

# TortsCenter | Episode 11

## "The Future of Litigation: Adapting to the Era of Nuclear Verdicts"

**Courtney Dunn:** [00:00:00] A quick note before we get into our episode. The content provided in the Tort Center podcast is for informational purposes only and should not be construed as legal advice. The information presented in each episode is based on general principles of law and may not apply to your specific legal situation.

Listening to the Tort Center Podcast does not create an attorney-client relationship between the hosts, guests, or listeners. If you require legal advice or representation, please consult with a qualified attorney licensed to practice law in your jurisdiction. We disclaim any liability for any loss or damage, including without limitation, indirect or consequential loss, or [00:01:00] damage, or any loss or damage whatsoever arising from the use of information presented in the Tort Center Podcast by accessing and listening to the Tort Center Podcast.

You agree to these terms and conditions.

**Carla Varriale-Barker:** Hi everyone. It's my pleasure to introduce you this afternoon to a shareholder in our Chicago office. Although it sounds strange to say that because I best know Paul Moats for parachuting in to a variety of states across the country as needed. Because he has outstanding trial skills.

He's a seasoned litigator. We know that he focuses on complex commercial and tort litigation disputes, but don't sleep on his insurance coverage. Multi-district litigation, labor and employment skills among others, he is the consummate trial lawyer. It is my pleasure [00:02:00] to introduce Paul Motes, who will discuss a topic near and dear to his heart, the perils of nuclear verdicts, and maybe he'll even talk to us a bit about thermonuclear verdicts.

How are you today, Paul?

**Paul Motz:** I am great. Thank you for that introduction. That was very kind. But I thought we were here to talk about sports and my, uh, never ending, uh, trauma as a Chicago Bears and Manchester United fan. Now, happy to be here.

**Carla Varriale-Barker:** A totally different sort of blood sport. We're talking litigation and trials today.

And Paul, I think of you as one of the most vivacious, well-read and focused trial lawyers that I know. What's your secret sauce before we talk about what we call nuclear or thermonuclear verdict?

**Paul Motz:** Well, that's a, a great question. Hey, obviously I learned from some great trial attorneys, both, you know, on the defense side and to be honest on the plaintiff's side, it's one of those [00:03:00] things that trial attorneys, especially once you've had a big case, you know, I'm not talking like a \$15,000 case, I'm talking where, you know, their demands are eight figures, nine figures.

10 figures. I haven't had that yet, but I've had nine figure asks of the jury before, and to me, trial is the great crucible. You learn whether you got it or you don't. When there are millions of dollars on the line in a society where corporations had injured people, good, let's give them money because they got hurt.

Doesn't matter the liability situation. Defense lawyers. Have to be even better than their P of colleagues because we don't get the, the same benefit of the doubt that a lot of, uh, the plaintiffs get. So we have to be bring our A game from basically the moment the file hits our hands, and we have to be prepared to go to trial and be thinking about trial from the moment the file hits your hands.

**Carla Varriale-Barker:** Who have been some of your [00:04:00] key mentors, and what have been some of the key pieces of advice that you have taken away from those mentors?

**Paul Motz:** The biggest mentor was one of my old partners who's now retired. Unfortunately, we hard on less than amicable ways, namely 'cause I had the temerity to say, Hey, I want to be like you when I grow up and I want to have the opportunities to be like you.

But it's really looking at how you approach. And you know, it starts from thinking about the discovery that you're issuing, where you're going to get documentation or witness statements or, or video evidence. It's, it's thinking about all of the possibilities. Then that bleeds into oral discovery. Too many lawyers.

Don't think about how this deposition is gonna get used at trial. I tell young associates, I tell partners, I tell anybody that'll listen. Yeah, you may get a paragraph answer and there's that little one sentence [00:05:00] nugget in the middle of it, but that doesn't help you. You can't impeach somebody with that, or that's not an admission that you can use against them.

You have to get that clean little. 10 word or less, 15 word or less or better yet just a yes answer so that you can frame your case around that. Then that bleeds into making sure you are proactively attacking the case. I see too many lawyers. Especially seasoned lawyers who say they know what they're doing.

