



NEW SOUTH RESEARCH

**JOHN DOE & JANE DOE
V.
BUSINESS, INC.**

MOCK TRIAL

DECEMBER 2020



Key Quotes

Pro-Defense Quotes

- *“Out there on the website if you don’t read something, that is on you, you have shared that responsibility.”*
- *“Based on what we knew that Business, Inc. knew in that timeline, we came to the conclusion that they probably acted reasonably even if it was sending out a cover-your-butt email.”*

Pro-Plaintiff Quotes

- *“...if Business, Inc. is going to allow someone they do not know to sell products through their website, Business, Inc. is responsible for making sure that these products are somewhat legitimate to a certain point...you may not be able to test them, but as soon as you know there is a problem with it, Business, Inc. has the obligation to let everyone know what the harm and risk of using it are and then recall that and send back to the manufacturer.”*
- *“They did send out an email, but they didn’t mention enough in the email, there was nothing really stating anything about the dangers; it was not enough.”*



Introduction

- In December of 2020, New South Research conducted a mock trial in Birmingham, AL on behalf of ABC Law Firm. The purpose of the jury simulation was to examine the following:
 - To understand potential jurors' responses to testimony, facts, witness, evidence, and key themes in the case.
 - To understand what “types” of jurors are most likely to support a plaintiff as opposed to a defendant position.
- The jurors were recruited by random digit dialing and from a database using a screening questionnaire developed by New South Research. Thirty-six jurors were constructed to mirror a jury that may be found in the Middle District of State and represented a mix of gender, age, race, income, occupations, and education.
- Jurors were surveyed throughout the session using questionnaires that were developed by New South Research with input from the attorneys involved in the case. New South staff prepared this report. The open-ended comments from the questionnaire, as well as the deliberation discussions, have not been modified to correct grammar, slang, and style so that the reader can better understand the intellect and education level of jurors.
- While mock trials provide an excellent method by which to explore juror perceptions and ideas, it should be noted that these findings represent *qualitative* information and, therefore, cannot be projected to the population at large with statistical reliability.



Example - Table of Contents

- Key Themes: Plaintiff #
- Key Themes: Defense #
- Issues to Address #
- Witness Testimony Comparison #
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- Result of Verdicts #
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- Argument Influence Analysis #
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- Juror Pictures and Quotes #
- Appendix #



Key Themes — Witness Summary — Issues to Address

➤ Key Themes:

- **In this section, we outline what we believe the key themes and differentiators are for both the defense's and plaintiff's cases.**
 - Information related to and ratings for the most important or most believable facts that moved jurors more toward one side
 - Questions or information mentioned frequently in deliberations or on questionnaires

➤ Witness Summary:

- **Here, we provide an outline for the key learnings from witness or expert testimonies.**
 - How jurors rate the witnesses compared to the NSR benchmark
 - Jurors perceptions of witnesses
 - Key facts learned during testimonies

➤ Issues to Address:

- **Finally, we create a section that highlights what we believe to be key issues to address by either side.**
 - Suggestions on how to answer juror questions in initial presentation
 - Suggestions on how to clarify timelines or other information

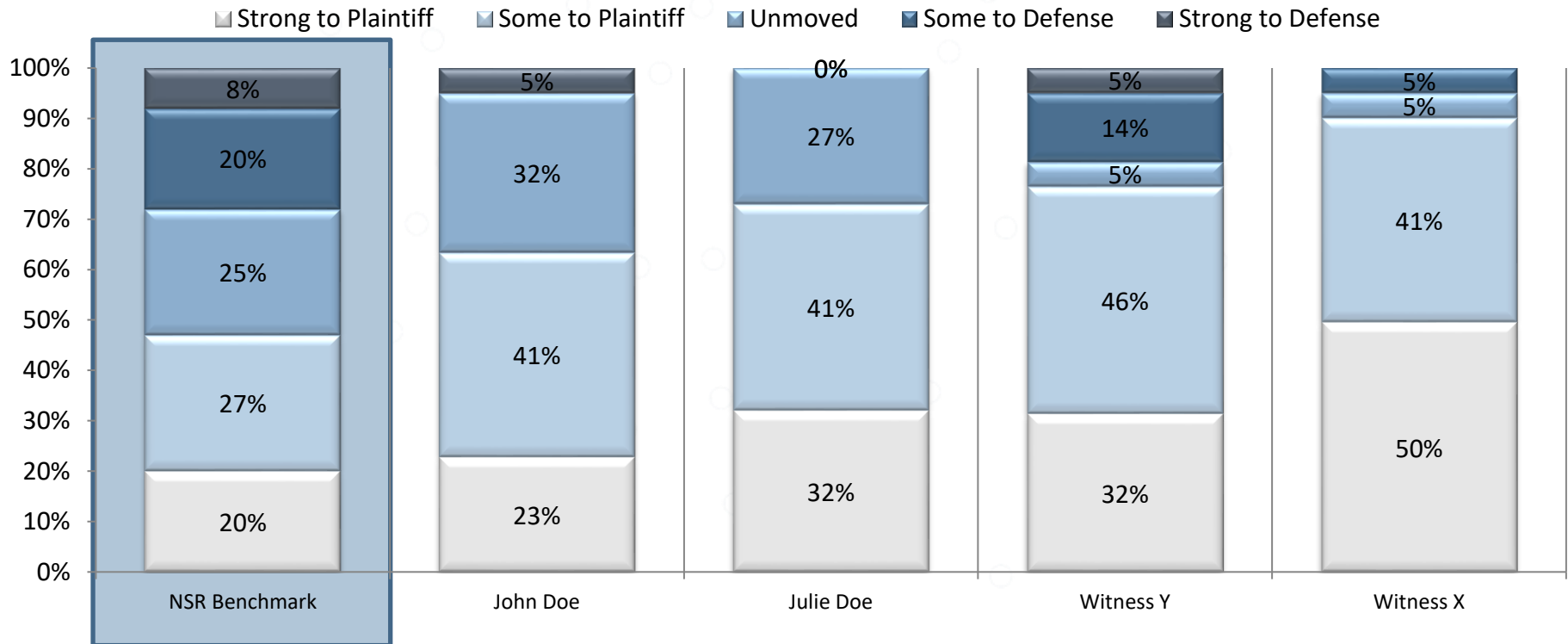


Witness Testimony Comparison

Witness and expert testimonies are compared from the case with each other and with the NSR benchmark to provide a visual representation of which testimonies were most helpful for the defense and plaintiff.

- **Witness X was the most useful plaintiff witness, as 91% moved toward the plaintiff after hearing her testimony.**
- **Witness Y was the most helpful witness for the defense, as more, 19%, moved toward the defense after hearing his testimony.**

Influence on Doe v. Business, Inc.





Best Defense and Plaintiff Jurors

Attitudes, habits, demographics and other characteristics are split by jurors who were pro-plaintiff vs. those who were pro-defense and compared to determine characteristics that are more likely to occur by type of juror.

- **Pro-plaintiff jurors tend to be younger, male, unmarried, and renters instead of owners who have been in their homes for one year or less. They are also more likely to be skeptical of large companies, hold online websites partially responsible for 3P sellers, be frequent online shoppers and frequent Business, Inc. shoppers, as well as, have confidence in Business, Inc., and don't have confidence in products.**
- **Pro-defense jurors were slightly older, female, with higher incomes, married, homeowners, lived in their homes for 10+ years, and more frequent churchgoers. They are more likely to never drink alcohol and favor the death penalty for convicted murderers. They are also more likely to agree trial awards are too large and more likely to disagree awards are too small. They are less skeptical of large companies and more likely to disagree online websites have some responsibility for 3P products.**

More Favorable - Pro Plaintiff Juror			More Dangerous Juror - Pro Defense Juror		
Demos	Plaintiff	Defense	Demos	Plaintiff	Defense
34 and under	18%	0%	55 and older	41%	60%
Male	53%	40%	Female	47%	60%
Unmarried	59%	40%	Incomes of \$50K or more	42%	60%
Renters	44%	0%	Married	41%	60%
Lived in home 1 year or less	24%	0%	Homeowners	56%	100%
Attitudes, Habits	Plaintiff	Defense	Lived in home 10+ years	47%	60%
Agree companies being sued usually did wrong	24%	0%	Attend church every week	41%	60%
Agree companies cover problems to avoid refunds	65%	40%	Attitudes, Habits	Plaintiff	Defense
Agree if purchase product on online website from 3P, website still has some responsibility	76%	40%	Never drink alcoholic beverages	48%	80%
Agree aware of problems with Chinese-imported products	59%	20%	Favor the death penalty for convicted murderers	59%	80%
Frequent online shoppers (1x/month or more)	66%	20%	Disagree amounts awarded in trial too small	24%	60%
Frequent Business, Inc. shoppers (1x/month or more)	53%	0%	Agree amounts awarded in trial too large	12%	60%
Have confidence in Business, Inc.	70%	40%	Disagree companies being sued usually did wrong	18%	60%
Don't have confidence in products	59%	40%	Disagree companies cover problems to avoid refunds	0%	60%
			Disagree if purchase product on online website from 3P, website still has some responsibility	6%	40%



