



2018 Annual Conference  
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## **Verdict Workshop: Calculating Exposure in Litigation Against Restaurant, Retail & Hospitality Defendants**

### I. INTRODUCTION

This roundtable will discuss various recent verdicts against restaurant, retail, and hospitality defendants, including facts relating to liability, and facts relating to damages, as reported in various jury verdict reports. Participants will then be asked to provide input about whether each case ended in a plaintiff or defense verdict, and as to plaintiff verdicts, the amount of the verdict, and any comparative fault. These exercises are instructive for claims professionals, risk management personnel, and lawyers in assessing settlement value and verdict potential in these cases.

Below are summaries of 11 cases, with as much detail as could be obtained from jury verdict and news reports. As each case is reviewed, consider the probable outcomes. A list of outcomes will be provided.

### II. CASE STUDIES

**VERDICT NO. 1: Adult Male Software Professional c. Well-Known Lower Budget Chain Hotel, from TEXAS (Collin County).**  
**INJURIES SUSTAINED IN AN ELEVATOR SLIP AND FALL.**

**Plaintiff Description:** Adult male employed in software business, age unknown.

**Incident Description:** Plaintiff slipped and fell on the floor of an elevator at well-known hotel. A housekeeper was mopping the floor of the elevator when Plaintiff called it to the third floor. Once the elevator arrived at the third floor, Plaintiff took one step onto the elevator and immediately slipped on a wet surface.

**Party Contentions:** Plaintiff stated that there were no warning signs about the condition, including no “wet floor” signage. A hospitality expert for Plaintiff claimed the hotel was non-compliant with the standard procedures which called for taking the elevators out of service when they are being mopped. The defense argued there were visible signs the floor had been mopped and that Plaintiff was comparatively liable for failing to exercise proper caution and heed the warnings. The defense also argued Plaintiff had preexisting hip dysplasia, which was the proximate cause of his knee injuries.

Alleged Damages: Plaintiff dislocated the left patella and suffered a renitacular tear. Plaintiff underwent physical therapy and arthroscopic surgery. In addition, Plaintiff missed 4 weeks of work and continues to walk with a limp as a result of the injuries. Plaintiff alleged to have suffered \$26,000 in past medical costs as a result of the injury.

<b>WHAT WAS THE VERDICT??</b> Plaintiff or Defense: _____ If Plaintiff, Was There Any Comparative Fault? Yes ____ No ____ If Yes, How Much? _____ What was Total Verdict?_____ Compare to Actual Verdict: _____
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VERDICT NO. 2: 56-Year-Old Female Realtor v. Resort Hotel, from *FLORIDA (Pinellas County/Tampa)*. SHOWER BENCH DETACHES FROM WALL CAUSING WOMAN TO FALL

Plaintiff Description: 56-year old female employed as a realtor.

Incident Description: Plaintiff suffered from a knee condition and was on crutches when she arrived at the resort. She was using the handicapped shower at the spa. When she sat down on the bench it detached from the wall causing her to fall to the floor.

Party Contentions: Plaintiff alleged the shower bench was negligently maintained and that there was a failure to warn guests. Plaintiff stated the Spa had been renovated by a contractor a few years prior and the wrong type of screw anchors were used when the bench was reattached. The defense argued the bench was installed correctly and was in compliance with manufacturer specifications. The defense also argued that Plaintiff suffered from a pre-existing condition which contributed to her injuries as evidenced by her pre-incident x-rays.

Alleged Damages: Plaintiff had undergone several procedures to both knees prior to the fall, including a right knee replacement surgery 4 years earlier, and an arthroplasty and patella revision a few years later. Plaintiff contended the knee condition was aggravated by the fall, and she required a total arthroplasty revision of her right knee. She also suffered back pain as a result of the fall. A medical expert testified she would need \$400,000 in future medical care and \$300,000 in future knee surgery treatments. Plaintiff stated the injury cost her \$300,000 in commissions, and that as a realtor she was no longer able to show multiple-floor houses unless there was an elevator due to her inability to climb stairs. Plaintiff also alleged \$74,000 in past medical expenses, and unspecified amounts for future for pain and suffering.

