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The IDC Monograph

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Combatting Reptile Theory & Dodging Nuclear Verdicts

Introduction

Nuclear verdicts are considered a relatively new and alarming nationwide phenomenon that defense counsel and insurers alike are encountering with dreaded frequency. While many view their increased frequency as a post-pandemic phenomenon, there is hard statistical evidence that the origins of this trend pre-date the pandemic. The rise of nuclear verdicts has been intertwined with the proliferation of "Reptile Tactics" in litigation. In addition to understanding the tactics that cause nuclear verdicts, defense counsel must assess what can be done to avoid such verdicts at every stage of litigation. We endeavor to not only provide information on these topics but hope to provide practical advice on countering these tactics, and hopefully obtaining positive results.

What are "Reptile Tactics"? In 2009, Atlanta-based Plaintiffs attorney Don Keenan and trial consultant David Ball published *Reptile: The 2009 Manual of the Plaintiff's Revolution*.[1] In *Reptile*, the authors assert that reptile animals possess a group fear mentality and that a threat to one is a threat to the group. The theory continues that, at trial, plaintiffs' attorneys must awaken the reptile area of the jurors' brains. By awakening this part of the jurors' brains, the jurors will believe that they need to protect their community, and the way to do so is to award a verdict in the plaintiff's favor. Rather than asking jurors to put themselves in the shoes of the plaintiff—which would be an inappropriate "golden rule" argument—they are now asking jurors to protect the group. The emphasis of this strategy is fear and safety.

Reptile Tactics and the danger of nuclear verdicts pose many challenges to defense counsel. In the courtroom, the conditioning of the jury by the plaintiff through reptile tactics can subtly shift their perception of the case, emphasizing safety and protection over factual analysis. Plaintiffs may use emotional appeals and safety concerns to create a heightened sense of duty or risk that the defendant is alleged to have violated. Defense strategies must therefore include a diligent clarification of legal standards and duties to counteract any misrepresentation of the defendant's obligations.

By carefully crafting these arguments and instructions, defense attorneys can help ensure that the jury's verdict is based on a balanced and accurate understanding of the case.

Third-party litigation funding is a concept that is lurking beneath the surface and enabling the chase for nuclear verdicts. Without its impacts, most plaintiffs and their attorneys would not have the money, and thus the time, to wait out defendants, drive up defense costs, and hope to develop evidence of liability. It is because of these advantages that plaintiffs' counsel are willing to take on the ethical risks of divided loyalties with portfolio funding of their cases.[2] In order to fight these trends, discovery of third-party litigation funding and coordination among defense counsel, their clients, and their insurers is necessary to identify the trends in the relationships between plaintiffs, counsel, and doctors.

Understanding the psychological leverage gained through Reptile Tactics reveals a complex landscape where defense counsel must navigate with precision, emphasizing the need for a strategic response to mitigate the risks of disproportionately large verdicts. This discussion further highlights the multifaceted challenges and the necessity for a comprehensive and proactive defense strategy to counteract these trends effectively.

What is a "Nuclear Verdict" and What Types of Cases Tend to go Nuclear?

According to the Chamber of Commerce's Institute for Legal Reform, the term "nuclear verdict" refers to any award or settlement that exceeds $10 million.[3] "These jury awards are nuclear in the sense that such a verdict can have devastating impacts on businesses, entire industries, and society at large, even when a verdict is later thrown out or substantially reduced by an appellate court." [4]

One of the hallmarks of a nuclear verdict is an award of non-economic damages that is grossly disproportionate to the economic damages awarded. Such an example of a disproportionate verdict was cited in the 10-year study of nationwide personal injury and wrongful death cases conducted by the U.S. Chamber of Commerce Institute for Legal Reform. The case arose from Illinois federal multidistrict litigation involving AndroGel, a medication that was used to treat low testosterone in men. The plaintiff alleged that the manufacturer of the drug fraudulently misrepresented its safety risks. The jury awarded $150 million in punitive damages to a single plaintiff, but also found in favor of the manufacturer on the plaintiff's strict liability and negligence claims. Therefore, no compensatory damages were awarded.[5] The trial court threw out the first $150 million verdict, holding that it was inconsistent for the jury to award punitive damages by finding the manufacturer had misleadingly marketed the drug, while finding that the drug had not caused the plaintiff's heart attack, and to award no compensatory damages. A second $140 million verdict was tossed out for similar reasons. [6]

A nationwide study of personal injury and wrongful death cases conducted by the U.S. Chamber of Commerce Institute for Legal Reform, (released in September of 2022), examined 1,376 nuclear verdicts returned from 2010 to 2019.[7] The study found that the nationwide median nuclear verdict was $20 million. [8] Approximately one-half of these verdicts were between $10 million and $20 million[9] and one-third were between $20 million and $50 million.[10] 16% of the nuclear verdicts studied exceeded $50 million, including a "mega nuclear group" of verdicts that exceeded $100 million.[11]

The report found that "nuclear verdicts" were increasing in both size and frequency. [12] The median reported nuclear verdict increased from $19.3 million in 2010 to $24.6 million in 2019. [13] This represents a 27.5% cumulative increase in the median nuclear verdict over a 10-year period in which inflation rose only 17.2%. [14]

In Illinois, medical liability cases most frequently resulted in nuclear verdicts. (37.3%),[15] followed by product liability cases (17.3%) and premises liability cases (16%).[16] 10.7% of nuclear verdicts were returned in personal injury and wrongful death lawsuits arising out of automobile accidents.

The study found that the venue in which the case was tried in Illinois was relevant in cases that resulted in nuclear verdicts. Two-thirds of nuclear verdicts in Illinois resulted from trials in the Cook County Circuit Court. One-quarter of the state's nuclear verdicts were returned in federal court, primarily in the Northern District of Illinois. The remainder came from cases in other state trial courts.

On December 5, 2024, the American Tort Reform Association ("ATRA") ranked Cook County number two on its 2023-2024 "Judicial Hellholes" list. The report notes that since 2022, Illinois courts have produced 13 "nuclear verdicts," ranging from $10.5 million to $363 million. All but one of those verdicts were returned in lawsuits filed in the Circuit Court of Cook County.

