

# 2024 PROPERTY CASUALTY CLAIMS SEMINAR

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*A Berkshire Hathaway Company*







# Nuclear Verdicts®: Five Trending Plaintiffs' Tactics and Defense Methods to Stop Them!



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 **THE PROBLEM**

 **TOP 5 TRENDS AND HOW TO ADAPT**

 **TAKEAWAYS**







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# The Problem







- ▶ Defining the problem
  - ▶ What *is* a Nuclear Verdict®?
    - ▶ Verdict in excess of \$10M OR
    - ▶ Where noneconomic damages are disproportionate to the economic damages/injuries/facts

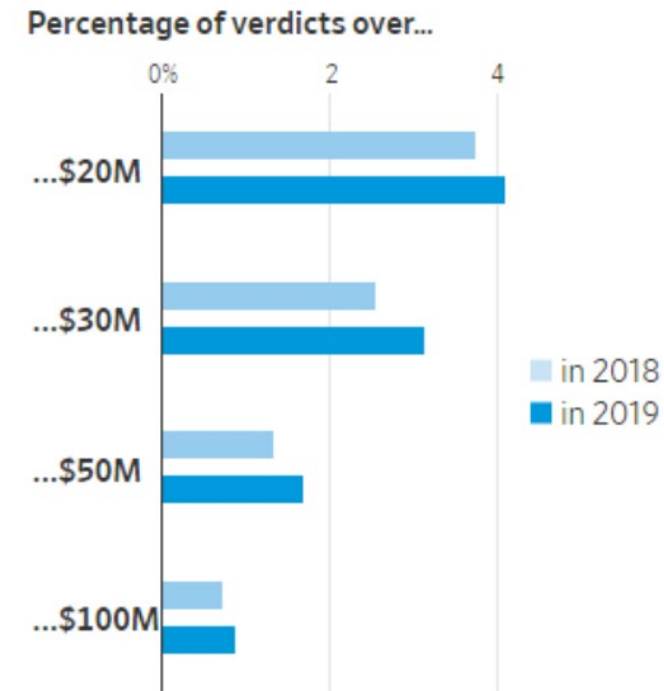




- ▶ 2010 – 2018
  - ▶ Average of verdicts exceeding \$1M rose from \$2.3M to \$22.3M
  - ▶ Nearly 1000% increase!



- ▶ 2019: 300% spike in verdicts of \$20M compared to prior decade



Note: Based on a database of more than 200,000 U.S. cases reported.

Source: VerdictSearch





- ▶ Well, the number speaks for itself



- ▶ That could buy...
- ▶ 16 Mona Lisas
- ▶ 31 Boeing 747s
- ▶ 3,421,053 floor level Taylor Swift tickets!



# How Is This Happening?

- ▶ Over the past 15 years, plaintiffs' counsel has made 2 major changes:
- ▶ Go for **ANGER**
- ▶ Ask for a **BIG NUMBER**



# A Funny Thing Happened Four Years Ago

6.17.20 - 10:30 AM PDT

**CASE ANALYSIS**

**FREE WEBINAR**

**DEBUNKING NUCLEAR VERDICTS**

**SEAN CLAGGETT**

**DAVID BALL**

The book called NUCLEAR VERDICTS is widely distributed and causes confusion among plaintiff attorneys from the Defense, once we see the page — we will know exactly how lawyers use every one of the book's suggestions for how to stall a case and David have done a great job of it. They'll also respond to concerns about the book. They'll be sure everyone is prepared to respond to the book instead of worrying about it.

**CASEANALYSIS.COM TO REGISTER**

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7.15.20 - 10:30 AM PDT

**NUCLEAR VERDICTS**

**WITH SEAN CLAGGETT & DAVID BALL**

Viewers called for a Part 2 even before Part 1 ended. In Part 2 Sean and David dismantle the rest of the defense's "scary" NUCLEAR VERDICTS book. By experienced analysis and specific examples, they show you how to turn the book back on the defense so explosively that defense lawyers will regret ever having read it. Our best weapon is the one we take from the enemy, so this defense book's only effect will be larger verdicts. Your individual questions will be answered. And you'll find yourself eager to boomerang the book's "scary" methods as early as your next deposition. Guaranteed to be fun.