<b>WHAT WAS THE VERDICT??</b> Plaintiff or Defense: _____ If Plaintiff, Was There Any Comparative Fault? Yes ____ No ____ If Yes, How Much? _____ What was Total Verdict?_____ Compare to Actual Verdict: _____
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VERDICT NO. 3: 78 Year Old Female v. Large Hotel, from *Pima County (Tucson), ARIZONA*. FEMALE DIES FROM FALLING DOWN FLIGHT OF STAIRS.

Plaintiff Description: 78 year old female.

Incident Description: Plaintiff was a guest at a hotel with her family and fell down a flight of stairs that did not contain handrails leading from the lobby to an atrium area. Plaintiff was in a coma as a result of the fall, and died six days later as a result of her injuries.

Party Contentions: Plaintiff beneficiaries alleged the hotel was negligent as it failed to maintain a safe condition of the stairway due to the lack of handrails. The beneficiaries maintained the hotel had removed the handrails of the stairway in violation of building codes. In addition, the beneficiaries claimed the hotel knew of other falls that had occurred prior to Plaintiff's fall and took no action to alter or change the unreasonable dangerous condition. The hotel denied allegations of unsafe conditions, building violations, or allegations that they knew that a dangerous condition existed. Instead, the hotel argued Plaintiff was negligent when coming down the stairs and the lack of handrails was open and obvious. The stairway was wide with about 10 steps.

Alleged Damages: Plaintiff suffered a fall and lethal blow to her head and initially underwent neurosurgery as a result of the fall. She was in a coma for six days before her death. The beneficiaries sought recovery for past medical expenses, compensatory and punitive damages for the loss of their mother's past and future affection and companionship, associated pain, grief, sorrow, anguish, stress, shock and mental suffering, plus burial and funeral expenses.

**WHAT WAS THE VERDICT??**      Plaintiff or Defense: \_\_\_\_\_  
If Plaintiff, Was There Any Comparative Fault? Yes \_\_\_\_ No \_\_\_\_ If Yes, How Much? \_\_\_\_\_  
What was Total Verdict? \_\_\_\_\_ Compare to Actual Verdict: \_\_\_\_\_

VERDICT NO. 4: 53 Year Old Male Restaurant Owner v. Popular Home Improvement Store Chain, from Kern County, CALIFORNIA. ADULT MALE FALLS OVER PALLETS OF TILE AT HOME IMPROVEMENT STORE.

Plaintiff Description: 53 year old male, employed as a restaurant owner.

Incident Description: Plaintiff was shopping at the home improvement store and was looking at products on a shelf. Plaintiff asserts he "felt something" under his foot, lost his balance, and landed across the aisle on a large pallet of tile that an employee was taking another shelf to stock. Plaintiff claimed to have struck his head, lower back, and shoulder when he fell.

Party Contentions: Plaintiff asserts that the home improvement store created a dangerous condition and failed to take adequate safety precautions when moving the large pallet of tile. The home improvement store asserted the employee had warned Plaintiff to be careful as he was maneuvering around the pallet of tile. In addition, the defense argued there was no condition that caused Plaintiff to lose his balance. An expert for the defense testified there was no trauma to Plaintiff's head and Plaintiff's radiological studies had all come back normal. In addition, Plaintiff's treating chiropractic expert admitted Plaintiff was mostly pain free and back to work within a few months after the incident.

Alleged Damages: Plaintiff claimed he fell, and struck his lower back, head, and shoulder before landing between the pallet and shelf. Paramedics arrived, and Plaintiff was transported to the emergency room. Plaintiff underwent radiological studies and alleges he was diagnosed with a possible syncope (temporary loss of consciousness caused by a fall in blood pressure) He maintained he suffered medical costs, lost past earnings, and future loss of earning capacity (amount not specified). Plaintiff's family testified his personality had changed after the accident, and that he became forgetful, difficult to be around, and had to rest frequently as a result of the headaches and pain. He missed three months of work after the accident, and became less involved with his business. Plaintiff sought recovery of \$800,000 in total economic losses, including \$98,000 in past medical care costs, \$280,000 in future medical care costs based on a life care plan, and unspecified amounts for his past and future wage loss.

Of Note: The defense was able to impeach Plaintiff's wife's testimony that the incident had caused Plaintiff to become more angry and act differently. Just one day after the Home Depot incident, Plaintiff's wife filed a restraining order stating that her husband had a history of anger and that she was worried for her safety.