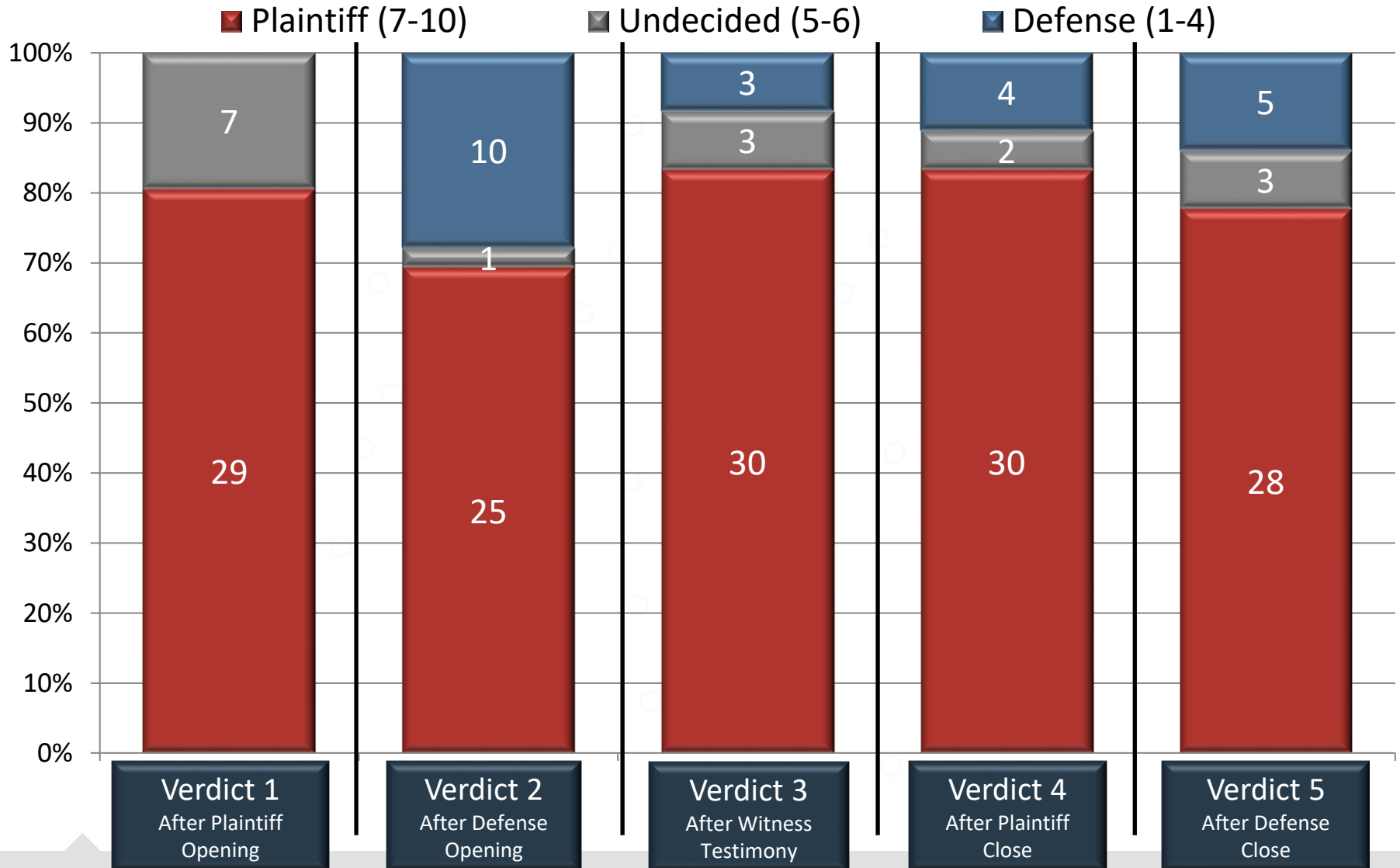
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VERDICT TRACKING



Result of Verdicts

Verdict scores are taken at various points in the trial. Jurors rate how they feel on a 10-point scale, with a 10 being pro-plaintiff and a 1 being pro-defense, rather than forcing the jurors to decide an absolute verdict.





Individual Final Verdict Tracking

At closing, jurors are provided an individual verdict form on which they provide a verdict via verdict form that is styled like the actual verdict form at trial.

Individual Verdict Tracking		
Business, Inc. failed to exercise reasonable care with respect to warning Jane Doe of the dangers of the product she purchased	28 of 36 jurors agree	
Business, Inc.'s failure to exercise reasonable care in warning Jane Doe caused harm to Jane Doe's person or property	28 of 36 jurors agree	
Business, Inc.'s failure to exercise reasonable care caused harm to the person or property of other members of the Doe family	28 of 36 jurors agree	
Compensatory		
	Property	Personal
Jane Doe	\$964,091 28 jurors awarded	\$423,773 21 jurors awarded
John Doe	\$1,032,273 28 jurors awarded	\$1,050,682 28 jurors awarded
Julie Doe		\$895,455 26 jurors awarded
Jake Doe		\$1,030,227 28 jurors awarded
Jessica Doe		\$324,318 15 jurors awarded
Jamie Doe		\$324,318 15 jurors awarded
Punitive Damages		
Business, Inc. acted recklessly with respect to its initial email to product purchasers	23 agree	
	\$12,877,273 23 jurors awarded	
Total Award: \$18,273,773		

- Notes:
- These are average awards created by dividing the total of each category by the total number of jurors (36).
 - Punitive awards ranged from \$100K to \$75 mil.
 - Total award is the total of all compensatory awards and punitive awards divided by the total number of jurors (36).



Individual Verdict Damages – Property and Personal Damages

➤ Individual Verdicts

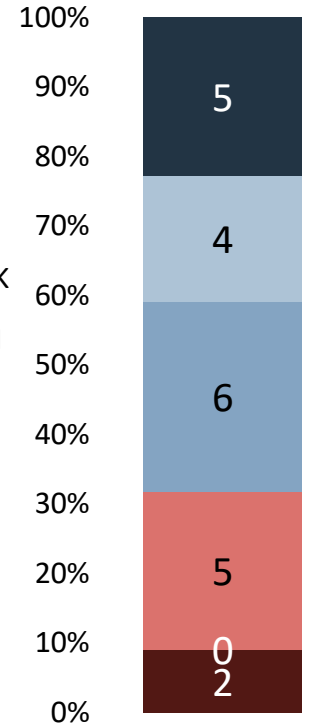
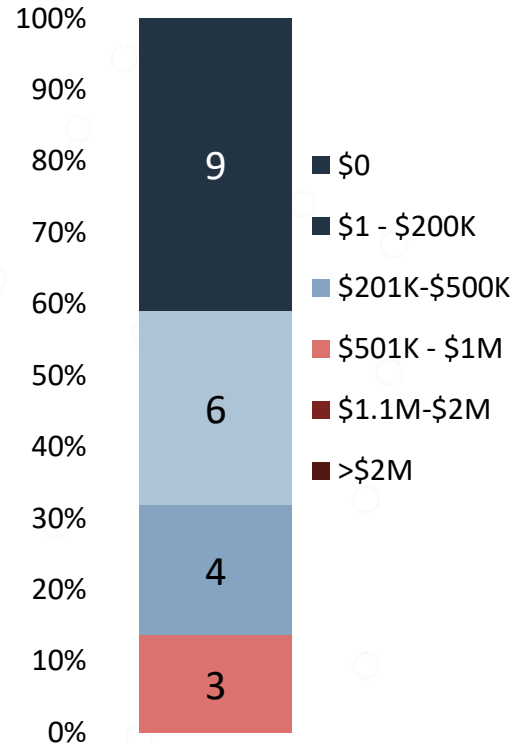
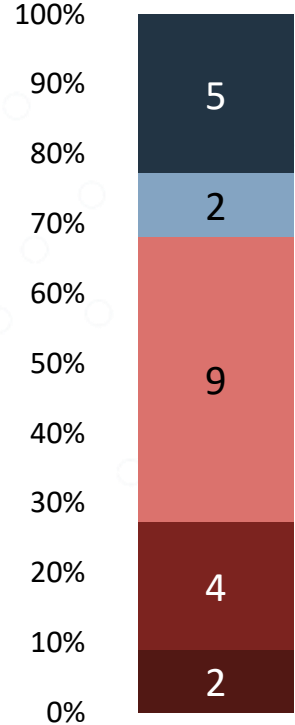
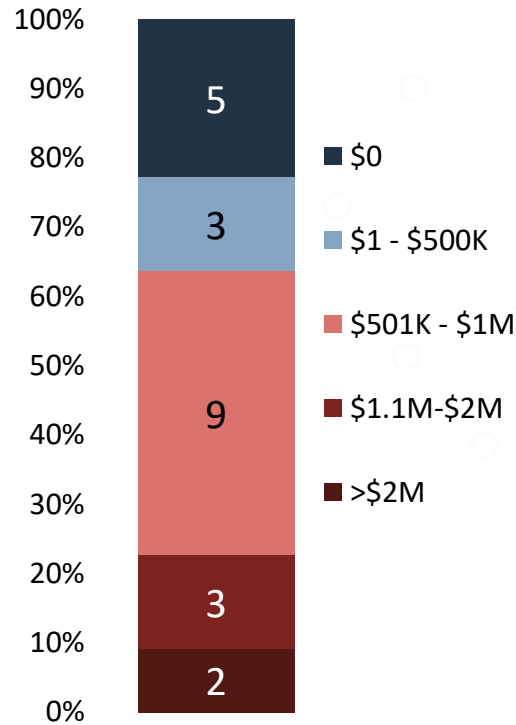
– When jurors make their final individual verdicts, they are asked to assess monetary damages:

