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PERSPECTIVE

## Defense attorneys to help each other fight 'nuclear' jury verdicts

By Ricardo Pineda

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A new trial program to teach defense attorneys how to fight excessive or runaway jury verdicts is set for June in San Diego, but plaintiffs' lawyers don't think it is needed.

"There are excellent plaintiffs lawyers out there. They have been getting better and better over the past 15 years. They gather, talk about their strategies, and congratulate each other. As for defense lawyers, there is little sharing," said defense attorney Robert F. Tyson Jr. of Tyson & Mendes LLP, which is spearheading the program.

"We are set to offer methods and techniques on how to defuse or even combat these disproportionate verdicts that are happening literally every day," Tyson said. As an example he cited last week's decision by a Seattle jury awarding \$100 million to people who were injured, or had their cars damaged, when a 300-foot construction crane collapsed in the wind.

At the inaugural June 23-26 event organized by the Nuclear Verdicts Defense Institute, defense experts including top trial attorneys, a specialist in jury psychology, a certified faculty member of the National Institute of Trial Advocacy, and a professor at the University of San Diego School of Law will participate.

Tyson, who has 30 years of trial experience and wrote, "Nuclear Verdicts: Defending Justice for All," published Feb. 7, 2020 by Law Dog Publishing LLC, will also speak at the event.

"Defendants are entitled to have a jury decide their case without being stirred with passion and bias by creative plaintiff lawyers," he said in the book. "It is time to bring an end to the epidemic of nuclear verdicts across our country. ...The ultimate equalizer in any case is common sense. It allows the jury to come to a conclusion that is fair and reasonable."

Commenting on the defense initiative, plaintiffs' attorney Brown Greene, name partner of Greene Broillet & Wheeler LLP, said, "Large cases merit the effort and the expense that is required. But let's talk about California."

There have been few large verdicts in the past two years, he said, because the state Supreme Court "stopped jury trials last year and courthouses have been closed for months. I think this [nuclear verdict] is a form of mythology, a mirage."

"Inflation," plaintiffs' attorney Kevin R. Boyle of Panish, Shea & Boyle LLP said in commenting about huge verdicts. "Verdicts have been going up over time like everything else, like the price of milk, housing, and gas, though the latter has some other issues going on recently as we all know."

It is precisely in a bad economy, Tyson said, that juries will overcompensate for injuries, pain and suffering. Which means, according to him, more psychology is needed from the defense through personal anecdote and emotional connection to reach the jury. He predicted "more nuclear verdicts" in California after social distancing restrictions are long gone and litigation is back to normal.

"It's an uphill battle, but you have to start somewhere," he said.

Boyle said he sees an unjustified verdict as a rare thing.

"All of the large verdicts I've had firsthand knowledge of are completely warranted. They make one wonder why the case was in trial to begin with."

Asked his opinion about the theme of the upcoming program, he responded: "Plaintiffs' lawyers' approach hasn't changed in any way that I have seen for over 20 years. Hopefully the nuclear verdicts event will include some classes on properly reporting the significance of the damages and liability, as opposed to downplaying them to the defendant and its insurance carriers until it is too late."

Greene said he sees the defense initiative as healthy for the system, but has his reservations. "It's a discussion, sure, but a salacious one," he said. "There have been several attempts to spread information, similar seminars on how to combat, defeat or reverse

the decision through strategies and tactics."

Linda L. Lane, professor of practice at the University of San Diego School of Law, disagreed. "I'm not aware of another trial academy focused solely on the defense that teaches courtroom strategies the way this one will. The Nuclear Verdicts Defense Institute will cover actual trial methods in great depth and attorneys will be instructed how to implement a specific set of practical strategies in the courtroom to minimize the risk of runaway verdicts."

Lane, who will be a speaker at the event, said, "I would like to see these participants leave with new ways of navigating jury trials that deliver the best results for their clients. Even better would be for them to implement these strategies in their cases so that other attorneys can learn from seeing these effective attorneys in action."

Lane added, "I believe this program is beneficial for society. By definition, nuclear verdicts are those verdicts that are disproportionate to the claims being made by a plaintiff, far exceeding rational, reasonable amounts. . . . The end goal of our legal system should be for injured people to receive fair and reasonable compensation from a party who caused them harm."

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