**WHAT WAS THE VERDICT??** Plaintiff or Defense: \_\_\_\_\_  
If Plaintiff, Was There Any Comparative Fault? Yes \_\_\_\_ No \_\_\_\_ If Yes, How Much? \_\_\_\_\_  
What was Total Verdict? \_\_\_\_\_ Compare to Actual Verdict: \_\_\_\_\_

VERDICT NO. 5: 45 Year Old v. World Famous City, Amusement Park, and Ride Manufacturer, from Kings Supreme Court, NEW YORK. FEMALE SUFFERS VIOLENT NECK AND HEAD TRAUMA FROM ROLLER COASTER.

Plaintiff Description: 45 year old female who was unemployed at the time of the injury. Former shipyard worker.

Incident Description: Plaintiff was injured on a “cyclone” roller coaster ride at a city theme park. Plaintiff suffered violent neck and head trauma from the ride.

Party Contentions: Plaintiff alleged the roller coaster was operating in a dangerous condition and did not satisfy ASTM safety standards. Plaintiff also maintained the roller coaster’s restraints were noncompliant with proper standards as the riders were not properly restrained. The defense argued that the roller coaster was properly functioning, and the restraints were safe and effective. While there had been minor renovations to the ride, this did not adversely affect the roller coaster’s operation.

Alleged Damages: Plaintiff was diagnosed with quadriparesis secondary to compression of the spine's C4 and C5 levels. Doctors also diagnosed an acute herniation of the C4-5 intervertebral disc and a concussion. The next day, she underwent fusion of her spine's C4-5 level. The procedure included implantation of stabilizing hardware. Hospitalization lasted five days, and she subsequently underwent years of physical therapy. Plaintiff claimed she also developed post-traumatic stress disorder, with manifestations that included depression. She underwent psychological counseling. She further claimed she suffers residual pain and a residual diminution of her neck's range of motion. She was a teacher seeking recertification, and claimed her residual effects prevent her resumption of work. She also claimed additional treatment was necessary. Past medical costs totaled \$120,000, and future medical costs were estimated at \$250,000. Plaintiff sought undisclosed amounts for past and future medical expenses, future lost earnings, past and future pain and suffering, and Plaintiff’s husband filed a derivative claim.

**WHAT WAS THE VERDICT??** Plaintiff or Defense: \_\_\_\_\_  
If Plaintiff, Was There Any Comparative Fault? Yes \_\_\_\_ No \_\_\_\_ If Yes, How Much? \_\_\_\_\_  
What was Total Verdict? \_\_\_\_\_ Compare to Actual Verdict: \_\_\_\_\_

VERDICT NO. 6: 9 Year Old Female and her Guardian v. Amusement Park, from Wake County, North Carolina (Raleigh area). MINOR CHILD SUFFERS LIMB THREATENING DAMAGE TO FOOT AFTER BEING TRAPPED BY BUMPER CARS.

Plaintiff Description: 9 year old minor female.

Incident Description: Plaintiff was at an amusement park with her grandfather. After riding the go-karts twice with supervision, Plaintiff rode alone for the third ride. Plaintiff was riding in the go-kart alone when it became hung up with a safety railing. After waiting 30-60 seconds for help, Plaintiff exited the kart to attempt to free it from the railing. After failing to free the kart, Plaintiff was stepping back inside when she was struck by another kart. Plaintiff’s foot was trapped and crushed as a result of the crash.

Party Contentions: Plaintiff alleged the Defendant owners failed to operate the ride in a safe manner, including failure to maintain visual contact with the entire track and failing to notice Plaintiff's kart was stuck. Plaintiff maintained the injuries could have been prevented if Defendants properly observed the situation and if they had helped her when the kart became stuck. Defendants contended they provided adequate verbal instruction and warnings, and that warnings are given before each ride. In addition, two kart controllers were working at the time of the incident, even though only one was required. The defense also maintained Plaintiff would not have been injured had she followed directions and not exited the kart.