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David Ball

☆☆☆☆☆ WARNING

Reviewed in the United States on April 17, 2020

This book's general lack of originality and apparent unawareness of the law are baffling. And its civil Defense suggestions are so far off the mark that they could well have been made by a Plaintiff's attorney trying to fool credulous Defense lawyers into screwing up by using them -- or by a Defense lawyer hoping to fool his credulous competitors into screwing up. These suggestions used against a Plaintiff's attorney who knows how to try a case will show jurors how hypocritical the Defense is, and how willing the Defense is to ignore and violate the law just to protect the insurance company's money.

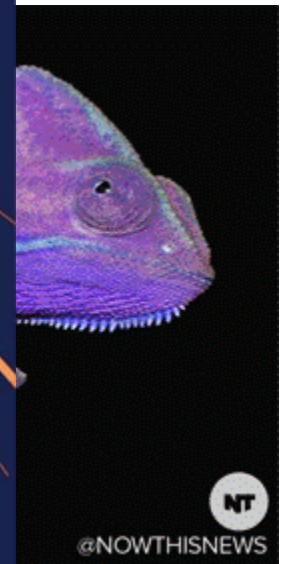
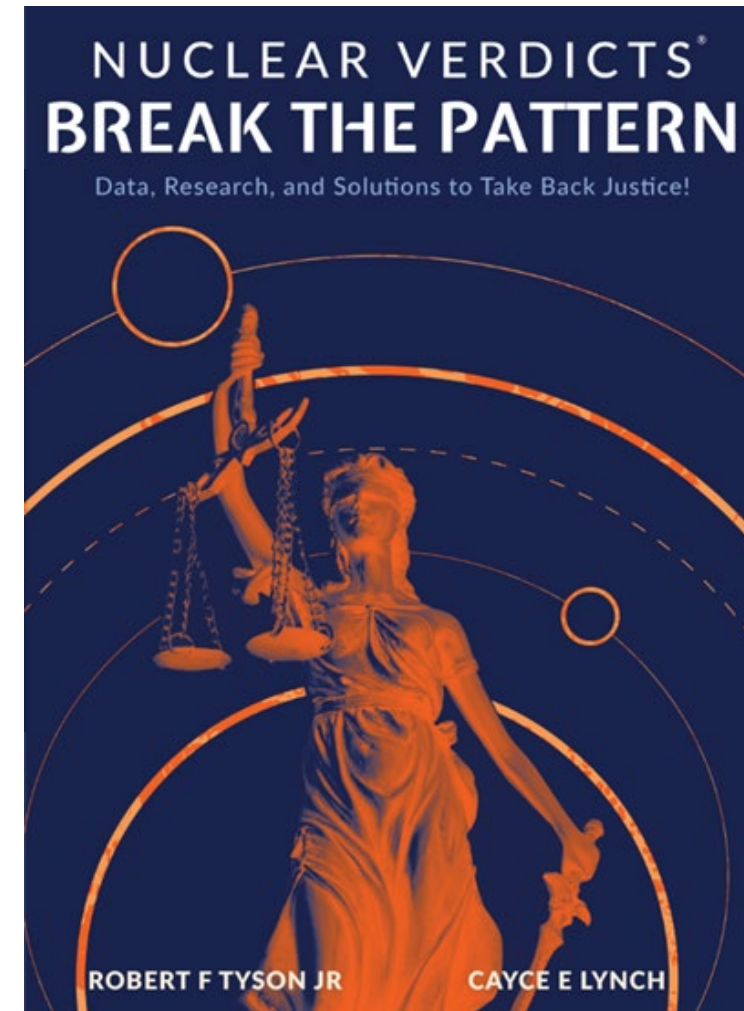
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# What Have We Learned over the Past Four Years?

