

Quantifying the juror bias against corporate defendants

A research study on how bias can impact the value of a case

BY CHRIS DENOVE

I recently spoke at a conference where I asked the group to list off all the relevant facts they would want to know in order to estimate the value of a case. We gave them just the basics; your client is a 40-year-old man who suffered a displaced fracture of the right arm when he tripped on a piece of carpet that had lifted from the ground. Liability was admitted, so the jury's only task will be to determine the value of your client's damages.

After about five minutes, the group had provided a long list of items. Many were the usual suspects: What are the medical expenses, what does your client do for a living and is there a loss of earnings claim? Others were more creative, but potentially just as important.

Nature of the defendant

I found it interesting, however, that no one asked about the nature of the defendant; specifically, are we suing a homeowner or a business? So I asked the group how important the nature of the

defendant was in determining damages of an admitted liability case. The consensus answer was that since liability was admitted, the nature of the defendant was primarily relevant with respect to the defendant's *ability to pay* the claim, and not the value of our client's damages.

This generally-held belief led to the research project discussed below. Specifically, we wanted to know whether jurors would modify their damage award based solely on the nature of the defendant, and if so we wanted to statistically quantify the difference in dollars. One way to do this



would be to review all of the available slip-and-fall verdicts involving broken arms to see whether cases against businesses generated higher verdicts. This quickly proved unacceptable, however, because every case is different and it would be impossible to know whether the differences in the verdicts were due to the nature of the defendant, or the myriad of unique differences within each case.

Mock trials

We therefore decided that the only way to accurately measure this impact once and for all would be to conduct a series of mock trials that were identical in every way *except* for the nature of the defendant. That way we would know that any difference between the verdicts exclusively reflected the subconscious bias created by the nature of the defendant.

We ran a total of three mock trials. Each trial was conducted online because the lower cost per juror allowed for large enough sample sizes to be statistically reliable.

In all three cases the plaintiff (and his injuries) were identical:

- 40-year-old married man
- Two surgeries (injury resolved except permanent loss of range of motion and minor pain with activity)
- No loss of earnings
- Primary long-term impact on recreation (no longer able to play serious competitive softball – but still able to play recreational softball, and pain when playing golf)

The defendant, however, was described differently in each mock trial:

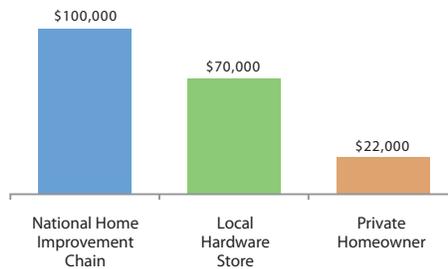
- Mock Trial #1 (Homeowner hosting a Super Bowl party)
- Mock Trial #2 (Local hardware store)
- Mock Trial #3 (Nationally branded home improvement chain)

Jurors were told that the medical expenses had already been paid, so their verdict should be limited to calculating the plaintiff's pain and suffering.

We didn't want to unduly bias the jury regarding the nature of the defendant so we didn't suggest the duty of a national retailer, or attempt to elicit empathy when the defendant was a homeowner. Instead, we only mentioned the defendant once at the beginning of the case, and from that point forward focused all evidence on the plaintiff and his injuries.

The results, which are summarized above, yielded numerous surprises.

Verdict by Type of Defendant



The first of which was the sheer size of the difference between the awards with the national retailer being hit with a damage award five times larger than that for the homeowner.

The second surprise was how the jury modified their verdict between when the defendant was a local versus national

retailer. While we weren't surprised to see at least some difference between a private homeowner and a business, the fact that the jury awarded 42 percent more for a large versus small business was quite unexpected.

As large as the differences in the verdicts were, we question whether the gaps might be even larger in a real trial. After all, in a real trial the biases may be greater where the defendant's nature is out front for all to see; the team of attorneys from the faceless corporation scurrying about, or in the opposite scenario the jury will see poor Mr. and Mrs. Johnson sitting helpless at the defendant's table.

The one undeniable fact that comes from this research is that regardless of which bar you sit (plaintiff or defense), the subconscious biases associated with nature of the defendant can be one of the most critical elements in evaluating (or miscalculating) the value of a case.



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