1) Jane Doe - Property

2) John Doe - Property

3) Jane Doe - Personal

4) John Doe - Personal



Average Award
\$964,091

Average Award
\$1,032,273

Average Award
\$423,773

Average Award
\$1,050,682

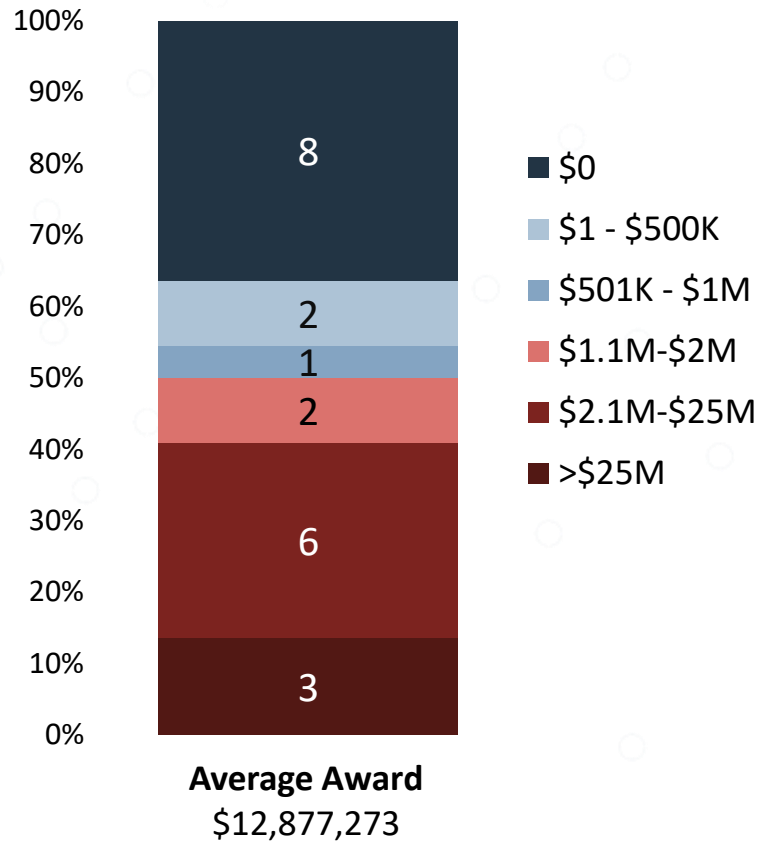


Individual Verdict Damages - Punitive

➤ Individual Verdicts

- When jurors make their final individual verdicts, they are asked to assess monetary damages:

9) Punitive Damages





Full Jury Verdict Tracking

After closing, jurors are split into panels and asked to come to a unanimous decision of a final verdict, on which they provide a verdict via verdict form that is styled like the actual verdict form at trial.

Full Jury Verdict Tracking						
	Jury 1, n=12		Jury 2, n=12		Jury 3, n=12	
Did Business, Inc. fail to exercise reasonable care with respect to warning Jane Doe of the dangers of the product she purchased?	Yes		No		Yes	
Did Business, Inc.'s failure to exercise reasonable care in warning Jane Doe cause harm to Jane Doe's person or property?	Yes		-		Yes	
Did Business, Inc.'s failure to exercise reasonable care cause harm to the person or property of other members of the Doe family?	Yes		-		Yes	
Compensatory						
	Jury 1, n=12		Jury 2, n=12		Jury 3, n=12	
	Property	Personal	Property	Personal	Property	Personal
Jane Doe	\$2.5 mil	\$2.5 mil	-	-	\$1 mil	\$40,000
John Doe	\$2.5 mil	\$2.5 mil	-	-	\$1 mil	\$40,000
Julie Doe	-	\$2 mil	-	-	-	\$2 mil
Jake Doe	-	\$3 mil	-	-	-	\$5 mil
Jessica Doe	-	\$0	-	-	-	\$40,000
Jamie Doe	-	\$0	-	-	-	\$40,000
Punitive Damages						
	Jury 1, n=12		Jury 2, n=12		Jury 3, n=12	
Did Business, Inc. act recklessly with respect to its Dec. 12 email to product purchasers?	No		-		Yes	
	-		-		\$75 mil*	

*One juror objected to this verdict and gave up arguing, turning his back to the other jurors as they produced the verdict. The verdict was never truly unanimous and there was little talk about punitive damages. 2 jurors spoke on the matter and the others went along with it.



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WHAT ARE JUROR PERCEPTIONS OF KEY WITNESSES AND PARTIES?

Over the past 25 years, New South has assembled a large database of witness evaluations. The slides to follow compare our scores for the “typical” witness to scores of the witnesses presented at this mock.

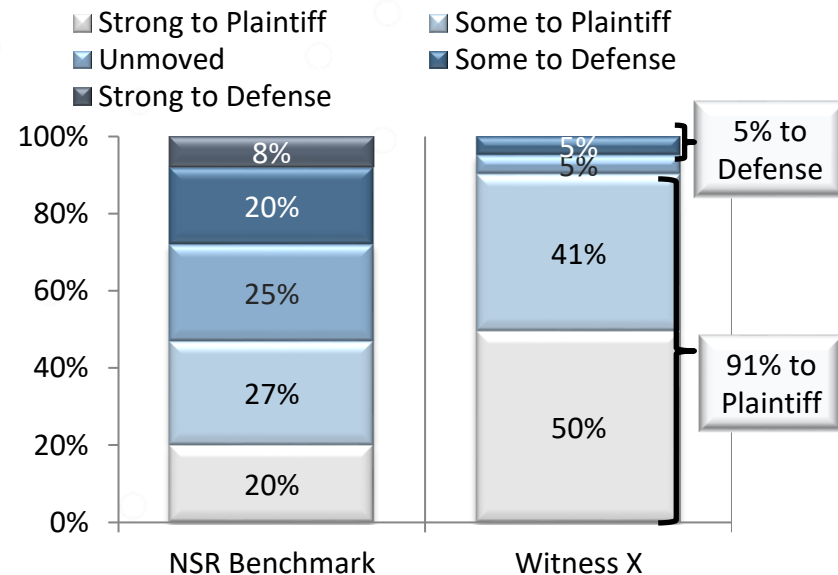


What are perceptions of Witness X?

Key learnings for each witness or expert testimony are collected through questionnaires and conversation and then compared to the NSR benchmark for all witnesses in our databases.

- Character perceptions of Witness X:
 - Jurors felt Witness X was hiding information in her deposition and trying to cover for herself and Business, Inc. by saying she “couldn’t recall” many facts in her statement.
 - Witness X is the strongest witness for the plaintiff’s case, as 20 out of 22 jurors moved more toward the plaintiff after hearing her testimony (91%), significantly higher than the benchmark (47%).
 - When rating Witness X as a witness, jurors feel her statement is more important than the NSR benchmark and thought of her as slightly more forceful and intelligent, but rate her notably below average for concerned, friendly, approachable, honest, and caring.
 - Key learnings from Witness X’s testimony were:
 - Witness X claimed there was no consistent date or fact pattern and appeared to try and cover up any wrongdoings of Business, Inc. or herself.