ATRA moved Cook County up from number five to number two in its ranking based largely on Illinois' encouragement of what it termed "no injury lawsuits." At the head of these "no injury lawsuits" were suits based on Illinois' 2008 Biometric Information Privacy Act ("BIPA"). The report noted that the Act did not attract much attention until 2015, when a group of plaintiffs' lawyers began using the law as a basis for class action lawsuits. The report noted that in the eight years since the passage of the BIPA Act, a "growing cadre of class action law firms have used the law to file thousands class action lawsuits and amass billions of dollars, collectively, in attorney fees from businesses who choose to settle rather than take the chance of being slapped with what Illinois Supreme Court justices and others have described as potentially "annihilative "and "catastrophic "payouts at the hands of juries. "

The report cited research from The Perryman Group, which found that "lawsuit abuse and excessive tort costs" in Illinois alone cost the state economy more than $21 billion annually." In Chicago and Cook County, these lawsuit costs drain $2.24 billion from personal income yearly, resulting in an estimated loss of more than 187,000 jobs, costing each Chicago resident about $2,300 per year in a so-called invisible "tort tax."

The study notes that all of this has been exacerbated by the passage of Illinois' Pre-judgment Interest Act, which has allowed plaintiffs to massively increase awards through prejudgment interest at 6% per year from the date of the filing of the litigation. Additionally, the report cites Governor Pritzker's signing into law a provision allowing plaintiffs to seek "limitless punitive damages in most wrongful death cases."

It is clear that nuclear verdicts are a major threat that defense attorneys face now, and if the trends continue, will face for the foreseeable future. This monograph takes up the issue of nuclear verdicts, why they are happening, tactics used by plaintiffs' attorneys and what measures defense counsel can take to limit or prevent them.

Recent Examples of Nuclear Verdicts in Illinois

In *Kamuda v. Sterigenics*, a Circuit Court of Cook county case, Susan Kamuda sued Sterigenics and its parent companies alleging that the ethylene oxide emissions from the Sterigenics medical sterilization facility in Willowbrook, Illinois caused her breast cancer. At the time of trial, she was in remission. Sterigenics argued that its emission levels complied with state regulations, and that at environmental levels, ethylene oxide is too weak of a carcinogen to cause cancer. Sterigenics argued that the use of various pollution control equipment that was urged by the plaintiff was dangerous and would increase the possibility of an explosion. Finally, the defense argued that medical literature and science supported the contention that in order to be a cancer risk to the plaintiff, she would have had to have been exposed to ethylene oxide emissions at a level 1,000 times more than she may have been exposed to.[17]

The plaintiff asked the jury to award $21,000,000 in compensatory damages and $325,000,000 punitive damages. On September 19, 2022, the jury returned a verdict of $363 million - $38 million in compensatory damages and $220 million in punitive damages against Sterigenics, $100 million against one of the parent companies and $5 million in punitive damages against affiliated company Griffith Foods, International. The Cook County Jury Verdict Reporter noted that this was the highest total Illinois verdict for an individual plaintiff in Jury Verdict Reporter records. [18]

On January 30, 2024, a Cook County jury returned an $18 million nuclear verdict in favor of a 39-year-old postwoman who tripped over a wheel stop located on a walkway that led from the parking lot to the building in which she lived. Michelle Biancalana sued First Arm Investment Group, Inc., the owner of the property, and Seagreen Property Services, Inc., the manager of the property. She alleged that her right arm was cut by a glass bottle that broke when she fell and required surgery to clean out dead muscle tissue, to repair a tendon and to repair her ulnar nerve, among other procedures. Biancalana claimed that the injury plus the surgeries resulted in the development of complex regional pain syndrome (CRPS) and that she ultimately needed a spinal cord stimulator permanently implanted in her cervical spine and would need at least four more procedures to replace its battery, among other procedures. She claimed that her medical expenses exceed $1 million.

While the Cook County courts enjoy a reputation for returning unusually large verdicts, another recent nuclear verdict that caught a lot of attention came out of a venue that was well known for being one of the more conservative venues in Illinois – Kendall County.

In *Logan Bland v Q. West, Little Rock Fox Fire Protection District, et. al.,* the plaintiff, a 23-year-old male customer of the defendant's bar, Q West, consumed alcohol and became intoxicated on November 13, 2015. Several bouncers removed him from the bar around midnight. The plaintiff alleged that the personnel from the bar that removed him used excessive force by flipping his legs over his head while he was being ejected which caused him to land on his neck. The plaintiff sustained spinal fractures at C5-7, leaving him an incomplete quadriplegic. The plaintiff claimed to have incurred $821,399 in past medical expenses, and would incur $11,334, 505 in future medical expenses and a lifetime lost wage of $1,418,175 to $2,097,336.[19] The defense argued Q West employees acted reasonably and that the plaintiff was contributorily negligent for failing to drink responsibly, becoming intoxicated, failing to leave the premises when requested, refusing to cooperate with the defendant's employees, refusing to leave peacefully when asked to do so, and physically resisting attempts by security personnel to remove him. Prior to trial, the Little Rock Fox Fire Protection District settled. The plaintiff made a $1 million policy demand to Q West in 2017. The policy limits were ultimately offered after the motions in limine conference, but the limits demand had long since expired by that time.[20]

At trial, the plaintiff asked the jury for $61,605,904. On June 30, 2021, the jury awarded $51,605, 904, reduced by 20% for the plaintiff's comparative negligence to $41,284,723. The verdict did not include any punitive damages. The Jury Verdict Reporter noted that this verdict was the highest reported Kendall County verdict in Jury Verdict Reporter records. [21]

Approaches to Countering Reptile Tactics

Challenges for Defense Attorneys

Emotional Bias: The reptile theory effectively shifts the focus from legal standards and the specific facts of the case to emotional responses and safety concerns. This can create a bias against the defendant, as jurors may be swayed by fear and empathy rather than the evidence presented.

Difficulty in Refuting Emotional Appeals: It is challenging for defense attorneys to counteract emotional appeals with rational arguments and legal principles without appearing uncaring or dismissive of safety concerns. This balance is difficult to achieve and requires careful strategy.

Broadening the Scope of the Case: The reptile theory can broaden the case's scope beyond the specific issues at hand, forcing defense attorneys to address wider safety concerns and societal implications. This can complicate the defense strategy and necessitate a broader range of evidence and arguments.

Preparing Witnesses: Defense witnesses may be unprepared for the aggressive questioning style that seeks to elicit responses supportive of the reptile theory's narrative. Training witnesses to navigate these Reptile Tactics without inadvertently supporting the plaintiff's case is a complex and time-consuming process.

Defense attorneys must navigate the psychological tactics designed to evoke fear and protective instincts among jurors. The challenge lies in countering these emotional appeals with a defense grounded in rational argumentation, legal standards, and factual evidence, all while maintaining a respectful and empathetic demeanor. This necessitates a nuanced understanding of both legal strategy and human psychology.

Building a Robust Defense against Reptile Tactics

Conducting an early case assessment is the key to developing a successful defense strategy. This pivotal phase lays the groundwork for all subsequent actions and decisions, providing the necessary insights to counteract the emotionally charged strategies employed by plaintiff attorneys. A meticulous and comprehensive review of the case issues becomes paramount, enabling the creation of a defense that is not only resilient but also adaptable to the shifting dynamics of litigation.