- We are SLOW TO ADAPT
- So, we decided to study the problem



# Ready for Some Good News?

- THERE ARE TRENDS!
- Which means we can... what's the word?
- ADAPT!





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# Top Five Trends and How to Adapt



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# Trend #1:

## Throwing It in Our Face When We Don't Accept Responsibility



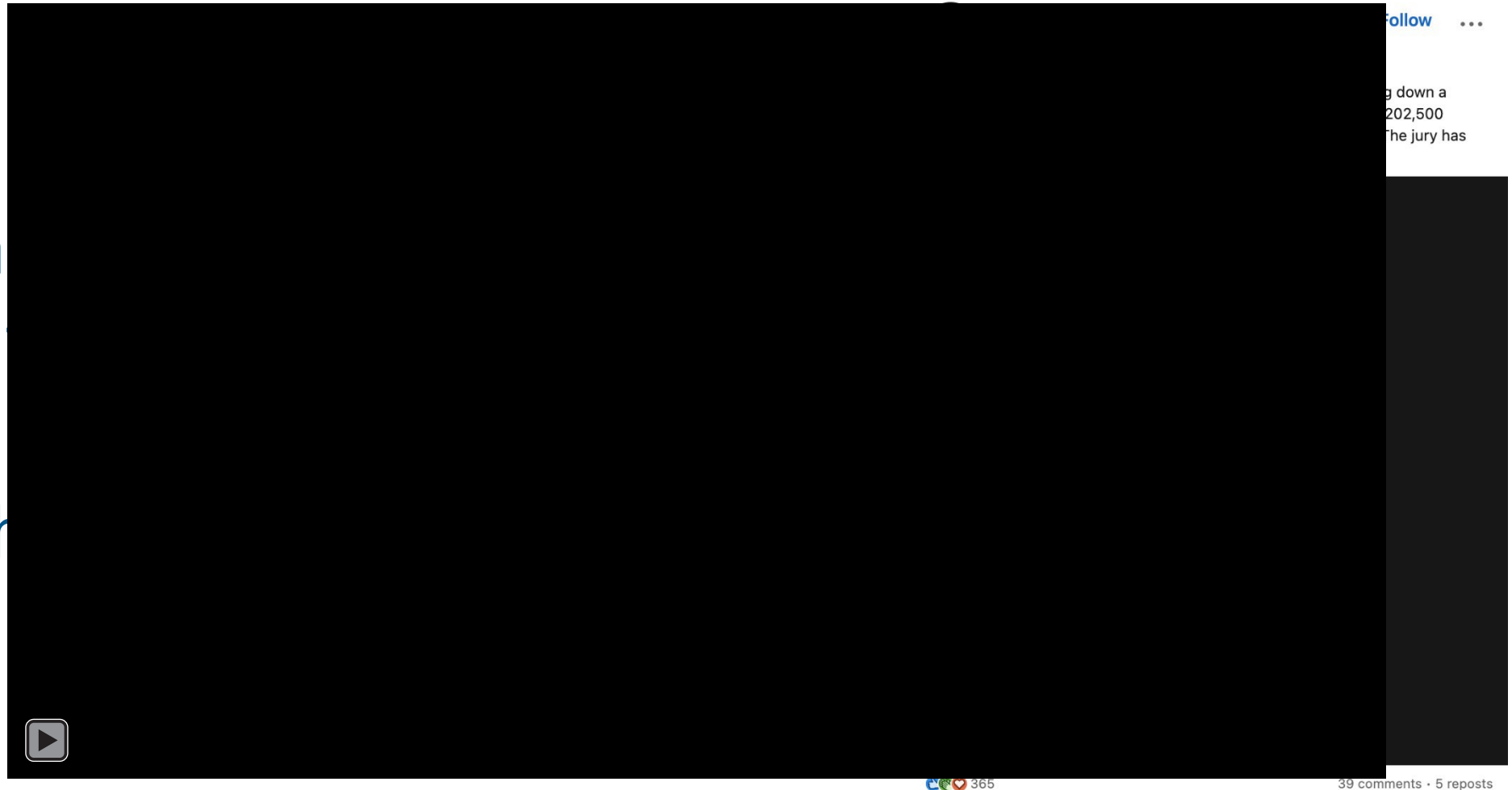
# Plaintiffs Love a Defendant Who Refuses to Take Responsibility!



