

THE AM LAW LITIGATION DAILY

Juicy Nuggets About Juror Attitudes Toward Plaintiffs, Litigation Funding

By Ross Todd

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Yesterday, we raised the curtain on [new research](#) from **Orrick, Herrington & Sutcliffe** about attitudes prevailing in the jury pool across the United States.

The online survey of nearly 1,300 jury-eligible adults across the U.S. followed up on a similar study by the firm in 2022. According to the responses, prospective jurors across generations, geographies and the political spectrum exhibit a growing loss of faith in institutions—especially when it comes to big business.

This morning, we will focus on a couple of other findings that could be significant for corporate litigants. A large majority of respondents agreed that people too often blame others for their problems and that people will bring false claims to get money they do not deserve. Still, in cases where litigation funders are known to be involved, a majority said they'd be likely to *increase* their damages awards.

This morning, **Meghan Kelly** and **Bill Oxley**, the leaders of Orrick's complex litigation and dispute resolution practice, discuss those topics and a couple of their overall takeaways from the survey.

The following has been edited for length and clarity.

Lit Daily: Beyond the loss of faith in institutions, there also seems to be a certain level of loss of faith

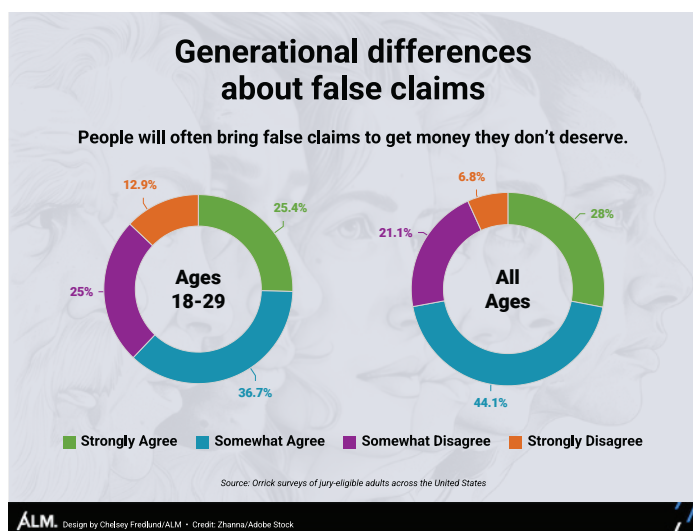


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Orrick Herrington & Sutcliffe 400 Howard Street, San Francisco, CA

in humanity and individuals in these numbers, too. The statement: “People too often blame others for their problems”—39% agree strongly with that and 45% agree somewhat. “People will bring false claims to get money they do not deserve”—28% agree strongly with that and 44% agree somewhat. That would play to a corporate defendant’s advantage, it would seem.

Oxley: It would, but you have to be really careful. I think you need to lead with yourself in those cases. When I say “yourself,” I mean with the company, what its values are and why its products were safe. If you can do that, then the jurors can get to the conclusion. It’s risky to start off your case with, “The plaintiff is a liar. The plaintiff isn’t really hurt. It’s their fault.” We saw this a lot in the opioid



litigation. There was a lot of victim-blaming that took place. We see that in other areas as well. And if you lead with that, then it's going to play into the idea that you're just a big, bad company looking to take advantage of people. So, I think you can get there, but it's a process.

Kelly: I totally agree. It's something that you need to be aware of as a defense lawyer, that jurors feel that way. But letting jurors get there themselves, as opposed to beating them over the head with it at the start, is much more successful. I also think it's funny you raise that number, because one of the things that's interesting is when you look at the age spread of how people respond to whether or not people bring false claims for money, it is hugely divided across age. 18-to-29-year-olds make up 38% of the "disagree strongly" responses. I think that's one of the areas where we do see some polarization based on age. The views of younger jurors versus older jurors can be really different. This is an area where younger jurors are less likely to believe that people are bringing false claims to make money, and much more likely to stick with their anti-corporate sentiment.

So, additionally, 55% of respondents said they would be likely to increase an award of damages if they learned that a litigation funder would receive any of the damages award. That one was really

interesting to me. So, disclosure might not be all that helpful after all for defendants.

