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Dealing with angry juries

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While Wall Street may be showing signs of improvement, jurors on Main Street are still madder than ever.

Although juries have never loved big corporations, they are much angrier now because they are getting hit personally, whether by losing a job, their home or their retirement savings, said Dr. Noelle Nelson, a trial consultant and clinical psychologist in Malibu, Calif.

"When anger is personal, it has a much bigger impact in the courtroom," Nelson said.

Last year, Mark Kosieradzki, a plaintiffs' attorney at Kosieradzki Smith in Minneapolis, began noticing a "universal distrust of corporations" among jurors.

But figuring out whose side jurors take when they're angry is less clear.

According to conventional wisdom, a bad economy produces two effects: juries are more punitive and less generous, said Kenneth Broda-Bahm, a senior consultant with Persuasion Strategies in Denver.

In criminal cases, juries are more likely to convict, he said.

In civil cases, expect juries to be less generous with classic damages in a standard personal injury case, but more willing to "send a message" in cases involving bad corporate behavior, Broda-Bahm said.

Cuts both ways

A juror who is personally experiencing financial turmoil could benefit either side of a dispute, depending on his attitude.

Asking a juror about how he is dealing with a financial setback, such as the loss of a job, can give a lawyer insight into how he sees the world.

"If a juror says, 'It's tough right now, but we're tightening our belts and thinking of ways to start up a small business on the side,' that tells me this juror is a master of [his] own destiny," said Richard Gabriel, a jury consultant at Decision Analysis in Los Angeles.

Such a juror would be favored by a defendant.

On the other hand, a juror who says, "I don't know what we're going to do. We have to move out of our house and I'm just really upset by the whole thing," may be more susceptible to a plaintiff's argument that "somebody did something to me," said Gabriel.

While juries tend to be more frugal in a bad economy, they also expect corporations to follow the rules - and will punish those who break them.

For corporate defendants, it's more important than ever to humanize the company, by telling the story of the founders or telling the jury about pro bono activities such as community outreach, Nelson said.

More hardship waivers

Jury consultants are observing more hardship waivers.

Patricia McEvoy, a consultant with Zagnoli McEvoy Foley in Chicago, said that at a recent trial the judge allowed anyone who was unemployed and looking for a job to get out of jury duty.

Noticeably, the more educated and management-level segments of the workforce are seeking hardship waivers.

As a result, the average education of the jurors who ended up serving on the jury is lower than expected, McEvoy said.

Typically, hardship decisions are made by judges outside the view or control of lawyers, but lawyers might want to explore this issue in written jury questionnaires, said Ted Donner of Donner & Co. Law Offices in Wheaton, Ill., co-author of *Jury Selection: Strategy & Science*.

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