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Wh



The Good Place, 2016 – 2020



# They Do It All the Time!

"That's why you are all here, to hold the defendant accountable for their conduct."

➤ \$9M slip and fall

"What about the responsibility that the County is supposed to take for [plaintiff]?"

➤ \$113.4M for child injured

"[T]here has to be some accountability and responsibility...and the city fell short."

➤ \$85M for wrongful death in police custody

"They're not taking any responsibility for this at all."

➤ \$25.6M for teen struck by car in crosswalk



➤ Very well!



- Accept responsibility for SOMETHING
- In every case, no matter what
- You can still get a defense verdict!





# Why Accept Responsibility?

- Responsibility
- Makes y
- *Defuses*



SAME





## Trend #2: Claiming the Defense “Wants A Discount”

# Plaintiffs' Counsel Uses This Phrase in Most Nuclear Verdicts®



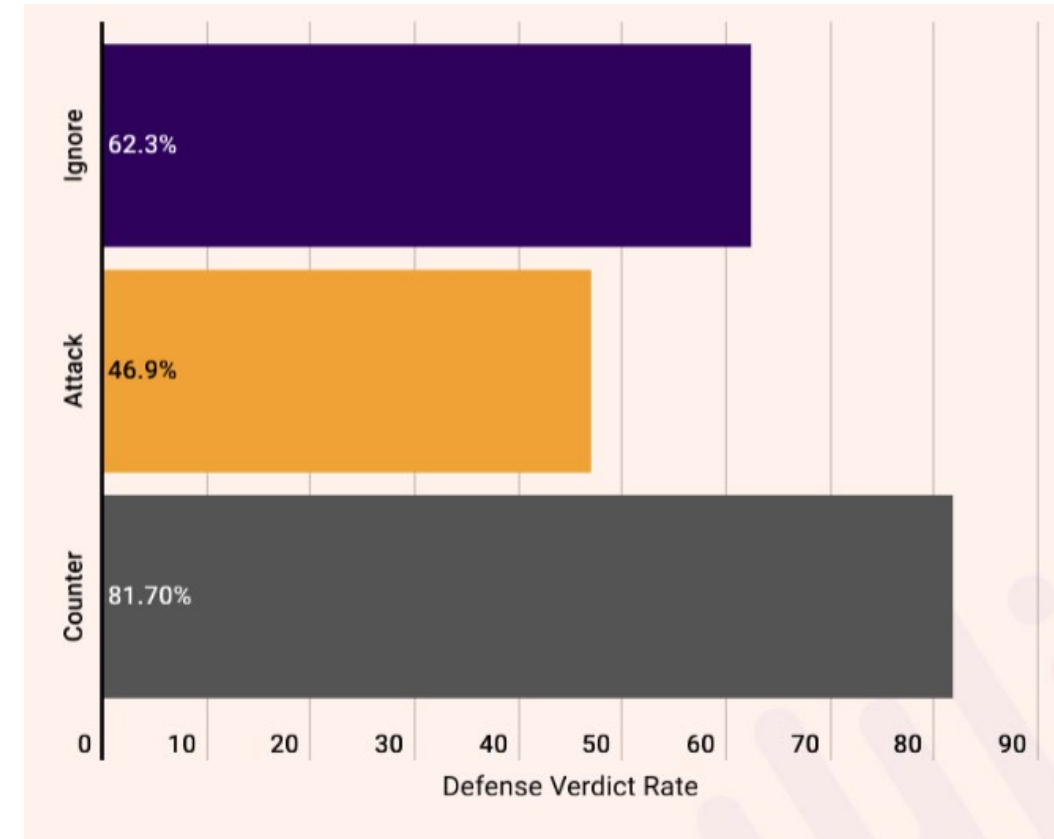
- ▶ Why?
- ▶ Makes us look COLD, UNFEELING, DISCONNECTED, UNTRUSTWORTHY
  - ▶ Jurors are on guard
  - ▶ Less interested in a defense verdict
    - ▶ Don't want to let the defense "get away with it"
    - ▶ Taps into reptile brain



- HEAD ON
- Talk about it in voir dire, and plant the seeds for...



