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In January, Litigation Insights circulated an *Insight* devoted to the psychological impact of 9/11 on jurors. During a subsequent discussion of that *Insight* at an IADC presentation, Pete Rowland was asked a question about the likely impact of Enron. In response to that question, Alan Tuerkheimer, who directs Litigation Insights' Minneapolis office, compared a sample of "Pre-Enron" mock juror questionnaire responses with a sample of "Post-Enron" responses. The results are presented below as our third *Insight*.

Method. The study is based on a sample of 543 mock jurors, all of whom served as mock jurors in cases pitting a large corporate entity against either an individual plaintiff or a much smaller business. The pre-Enron group was made up of 292 mock jurors, all of whom served during the six months prior to Dec. 2, 2001. The post-Enron group was made up of 251 mock jurors, all of whom served during the six months immediately following Dec. 2.¹ Although our sample is not random in the formal statistical sense, jurors who responded to questions measuring corporate and legal attitudes were drawn from jurisdictions with vast heterogeneity on the economic, political and cultural spectrums. The cities where the attitudinal assessments occurred ranged from Boston to Los Angeles, Houston to Minneapolis, Salt Lake City to Little Rock, and included rural venues in Arkansas, Georgia, Iowa and New Mexico.

Findings. The results of the before-after comparison were unambiguous. As illustrated by the following examples, our mock jurors have taken a decidedly cynical turn since Dec. 2.

- Jurors were asked, "If a person claims injury by a product made by a large corporation, the corporation should pay for the injury even when there is no proof the corporation did something wrong." Before Dec. 2, 6% of jurors *agreed/strongly agreed* with this statement, while after Dec. 2, the number climbed to 12%, a 100% increase. Although the percentage of mock jurors who believe that a corporate defendant should always pay remains relatively small after Dec. 2, the magnitude of this increase is important and interesting for two reasons. First, although the change is not necessarily the result of the Enron scandal, it reflects a significant increase in the number of very bad, must-strike jurors. Second, this result suggests that the negative impact of Enron will not be confined to commercial cases, but will spill over into personal-injury cases.
- When asked whether "Most people who sue others in court have legitimate grievances," 29% before Dec. 2 *disagreed/strongly disagreed* with that statement. After Dec. 2, only 16% *disagreed/strongly disagreed* with that statement. In other words, before Dec. 2, almost one-third of all jurors expressed cynicism regarding the authenticity of legal claims. On a jury of 12, this equates to four individuals who begin jury service with an important pro-defense predisposition. However, after Dec. 2, that number dropped to two of 12, which is particularly important in jurisdictions with 10 – 2 decision rules.

¹ To allow time for the announcement to "sink in" the first post-Dec. 2 subset of jurors used in this study responded to questions roughly two weeks after the announcement.

- Before Dec. 2, 46% *agreed/strongly agreed* there should be a cap on the money damages a jury can award in a civil trial. This number dropped to 29% after the Enron announcement. After Dec. 2, jurors were much less eager to protect corporate defendants and much less concerned about the deleterious impact of uncapped verdicts. In combination with the previous finding, this means that after Dec. 2, jurors in our study were not only less wary regarding the legitimacy of claims, but also less concerned about the prospect of plaintiffs obtaining windfall recoveries.
- Finally, before-and-after differences such as those outlined above were not regional or localized. Of particular interest along these lines were Houstonians. Sixty-four of our mock jurors were Houstonians. Despite Houston's unique relationship with Enron, Houston's Dec. 2 attitudinal changes resembled closely the national trend. Our data are not extensive enough for us to say for sure why the Houston reaction so closely resembled the national reaction; however, our experience in Houston suggests that for many Harris County jurors, Enron simply reinforced pre-existing attitudes about corporations and corporate culture.

Conclusion. Although the trends reflected in these examples are clear, we must, as always, introduce some cautionary notes regarding interpretation and the implications of these findings for litigation strategies. First, our sample, though representative, is not large or diverse enough to be sure how closely the sample jurors approximate the population of “real” jurors. Second, it is difficult to estimate the longevity of these findings. In the short run, it is likely that ancillary events, such as the recent Arthur Andersen verdict, will exacerbate and extend the life of the Enron problem for corporate defendants. Potentially more problematic is the question of how jurors will react if the Enron problem expands to include other major corporate entities and the Andersen problem expands to include other accounting firms. If, as seems likely, this expansion proceeds in tandem with a falling stock market, rising unemployment and other sources of economic anxiety, Juror Psychology 101 predicts that the anti-corporate spikes discussed above will become the norm – conventional wisdom – and that each new scandal will produce more severe spikes and more severe problems for corporations and those who defend them.

So what should corporate defendants do in anticipation of an increasingly cynical litigation climate? Although the final answer will vary case to case, some generic suggestions can be gleaned from experience and a social cognition approach to jury psychology.

- Standard reminders that the plaintiff bears the burden of proof will be interpreted by more and more jurors as an attempt to evade corporate responsibility.
- It will become increasingly important to defend *your* corporation rather than defending the rights of corporations such as your corporation.
- In states with liberal voir dire rules, it will be important to use jury selection not only to identify the increasing number of must-strikes, but to initiate a frank discussion of jurors' cynicism and to secure verbal commitments from individual jurors that they will try your client as an individual, not as a representative of corporate America.
- It has always been important to prepare corporate witnesses as communicators who are able to put a friendly, individualized face on their company. This preparation will be even more important for the foreseeable future.

As always, we welcome any questions or comments.

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