Comprehensive Document Review: The early case assessment begins with an exhaustive examination of all case materials available. It is a process of uncovering the ammunition the opposition may use, especially when deploying reptile tactics to incite fear and emotional reactions in jurors. This review serves as the foundation for understanding the allegations, the factual basis for the claims, and any recent case law that may impact the case strategy. For example, in 2023, Illinois passed legislation that now allows punitive damages to be recovered in Wrongful Death actions which can significantly enhance exposure to clients. This should also put attorneys on notice that such cases put bigger targets on the backs of their clients.

Stakeholder Interviews: Interviews with key stakeholders take on heightened significance when reptile tactics are at play. This includes discussions with potential witnesses, corporate officers, and employees who possess unique insights into the case's context and nuances. These conversations can unveil previously unconsidered aspects of the case, such as operational practices, internal communications, and the decision-making processes that may be targeted by the opposition's emotionally charged narratives. By understanding the nuances within the organization and its practices, defense attorneys can better prepare to counter reptile tactics that aim to exploit these areas.

Assessing Vulnerabilities Early and Often

The process of assessing vulnerabilities is never ending throughout any given litigation. You should always be evaluating the case from the perspective of your opposing counsel. And with this in mind, you should be able to anticipate traps.

Witness Vulnerabilities: Identifying potential weaknesses in witness testimonies becomes a critical endeavor. This involves a comprehensive assessment of witness credibility, the consistency of their accounts, and any potential biases or conflicts of interest that could be exploited by the opposition. Additionally, evaluating their depth of knowledge and understanding of the matters at issue is essential for gauging how they might be perceived by a jury and how effectively they can withstand the intense scrutiny of cross- examination.
Corporate Witness Binding Authority: Understanding the extent to which corporate witnesses can legally bind the corporation is vital in countering reptile tactics. This involves a thorough analysis of the hierarchical positions of witnesses within the company, their roles in decision-making processes, and any statements or actions they have made that could be construed as admissions on behalf of the corporation. By pinpointing these vulnerabilities, defense attorneys can craft strategies to protect their clients from unwarranted legal consequences.

Legal Exposure and Compliance Issues: The early assessment should also concentrate on identifying any legal exposure stemming from non-compliance with regulatory requirements, contractual breaches, or negligence in adhering to industry standards. This proactive analysis is instrumental in anticipating the arguments likely to be made by the opposing party and in formulating counterstrategies that negate the impact of reptile tactics centered on perceived wrongdoing.

Witness Preparation Strategies

Witness preparation is not just a procedural step; it serves as the protective shield that upholds the integrity of the case. This comprehensive preparation encompasses a range of strategies and techniques aimed at ensuring that witnesses are equipped to navigate the challenges posed by emotionally charged tactics, such as reptile strategies.

Corporate Representative Depositions: The preparation of any witness is important, but those who are designated to speak for a company are among the most critical for a defense attorney. This preparation goes beyond mere rehearsal of facts; it delves into the intricate understanding of the company's stance on key issues, notably safety, and equipping representatives to effectively navigate the challenging questions from opposing counsel. The goal is to ensure that these representatives can adeptly navigate the complex interplay between upholding safety standards and acknowledging the practical realities of their respective industries.

Seeking Protective Orders: The strategic use of protective orders becomes instrumental in safeguarding the integrity of witness testimonies. Protective orders serve as a crucial tool to prevent witnesses from being compelled to make broad and potentially damaging statements about subjects they are not experts in. While obtaining protective orders can be challenging, they are indispensable for protecting witnesses from undue emotional manipulation tactics.

Thorough Preparation: Preparing a corporate representative for deposition involves a comprehensive review of all relevant case materials, corporate policies, and industry standards. It is not a superficial examination but a deep dive into understanding the underlying principles guiding the company's operations and its approach to safety. This preparation includes mock depositions where representatives face challenging questions in a controlled environment, allowing them to refine their responses and demeanor for the courtroom battleground.

Smart, Practical Answers: During depositions, corporate representatives must master the art of striking a balance between demonstrating unwavering commitment to safety and acknowledging the practical considerations of running a business. For example, while safety is of paramount importance, it is not the sole concern. Representatives need to articulate how safety measures are effectively implemented within the broader context of business objectives, including operational efficiency and financial viability. This nuanced understanding helps counter overly simplistic narratives that might portray the company as neglecting safety in pursuit of profit.

Acknowledging Inherent Risks: In industries like construction, manufacturing, and transportation, inherent risks are a reality. A corporate representative's ability to discuss these risks candidly, while highlighting the measures in place to mitigate them, is pivotal. This discussion should frame risk as an inherent aspect of providing valuable services or products to society. Acknowledging the risks involved, while detailing the safety protocols and training in place, demonstrates a responsible and realistic approach to business operations.

Rehearsing for Real-World Scenarios: Meticulous preparation for a deposition entails rehearsing responses to a wide range of questions, including those that might seem simplistic or leading. Corporate representatives should be well-equipped to handle questions designed to box them into a yes-or-no answer when the reality is far more complex. The more critical the witness, the more time that should be spent on preparation. Training sessions should focus on developing strategies for providing comprehensive, thoughtful responses that authentically reflect the company's stance while avoiding potential traps set by opposing counsel. These sessions should be recorded on video so the witness can observe their mannerisms—especially during the challenging portions.

Handling High-Pressure Situations: Finally, corporate representatives must be prepared for the psychological aspects of a deposition. The relentless pressure from opposing counsel can be intense, aiming to elicit emotional responses or unguarded comments. Representatives should learn techniques for maintaining composure, such as taking a moment to breathe before answering, requesting clarifications when necessary, and recognizing when a break might be needed to consult with legal counsel.

Examples of Reptile Theory in Practice

Example 1: Industrial Accident Case

> **Scenario:** In an industrial accident case where an employee was injured due to machinery malfunction, a plaintiff attorney might focus extensively on the company's overall safety record, even if unrelated to the machinery in question.

Reptile Question: "Isn't it true that your company has been cited for safety violations in the past, suggesting a pattern of neglecting worker safety? How can the community feel safe knowing that your company continually puts its workers at risk?"
Why It's Challenging: This approach pressures the defense to address broader accusations of safety negligence, diverting attention from the specifics of the incident and creating an emotional bias against the company.
Sample Defense Response: "While it's true that we may have had isolated safety violations in the past, it's important to remember that we've always taken those seriously and made improvements as necessary. We have a comprehensive safety program in place, and safety is our top priority. Our employees undergo regular training, and we've invested heavily in safety measures and equipment upgrades to ensure a safe working environment. It's unfortunate that this incident occurred, but it was an isolated event, and we are committed to learning from it to prevent any future accidents."