- Give a number
- Early
- Often
- Never goes up
- Yes, even when going for a defense verdict!
- CHANCES INCREASE



Source: Campbell, J., Chao, B., Robertson, C., & Yokum, D. (2016). *Countering the Plaintiff's Anchor: Jury Simulations to Evaluate Damages Arguments*.





- ▶ Tie your number to evidence
- ▶ You are not “getting away” with anything with your number
  - ▶ You are paying what you owe plaintiff!
- ▶ Talk about “sticker price”





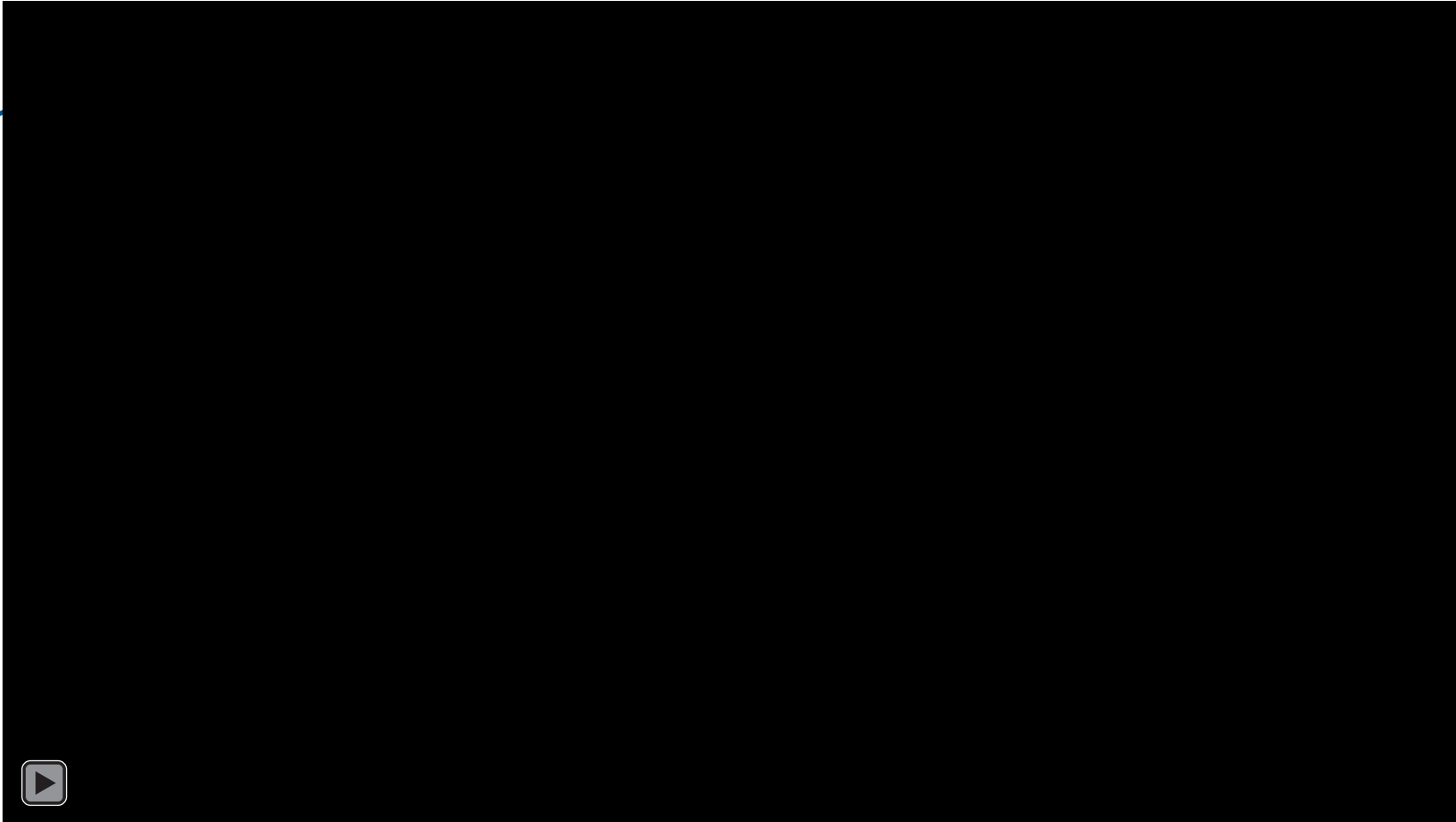
# Trend #3:

## Hijacking the Standard of Care With the Reptile Theory!

# Plaintiffs Are Changing The Playing Field – and It's Not Fair!



WH



- Nobody is perfect – and corporations do not have to be!
  - You should be held to “reasonable care”
  - Just like everyone else!
- *COMMON SENSE!*



# So... Prime, Prepare, and Prehabilitate!

- ▶ Witness prep at the outset to avoid reptile traps
- ▶ Craft your discovery responses with the reptile in mind
- ▶ “Prehabilitate” your jurors!
- ▶ And remember... the reptile is only effective if anger is not defused!





# Trend #4: Getting Creative With Pain and Suffering



- ▶ Comparing the value of inanimate objects
  - ▶ Picasso painting!
    - ▶ \$60M, negligence in hotel delayed medical care
  - ▶ “Valuable diamond”
    - ▶ \$200M, boy killed in boat propeller



- ▶ Talking about minutes, hours, and days of misery ahead
  - ▶ “If I look at \$75 an hour, you multiply by 8,760 hours in a year, that gets you to \$40,000,077. I think that seems too high. I think reasonable is somewhere in between those two numbers. So I put \$50 an hour to live like January has to live and I get to a number of \$26,718,000. So if you – if you were to add those two numbers together, and – and I can't do the math good enough in my head to get it to the penny, it's going to be that plus the economic damages that we saw, um, right there, the \$23,752,566.”
  - ▶ \$30M, birth injury