Alleged Damages: Plaintiff's injuries were limb threatening. She suffered a fracture, dislocations, and subluxations of the left foot with lacerations and plantar degloving injury. Plaintiff had multiple procedures and underwent a transmetatarsal amputation. In addition, Plaintiff is unable to wear a regular shoe on the left foot, has difficulty walking, weight-bearing limits, PTSD, and future procedures are anticipated. Plaintiff claimed \$245,954.12 in past medical bills, and damages for permanent pain and suffering, disfigurement, and future loss of earnings.

**WHAT WAS THE VERDICT??** Plaintiff or Defense: \_\_\_\_\_  
If Plaintiff, Was There Any Comparative Fault? Yes \_\_\_\_ No \_\_\_\_ If Yes, How Much? \_\_\_\_\_  
What was Total Verdict? \_\_\_\_\_ Compare to Actual Verdict: \_\_\_\_\_

VERDICT NO. 7: 27 Year Old Male Mail Sorter and 40 Year Old Homemaker and Homemaker's Spouse v. Popular Chain Restaurant, from Kings County, WASHINGTON (Seattle area). RESTAURANT PATRON BECOMES QUADRIPLÉGIC AFTER LATE-NIGHT RESTAURANT SHOOTING.

Plaintiff Description: 27 year old male employed as a mail sorter, as well as a 40 year old homemaker.

Incident Description: 27 year old male was one of five people shot inside a chain restaurant. This location was a popular late-night destination after local bars started closing around 2 a.m. A patron who had been drinking was causing trouble inside the restaurant. An employee told the patron to leave and that they were calling the police. The patron initially left the restaurant but returned shortly after with a gun and then shot five restaurant guests.

Contentions of Parties: Plaintiffs alleged the restaurant negligently failed to prevent the shooting since restaurant employees knew violence was likely to occur at that time (it was 2 a.m. and there was a history of violence since many people were there after the bars closed). Plaintiffs alleged the restaurant should have closed during "bar rush" hours or should have hired security during that time. In addition, Plaintiffs alleged the restaurant was aware of the late-night weekend violence due to hundreds of 911 calls from that location in the years prior to the shooting. The defense contended the evidence of prior 911 calls at that location does not mean there were repeated instances of violence, and that these calls spanned a number of years. In addition, the defense argued the incident was not foreseeable.

Alleged Damages: The 27 year old male suffered a severing of his cervical vertebra at the C6 level, rendering him a quadriplegic. He spent three months in hospital and nearly four years in a nursing home. Experts testified he would be unable to work in any capacity and his best chance of reaching full life expectancy would be to receive round the clock care. Experts estimated future care costs to be around \$17 million. His total past specials were \$690,000. The 40 year old female homemaker suffered a flesh wound to her lower right leg and had permanent numbness to that area. Her past medical expenses were \$4,500. Her husband claimed he suffered from emotional distress as a result of witnessing his wife suffer from the incident.

**WHAT WAS THE VERDICT??** Plaintiff or Defense: \_\_\_\_\_  
If Plaintiff, Was There Any Comparative Fault? Yes \_\_\_\_ No \_\_\_\_ If Yes, How Much? \_\_\_\_\_  
What was Total Verdict? \_\_\_\_\_ Compare to Actual Verdict: \_\_\_\_\_

VERDICT NO. 8: 28 Year Old Male Bartender v. Hollywood Bar, from Hollywood, CALIFORNIA. ASPIRING MODEL ASSAULTED BY SECURITY-GUARD OUTSIDE BAR.

Plaintiff Description: 28-year-old male bartender and aspiring model.

Incident Description: Plaintiff left a Hollywood bar at around 2 a.m. Plaintiff was waiting for his friends to leave, and leaned against a small rail that separated the sidewalk from the bar. The security guard in front of the bar told Plaintiff to stop leaning on the rail. An altercation arose and the security guard walked around the rail, and off of the bar's property, with Plaintiff following him. Surveillance showed Plaintiff made first contact with the guard when he slapped the guard's hand away from him. After that, the guard struck plaintiff on the left side of the head, knocking him out. Plaintiff collapsed, fell, and stuck the back of his head on the sidewalk.

Contentions of the Parties: Plaintiff sued the operator of the bar and the management company. Plaintiff alleged the Defendants were negligent in the screening, hiring, training, supervision, and retention of the security guards. Plaintiff also contended the security-guard was negligent as he broke many of the bar's use-of-force policies by contacting Plaintiff when he was off the property, by failing to de-escalate the altercation, and the use of excessive force. The defense argued Plaintiff started the altercation as he was the first to initiate contact with the security guard, and that the guard had a right to defend himself.

