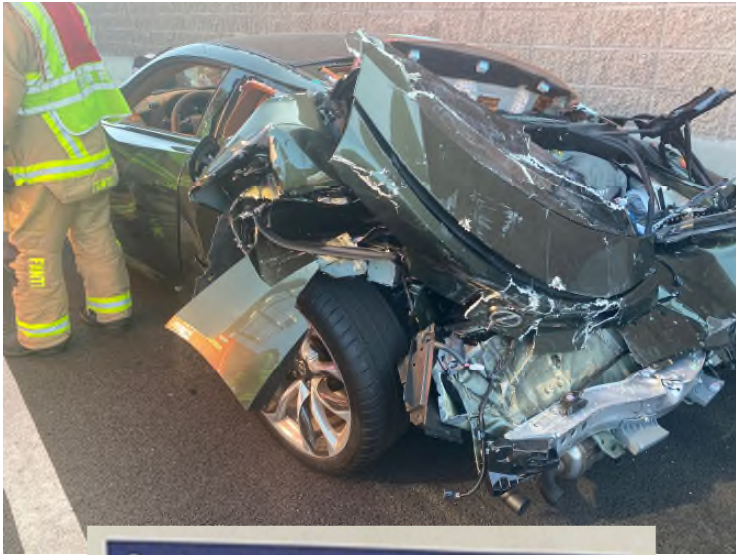


Key Difference #6:
Damages have ballooned due to social inflation.

VIDEO PLACEHOLDER

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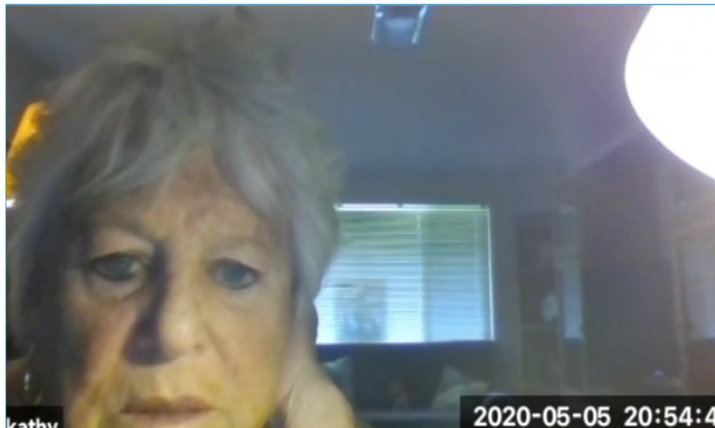
Healthcare costs keep going up – and up and up. (And don't forget...personal experience drives everything.)



Services and Charges		
250	Pharmacy	\$630.00
300	Laboratory	\$1,829.00
320	Radiology - Diagnostic	\$1,226.00
350	CT Scan	\$23,948.00
450	Emergency Room	\$3,742.00
610	Magnetic Resonance Technology (MRT)	\$3,545.00
680	Trauma Response	\$24,259.00
Total		\$59,179.00

So what can you do? (during discovery)

- Provide resources, such as witness prep and additional attorneys
- In-person prep sessions more effective than virtual ones
- Today's second or third chair is tomorrow's first chair



So what can you do? (during jury selection)

- Changing process due to Covid
- Jury selection now takes place in many different formats
- Multiple appellate issues
- Questionnaires and social media audits even more crucial, since jurors aren't always forthcoming – especially in a group setting



Man accused of breaking jaw, nose of Springfield bar owner



So what can you do? (during jury selection)

- Changing profile of scariest juror
 - Non-vaccinated jurors 2.5 times more likely to side with plaintiff
 - Jurors “very” financially affected by COVID 3.2 times more likely to side with plaintiff
- Best defense jurors: voted for Trump, don’t support Biden, vaccinated



So what can you do? (during jury selection)



But what is a “Trump juror”?

- Redefining the merits of the “conservative juror”
- Wide spectrum
- Worry about “Tribal Jurors”
 - Conspiracy theorists
 - Distrust government, media, anyone in authority
 - Question validity of medicine
- **Be aware of potentially polarizing jurors – for both sides.**

A screenshot of a Facebook profile for Donny Benbrook. The profile bio includes: "Manufacturing Specialist at SMI Joaquin County", "Worked at Western States Steel and Fabrication", "Went to Lodi High School", and "Lives in Manteca, California". Below the bio is a "Photos" section with a "See all photos" link. The main photo shows Donny Benbrook holding a framed picture of a man in a safety vest. Below the main photo is a grid of six smaller images. The first image is a Fox News article titled "Biden voter 'disgusted' with the president, says Dem party has become 'unrecognizable'". The other five images are logos for "Old Holy Cross Cemetery, Santa Cruz California - Neighbors", "Patriot Journal", "President Donald Trump Fan Club", "The Daily Caller", "The Western Journal", and "This Explains That".

So what can you do? (during trial)

- Rely on tested visuals.
- Humanize defendants. Show that they cared.
- Remember – jurors see everything.
- Provide a narrative that is as simple and compelling as the plaintiff's – if not more so.

Seyfarth Trial Team's Recent Experience



Thank You

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