

Identifying and Resolving High Exposure Claims

2012 PLAN Regional Meeting Atlanta – May 1, 2012



PANELIST

- **Mike Caldwell (Travelers)**
- **Tasha Matheson (Hiscox)**
- **Mary Anne Ackourey (Freeman Mathis & Gary, LLP)**

MODERATOR

- **Joe Starr (Starr, Butler, Alexopoulos & Stoner, PLLC)**



Agenda

- Statistical Trends
- Juror Attitudes
- Mock Testimony
- Lessons Learned
- Best Practices



National Employment 2011 Discrimination Statistics

<u>TYPE</u>	<u>NATIONAL PERCENTAGE</u>
RETALIATION	37.4%
RACE	35.4%
SEX	28.5%
DISABILITY	25.8%
AGE	23.5%
NATIONAL ORIGIN	11.8%
RELIGION	4.2%
EQUAL PAY	0.9%
GINA	.2%

EPL Lawsuits

- 1. 56% of employment trials -- plaintiff verdict (HR.com)**
- 2. Average award 2003-2010 was \$640,477**
- 3. Median award was \$317,000 in 2010**
- 4. 21% experienced EPL in past five years**
- 5. Average cost of charge/lawsuit was \$51,975**

Chubb 2010 Private Company Risk Survey

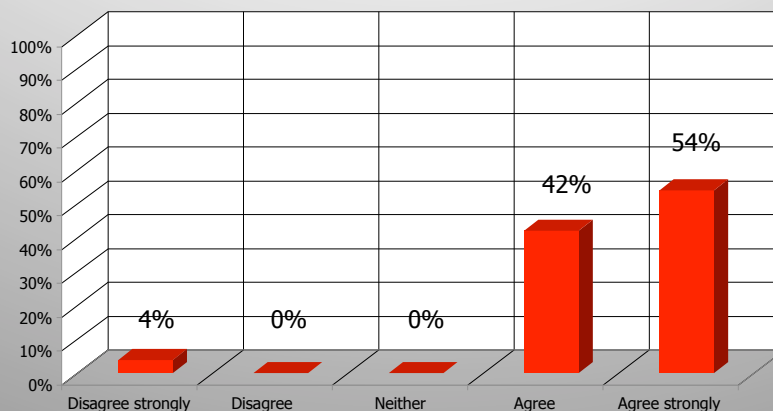


Understanding Juries

**What They Think
Tells You Why
They Award Damages!**



It is very important for people to stand up for what they believe in

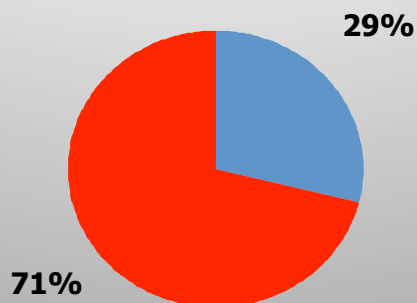


Source Dan Galipeau, Phd.



Which of the following statements best describes your feelings?

It is more important to follow the "letter of the law" than the "spirit of the law":

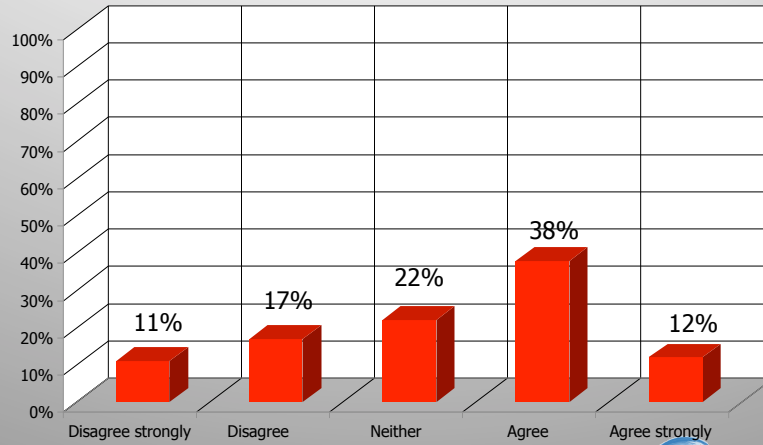


It is more important to see that "justice is done" than to follow the "letter of the law":

Source Dan Galipeau, Phd.



**A million dollar award against a large company
would not even be noticed by senior
management**



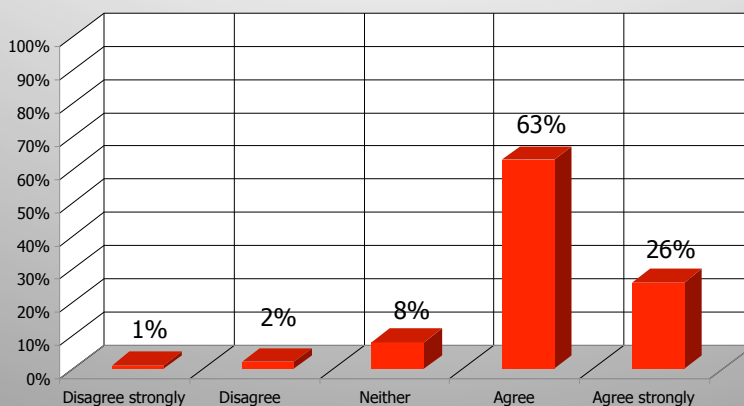
Source Dan Galipeau, PhD.



**An important function of juries in America is to
send messages to organizations to improve
their behavior**



**If a company is found to be negligent,
that company should pay punitive damages**



Source Dan Galipeau, Phd.



Mock Case Scenario

- **Miles E. Cyrus v. Back Page & Associates Law Firm**
- **Accused Partner- Stan Jock**
- **Managing Partner – Iam Clueless**



Damages And Lessons From Trial

- **Early Investigation Is More Than Talking With Insured**
- **It Is Not Just About Plaintiff's Conduct**
- **"Fair" Is As Important As "Unlawful"**
- **Credibility – Non-supervisors/Former Employees Can Be Critical**
- **Risk of Liability (Motion vs. Trial)**
- **Venue**



Key Red Flags For Big Verdicts

1. **The Insured "Doesn't Get It"**
 - **Did Nothing to Prevent or to Respond**
2. **This Is "Not The First Time"**
3. **The Insured Is Dislikeable**
4. **"Eggshell Plaintiff" / Sympathetic Plaintiff**
5. **Your Defense Counsel Is Not Likeable**
6. **Economic Damages Not Always Predictor**



Strategies/Best Practices To Reduce Damages

- **Plaintiff's Depo – Make DA spend time on damages**
- **Trial – Make DA talk about damages**
- **Offers of Judgment (Rule 68)**
- **Pay Attention To Caps/Educate Plaintiff**
- **High/Low Agreements**
- **Arbitration as Alternative**



Strategies/Best Practices To Reduce Damages

- **Focus Groups/ Mock Trials?**
- **Do You Have The Right Trial Counsel?**
- **Need Local Counsel?**
- **Trial Consultant?**
- **Claims Professional At Trial?**



Lessons Learned Too Late

- 1. Cases are about everyone involved—
Not just Plaintiff, but the insured too**
- 2. True facts don't always matter and juries
believe witnesses they like**
- 3. Juries often don't distinguish between
unlawful and unfair**
- 4. Emails will haunt you**
- 5. Prior bad acts will haunt you**



Lessons Learned Too Late

- 6. Written Policies Count**
- 7. Third party witnesses highly critical**
- 8. Conduct outside of work relevant**
- 9. Juries Hold Companies to a High Standard
—and don't consider the realities of
business**
- 10. Things are not always as they appear...**