Example 2: Medical Malpractice Case

Scenario: In a case alleging medical malpractice, the plaintiff attorney might generalize the incident to imply a systemic issue with the hospital's patient safety protocols.
Reptile Question: "Doctor, would you agree that prioritizing speed over accuracy in surgical procedures endangers not just the individual patient but the entire community that trusts your hospital for their care?"
Why It's Challenging: The question is designed to trap the witness into agreeing with a broad statement that frames the hospital as a threat to community safety, making it difficult for the defense to counter without seeming to dismiss concerns for patient safety.
Sample Defense Response: "I understand the concern, but it's essential to clarify that our hospital's primary focus is on providing the best possible care to each patient. While speed is important, it is never prioritized over accuracy or patient safety. Medical procedures are carefully planned and executed, with the utmost consideration for patient well-being. This unfortunate incident should not be taken as a reflection of our hospital's commitment to safety. We continuously review and improve our procedures to ensure the highest standards of care are maintained."

Example 3: Automotive Product Liability Case

Scenario: In a lawsuit alleging a defect in a vehicle led to a crash, the plaintiff attorney might use hypothetical scenarios to highlight the potential for widespread harm.
Reptile Question: "If it were known that this vehicle model had a tendency to lose braking power under certain conditions, could that not put every driver and pedestrian in our community at risk?"
Why It's Challenging: This line of questioning seeks to extend the liability beyond the individual case to imply a broader public safety threat, aiming to evoke fear and concern among jurors about their safety.
Sample Defense Response: "I appreciate the concern, but it's important to note that the vehicle in question met all safety standards and regulations when it was manufactured. While accidents can happen, they are often isolated incidents and not indicative of a broader public safety threat. We have always cooperated with investigations and recalls to address any potential issues promptly. Our commitment to safety extends to our entire product line, and we continuously work to improve vehicle safety features to protect our customers and the community."

Example 4: Residential Property Negligence Case:

Scenario: In a case where a tenant was injured due to a poorly maintained property, the plaintiff attorney might focus on the landlord's general approach to maintenance across all properties they own.
Reptile Question: "By failing to maintain safe living conditions in this instance, isn't it indicative of a disregard for the well-being of all tenants in your properties? How many other community members are living in unsafe conditions because of your negligence?"
Why It's Challenging: This question suggests a pervasive neglect that endangers the community, compelling the defense to tackle the accusation of widespread harm rather than focusing on the specifics of the incident.
Sample Defense Response: "I want to assure you that we take the safety and well-being of all our tenants seriously. While this incident is regrettable, it does not represent our overall commitment to maintaining safe living conditions. We have a comprehensive maintenance program in place, and issues are addressed promptly when reported. It's essential to consider this incident as an isolated occurrence, and we are fully cooperating to rectify the situation. We care about our tenants and work diligently to ensure their safety and comfort in all our properties.

Example 5: Commercial Truck Driver Vehicle Accident Case:

Scenario: A commercial truck collides with a passenger vehicle, resulting in significant injuries to the passenger vehicle's driver, the plaintiff alleges that the truck driver was fatigued and accuses the trucking company of failing to enforce regulations regarding driving hours and rest periods.
Reptile Question 1: "Isn't it true that your company's truck drivers, including yourself, are often encouraged to meet unrealistic delivery schedules, even if it means skirting around federally mandated rest periods?"
Why It's Challenging: This question implies that the company systematically prioritizes profit over safety, endangering not just the individuals involved in the accident but everyone on the road. It challenges the defense to refute the implication of widespread safety violations without appearing to dismiss legitimate safety concerns.
Sample Defense Response: "I want to clarify that our company prioritizes safety above all else. While we have delivery schedules to meet, they are always within the bounds of federal regulations. We do not encourage our drivers to violate rest periods or safety guidelines. Our drivers are trained to prioritize safety, and we have strict protocols in place to ensure compliance with regulations. Safety is not compromised for the sake of delivery schedules, and we are continuously monitoring and improving our procedures to uphold the highest safety standards."
Reptile Question 2: "Would you agree that by ignoring the signs of fatigue and continuing to drive, a commercial truck driver becomes a potential threat to every family traveling on the same road?"
Why It's Challenging: This question personalizes the risk, suggesting that the defendant's actions could have catastrophic consequences for the community. It aims to make the jurors feel personally vulnerable, leveraging fear to influence their judgment.
Sample Defense Response: "I understand the concern, and I want to emphasize that fatigue is a serious issue in the trucking industry. Our drivers are trained to recognize and address signs of fatigue promptly. If a driver is feeling fatigued or believes they are unfit to drive safely, they are encouraged to stop and rest. We take our

responsibility to the community's safety seriously and have strict policies in place to prevent fatigued driving. This incident is regrettable, and we are committed to learning from it to ensure it does not happen again."

Reptile Question 3: "How many more accidents must occur before your company decides to strictly enforce the rest regulations for its drivers? How can the community feel safe knowing that trucks operated under your company's policies are on the road?"

Why It's Challenging: By framing the company's policies as an ongoing threat to public safety, this question seeks to provoke outrage and fear. It puts the defense in the position of having to defend the company's safety record and policies in the broader context of community safety, rather than focusing on the specific case at hand.

Sample Defense Response: "We deeply regret this accident and any concerns it may have raised. Our company is committed to strict enforcement of rest regulations for our drivers. We continuously monitor and review our policies and procedures to ensure compliance with safety regulations. One accident is one too many, and we are taking this incident as an opportunity to reinforce our commitment to safety. Our goal is to maintain the highest standards and to make our roads safer for everyone.

Examples for Strategic Responses to Reptile Tactics

Remember, plaintiff attorneys are looking for "yes" or "no" responses that they can read at trial. A well-prepared witness will not let themselves be painted into a corner on any given issue. Effective responses require careful preparation, clear communication, and strategic thinking to prevent being drawn into the emotionally charged narrative. Here are strategies and examples of effective responses to such generalized reptile theory-based questions:

Reptile Question: *"Would you agree that safety should always be the company's top priority, above making profits?"* **Effective Response:** "Our company is committed to operating safely and within all regulatory requirements. Safety and compliance are integral to our business model, which includes ensuring the well-being of our employees and the communities we serve, as well as maintaining a sustainable business." **Why Effective:** Redirected with facts and other specifics

Reptile Question: *"Isn't it true that ignoring safety regulations could endanger the entire community?* **Effective Response:** "Our company takes its regulatory obligations very seriously, and we have comprehensive policies and training programs in place to ensure compliance. Safety is a complex issue that we continuously address through a multifaceted approach, including regular training, equipment checks, and compliance audits." **Why Effective:** Affirm company values while highlighting complexity.