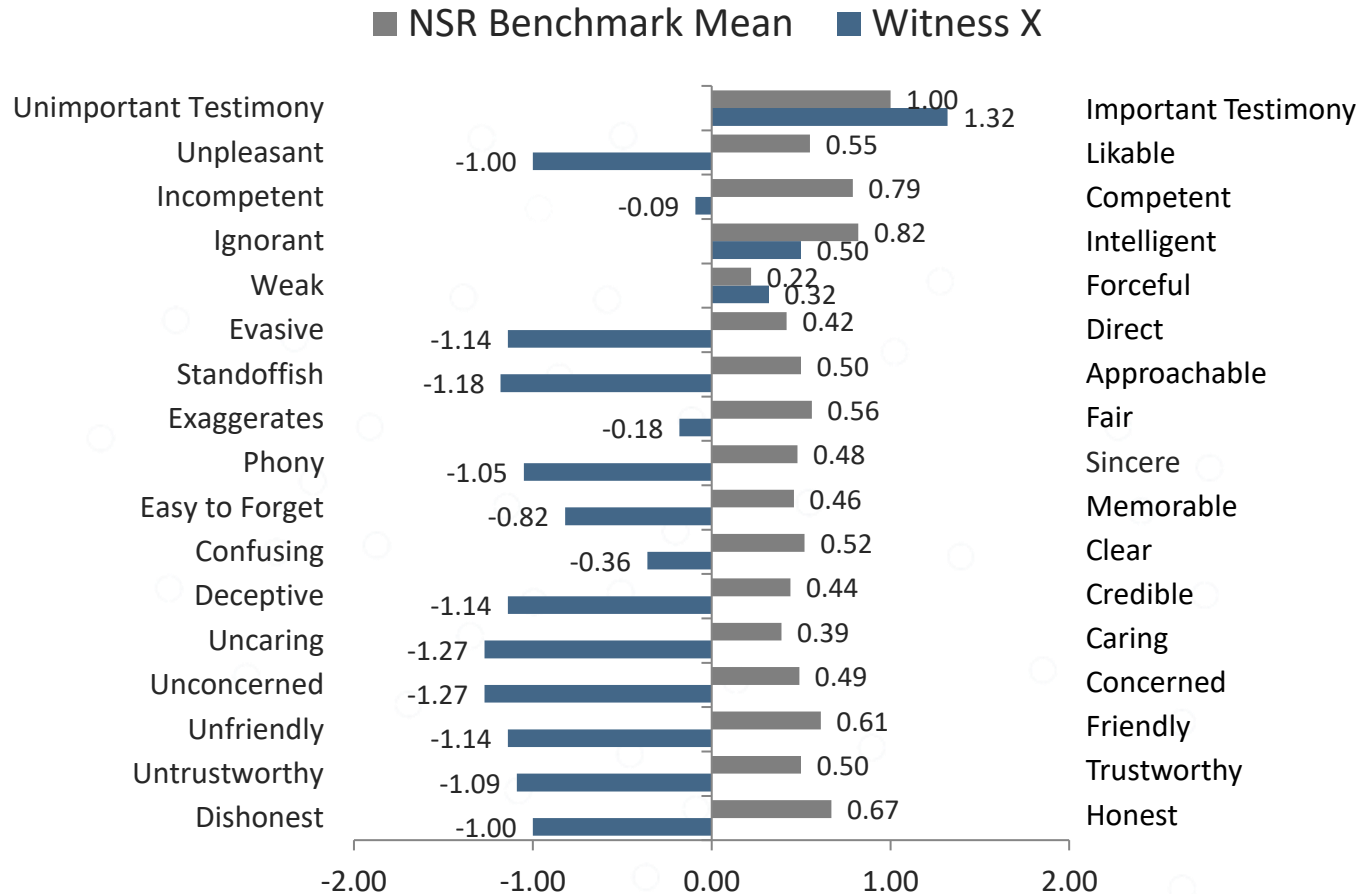
Incompetent
 Uncaring/Unconcerned/Bi*ch
 Dishonest/Liar/Deceptive
 Evasive
 Careful/Calculated
 Untrustworthy
 Uppity/Shrewd
 Corporate-Minded





What are perceptions of Witness X?

Our scores for the “typical” witness, collected from our database, are compared to scores of the witnesses presented during the mock.



New South has assembled a large database of witness evaluations over the past 25 years. Comparison of our scores for the “typical” witness to scores of the witnesses presented at this mock are shown. For each characteristic, jurors indicated on a scale of 1 to 5 the strength of that characteristic, with 1 being weak and 5 being strong. For reporting purposes, the scores were weighted to determine an average.



What are perceptions of Business, Inc.?

➤ Perceptions of Business, Inc.:

- Jurors most often described Business, Inc. as deceptive and evasive regarding the issues with products and this case. Jurors also describe Business, Inc. as careless and negligent and believe Business, Inc. should have more accountability to consumers and better vet third-party sellers.
- Many thought Business, Inc. should have more responsibility for products sold on their marketplace by third-party sellers and should update or create new policies to determine what the process should be if a third-party seller cannot be located.
- Jurors felt that Business, Inc. could have been clearer in their original emails to consumers and felt they purposely sent a “non-alarmist” email in the early morning hours to avoid bad and prolonged press coverage and having to issue refunds, leading jurors to believe that Business, Inc. was more concerned with their bottom-line rather than their customers.
- *“They [Business, Inc.] had poor systems and procedures in dealing with this situation, so they should be penalized, and punitive damages should be awarded for the losses of this family and other families as well. And through those punitive damages, they will change their policies and procedures.”*

Lousy
Cheaters
Careless/Negligent
Deceptive/Evasive/Elusive/Guarded
Clustered
Corporate/Seller
Dependable
Uninformed
Dangerous
Diverse



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ARGUMENT INFLUENCE ANALYSIS



Argument Influence Analysis – Overview

The importance/believability-influence analysis compares how important or believable key issues are during the mock trial to their influence of the juror's verdict.

The chart depicting the analysis is divided into 4 quadrants.

Quadrant 1 indicates arguments that somewhat help the defense's case.

Quadrant 2 depicts arguments that strongly help the defense's case.

Quadrant 3 shows arguments that somewhat help the plaintiff's case.

Quadrant 4 reveals arguments that strongly help the plaintiff's case.

The main focus should be on Quad 4. These should be key issues which need to be addressed by the plaintiff during the trial.



Argument Influence Analysis Matrix Key

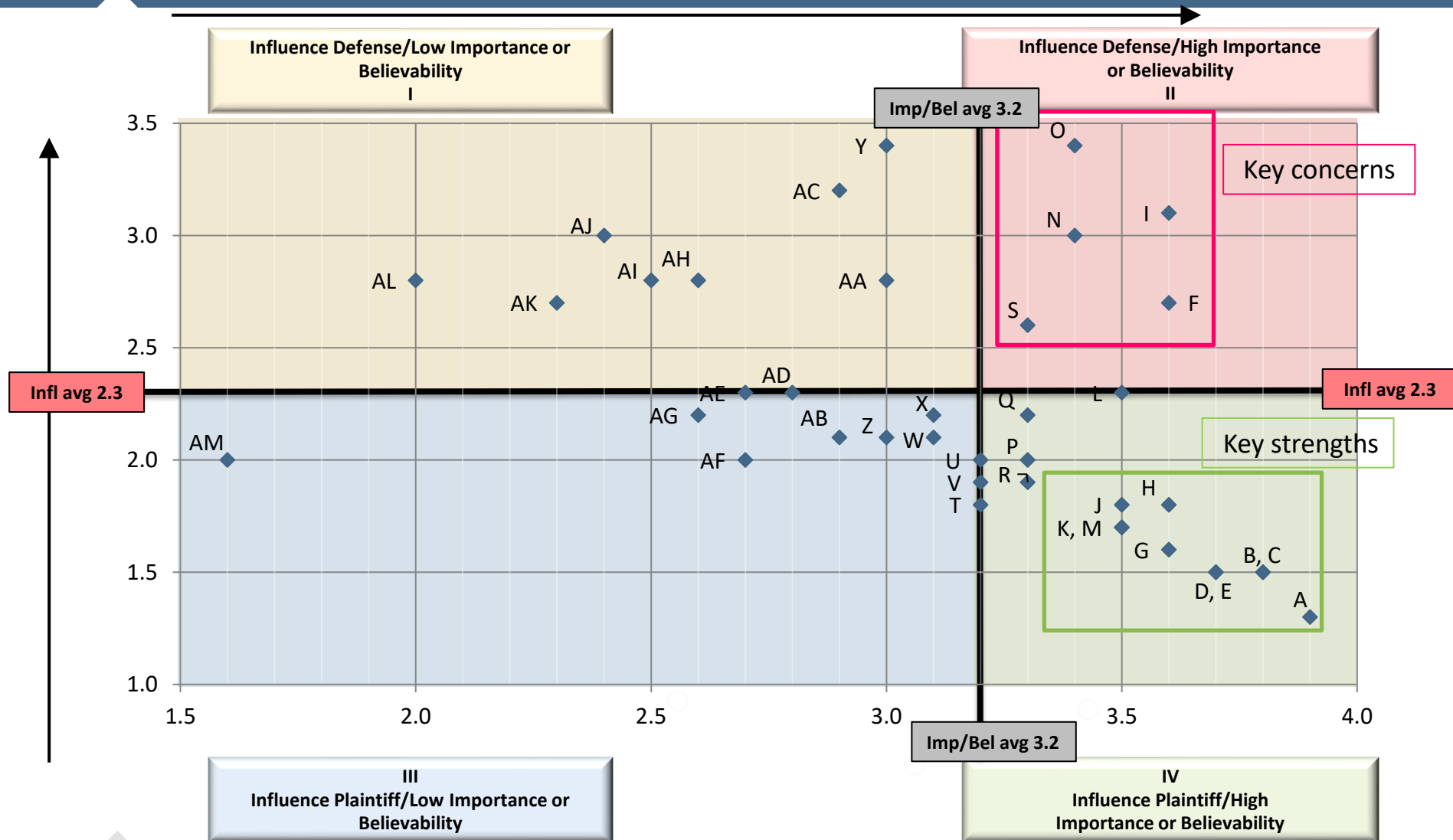
Respondents evaluate facts in the case for importance or believability through questionnaires. The following provides a key for the matrix on the subsequent page.

