



# SHOULD YOU ACCEPT RESPONSIBILITY AT TRIAL?

Why the Answer Could Very Well Prevent a Nuclear Verdict

By Robert F. Tyson Jr.

**T**here are a number of crucial tools all claims professionals and their defense counsel can utilize to prevent nuclear jury verdicts.

One core principle is quite simple: accept responsibility. Yes, the defense must accept responsibility in every single jury trial.

This recommendation may be anathema to many corporate defense

lawyers, but it is important for the defense to accept responsibility for something in every jury trial. There are no exceptions to this. This does not mean admitting full liability, or even any liability at all. The degree and manner of responsibility accepted depends on each individual case, but the strategy must be applied in some variation.

Accepting responsibility must be done thoughtfully and strategically.

There are some key points that must be considered with this strategy. Let's begin first by answering this question: Why accept responsibility in every jury trial?

## DEFUSE ANGER

Anger is the number one motivator of runaway jury verdicts in America, not sympathy. So that is the goal of many plaintiffs' attorneys: to enrage and provoke anger and other extreme emotions from jurors.

Naturally, that means the defense counsel's job is to defuse anger. Defense counsel must figure out what is going to make a jury angry about their cases, and then attempt to tamp it down. One way to do that is by accepting responsibility.

Accepting responsibility—even when requesting a defense verdict—allows defense counsel to take juror anger out of the equation. Moreover, acknowledging the defendant's fault or error when accepting any portion of liability similarly defuses juror anger. Employing these strategies at the outset allows defense counsel to puncture a hole in the "anger balloon" early and prevent significant buildup, which likely would result in the balloon "popping" later in the form of a runaway jury verdict.

## APPEAR REASONABLE

Taking responsibility also makes a defendant appear reasonable. Being the most reasonable person in the room, especially in a courtroom, is critical. If the defense comes across as reasonable to the jury, and not as just a lawyer who fights every single little battle at the risk of losing the war, then it will disarm plaintiff lawyers' attempts to inflame the jury.

Generally speaking, people are more inclined to listen to a reasonable person as opposed to someone who is unreasonable. This is even more true during a jury trial. When a defense



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attorney denies all responsibility, the jury will constantly look for any hole in the defendant's argument. And once there is a perceived flaw in the defendant's argument, the credibility of the defendant begins to erode.

When a jury finds multiple arguments unreasonable, then they will likely also find the party presenting those arguments to be unreasonable. So presenting a rational and practical approach is key. Think of it this way: Why would an angry jury listen to the defense's damages arguments when they found them to be unreasonable in their liability arguments?

When contesting liability, accepting responsibility for something allows the defense to highlight how it acted as a reasonably prudent person or business under the circumstances. Along the same line, it is just as important to accept responsibility when the defense is accepting some portion of liability. Whether or not any liability is clear, accepting responsibility for the defense's actions is the most reasonable position to present the jury, and it allows the defense to then defuse juror anger.

Accepting responsibility also shifts the jury's focus to the other party's potential comparative fault. The goal is to have the jury to assess the culpability of other parties, including the plaintiff, who most likely have failed to accept responsibility for anything. When the focus is shifted to the plaintiff's actions early on, the jury will more closely scrutinize the plaintiff's arguments and identify more problems with the plaintiff's case and credibility.

The strategy of accepting responsibility is especially effective in shifting comparative fault when the defense also accepts some portion of liability. For example, the defense is able to argue to the jury, "You do not have to decide if we were negligent; what you have to decide is who else is responsible." In admitted partial liability cases, this technique arms the jury to assign substantial comparative fault to others who have failed to

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accept any responsibility and appear unreasonable at trial.

### TIMING IS KEY

We've answered the "why" when it comes to accepting responsibility in every trial, but what about the "how"? Accepting responsibility must be done as early as possible in a trial, which often means accepting responsibility when selecting a jury. The defense should tell potential jurors that they accept responsibility. Ask these potential jurors about the importance of taking responsibility for their actions. Examples of questions and lines of inquiry include:

- "Does anyone think it is a problem in society that people do not take responsibility for their actions?"
- "Is taking responsibility something you value, and something that you try to instill in your children?"
- "Do you feel if a person is even partially responsible for an unfortunate circumstance, they should be held accountable?"
- "What does the word 'responsibility' mean to you?"

In addition to voir dire and opening, it is also important to sprinkle in questions on cross examination and direct regarding both parts of responsibility: acceptance and accountability. By asking these questions throughout trial, defense attorneys will be able to seamlessly argue responsibility in closing.

### LIABLE OR NOT?

When done properly, accepting responsibility for something makes the defense look like the most reasonable party in the room, and it defuses the type of anger that results in exorbitant jury verdicts. Most importantly, this tactic does not require admitting liability. Examples of this may include:

- Accept responsibility for maintaining safe premises.
- Accept responsibility for defendant's response to alleged harassment in compliance with your own employment manual.
- Accept responsibility for providing sound professional advice.
- Accept responsibility for putting a safe product in the stream of commerce.

These are just a few examples that can lay the groundwork for highlighting everything that the defendant did right. After accepting responsibility for putting a safe product on the market, defense counsel should then describe everything done to produce that safe product, such as thousands of hours of research and development, engineering, safety testing, drafting a manual, independent certification, and training. In this specific example, defense counsel is not accepting any portion of liability, yet is still accepting responsibility for something.

A determination to accept partial liability is a very powerful tool. The defense industry is hesitant to accept liability and ask a jury to hold them accountable when they think another party is mostly or even partially at fault. Wrong! That is what the plaintiffs' bar wants you to do: fight everything, at all costs. On the contrary, the defense must fight the urge to deny liability when they know they will be found partially at fault. Own it. Be the most reasonable person in the room, and much more liability will be attributed to the other, more culpable parties in the case. ■