Alleged Damages: Plaintiff was struck in the left temporal region and sustained a left temporal fracture and was in and out of consciousness for three days. In addition, Plaintiff allegedly suffered from a fractured skull, unconsciousness, traumatic brain injury, anosmia (loss of sense of smell), and memory impairment. The parties stipulated that Plaintiff's past medical costs totaled \$57,201.09, however the parties disagreed on the life care plans that were presented Plaintiff's life care plan totaled \$1.9 Million, and the defense argued future medical expenses would only cost \$149,999.

**WHAT WAS THE VERDICT??** Plaintiff or Defense: \_\_\_\_\_  
If Plaintiff, Was There Any Comparative Fault? Yes \_\_\_\_ No \_\_\_\_ If Yes, How Much? \_\_\_\_\_  
What was Total Verdict? \_\_\_\_\_ Compare to Actual Verdict: \_\_\_\_\_

VERDICT NO. 9: 31 Year Old Female Office Assistant v. Movie Theater Chain, from FLORIDA (Miami-Dade County). FEMALE TRAMPLED AT MOVIE THEATER.

Plaintiff Description: 31 year old female, employed as an office assistant.

Incident Description: Plaintiff was watching a movie at a theater when a guest was involved in a heated verbal altercation with another guest. The suspect left the theater and re-entered with black gloves, and rushed upstairs towards the person he was arguing with earlier. Plaintiff and her friend sensed danger and decided to get up and leave the theater. The actions of the patrons caused a panic among the other movie-goers and an uncontrolled crowd of 150 people rushed towards the exit and trampled Plaintiff.

Contentions of the Parties: Plaintiff alleged security should have prevented the suspect from returning to the theater and a dangerous situation was allowed to occur by failing to implement proper procedures such as supervision and security. In addition, since the incident occurred only eleven days after the movie theater shooting in Aurora, Colorado, Plaintiff maintained the theater should have been put on notice of other potential incidents and implemented proper security. The defense argued the suspect was the only one at fault in this incident, and that the theater could not be held liable because the incident was not foreseeable.

Alleged Damages: Plaintiff sought treatment in the emergency room a day after the incident. She suffered a Lisfranc fracture on the first four metatarsal bones in her right foot. She underwent an open reduction and internal fixation surgery with a plate and 6 screws implanted. Plaintiff was also required to undergo a secondary surgery with hardware implanted. Plaintiff argued she was very active before the incident. As a result of her injuries, she is unable to endure physical activity, is unable to wear high-heels, and has frequent swelling of the foot. Plaintiff claimed to have suffered past medical costs totaling \$88,000. The defense argued the damage should be limited to \$75,000 for past pain and suffering and \$75,000 for future.

<p><b>WHAT WAS THE VERDICT??</b> Plaintiff or Defense: _____ If Plaintiff, Was There Any Comparative Fault? Yes ____ No ____ If Yes, How Much? _____ What was Total Verdict? _____ Compare to Actual Verdict: _____</p>
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VERDICT NO. 10: 49 Year Old Male Financial Officer v. Chicago Nightclub, from *ILLINOIS (Cook County)*. MALE HIT IN THE HEAD BY BAR STOOL DURING FIGHT

Plaintiff Description: 49 year old male employed as a financial officer.

Incident Description: Plaintiff was dancing at a nightclub in Chicago when a fight broke out between other patrons. Plaintiff was not directly involved in the fight, but was hit in the head by a stool that was flung across the bar during the chaos. Plaintiff alleged personal injuries as a result of the incident.

Contentions of Parties: The defense admitted liability to the incident, but disputed the extent of the injuries and damages. Plaintiff had complained of head pain and migraines and underwent nerve block treatment. However, the defense noted that there was a three-year gap between the first nerve block treatment and the resumption of the treatments- and that the first nerve treatment was for the left side of the head while the other treatments were for the right side. In addition, the defense argued that Plaintiff had a history of migraines and had sought treatment for this prior to the incident in the nightclub. In addition, the defense maintained that the reoccurring headaches were a result of Plaintiff taking too many medications.