They, they walk into a deposition trying to basically ask the who, what, where, when, and why. Instead of taking a plaintiff and trying to nail him or her to a cross, this is what the plaintiffs are doing to our witnesses. There is no reason that we, as the defense shouldn't be doing the exact same. It's about having a strategy.

It's more about prepping somebody 10 minutes before a deposition and say, just look 'em in the eye. Tell 'em the truth. You can't do that. You have to know your case inwards and out backwards, forwards, and every one of those discovery steps leads you [00:06:00] into a trial posture. And then, you know, deep down I'm a frustrated actor.

I wanted to go to theater school and you know, I was told you can't go to New York or California, but you can go anyplace else. And that pretty much ended my dream right then and there. But trial is theater and you're telling a story as a trial lawyer, and you have to be thinking about that story early on.

**Carla Varriale-Barker:** How real switching gears is the concern about social inflation and its impact. On jury verdicts, is it hype, is it reality? And what are some strategies to counter that?

**Paul Motz:** I don't know if I necessarily like the term social inflation, but the concern is there very verdicts, especially since the pandemic have started going up nationally, there are more what are considered thermonuclear verdicts.

I think it's 50 million or more, or a hundred million or more. I can't remember the exact label that people smarter than I have, have put on it, but those are all trending up. First things first is just like the Manhattan [00:07:00] Project, A thermo nuclear verdict or a nuclear verdict wasn't built at the courthouse.

It happened throughout the course of discovery. It's a failure to potentially understand the damages that are going to be awarded in this case. Failure to understand what witnesses need to be properly trained before they get set up for their deposition. What experts need to be properly engaged before the plaintiff's deposition, before your people's depositions.

Too many times we get involved in cases and you know, it's just a normal caseload. Some things fall by the wayside, but if you start thinking early on that can lessen it, that can put you in a position where you can adequately inform your client, okay, here's what I think the true verdict value is.

Sometimes that goes by jury verdict research. Sometimes that's through mock trial exercises, but all of that goes into how you're looking at the value and saying, okay, this is a bad case. Liability isn't great. Here's what I think is gonna [00:08:00] happen X times out of 10, but I would say the biggest thing to try and tamp down on social inflation and, and nuclear verdicts, it's the defense's anathema to properly arguing damages.

I can tell you that the people that I learned from as a young lawyer. The defense lawyers that I learned from, they didn't wanna argue damages. They were like, well, it's gonna make me look like I'm admitting liability. No, it's not. It's just not. And there's actually a University of Iowa Law Review article from several years ago that.

It was written by some people that did testing on this, and they found through mock trials that it didn't have any meaningful impact on whether or not you're emitting liability. And I can tell you in every case where I've argued damages, you get a better number if you're getting a plaintiff's verdict.

Just that's the way, because the, the, the plaintiffs know that anchoring works and they're gonna say in voir [00:09:00] dire this case. I'm gonna ask you for a hundred million dollars. How many of you would have a problem awarding that much money if it's supported by the evidence? All the juror's hands go up that, you know, are defense friendly.

They get booted out. And so we have to be able to do the same thing. And too many lawyers that have much more gray hair than I do simply won't do it. And it, it's just, it's mind boggling why they don't do it.

**Courtney Dunn:** Well, I've heard and read a theory that jurors are more sympathetic to an injured person now post Covid because they can kind of empathize with being sick or being stuck at home or kind of on that weaker scale when you wanna be out doing stuff.

So when you say arguing. How do you address that? By reminding them that the damages can't be based on emotion or anything that would kind of bring out that sympathetic side. Is that something that you consider and do you think, oh yeah, jury is viable?

**Paul Motz:** Oh, absolutely, and just like the [00:10:00] plaintiffs start in voir dire, I start in voir dire.

It's one of those things where when I'm picking a jury, I'm gonna say, Hey, there's two elements to every case. There's liability and damages. I don't believe there's any liability in this case, but as my job as an attorney, I. I have to argue both sides of this case. Does anybody have any problems with that?