Reptile Question: *"Do you think companies like yours put the public at risk by prioritizing deadlines over safety?"* **Effective Response:** "Could you please clarify or specify what you mean by 'prioritizing deadlines over safety'? Our company has strict policies to ensure that safety regulations are never compromised for the sake of meeting deadlines. We adhere to all industry standards and regulatory requirements to protect public safety." **Why Effective:** Clarify and request specifics.

Reptile Question: *"How can you justify any level of risk to the public in your operations?"* **Effective Response:** "Our operations are conducted within the framework of stringent industry and regulatory standards designed to minimize risk. We continuously assess and improve our safety measures based on the latest research, technology, and best practices. Here is [specific data/evidence] showing our track record and the effectiveness of our safety programs." **Why Effective:** Use tangible evidence or data to counter emotional appeals.

Reptile Question: *"Wouldn't you agree that even one accident is too many?"* **Effective Response:** "Absolutely, any accident is regrettable, and we strive to prevent them through our rigorous safety protocols and training. However, it's important to examine each incident in the context of specific facts and circumstances to effectively address and learn from it." **Why Effective:** Acknowledge concerns without conceding fault.
Reptile Question: *"If a company violates safety standards, isn't it directly responsible for endangering the community?"* **Effective Response:** "It's critical to base our discussion on actual facts and evidence rather than hypotheticals. Our legal system and regulatory framework provide specific criteria for assessing responsibility and compliance. Our company adheres to these standards and is committed to ongoing improvement to safety practices." **Why Effective:** Counter hypotheticals and legal standards.

Other Defense Strategies

Motions in Limine: Navigating the use of motions in limine in the context of reptile theory requires a delicate strategy. These pretrial motions are a crucial defense tool to exclude prejudicial evidence and arguments stemming from the nebulous concept of reptile theory. By addressing these tactics early, defense attorneys aim to shield their clients from emotional manipulation, ensuring a fair trial.

Voir Dire: Throughout the jury selection process, it is critical to reiterate the focus on the evidence rather than emotion. Defense counsel must be on the lookout for those individuals who provide feedback suggestive of someone who is predisposed to emotional appeals over factual analysis. To achieve this, attorneys must craft that underscore the importance of decisions based on evidence, asking jurors to commit to this standard despite personal biases towards community safety or corporate responsibility. Additionally, exploring jurors' attitudes towards industry practices and risks helps reveal any biases that align with reptile tactics, aiming to select jurors who can maintain a balance between rational assessment and emotional response. This strategic approach during voir dire ensures a jury foundation built on rationality, safeguarding the trial's integrity from strategies that manipulate emotions.

Illinois Courts' Treatment of Reptile Tactics

In Illinois, the case law addressing "Reptile Tactics" is not as robust as the case law addressing "Golden Rule" arguments likely due to the strategy's relative novelty, but the courts' treatment of "Golden Rule" arguments provides guidance on the court's treatment of Reptile Tactics. Further, Plaintiffs attorneys have found new tactics to avoid the traditional Golden Rule argument.

While it is well established that a party is afforded broad latitude in making a closing argument, this latitude is not boundless.[22] Attorneys cannot unfairly appeal to the jurors' emotions as the jury must decide the case based on the evidence presented.[23] *Bale v. Chicago J. R. Co.*, 259 Ill. 476 (1913), is one of the earliest cases admonishing arguments that appeal to the emotions of the jury.[24] In *Bale*, the deceased was killed when he stood between two passing trains and was thrown beneath one.[25] During closing argument, the deceased's counsel made repeated statements that "the price of $10,000 for a man's life suddenly hurled into eternity."[26] The court found that counsel's arguments were "an impassioned appeal to the emotions of the jury" with the "deliberate purpose to arouse sympathy and excite prejudice."[27] The court ultimately held that this kind of argument could not be justified and was sufficient reason to grant a new trial.[28]

Under the same general principle that the jury must decide each case based on the evidence presented unencumbered by appeals to its passion, prejudice, or sympathy, arguments asking jurors to stand in the shoes of a party, also known as "Golden Rule" arguments, have similarly been found to be improper. "It is error for a plaintiff's counsel to ask a jury to put itself in the position of a plaintiff. It is just as erroneous for a defense counsel to as the jurors to place themselves in the position of the defendant."[29] *Klotz v. Sears, Roebuck & Co.*, 267 F. 2d 53 (7th Cir. 1959) represents one of the most egregious examples of a "Golden Rule" argument. In *Klotz*, the plaintiff lost his eye when a sprayer purchased from the defendant exploded.[30] During closing argument, the plaintiff's attorney specifically asked jurors twice to "do unto others as you would have them do unto you."[31] The plaintiff's attorney continued by asking "what is the eye worth and what could you get anybody to give it to you for?"[32] The plaintiff's attorney concluded his closing argument by asking the jury, "We ask you to give us the kind of deal that you would want to get."[33] The court found, given the nature and number of the remarks, that the plaintiff's attorney deliberately attempted to appeal to the jury to decide the case on sympathy and held that a new trial was warranted.[34]

However, not all "Golden Rule"arguments result in prejudice as they do not elicit the passion, prejudice, or sympathy of the jury.[35] In *Sikora v. Parikh*, 2018 IL App (1st) 172473, the deceased sustained a pulmonary embolism while under the defendant's care.[36] The allegations against the defendant focused on the defendant's failure to diagnose and treat the pulmonary embolism.[37] During her closing argument, the defendant's attorney ask the jury to "stand in [the defendant's] shoes on that morning."[38] The plaintiff's attorney objected to the statement, and the trial judge sustained the objection.[39] In addition to sustaining the objection, the trial judge instructed the jury to "disregard standing in somebody's shoes."[40] The defendant's attorney continued her closing argument by saying, "take yourself back to that time and evaluate from [the defendant's] perspective."[41] After closing argument, the jury returned a verdict in favor of the defendant.[42]

The plaintiff's attorney filed a motion for a new trial, and in ruling on the motion the trial court found the comment to be improper and also found that it was "particularly prejudicial on its face."[43] Although it affirmed the granting of a new trial on other grounds, the court found that the defendant's attorney's arguments, while technically improper, did not result in significant prejudice.[44] The court explained that to ask the jury to place itself in the position of a party is only improper if the intent is calculated to arouse the passion, prejudice, or sympathy of the jury.[45] The court held that the defendant's attorney's remarks were "not intended to elicit sympathy or arouse the passions of the jury."[46] Rather, the remarks were intended to temporally frame the relevant facts known to the defendant.[47]

Reptile Tactics to Avoid "Golden Rule" Argument Prohibitions

Given the general prohibition on Golden Rule arguments, plaintiff's attorneys have had to create new ways to appeal to a jury's prejudice, passion, or sympathy.