Quadrant IV – Strongly help the plaintiff’s case		} Top strengths for plaintiff
A	<i>We will test specific facts related to the case</i>	
B	Business, Inc. was aware of at least 17 incidents at the time of initial letter	
C	Business, Inc. had complaints from customers about the specific product the Doe's purchased causing similar incidents	
Quadrant III – Somewhat help the plaintiff’s case		}
T	<i>We will test specific facts related to the case</i>	
U	Business, Inc. purposely withheld info it should have released	
V	Business, Inc. did not allow co-sellers to have direct contact with customers	
Quadrant I – Somewhat help defense’s case		}
Y	<i>We will test specific facts related to the case</i>	
AA	Business, Inc. records show they sent Ms. Doe the warning email	
AC	Only a tiny percentage of Business, Inc. product purchasers actually complained prior to time of Doe’s incident	
Quadrant II – Strongly help defense’s case		} Top concerns for plaintiff
F	<i>We will test specific facts related to the case</i>	
I	One month after the Doe’s incident, Business, Inc. decided to stop selling products worldwide	
N	Business, Inc. sent stronger warnings to customers in 2016 regarding product dangers	



Argument Influence Analysis Matrix: Importance/Believability

Respondents evaluate facts in the case for importance or believability through questionnaires. This chart depicts the analysis divided into 4 quadrants based on how much they influence the defense's or plaintiff's case.





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KEY CROSS TABULATIONS BY OVERALL VERDICT AVERAGE

Demographics, attitudes, habits and other characteristics are split by jurors who were pro-plaintiff vs. those who were pro-defense and compared to determine characteristics that are more likely to occur by type of juror.

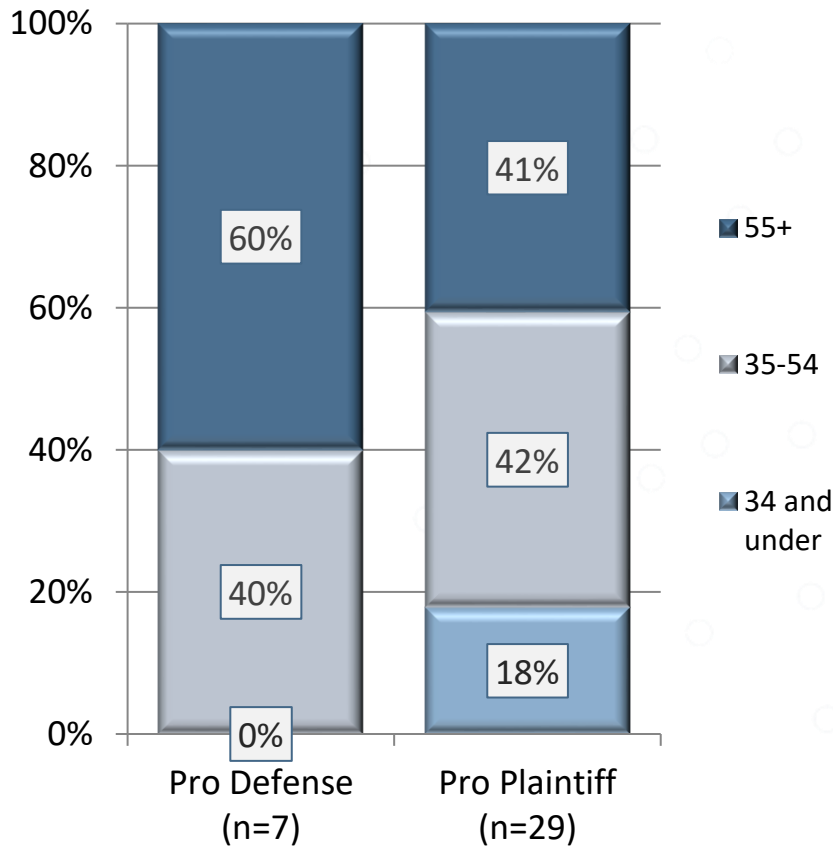


Demographics

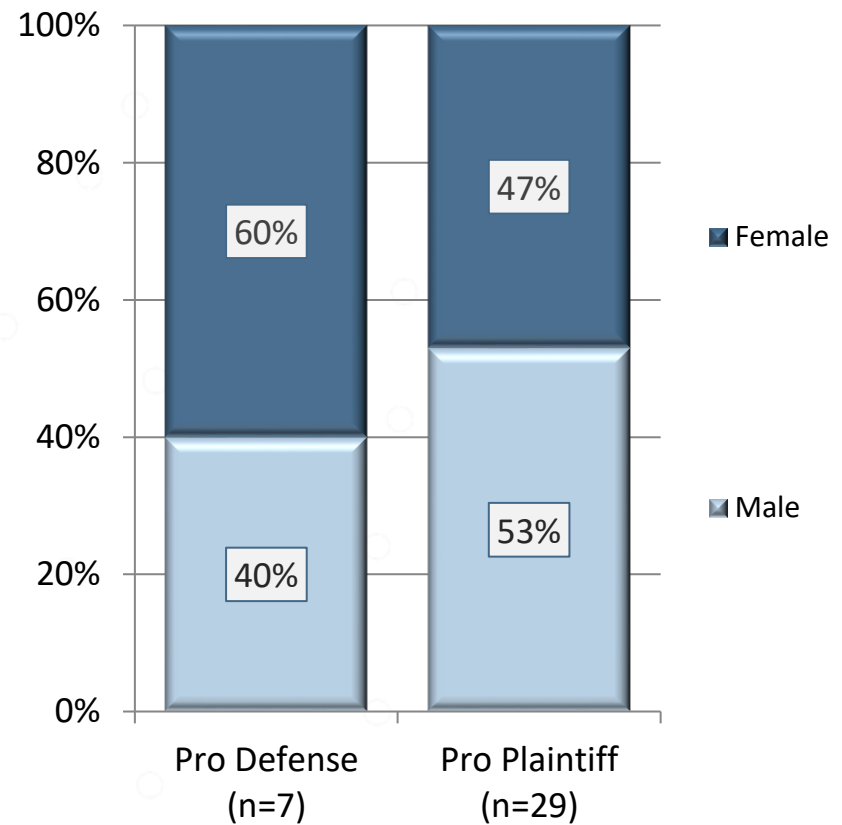
Demographics, attitudes, habits and other characteristics are split by jurors who were pro-plaintiff vs. those who were pro-defense and compared to determine characteristics that are more likely to occur by type of juror.

Demographics

Age



Gender



Age, Gender

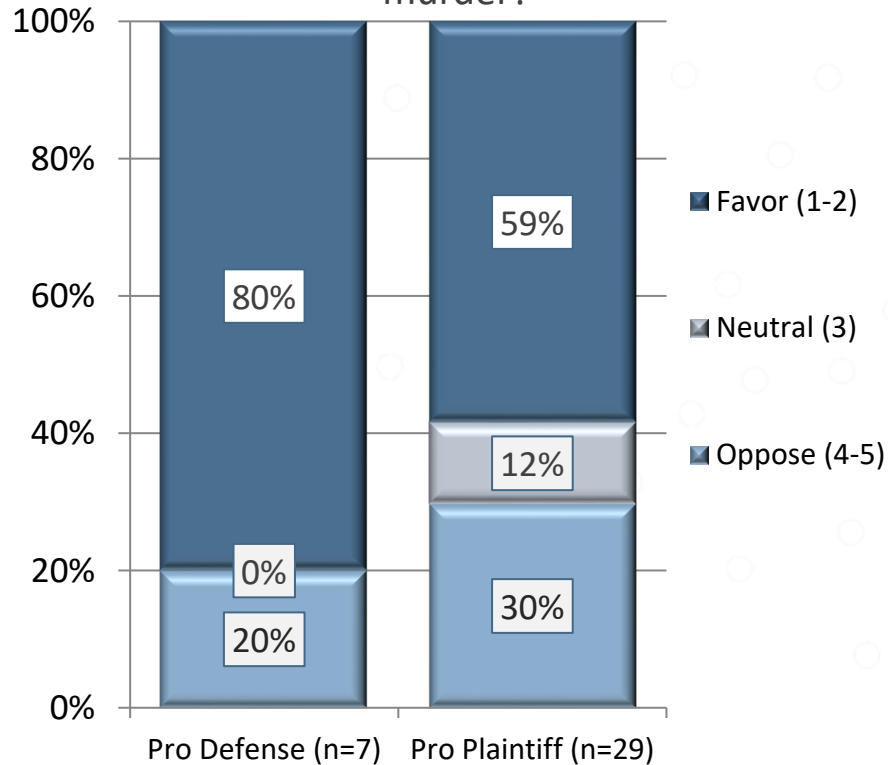
Attitudes



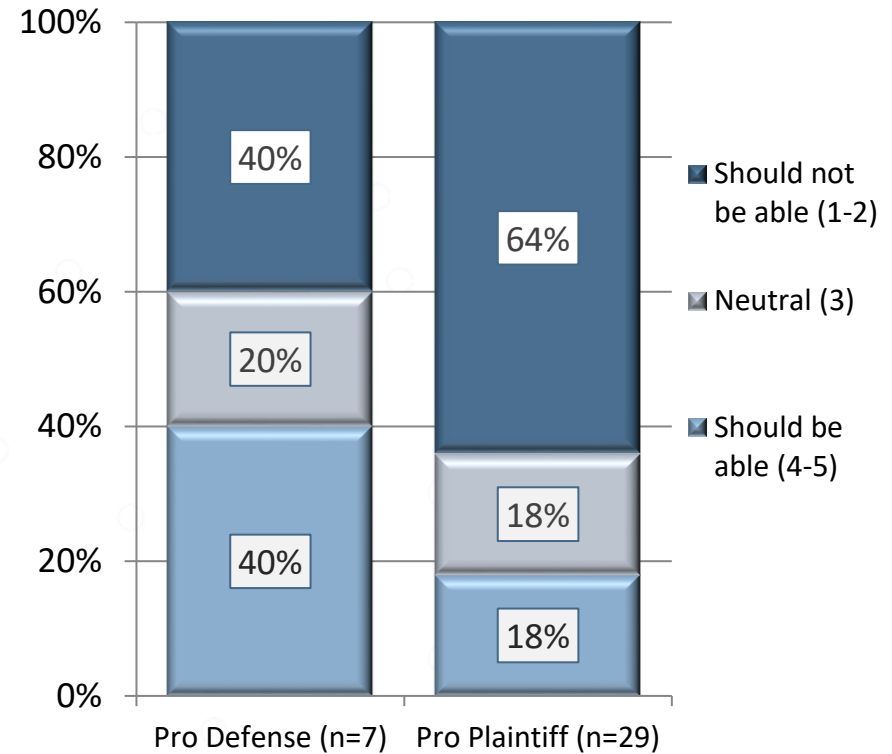
Demographics, attitudes, habits and other characteristics are split by jurors who were pro-plaintiff vs. those who were pro-defense and compared to determine characteristics that are more likely to occur by type of juror.