And I'm gonna say, Hey, you know, you heard plaintiff's astronomical number. I'm gonna say, Hey, based on the evidence, based on the reasonable expert testimony, based on your common sense. Here's my number, and it has to go throughout your entire case. When you're working for an insurance company, you have to have that number agreed to before you start trial, and you can never, ever go and change that.

You know, Bob Tyson has a really good book on how to approach arguing damages in, in the age of nuclear verdicts, and I highly recommend it. I think it's free with an Amazon Kindle Plus membership or something like that. So yeah, you have to do it. You have to try to engage. Logic as opposed to [00:11:00] letting jurors run amuck with their emotions.

Now a lot of that is comes down to jury selection. Sorry. I don't want younger people on my jury for that very reason because the research shows that starting basically with millennials, which I am a geriatric millennial, and every generation since they become more and more well. They want the quick fix.

They think corporations have all the money in the world, or they know that insurance is gonna pay it. So who really cares? There's no reason for them to stay tethered to reality. So yeah, if I could just have a bunch of 65-year-old Fox News viewers as my juries in these horrible venues, I would be very happy.

But I know that that is a pipe dream.

**Courtney Dunn:** Does that go hand in hand with the large number bias? Have you heard of it referred to as that, where people's understanding of large numbers decreases as the number increases? [00:12:00] So when you're looking at what to award, if it's up in the millions, there's really no differentiation in their head as to 1 million versus say, 100 million.

To them, it's just give them the high number. There's no big

**Paul Motz:** difference here. The way I see that really talked about is in like the anchoring and counter anchoring Yeah. Side of things. And you're right. If you are not correctly arguing and putting forth evidence, that's the other thing. Too many defense lawyers like to cross examine the plaintiff's expert and say, that's that's all I need.

I don't need my own damages. Experts. No, you don't. The jury doesn't want to hear from you on cross examination. Cross examination's. Fun. That's my favorite part of next to closing argument. But you have to have people that can convince a jury why you are right, why you are the reasonable ones. It's about credibility in front of that jury.

And so, yeah, the plaintiffs know the large number of theory and, and know that big, large numbers sound appealing to juries, but the defense has [00:13:00] tools available and we should be grabbing them with both of our hands and making sure our clients and carriers know that and know that from day one. 'cause it costs more money to defend a case that way.

Simply put, 'cause you're engaging more experts, it's gonna be a longer time.

**Courtney Dunn:** And when we say nuclear verdicts, just to be clear, we're talking verdicts in excess of 10 million. Right?

**Paul Motz:** I think that's the generally accepted ES five 10. I mean, they're big.

**Courtney Dunn:** And are there certain types of cases that we see a trend in nuclear verdicts in more than others?

Say personal injury versus, I don't know, a, a breach of contract or something like that?

**Paul Motz:** Yeah, you can get those and frankly, I don't have enough knowledge in terms of tracking verdicts around the country on more commercial based claims. When you make a jury angry, you see large punitive awards in punitive, in commercial cases on certain things.

That's when you can get a, a nuclear verdict in the, the commercial context, the same is true in the personal injury world or the product liability world where [00:14:00] somebody has been physically injured because this is the, the genius of the reptile theory, or I think it's now called the Edge and it's all about.

Basically turning a compensatory damage into a punitive case, a referendum on society, community, and personal safety, which is completely inappropriate. But not enough courts have said no. So we as defense lawyers have to be preparing for it from day one.

**Courtney Dunn:** So Paul, in terms of if we try to put this in into a sports perspective.

I'm wondering what portion of verdicts account for the inflation? Is it economic damages, non-economic damages? So say we're looking at a plaintiff who plays sports recreationally or in some capacity sustains an injury while playing the sport or in any other aspect at that injury, can no longer play the sport.

What portion of a verdict is a jury going to look at the fact that they have that pain and suffering and [00:15:00] can't play anymore? The injury itself. What do you think?

**Paul Motz:** I think it depends on the actual injury that's suffered. You know, if it's a broken ankle and they missed out on two more years of a contract, that could potentially not be something that's so astronomical to drive a nuclear verdict.