Recently, in *McCarthy v. Union Pac. R.R. Co.*, 2022 IL App (5th) 200377, the plaintiff sued his former employer (Union Pacific) and direct supervisor for personal injuries he claimed to have sustained while at work.[48] The plaintiff claimed he received unwanted physical contact from his direct supervisor that caused both physical and emotional injuries.[49] The defendants filed a motion in limine seeking to bar the plaintiff from presenting "any argument, comment, or suggestion that the jurors act as safety advocates in this lawsuit or that they send a message to the corporate defendant with their verdict." which was granted.[50]

During closing arguments, the plaintiff's attorney—in blatant disregard of the motion in limine—stated, "Make no mistake. This case is about more than one man getting hurt at work. You have an opportunity to do more for the safety of your community than you will likely ever again in the rest of your lives."[51] The defendants' attorney objected, and the

jurors were admonished to disregard any statement not based on the evidence.[52] Despite this, the plaintiff's attorney continued to make such statements, including:

- safety rules protect us all. You have the power to make this community safer;
- this is your community;
- if you don't do something about it today, it's going to happen again;
- if the railroad isn't going to enforce its safety rules, that burden falls to you;
- every place of employment will be safer;
- keep in mind, your verdict today isn't just about this case; your verdict will set a precedent; and
- your verdict will stand for the proposition that this community demands safety rules be enforced.[53]

After closing arguments, the jury returned a verdict of $3.14 million against Union Pacific and $10,000 against the supervisor.[54] As a result of the plaintiff's attorney's repeated violation of the motion in limine, the defendant's attorney filed a motion for a new trial, which was denied.[55] On appeal, the court held that the trial court abused its discretion when it denied the motion for a new trial finding that no reasonable judge could conclude that the plaintiff's attorney's closing argument did not prejudice the verdict.[56]

McCarthy serves as an example of what Reptile Tactics look like in practice and a warning of the results of such tactics. The *McCarthy* opinion also illustrates the importance of motions in limine, which were discussed above. Having the motions in limine in place allowed defense counsel to overturn the verdict on appeal.

Litigation Funding and its Relationship to Nuclear Verdicts

There is a direct line between Reptile Tactics and nuclear verdicts as Reptile Tactics are specifically designed to drive up verdicts by angering and scaring jurors. Under the surface, a blooming reliance on third-part litigation funding is s allowing plaintiffs to take full advantage of these tactics and yield these results. Litigation funding of individual tort cases is now often done on a portfolio basis in both the mass tort and class action context, as well as funding the firms who handle individual cases.[57] This funding has numerous impacts both before and during litigation.

The pre-suit impact of litigation funding allows plaintiffs' attorneys to flood the airways with advertising. From CNN Business "[c]ompanies that specialize in recruiting clients, often bankrolled by hedge funds and litigation-finance firms, will often [sic] fund advertising and refer claims to attorneys for a fee."[58] The scope of the funding is staggering and growing year over year:

- "In 2021, more than 15 million ads for legal services aired on local television broadcast networks in the 210 media markets across the U.S., totaling approximately $971.6 million spent. By comparison, pizza restaurants spent $67.4 million on a mere 845,000 ads while furniture retailers spent $589 million on 4.8 million ads aired on local television broadcast networks. Additionally, trial lawyer groups aired more than 71,000 ads on national cable television at an estimated cost of $97 million." [59]

- "Nearly 800,000 television advertisements for mass litigation ran in 2023 at a cost of more than $160 million."[60]

This funding not only seeks to attract clients for a particular firm, but to drive up the value of cases in the minds of potential jurors by telling jurors of the injury a particular plaintiff suffered, the cause of the injury, and the recovery. This

has a snowball effect on future verdicts which feeds into settlement values. From the plaintiffs' lawyers perspective it is truly a rising tide raises all boats feeding into the nuclear verdict phenomenon.

More importantly, and related to the Reptile Tactics, the advertisements often parrot concerns about community safety and nameless, faceless, companies for being responsible for injuries. The advertisements explicitly contain the narrative that defendants put profits over people. They also specifically mention insurance companies as being responsible for litigation decisions to prevent plaintiffs from obtaining full value and delaying payment. ? Such arguments could never be made before a jury at trial, but through the use of advertising the jurors get the message before they are ever called. The repetition of the message makes such it sticks.

In that regard, the advertisements also reinforce the questionable science in mass tort cases related to causes of cancer and that conflates correlation and causation. This has even reached the judiciary as Justice Nathniel Howse revealed in his comments at oral argument in *Molitor v. BNSF Railway Co.*, 2022 IL App (1st) 121486, a case involving exposure by the plaintiff to diesel fumes and Roundup that allegedly caused B-cell lymphoma:

> "[E]verybody knows diesel fumes cause cancer. Everybody knows Roundup causes cancer. I mean it's all in the news. It's all through the atmosphere. And there's laws passed to reduce diesel fumes and diesel smoke because it's known to EPA in other countries, not just the USA — says that these fumes cause cancer. Now given that, and Justice [Mary Ann] McMorrow issued a decision I believe which says we aren't limited to the record. We can take notice of what's out there. Given that, isn't it plausible that an article which, given that everyone knows diesel causes cancer, isn't it plausible for him to rely on an article — says that association as opposed to method?"[61]

In *Molitor*, the circuit court had granted summary judgment to the defendants based, in part, on the plaintiff's expert, Dr. Ernest Chiodo, reliance "on two published studies to corroborate his opinions. Neither of these studies support his position that diesel exhaust exposure or exposure to herbicides causes B-Cell Lymphoma. Instead they claim there may be evidence of a positive 'association with' B-Cell Lymphoma. … "[n]oting this, Chiodo explained that based on his review of the literature, he is of the opinion that 'associated with' essentially means 'causes,' unless the study indicates the presence of a confounder. He goes on to claim that if there is no confounder stated, any substances merely 'associated with' any particular illness, also causes that illness. Dr. Chiodo cites no scientific authority for his position. Chiodo also relies upon the 'extrapolation principle,' which he claims is generally accepted in Illinois courts to get around another hurdle his opinion faced."[62]

The advertisements also feed into changes in jury trends toward a more conspiratorial mindset, that has prevailed since March 2020.[63] As Dr. Polavin describes it based upon his research, the current jury pool that is more susceptible to propositions lacking evidence including politics: "Consistent with prior research, our study identified the following factors that increased susceptibility to conspiracy theories:

- People with a lack of trust in the government and government agencies (e.g., EPA, FDA)
- People with anti-corporate attitudes
- People who have what is known in psychology as "Faith in Intuition for Facts," which measures someone's willingness to believe they can rely on their intuition to tell them if a piece of information is true or not, versus not relying on intuition and instead fact-checking information
- People with low education.64

In Illinois, funding to the plaintiff is governed by the Consumer Legal Funding Act.[65] That statute provides for a rate of 18% every 6 months for no morae than 42 months.[66] This could yield total interest owed in excess of the amount borrowed.[67] The statute provides that "[n]o communications between the consumer's attorney in the legal claim and the consumer legal funding company as it pertains to the consumer legal funding shall limit, waive, or abrogate the scope or nature of any statutory or common law privilege, including work product doctrine and the attorney-client privilege."[68] There is also no requirement for disclosure of the arrangement despite the fact that the litigation funding could have a substantial impact of the resolution of the litigation. Similar to the disclosure of insurance policies in litigation.[69]

Other kinds of common litigation funding, include doctors who do not take a fee, but only take a lien on any recovery.[70] As described by Bryan and Johnson:

> "Plaintiff personal injury attorneys often take advantage of medical lien companies to inflate medical expenses and control the medical care. As part of this scheme, plaintiff attorneys refer their clients to pro-plaintiff doctors who are part of a medical lien 'network.' At the behest of counsel, plaintiffs enter into contracts with medical lien companies to finance this medical treatment. The lien companies then directly pay the medical provider expenses at a deep discount in exchange for a lien against the lawsuit proceeds for the full 'billed' amount of medical expenses. … [m]edical lien companies often cast themselves as mere 'factoring companies' that purchase accounts receivable at a discount. In addition to creating a large profit for the lien company, in collateral source states, this system allows plaintiff attorneys to inflate damages by claiming the 'billed' amount of medical expenses in litigation without reduction for the lien company's discount. These schemes also allow plaintiff attorneys to control the medical treatment and utilize plaintiff-oriented doctors who are experienced advocates. The defense bar should be prepared to identify medical lien arrangements and the bias they create."[71]

The nature of the doctor's relationship, especially when doctor's compensation is based in whole or in part on the outcome of the case creates an obvious bias that can be explored. It is also discoverable under the standard interrogatories in Supreme Court Rule 213(j), which allow a defendant to make the following request.

> "State any and all other expenses and/or losses you claim as a result of the occurrence. As to each expense and/or loss, state the date or dates it was incurred, the name of the person, firm and/or company to whom such amounts are owed, whether the expense and/or loss in question has been paid and, ***if so, by whom it was so paid***, and describe the reason and/or purpose for each expense and/or loss." (emphasis added).[72]

To cast a broader net for third-party litigation funding, the following discovery requests may be used:

- Interrogatory:\Please identify any party holding a contingency interest in the outcome of this case (excluding any arrangement with counsel, should one exist). This shall include medical providers, finance companies, finance lenders of any kind, banks, governmental entities, and other such individuals and/or litigations between Plaintiff and said individuals and/or entities.

- Request for Production:

> Please send all documentation relating to money or funds Plaintiffs have already received or collected from a third party due to the injuries suffered by Plaintiffs in this matter. This would include, but not be limited to, any funds received from any litigation funding company and any party who claims an interest arising from that money.73

Care must be taken in requesting third-party litigation information because as one court stated that the Defendants "respectively requested all documents and communications evidencing *any* third-party investment, litigation funding, loans or *other financial interests* being used in whole or part to pay for this Action. (Emphasis supplied). The defendants have provided no explanation of how such a limitless, all-inclusive request seeks 'relevant' information, beyond positing the generalization that the documents are relevant to 'exploring statements or representations about the facts of the case....' and 'could expand on the allegations of [defendants'] counterclaims, identify witnesses, and potentially be used for impeachment.' This request is imprecise, conjectural, and generalized."[74]

The impact of third-party litigation funding cannot be understated. Not only does it give plaintiff's counsel time, it means that there is another "mouth to feed" when it comes time for resolution of the matter.[75] This is only going to grow and has been described as currently exploding.[76] As a baseline for the amount of money involved, before the pandemic related shutdowns of the courts and the difficulty in accessing capital in 2020 and 2021, in 2019, the investment by litigation funders was $39 billion globally.[77] One commentator has described the environment as "[b]uoyed by consistent demand for financing in key practice areas, and undeterred by calls for greater transparency, litigation finance is set to continue its upward trajectory in 2024." There is growth in mass tort cases that will likely lead to more investment and advertising, as that has been further spurred by the decision in *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023).[78]

Conclusion

Reptile tactics and resulting nuclear verdicts are a continuing issue for defense counsel in Illinois and across the country. Mastering defense strategies in litigation necessitates a comprehensive and proactive approach. From the initial case assessment to the final arguments presented at trial, each step plays a critical role in constructing a formidable defense. By identifying vulnerabilities, preparing witnesses meticulously, navigating pre-trial maneuvers with finesse, and steadfastly focusing on the factual and legal standards during trial, a defense team can effectively counteract opposing Reptile Tactics and steer the case towards a favorable outcome. This strategic blueprint not only guides the defense through the legal battlefield but also upholds the integrity and fairness of the entire judicial process.

(Endnotes)

1 DAVID A. BALL, DON C. KEENAN, REPTILE: THE 2009 MANUAL OF THE PLAINTIFF'S REVOLUTION (2009).

2 John E. Hall, Jr., Todd Gilbert, R. David Ware, and Kelsey Kicklighter, *Modern Litigation: The Effect and Discoverability of Third-Party Litigation Funding (Part 1 of 2)*, FOR THE DEFENSE, March 2021.

3 BALL, PLAINTIFF'S REVOLUTION, CH1 P2

[4] BALL, PLAINTIFF'S REVOLUTION, CH 1 P2

[5] BALL, PLAINTIFF'S REVOLUTION, CH3 P21

[6] BALL, PLAINTIFF'S REVOLUTION, CH3P21

[7] BALL, PLAINTIFF'S REVOLUTION, 1P2

[8] BALL, PLAINTIFF'S REVOLUTION, CH2P7-CH1P2

[9] BALL, PLAINTIFF'S REVOLUTION, CH1P2

[10] BALL, PLAINTIFF'S REVOLUTION, CH192

[11] BALL, PLAINTIFF'S REVOLUTION, CH1P2

[12] BALL, PLAINTIFF'S REVOLUTION, CH2 P9

[13] BALL, PLAINTIFF'S REVOLUTION, CH2 P7

[14] BALL, PLAINTIFF'S REVOLUTION, CH2P7

[15] BALL, PLAINTIFF'S REVOLUTION, CH3 P20

[16] BALL, PLAINTIFF'S REVOLUTION, CH3 P20

[17] Michael Hawthorne, *Sterigenics settles hundreds of ethylene oxide lawsuits for $408 million after jury hit company with $363 million verdict for Willowbrook cancer survivor*, CHICAGO TRIBUNE, January 1, 2023, available at https://www.chicagotribune.com/2023/01/09/sterigenics-settles-hundreds-of-ethylene-oxide-lawsuits-for-408-million-after-jury-hit-company-with-363-million-verdict-for-willowbrook-cancer-survivor/; *see also* Susan KAMUDA; and Edward Kamuda;, Plaintiffs, v. STERIGENICS INTERNATIONAL, INC. Sterigenics International LLC; Sterigenics U.S., LLC; Bob Novak; Daniel Gibala; and Gtcr, LLC; Defendants., 2018 WL 5111997 (Ill.Cir.Ct.).