Attitudes

Do you favor or oppose the death penalty for persons convicted of murder?



Do you believe that pregnant women should be able to have legal abortion?



Death penalty for persons convicted of murder, Pregnant women should be able to have legal abortion

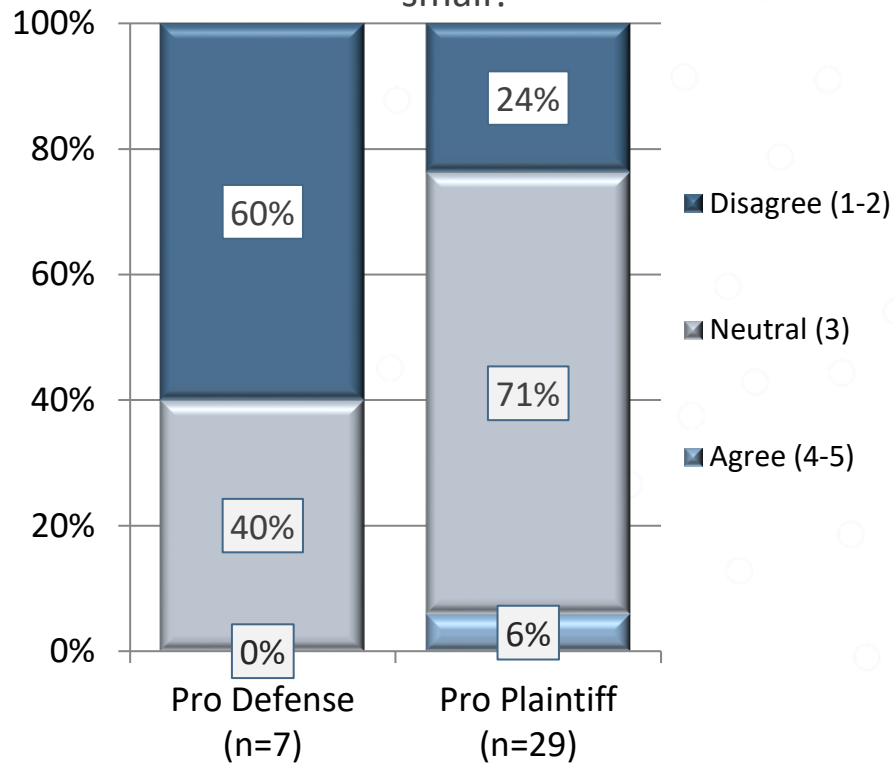
Attitudes



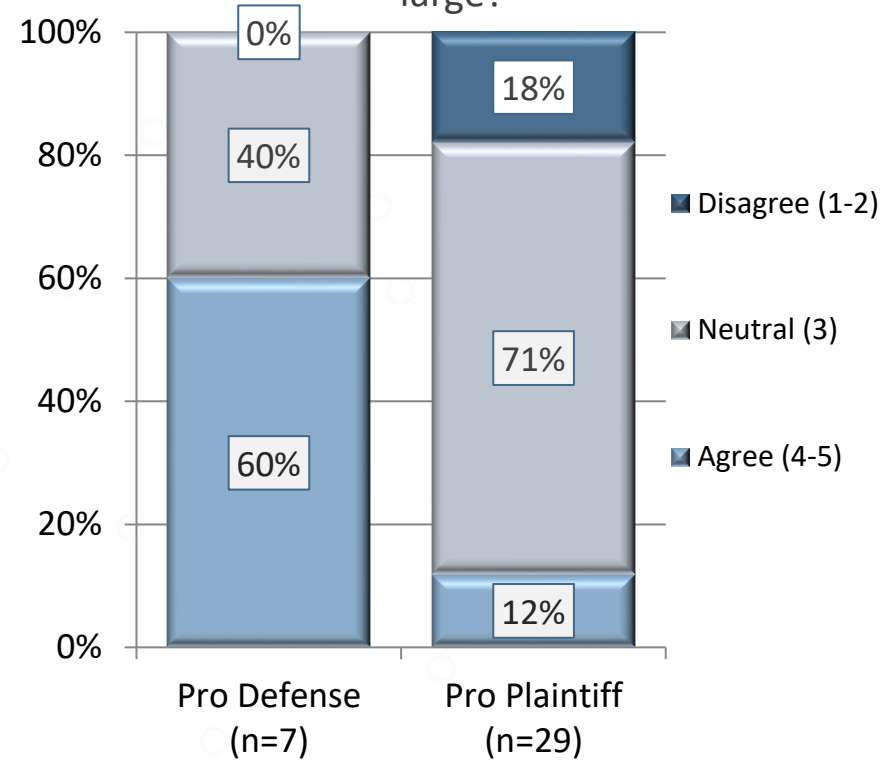
Demographics, attitudes, habits and other characteristics are split by jurors who were pro-plaintiff vs. those who were pro-defense and compared to determine characteristics that are more likely to occur by type of juror.

Attitudes

Do you agree that the amounts of money awarded in a trial today are too small?



Do you agree that the amounts of money awarded in a trial today are too large?



Amounts of money awarded in a trial today are too small, Amounts of money awarded in a trial today are too large