But when you have a severe injury, had a DeMar Hamlin actually passed away on the field that day, I think they could have probably come up with some. Theory of liability that would've gotten them around just suing, you know, what, or something under worker's comp, but trying to, you know, figure out, okay, is it the helmet manufacturer?

Is it, you know, the chest, you know, figuring out other ways to attack it, and if you would have a death case where the liability could stick. Those lost wages numbers would be the driver for astronomical non-economic damages. 'cause you gotta figure, okay, if there's an athlete that has a \$20 million guaranteed contract and goes [00:16:00] unfulfilled, well those are certain lost wages.

And then they would get somebody in to say, okay, after this contract, he'd get another contract. Or, you know, here's the likely outcome. So. See where it's going and then, then we have huge, like \$25 million in economics. It's much easier to say, well, you know, pain and suffering 10 million. You know, think about how he or she can no longer do the sport that she loves and they know, you know, this, this athlete knows they would have been a hall of famer and everybody agrees on this, that they would've been a hall of famer, nevermind.

It's the third string running back from the worst team in the Canadian Football League. So again, it's. If you have a good story to tell and you can get reasonable numbers, I mean, you, you'd figure that in, in a lost wage situation, the two sides would probably be pretty close together what those numbers would be.

It may be stipulated by the time of trial, and then you got, you as the defendant, have to deal with that, a large number. That's gonna be there, but [00:17:00] it makes it easier for the jury to award 'cause I'll be talking about it in voir dire. Here's the hard economics. We agree that the hard economics, then it's much easier for them to put up a nuclear thermonuclear or czar Bomba number That was the world's largest atomic bomb.

For those of you that don't know detonated by the Soviets, it's got its own Wikipedia page. Go look it up. So you can get into trouble really quick if you don't have a good liability defense, but that's a case that should be evaluated. You know, if, if you don't have a good liability defense, you should be settling that one.

You may have to pay a little more than you'd like.

**Courtney Dunn:** Yeah, that makes sense. So with this current trend, why now? Why now are we seeing this uptick in nuclear verdicts? Aside from social inflation? Sorry, I know you don't love the term it what we spoke about with maybe covid playing a factor. I mean, is it more expensive to settle cases?

Of course, there's the concern for third party litigation funding that's making it easier to bring and keep cases going up [00:18:00] until a trial time. What do you think is the factor here that's driving this?

**Paul Motz:** I think that it's a multifactorial problem and I'll, I'll start with when we, in the insurance defense world, we're part of the problem.

It's a race to the bottom in a lot of ways in terms of how insurers and their vendor attorneys, you know, negotiate rates and, and frankly, you get what you pay for. So there's that issue. Then you have the wrong suited attorney. I can't tell you how often I get a case where usually I'm involved from the excess carrier, but I'll get involved in the case, and it's an attorney that has no substantive experience in this type of work.

They didn't do any of the things that I talked about in terms of debt prep, deposition attack. Expert engagement, expert attack, and you're basically

looking at a hot, we'll, uh, say poop emoji when you're in the waning weeks and days before trial. Those two things are, [00:19:00] are really, really bad, you know, and I see this, and I talk obviously with colleagues that do primary level work, and I do some primary level work as well.

It's just, there's definitely more of a cost focus on cases that. Are not ones that you can nickel and dime to getting a better result. And you know, you get the issues where you have a primary carrier that wants to just basically stop paying. Their defense costs in a venue where the duty to defend rests with the primary carrier, which I think is pretty much everyone.

And so you get competing interests and, and instead of putting everybody in the same boat, rolling the same together, it's a vicious cycle on the insurance, insurance defense side. That's step one. The second thing is, there used to be, and then it probably will start. Swinging back, but one of the big drivers is there is absolute fear both on defense counsel and insurers for taking cases to trial because you can't get hit and you can get hit excessive limits and you can get hit for bad [00:20:00] faith.

The problem, as I see it, is more and more carriers have adopted, we are going to overpay. To get a case settled, which on some cases that's okay, but if it's predominantly every case, you're overpaying, you driving up the cost of poker for everybody. And so I'll give you one example of getting into a case late and.