Oxley: That's one of my favorite findings in the study. And here's why: I think so many people go in thinking, "Aha, I'm a big corporation, and if I can just show that somebody is getting funding, then that's going to blow the roof off of everything, because everybody's going to think it's all made up." But it's really more like companies who have insurance—they never wanted to have their insurance policy numbers shown, because that was going to give the jury a bigger number. It's very similar to that, because the jurors are saying, "No, we want all of the money to go to the plaintiff, and we're going to adjust our award in order to get the plaintiff all of the money that we think the plaintiff should have." I think one of the things we've seen throughout this process, over the last few years, is that a lot of the traditional wisdom is wrong.

Kelly: I think a lot of defendants, in the push for legislation and court rules to require disclosure of funding, have thought that if funding is disclosed, it will level the playing field. The idea is that it's a David versus a Goliath: That's why jurors don't like corporations. They think they have too many resources. They think it's an unfair fight. If we can disclose litigation funding, it will make it a level playing field. It's Goliath versus Goliath. This is being driven by two big corporations, or private equity on one side and a corporation on the other.

This finding really does take away that motivation. I think it says something really profound about how individuals are viewed versus corporations. It's not just about resources. It's really about power and distrust. If someone has to go out and get somebody to support them resource-wise to bring a claim, then jurors aren't going to hold that against them. They still feel like the power imbalance at the time the event occurred is what's upsetting them. They're not upset by who has more money in the lawsuit and who spends more.

I think it just reinforces that sort of sense that we've already talked about: this unanimous view that institutions are failing us and need to be torn down.

Yes. The approach seems to be "if the plaintiff needed this help to get to this point, we shouldn't hold it against them."

Kelly: Right. "We want to make sure that they get what we would have given them, even if they didn't have funding to get there." It's the only way they can fight these really powerful and, as most jurors see it, corrupt structures and institutions that are in place that are hurting individuals and helping corporations. They will not punish plaintiffs for that.

We've been talking a lot about the loss of faith in institutions. Bill, the last time we talked, you expressed your strong belief in the jury system as an institution. Have any of these findings shifted your feelings on that front?

Oxley: No. It's funny. I was going to mention that earlier. I still feel very strongly in favor of our jury system. Like any system, there are issues with it. But I am a huge believer that the folks who are sitting in that jury box are going to be able to reach a decision that they at least feel is fair. But it's our job to help them get to the one that we also think is fair. And so how do we do it? I think these results are so eye-opening in two ways. One, they confirm what we saw before: They show the divides are deeper now, and that the distrust in institutions are even deeper now. And so we're trying more to meet jurors where they are, and this really helps us do that.

So, no. I'm still a big believer in the system and in people, and I definitely feel like when people understand and it's explained to them in a way that makes sense,

and they can understand a company's values, they will get with the program and see things our way.

Kelly: My only caveat is that there are certain times and situations where you don't have the ability to understand and uncover some jurors who just don't belong on a jury for a certain case. And I think there are instances where you get such limited voir dire that you really don't have an option of identifying people who, under the rules of the system as they exist now, should not be a juror. Under our current standards, there are certain folks who, in certain cases, just should not be on the jury. Sometimes that takes a little bit longer to figure out than we're given as trial lawyers. One of my takeaways from this is that you really do need an opportunity in voir dire to meaningfully question people, because some of these beliefs are so strongly held that it doesn't matter what you say.

But I agree with Bill. I do trust the jury system. I think the way the rules are supposed to apply is the right way. You should be able to find jurors who are willing to make decisions based on the evidence. I just don't know that we always get the time to make sure that the folks who shouldn't be on a jury don't end up on it.

Oxley: I totally agree with that, but I like to see silver linings. One silver lining is to make use of the time you have. If you have two minutes per juror, don't sit there and talk about where you went to school or what your children do, or whatever. Get to the point and ask the jurors the questions that you want to ask them. We see a lot of lawyers waste a lot of time in voir dire, not focusing on things that are going to give you the information you need to make decisions.