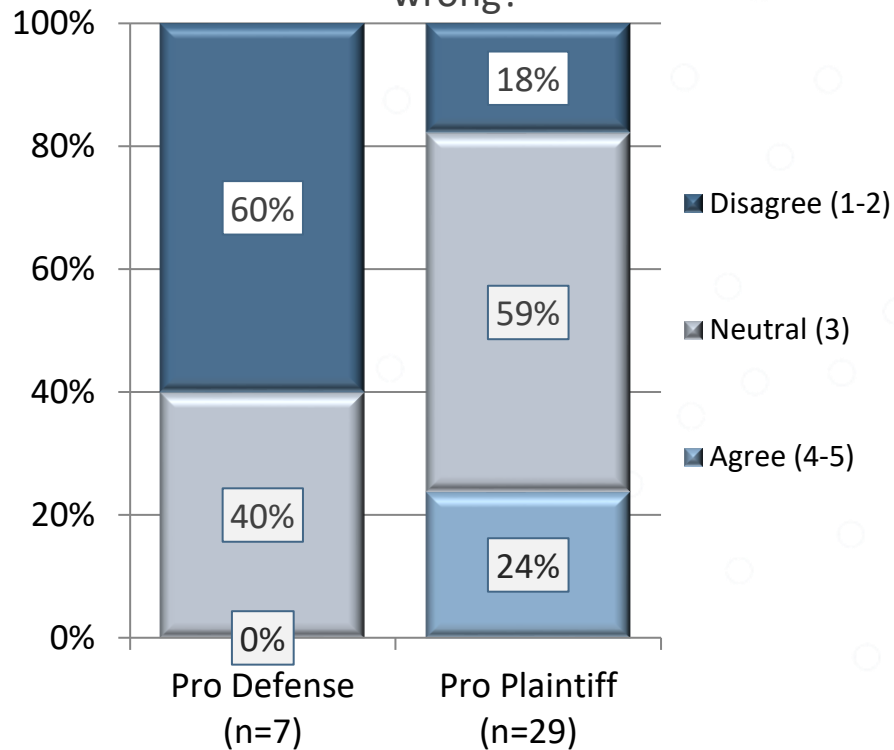


Relevant Facts to Case

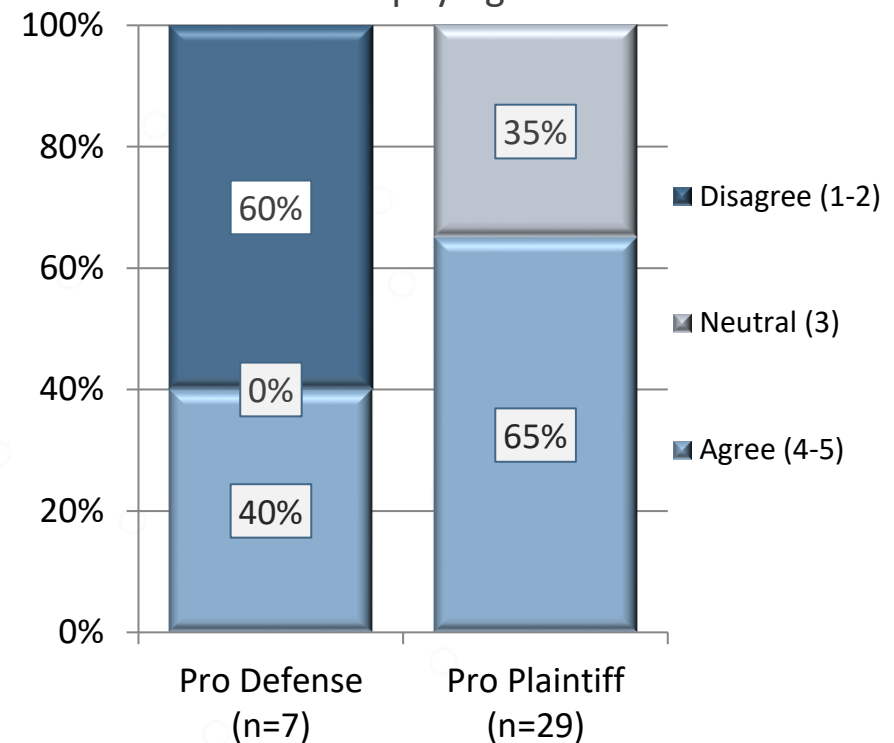
Demographics, attitudes, habits and other characteristics are split by jurors who were pro-plaintiff vs. those who were pro-defense and compared to determine characteristics that are more likely to occur by type of juror.

Opinions Toward Companies

Do you agree that companies who are being sued usually have done something wrong?



Do you agree that large companies often cover up problems to avoid paying refunds?



Companies who are being sued usually have done something wrong, Large companies often cover up problems to avoid paying refunds.

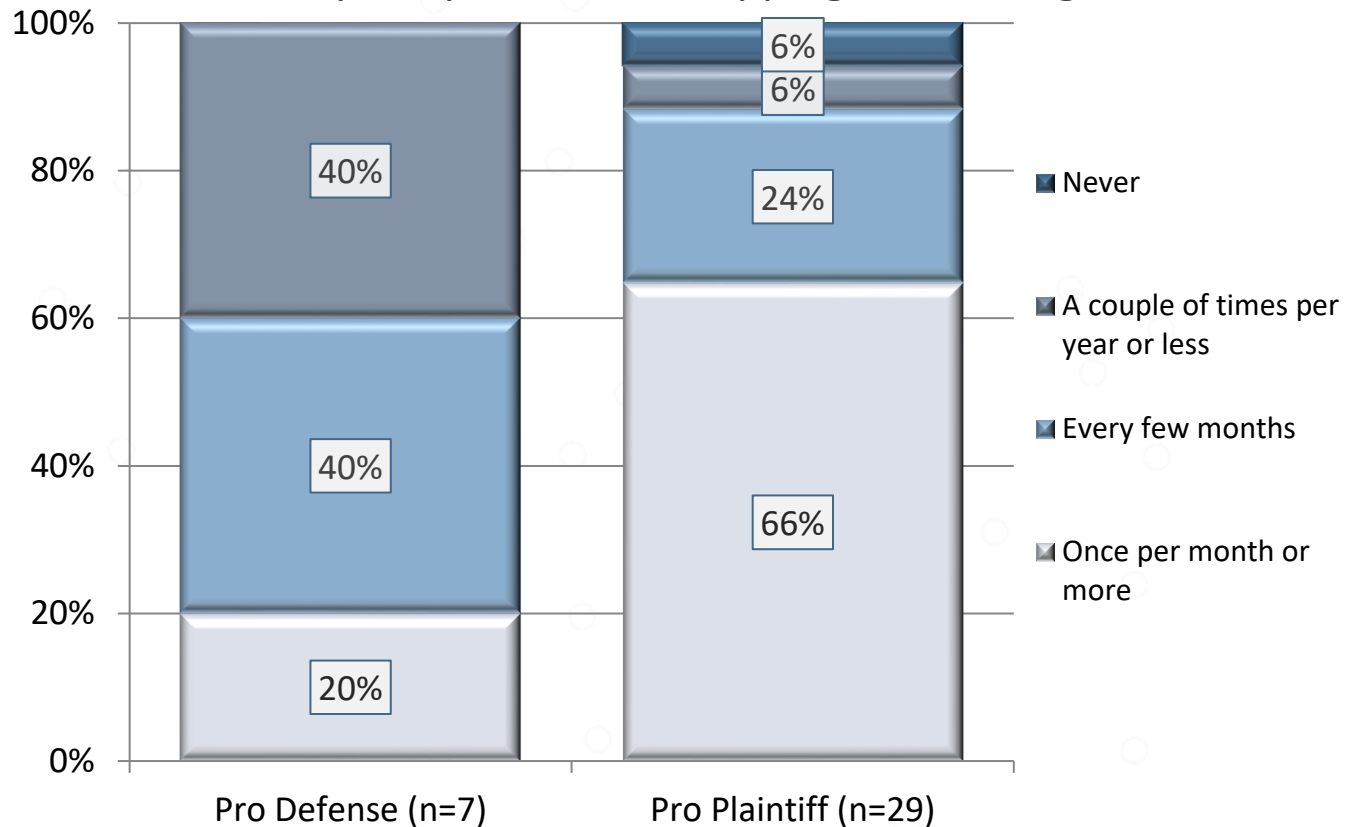


Relevant Facts to Case

Demographics, attitudes, habits and other characteristics are split by jurors who were pro-plaintiff vs. those who were pro-defense and compared to determine characteristics that are more likely to occur by type of juror.

Online Purchase Habits

Frequency of Online Shopping/Purchasing



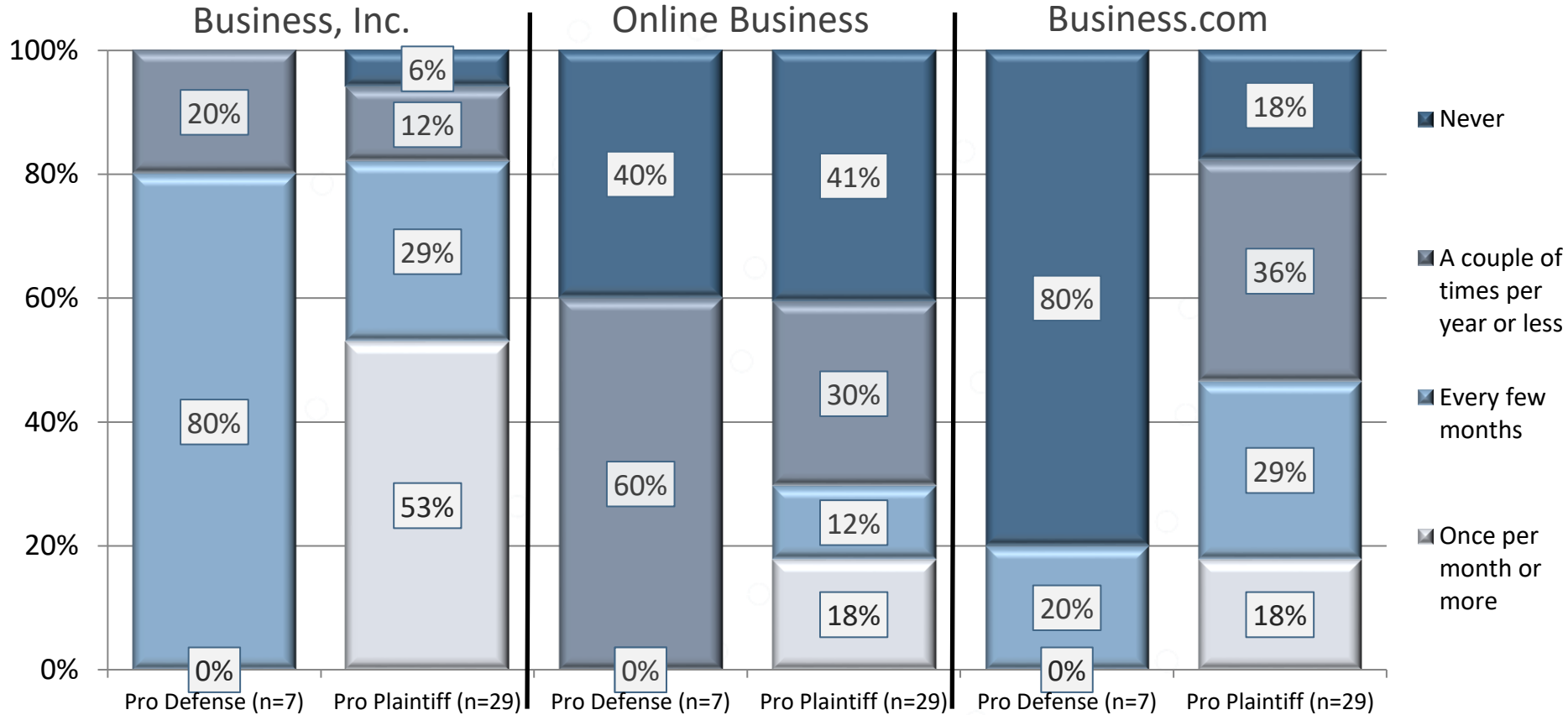
How frequently do you purchase products online and have them shipped to your home?