The primary carrier had little more than \$4 million left on their policy, and then I, I was involved on the excess level before I was involved. The primary carrier had tendered their limits to the plaintiff. They didn't accept, but that then set a artificial floor for any negotiations. Case was worth less than \$3 million on any day of the week and twice on Sunday.

But now we have a floor of 4.4. And so that floor done by a primary care drives up a higher settlement that the [00:21:00] excess has to consider, or they have to risk an excess of limits verdict for their insured, bad face for them. So you've got that. And then when I say fear, on the defense side, defense lawyers don't want to take bad verdicts.

And frankly, having sat first and second chair getting hit. It happens. It sucks. It's absolutely awful. I can tell you more about the cases I've lost than the cases I've won because that's how they're like burned into my brain. But there is still fear amongst defense counsel thinking that this is gonna be the end of their, their career.

I can tell you as. My first excess trial, which was 10 years ago this year, it's a case that I remember clear as day 'cause I got re retained a week before trial. And the Friday before we're picking a jury. The client discovered a pallet full of documents that should have been produced two years ago in discovery.

And instead of picking a jury on day one, we started day one of a sanctions trial. And by day two [00:22:00] of the sanction trial, my answer had been stricken and I had nothing. I had no liability defense. I, and there had been no workup on damages, defenses. Oh. So it was literally, I'm standing, and to this day, it's one of two lawyers that I think are the best plaintiff's trial lawyers in the nation.

This is Tom Teef from Southern Illinois. The other one is Brian Panish out in Ia. They are masters in the courtroom, and Tom Teef at a case. Where there was no liability defense at issue, there was no damages defense. So he basically got to throw up a number and I was just trying to, um, hold on, throwing spitballs at the oncoming train as I'm looking at it, get closer and closer at a high rate of speeds on the tracks, and it was one of those things where.

I thought my career was over at that point. You know, 10 years on, I've had success. I've had plaintiff's verdicts, I've had defense's, verdicts, and I'm still alive to [00:23:00] talk about it. But I can tell you that trial 10 years ago impacts everything on how I operate to this day and every other trial. That I've lost or been a part of the losing, you know, side or like if I've been sitting second chair.

Those are the cases that you really remember and you, you learn from, right? So you got fear, you've got nickel and dimming and inappropriate look at cost savings. But then you mentioned litigation funding that empowers the plaintiff's bar 'cause their clients gotten paid. Or we'll get paid, so they're off the hook on malpractice.

And then you've got the litigation funder who becomes basically the party in interest who can say, no, we want you to try this unless you get to X number. And thus when you get in a situation where you have the bad workup or you have bad counsel on the file, and then the plaintiff's number is saying, keep putting it on my hand and I'll tell you when to stop.

That then results in either an unfavorable. Nuclear verdict or having to blow out the reasonable settlement value. So it, [00:24:00] it's definitely a cycle. Then you get more emboldened plaintiff's attorneys, 'cause they know what they're dealing with. They do much more research than defense Bar does.

**Courtney Dunn:** So, I mean, if we're looking at it from that perspective, everyone knows it's a risk to go to trial regardless of nuclear verdicts or not.

There is that potential to get hit. It's part of the job, but it seems like a catch 22 that it's that bigger risk because we have those nuclear verdicts. So insurance companies are paying more to settle, which is emboldening. Plaintiff's bar emboldening third party litigation funding to keep bringing these cases and keeping them going until they get that inflated number.

How does this end? Where does this go to kind of slow down these big numbers?

**Paul Motz:** Again, there's gonna be multiple issues that need to change. You know, the defense bar needs to get like the plaintiff's bar and start talking like the plaintiff's bar instead of basically trying to hoard all of the, the information to themselves.

'cause that's, you know, how they set themselves apart from other firms and why you should hire them. That's [00:25:00] step one. Step two is we're gonna have to try more cases, and that is a huge business decision on the insurer side. I will tell you, I, my last defense verdict was a case where there was no insurance and there was eight figures on the line.

And that was a little worrisome. I, I'm not gonna lie, you know, usually it's like you tell the, the client, you know, Hey, this is why you have insurance. But that was one of those where I'm like. Okay. But the client was like, no, we're taking the stand on this. We're taking this all the way to verdict. Come hell or high water, and we defense the case.