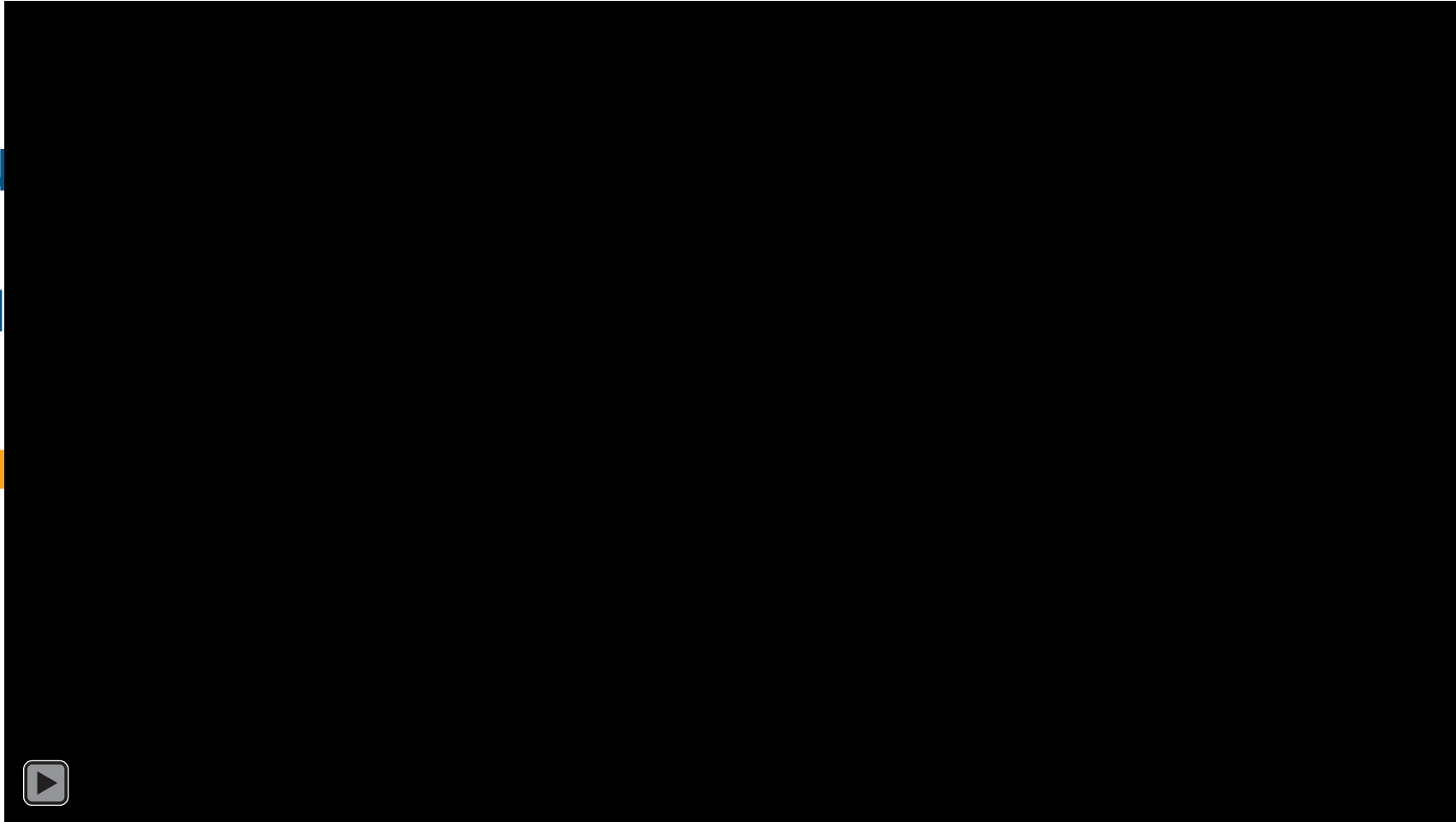


- ▶ Reminding jurors how much pro athletes make
  - ▶ "Trae Young for the Atlanta Hawks makes \$37 million per year. Freddie Freeman was a Brave, but he makes \$12 million a year for the Dodgers."
  - ▶ \$30M, birth injury



# Why Are They Getting So Creative?

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- Nu
- Bu



Nelly, 2000



- Impact of **accident** on plaintiff's life
- Impact of **money** on plaintiff's life





# Trend #5: Attacking the Defense!



- No corporate representative? Red flag!
  - Plaintiff will harp on that over and over
- Jurors will see the defendant as a villain
- “[Defendant’s] motto might as well be: “Just let us do whatever we want even if it's at the expense of the safety of children.”
  - \$113.4M verdict



# ...and They Come After Defense Counsel!

- ▶ "[H]er lawyers are trying to take advantage of the system."
  - ▶ \$9M slip and fall
- ▶ "I have not been disingenuous. I cannot say the same for defense here."
  - ▶ \$113.4M for injured child
- ▶ They even paint the defense counsel as rich and entitled!



# They Know about Corporate Identity Effect – Do You?

- ▶ “...renders corporate defendants more liable, more negligent, and owing higher damages than individual defendants sued for identical claims”
  - ▶ K. Rebeck, “Understanding the Corporate Identity Effect: An Examination of How Legal Standards are Applied to the Behavior of Corporate Versus Individual Defendants in a Civil Lawsuit Scenario.” University of Chicago. 2012.
- ▶ Personalize the corporate defendant!
- ▶ Prepare jury for the attack!





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# Takeaways

## ➤ Take back justice for ALL

Accept responsibility

Use common sense

Argue pain and suffering

Give a number

Personalize the defendant





# QUESTIONS?







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# Thank you!



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