Relevant Facts to Case

Demographics, attitudes, habits and other characteristics are split by jurors who were pro-plaintiff vs. those who were pro-defense and compared to determine characteristics that are more likely to occur by type of juror.

Online Purchase Habits



How frequently do you purchase from the following websites



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JUROR PICTURES AND QUOTES

The following slides offer a picture of each juror. The slides are arranged in order of strongly Pro-Plaintiff to strongly Pro-Defense, taking into account both verdict ratings and total amounts awarded.



Plaintiff Jurors

Summaries of each juror, including their photo, demographics, verdict, and key quotes are shown. Slides are arranged in order of strongly Pro-Plaintiff to strongly Pro-Defense, taking into account both verdict ratings and total amounts awarded.



Juror 1

Age: 44

Education: High school grad

Marital Status: Married

Occupation: Sales Associate

Classification: Clerical

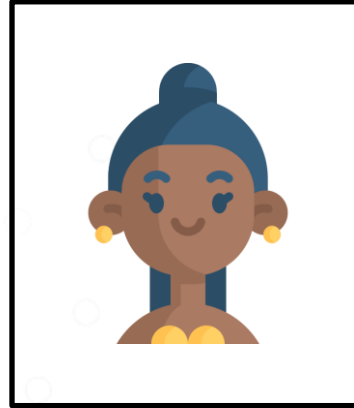
Income: \$35-50K

Final Verdict: Yes to all

Total Award: \$14 mil

Plaintiff Quote: *"The execs wanted to wait to see what else would happen other than the 17 complaints."*

Defendant Quote: *"Business, Inc. never had the product."*



Juror 2

Age: 49

Education: High school grad

Marital Status: Not married

Occupation: Counselor

Classification: Clerical

Income: \$35-50K

Final Verdict: Yes to all

Total Award: \$109 mil

Plaintiff Quote: *"They knew Christmas was going to produce more incidents."*

Defendant Quote: *"Signed business agreement."*



Juror 3

Age: 69

Education: College grad or higher

Marital Status: Not married

Occupation: Commercial Lending

Classification: Retired

Income: \$50-75K

Final Verdict: Yes to all

Total Award: \$37 mil

Plaintiff Quote: *"Customers should have been notified immediately stating some incidents occurred and products will be recalled."*

Defendant Quote: *"If Business, Inc. has no responsibility or liability for other sellers, why involve compliance?"*

Defense Jurors



Summaries of each juror, including their photo, demographics, verdict, and key quotes are shown. Slides are arranged in order of strongly Pro-Plaintiff to strongly Pro-Defense, taking into account both verdict ratings and total amounts awarded.



Juror 4

Age: 68

Education: 2 yr/Some college

Marital Status: Not married

Occupation: Admin. Asst.

Classification: Clerical

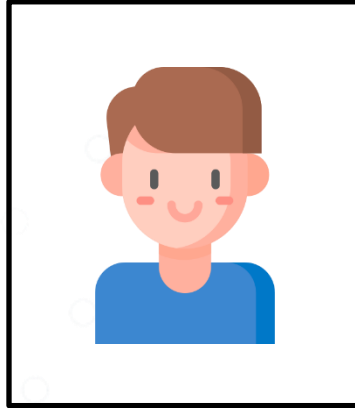
Income: \$35-50K

Final Verdict: No to all

Total Award: Zero

Plaintiff Quote: *"How much Business, Inc. knew already about incidents."*

Defendant Quote: *"Buyer knew it was a 3P sale. When signing up, agreed to terms."*



Juror 5

Age: 54

Education: College grad or higher

Marital Status: Married

Occupation: Sponsor Programming

Classification: Clerical

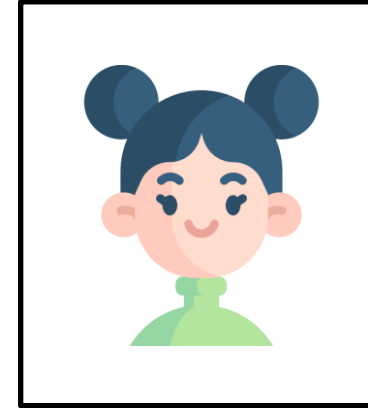
Income: \$75K+

Final Verdict: No to all

Total Award: Zero

Plaintiff Quote: *"Witness Y's testimony about his own purchase. This is pretty intriguing since he intended it for his child."*

Defendant Quote: *"The CPSC didn't decide until February."*



Juror 6

Age: 56

Education: High school grad

Marital Status: Married

Occupation: Sales

Classification: Clerical

Income: \$50-75K

Final Verdict: No to all

Total Award: Zero

Plaintiff Quote: *"Company's apparent lack of concern in determining what the problem was. Company's lack of concern on who and how the items they were selling were being produced."*

Defendant Quote: *"Stopped selling as soon as they determined unanswered problems."*



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APPENDIX I

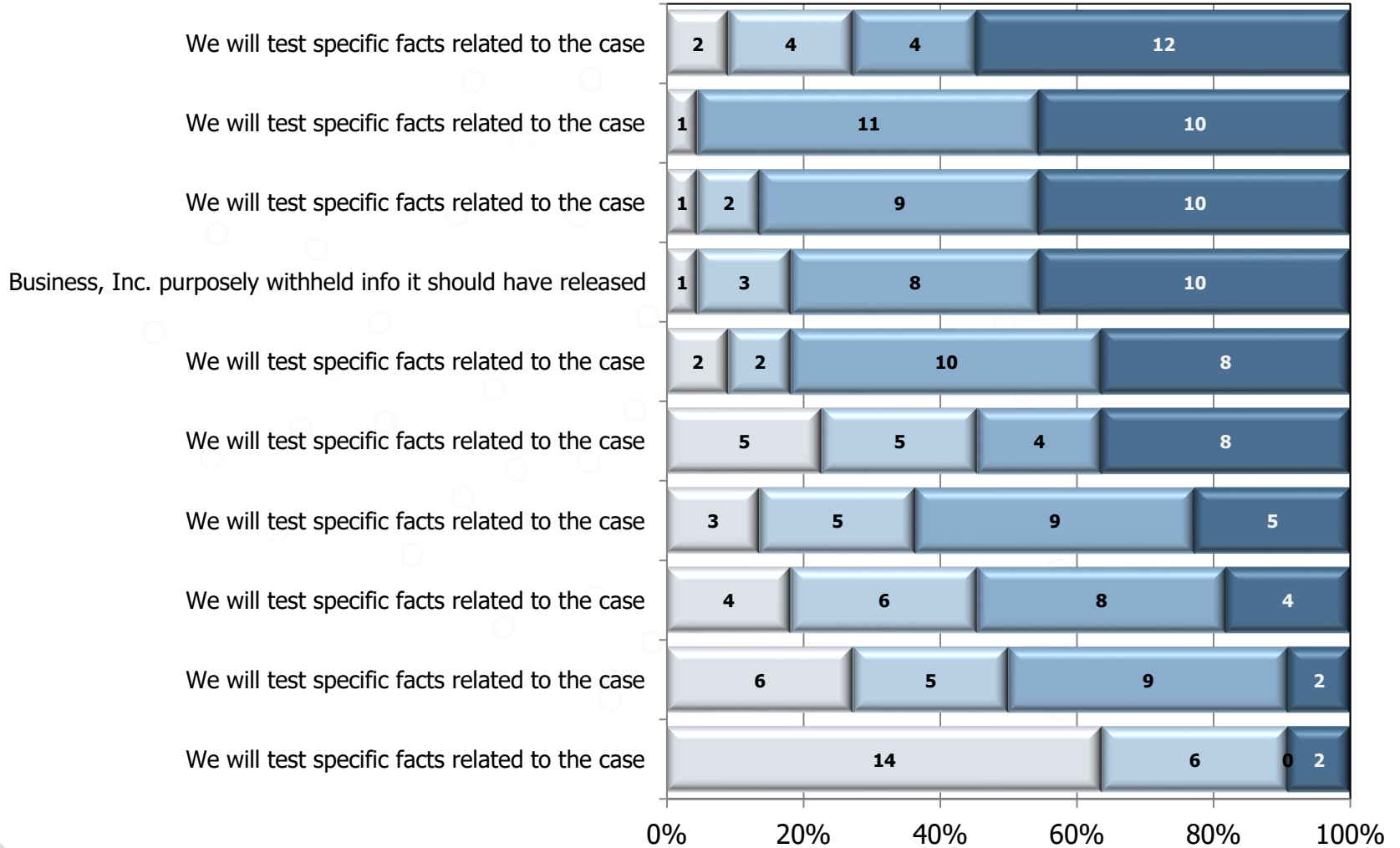
Jurors are asked to rate a variety of statements and facts related to the case for how important or believable each statement is.



Do you believe _____?

Jurors are asked to rate a variety of statements and facts related to the case for how important or believable each statement is.

Strongly Not Believe Some Not Believe Some Believe Strongly Believe





How important is it that _____?

Jurors are asked to rate a variety of statements and facts related to the case for how important or believable each statement is.

Not at all important Somewhat unimportant Somewhat important Very important

