

## Attorneys: Defuse Juror Anger, Show Humanity to Defuse Potential Nuclear Verdicts

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**W**illiam Tisdale made a poor choice by stopping late at night at convenience store and gasoline station in a sketchy neighborhood of Tacoma.

A jury in Pierce County, Washington found Tisdale 10% at fault for the circumstances that led to him being beaten over the head with a baseball bat by an insane assailant.

But the jury found 90% of the blame belonged to Apro LLC, a company incorporated in Delaware that operated the Union 76 station and thousands of other gasoline stations and stores on the West Coast. After hearing arguments that the company failed to protect its customers while operating an inherently dangerous 24-hour establishment, the jury reached a verdict that

found total damages of \$91 million — exactly what the plaintiff's attorney asked for during closing arguments.

Insurance defense attorneys say such “nuclear verdicts” are becoming increasingly common and are an even greater threat now that courts are resuming jury trials after a COVID-induced hiatus. The industry will continue to experience astonishing losses if it doesn't change the way it communicates to juries, said Robert Tyson, a partner with the Tyson & Mendes law firm.

Tyson and colleagues profiled the Tisdale v. Apro lawsuit in an Oct. 28 webinar, holding it out as an example of how plaintiffs' attorneys are able to drive up verdicts by inciting jurors to anger. The law firm said the average amount of verdicts for more than \$1 million increased from

\$2.3 million in 2010 to \$22.3 million in 2018.

“No one gives \$20 million out of sympathy,” said Tyson. “They were moved to award something, and it's always anger.”

Tyson & Mendes is marketing its trial lawyers as a strike team, called TM Halo, that “parachutes in” to take over high-risk cases that go to jury trial. The team charges a fixed fee for taking a case to trial instead of the traditional billable hour.

During the webinar, TM Halo team member Edward Leonard said that plaintiffs attorneys have learned how to persuade juries to award big damages by playing on their emotions and addressing “societal issues,” while defense attorneys tend to stick to the evidence presented in court.

“They are pointing out to the



*Robert Tyson*



*Edward Leonard*



*Mina Miserlis*



*Eric Fong*

jury that you've got things to worry about," he said. "They have changed tactics on the other side and they are kicking our butts."

Leonard said plaintiffs attorneys used to plead for damages by eliciting sympathy for their client, demonstrating that the plaintiff is worthy of a sizable verdict. Now they are more likely to encourage the jury to punish the defense.

"It's a new world and a new strategy and we are going to have to deal with it," he said.

The law firm recommended some strategies:

- **Show empathy.** Leonard said Tisdale's attorney portrayed Apro as greedy and the defense only enhanced that image by "hammering" the plaintiff at trial in an attempt to destroy his credibility.
- **Humanize the defendant.** Miserlis said the

defense needs to show that the defendant, even if a corporation, is operated by human beings who try to make reasonable decisions. "You don't want to get to the end of your case and have the jury not know a thing about your client," she said.

- **Take responsibility for something.** Miserlis said Apro could have accepted responsibility for not having a good response plan for criminal actions and still deny liability. "Show you are being reasonable," she said.
- **Name a number.** While Tisdale's attorney asked for \$91 million, the defense did not suggest a more appropriate amount of damages. "They didn't say what the defendant should receive if it's a rational verdict," Leonard said.

It would be difficult for any juror not to have some sympathy for 36-year-old William Tisdale after what happened to him at 11 p.m. on Nov. 4, 2015 when he stopped at the Union 76 station, owned by Apro, on Pacific Avenue in south Tacoma.

Tisdale didn't know it at the time, but as he approached the store, Terrence Jordan L. Sablan was inside threatening the clerk with a baseball bat. Sablan grabbed two packs of cigarettes from behind the counter and demanded that the clerk open the cash register. The clerk refused and snatched the cigarettes back.

As Tisdale entered the store, the clerk told him to call 911. Tisdale stepped back outside and was attempting to call when Sablan left the store and jumped into Tisdale's car. When Tisdale approached to confront him, Sablan jumped

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out and started swinging the bat at Tisdale's skull. He suffered multiple fractures and a traumatic brain injury.

Tisdale's attorney, Eric Fong of Port Orchard, said during an interview with the Claims Journal that the store clerk had locked the door after Sablan ran out and attacked Tisdale. He said the company seemed completely unaware that it had a duty to protect its customers under Washington state law.

"The guy's skull was split in half," he said, and then repeated the theme that brought him his client a \$91 million, minus 10%, verdict.

"Convenience stores that are open 24 hours a day are dangerous, especially convenience stores that are located in certain neighborhoods and areas," he said.

Fong discussed the case at length during a podcast called Great Trials. He said he was at first uncertain whether he wanted to take the case, but after looking into it, he recognized that it should easily settle for \$1 million.

After it became clear that Apro had no intention of settling for any amount, Fong

invested \$600,000 into focus groups to learn how potential jurors might react. He said he learned that a verdict for his client was no shoo-in because some jurors might blame Tisdale for putting himself in danger.

Fong said the defense attorneys attacked Tisdale at trial by portraying him as a drug abuser and an alcoholic. But he said the defense attorneys "went over the top" with their attacks and made the jury more sympathetic to his client.

"Our society's valuations of people and just the human worth of what it means to live, we are so ass backward," Fong said. "To say this person isn't worth some dollar amount, luckily I wasn't afraid to ask for what I thought truly what this man was worth."

Sablan stole Tisdale's car and fled the scene after the assault, according to court documents. He led police on a high-speed chase when an officer attempted to stop him, then lost control, crashed and fled on foot before he was captured by a K-9 unit.

Police learned that earlier that day, Sablan had attempted to strangle his nephew

while high on methamphetamine.

Pierce County prosecutors charged Sablan, 39, with assault, robbery, attempted murder, escape and other crimes. But in August 2017, he was found not guilty by reason of insanity.

"It was clear the defendant was acutely psychotic at the time of his actions at the gas station," the court order states. "He was in the same acutely psychotic state as he was when he attempted to murder his nephew."

Sablan was committed to the Western State Hospital, a psychiatric treatment facility in Lakewood, Wash.

On Oct. 22, Pierce County Superior Court Judge Gretchen Leanders signed an order granting Sablan the privilege of taking unescorted community day trips, with orders that he continue mental health treatment.

Apro LLC asked the trial court judge to overturn the jury verdict, but the request was denied. The company has filed an appeal. [CJ](#)