[18] Cook County Jury Verdict Reporter Published 3/17/2023

[19] See supra note 17.

[20] Illinois Jury Verdict Reporter 10/22/21

[21] Illinois Jury Verdict Reporter 10/22/21

[22] *Ittersagen v. Advocate Health & Hospitals Corp.*, 2020 IL App (1st) 190778, ¶ 83.

[23] *Ittersagen*, 2020 IL App (1st) 190778, ¶ 83.

[24] *Bale v. Chicago J. R. Co.*, 259 Ill. 476 (1913).

[25] *Bale*, 259 Ill. at478.

[26] *Id.* at 479.

[27] *Id.* at 480.

[28] *Id.*

[29] *Copeland v. Johnson*, 63 Ill. App. 2d 361, 367 (2d Dist. 1965); *Ittersagen v. Advocate Health & Hospitals Corp.*, 2020 IL App (1st) 190778, ¶ 83.

[30] *Klotz v. Sears, Roebuck & Co.*, 267 F. 2d 53, 54 (7th Cir. 1959).

[31] *Klotz*, 267 F. 2d at 54.

[32] *Id.*

[33] *Id.*

[34] *Id.* at 55.

35 *Sikora v. Parikh*, 2018 IL App (1st) 172473, ¶ 60; *Ittersagen v. Advocate Health & Hospitals Corp.*, 2020 IL App (1st) 190778, ¶ 83.

[36] *Sikora v. Parikh*, 2018 IL App (1st) 172473, ¶ 1.

[37] *Sikora*, 2018 IL App (1st) 172473, ¶ 5.

[38] *Id.* at ¶ 38.

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.* at ¶ 44.

[43] *Sikora*, 2018 IL App (1st) 172473, ¶ 49.

[44] *Id.* at ¶ 62.

[45] *Id.*

[46] *Id.* at ¶ 63.

[47] *Id.*

[48] *McCarthy v. Union Pac. R.R. Co.*, 2022 IL App (5th) 200377, ¶ 3.

[49] *McCarthy*, 2022 IL App (5th) 200377, ¶ 32.

[50] *Id.* at ¶ 64.

[51] *Id.* at ¶ 66.

[52] *Id.*

[53] *Id.* at ¶¶ 69-72.

[54] *Id.* at ¶ 85.

[55] *Id.*

[56] *McCarthy*, 2022 IL App (5th) 200377, ¶ 85.

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[58] Nathaniel Meyersohn, "*How personal injury lawyers took over your TV*" CNN BUSINESS, December 25, 2022.

[59] LEGAL SERVICES ADVERTISING SPENDING -2017-2021, AMERICAN TORT REFORM ASSOCIATION, February 22, 2022.

[60] Erin Mulvaney, "*TV Ads Recruiting Plaintiffs for Suits Mushroom*," WALL STREET JOURNAL, January 20, 2024.

[61] *Molitor v. BNSF Ry. Co.*, 1-21-1486, October 18, 2022.

[62] *Molitor v. BNSF Ry. Co.*, 18 L 1934, order July 26, 2021.

[63] Nick Polavin, PhD. "*Who Needs Evidence? The Rise of Conspiracy-Minded Jurors*," IMS Consulting.

[64] Nick Polavin, PhD. "*Who Needs Evidence? The Rise of Conspiracy-Minded Jurors*," IMS Consulting.

[65] 815 ILCS 121/1 et seq.

[66] 815 ILCS 121/25.

[67] As an example of this occurring outside of Illinois and the impact on the case, *see City of Englewood v. Ezekwo*, 2022 WL 3021157 (D. New Jersey, July 6, 2022).

[68] 815 ILCS 121/50. This is possibly a violation of the separation of powers articulated in Article II, Section 1 of the Illinois Constitution as it is the judicial power is vested solely in the judiciary under Article 6, Section 1. Illinois common law on work product only protects "opinion work product" in preparation for trial. *Monier v. Chamberlain*, 35 Ill.2d 351, 359-60 (1966). In addition, the kind of information that would be shared with a consumer legal funding company likely would relate to the valuation of the matter by the attorney for the consumer and may even predate the entry of the litigation funding agreement. Supreme Court Rule 201(b)(1) provides that "Full Disclosure Required."

[69] "*Third Party Litigation Funding: Civil Justice and the Need for Transparency*," DRI CENTER FOR LAW AND PUBLIC POLICY, THIRD PARTY LITIGATION FUNDING WORKING GROUP, David H. Levitt and Francis H. Brown III.

[70] *Hey, Hey, My, My, Virtual Litigation Will Never Die*, ALFA INTERNATIONAL, Christopher Bryan and Jeaneen Johnson.

[71] *Hey, Hey, My, My, Virtual Litigation Will Never Die*, ALFA INTERNATIONAL, Christopher Bryan and Jeaneen Johnson.

[72] Ill. S. Ct. R. 213(j).

[73] John E. Hall, Todd Gilbert, R. David Ware, and Kelsey Kicklighter, *Modern Litigation: The Effect and Discoverability of Third-Party Litigation Funding (Part 2 of 2)*, FOR THE DEFENSE, April 2021.

[74] *Art Akiane LLC v. Art & Soulworks LLC*, 2020 WL 5593242 (N.D. Ill. Sept. 18, 2020)

[75] Brian Brown, Christopher Fredericks, Drew Groth, and Katie Pipkorn, *Third-Party Litigation Funding and Its Impact on Commercial Auto — Part One, Risk & Insurance*, October 23, 2022 and Brian Brown, Christopher Fredericks, Drew Groth, and Katie Pipkorn, *Third-Party Litigation Funding and Its Impact on Commercial Auto — Part Two*, Risk & Insurance, October 23, 2022.

[76] "*Litigation Funders Bet Billions on Veterans' Toxic Water Claims*," Bloomberg Law, Emily Siegel and Kaustuv Basu, July 20, 2023.

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