Alleged Damages: Plaintiff complained of severe pain in the vertex portion of his head, and claimed that his pain continued to escalate over the next three years. Plaintiff underwent nerve block treatment, and three years later underwent five more nerve block treatments. Plaintiff alleged he developed post-traumatic migraine headaches, post-traumatic occipital neuralgia, and had to take medications for pain. An expert opined the reoccurring headaches would be permanent. Plaintiff sought a total recovery of \$2 Million.

<p><b>WHAT WAS THE VERDICT??</b> Plaintiff or Defense: _____ If Plaintiff, Was There Any Comparative Fault? Yes ____ No ____ If Yes, How Much? _____ What was Total Verdict? _____ Compare to Actual Verdict: _____</p>
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VERDICT NO. 11: Adult Female v. Popular Department Store Chain, from TENNESSEE (Greeneville Division). FEMALE HIT BY BOX OF WRAPPING PAPER.

Plaintiff Description: Female; age and occupation unknown.

Incident Description: Plaintiff was shopping at a popular department store when a box of wrapping paper fell from an upper shelf and hit her right shoulder, causing her to suffer personal injuries and emotional distress.

Contentions of the Parties: Plaintiff alleged the department store was negligent as the store failed to maintain the premises in a safe condition. Plaintiff alleged the store was negligent for using improperly or defectively designed shelving, for failing to properly stack and secure the box to prevent it from falling, and failing to use shelving that had protective barriers to prevent items from falling. The defense denied the allegations and contended that Plaintiff was negligent in a comparative manner.

Alleged Damages: Plaintiff alleged to have suffered from physical injuries as well as pain and suffering. Plaintiff complained of a torn rotator cuff as a result of the box hitting her right shoulder and emotional distress as a result of the incident and sought recovery of medical costs (unspecified amounts).

<p><b>WHAT WAS THE VERDICT??</b> Plaintiff or Defense: _____ If Plaintiff, Was There Any Comparative Fault? Yes ____ No ____ If Yes, How Much? _____ What was Total Verdict? _____ Compare to Actual Verdict: _____</p>
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### III. METHODS FOR EVALUATING VERDICT POTENTIAL

There are a variety of methods for evaluating verdict potential. There is no science to trying to second-guess what widely diverse juries will decide about a case, however. Whether assessing the outcome of liability or damages, we are only trying to approximate what a jury will do in order to determine whether settlement is a better option, and to assess settlement value and exposure.

#### A. MULTIPLIERS

One approach is to total all special damages (medical expense, lost earnings, etc., and derive a total, and then multiply that number by two or three to arrive at a likely total verdict. Most verdicts do not exceed a multiplier of two or three of special damages, assuming there are no permanent damages (i.e., scars, permanent restrictions, and/or permanent injuries).

#### B. AWARDS BASED ON HOLISTIC APPROACH

Another approach is to consider an appropriate figure based on an assessment of the injuries involved and a total appropriate award. This is a method best used by professionals with many years of experience. Alternatively, studying jury verdict reports in situations involving similar injuries can provide a basis for a single sum estimate.

#### C. ANCHORS

Many Plaintiff lawyer will withdraw claims for medical expenses and/or lost earnings when the dollar figures are low in order to avoid the jury anchoring to that number and developing a verdict with a multiplier based on low special damages. In these situations, consultation with experienced professionals and studying jury verdict reports is especially important because there will be no damages calculations to provide a basis for an estimate based on multipliers. Consider offering defense evidence about special damages.



IV. OUTCOMES OF ABOVE VERDICTS – see handout to be provided at conference.

V. CONCLUSION

We will discuss your conclusions. Are verdicts bigger in some locales? Are defense verdicts more likely in others? California and Florida often cases resulted in larger verdicts, as expected. Several of the remaining verdicts were fairly run of the mill with a variety of defense verdicts and low recoveries. Some of these results could be explained by geography and the type of injury.

All of the outcomes raise the question of whether opportunities for resolution were fully explored. Even defense verdicts and low verdicts come at a large cost. And certainly the very large verdicts come at even greater cost. These serve as a reminder that accurately assessing verdict potential can lay a good groundwork for effective resolution efforts.