Running Scared? Are We Settling Too Many Cases Because of Risk Fear?

There is a familiar anxiety in litigation that all trial attorneys experience. The fear that the jury will not see the case the way you do. The fear that the jury will over sympathize with the plaintiff's claims. The fear you will lose.

However, in recent years, there has been a different kind of fear that has been creeping into the litigation space. The fear that a case is not being evaluated on its facts, its evidence, or its legal defenses, but on the reputation of the attorney sitting across the table. A well-known plaintiff's lawyer with a history of large verdicts can change the temperature of a file. Adjusters, clients, excess carriers, and defense counsel may all begin asking the same question: How much does this attorney's involvement in this case impact on our case evaluation?

This question is compounded by the ever-changing landscape relative to verdicts. Large verdicts are no longer viewed as rare anomalies. They affect settlement posture, reserve setting, mediation strategy, and trial risk analysis. But they also create a dangerous distortion: fear of the opponent can interfere with honest case evaluation.

There is no question that the lawyer on the other side matters. Some attorneys are better at storytelling, damages presentation, witness preparation, jury selection, and emotional framing. Some have cultivated reputations that give them leverage before they ever enter the courtroom. A lawyer known for trying cases and consistently winning them can credibly threaten trial in a way that a settlement only lawyer cannot.

But the identity of opposing counsel should be one factor in the risk analysis, not the whole analysis. A great lawyer still needs facts. A great lawyer still needs admissible evidence. A great lawyer still needs causation, damages, credibility, and a jury willing to accept the plaintiff's theory. When the evaluation becomes "we are afraid of this attorney" rather than "we are afraid of this evidence," the defense has already ceded ground.

Runaway verdicts often arise from more than sympathy alone. They are frequently fueled by anger, distrust, corporate indifference, bad documents, evasive testimony, inconsistent positions, or a defense that appears unwilling to accept responsibility. Sometimes lack of trial preparation can turn into a runaway verdict.

Notwithstanding, the reality remains that recent verdict trends have changed the psychology of negotiation. A $10 million demand that once sounded extreme may now be presented as restrained. A policy-limits demand may arrive early, aggressively, and with a short fuse. Plaintiff's counsel may cite verdict reports, local jury outcomes, and social inflation to create pressure before discovery is complete. That pressure is not imaginary. The insurance and corporate defense industries are openly discussing nuclear verdicts as a major risk.

At the same time, not every large verdict survives intact. Some are reduced, settled post-verdict, or reversed. For example, in California, Judge Ruth Kwan granted a motion filed by Johnson & Johnson to throw out a $950 million punitive damages award stating that the plaintiff failed to establish by clear and convincing evidence that the company active with malice. The underlying

$16 million dollar verdict remained, but this is indicative of how headline numbers should be studied carefully rather than reactively utilizing them in our ongoing case analysis. The better approach is managed control. Respect the opposing attorney. Respect the case venue. Respect the realities of the verdict climate. However, a plaintiff attorney's reputation, while it may increase risk, does not eliminate defenses.

A sound litigation evaluation should evaluate risk, with the counsel's reputation and verdict history as one component of the complete picture. The liability posture is based on the facts. The damages are based on the injuries. Witness credibility is based on how they present at deposition. The temperature of the venue is based on its history and demographics. These are equally, if not

In closing, recent runaway verdicts should cause insurers, defendants, and defense counsel to prepare earlier, evaluate more honestly, and communicate risk more clearly. They should not cause the defense to abandon independent judgment. The attorney on the other side may be formidable, but the case still turns on facts, witnesses, damages, venue, and credibility.

The goal is not to be fearless. The goal is to be disciplined, prepared and thorough in your case management.