So there's gotta be more trials. And part of the other component here is I'm 42. There's not a lot of people like me. I. In the defense bar across the country that has the level of experience and at trial or getting cases ready to go to trial, we need to do a better job of training the next generation of defense trial lawyers and, and that's something that I always try to do.

I, I've got one associate we've gotten ready over [00:26:00] the last year and a half for, I want to say 10 or 12 trials, and they've all settled. Before opening statement or before the courthouse steps, but in like that week before trial. And I'm just like, yeah, prepping it for is one thing, but putting you in front of a jury knowing that it's you and the jury at this point and you've got live ammunition from the plaintiff's counsel and the judge, it comes back to, you have to have that proving grounds, that crucible to get that experience.

You know, I'm not saying, okay, it's a \$10 million case, let's throw you right in. I'm gonna go on vacation and just, uh, of course, no. It's about trying to work in a right way to get the experience. I, I had a case right before the pandemic, like the month before the pandemic, where the senior partner and the senior associate, the senior associate opened, partner closed.

They both split up all the key witnesses, both on direct and crossed. That's what we should be doing on the defense side, but it's, [00:27:00] it's a hard sell. One thing I try to do is like when I get an opportunity to a mock trial and I can say, okay, here's who I want to be the other side. I want it to be somebody else's experience.

I want them, whether it's a junior partner or a senior associate, get them in front of, really the closest thing to a real trial is arguing a case in front of 30 some odd strangers that are looking at you in a stuffy, uh, focus group room.

**Courtney Dunn:** Yeah, and I mean, that makes sense too because you're saying the next generation, it's not always about using.

Field tricks that used to work better than they use now as a fence side, right? So it's the people that are going to be promulgating and getting these things into the courtroom and testing them and seeing how this shift can be implemented, right?

**Paul Motz:** That's the other thing is like mock trials are a great opportunity for defense lawyers to test things 'cause we know the plaintiffs are doing that.

There are ways to configure mock so that you can figure out a, do new ideas [00:28:00] work, do different presentation styles work. I'll be honest, I wrote my paper on the reverse reptile after multiple mock trials of working up cases using the reptile theory against my opponent's experts. Or co-defendants experts and seeing what happens when a mock jury deals with that and experiences that.

And I was just like, holy cow, this works. You know, I didn't have to do it in front of a real trial. I got to do it in a more or less controlled environment, seeing how the, the results come out and then now I can adopt some of, if you can't beat 'em, join them, sort of thing. So yeah.

**Courtney Dunn:** Great tidbit and good to know.

Is that paper published. Yeah,

**Paul Motz:** it got published by DRI, I wanna say 2018. Uh,

**Courtney Dunn:** we should link it with this episode. Sure. Paul, with what we're seeing in this trend of nuclear verdicts and maybe even thermonuclear verdicts, what are you implementing in your own practice to protect your clients from these high, high numbers and [00:29:00] exposure?

**Paul Motz:** I believe that's when, uh, the, the people online say, well, if you pay 1995 and enter the code, uh, I'll give you access to my secret sauce. Now, I, I mean, it's literally about taking an aggressive stance. From day one, and you know, you don't like to be in a mediation 2, 3, 5 years down the line and not having any arrows in the quiver.

When the mediator says, well, plaintiff said X, how do you respond? And you're just like, what? What am I gonna do? So it's literally being. Making sure my team, which thankfully they are, how we have to be trial focused. And it's not just saying, oh yeah, we, we know what trial is. That means holding jury instructions.

When you have pattern instructions, you can literally tailor your case around them and. Incorporate them into your outlines of adverse witnesses. Thank plaintiffs and experts. You can get admissions that could knock the case out. In summary judgment. You know, I, I remember this one case that I had years ago.

I [00:30:00] literally asked questions that verbatim parroted the jury instructions. Plaintiff's counsel, I don't think he knew the jury instructions because he didn't object and I got clean admissions. It was a test on agency and I got clean admissions. On three of the four prongs that he had to prove from his expert, that would've completely torpedoed his case had it not settled.

While the summary judgment was still pending, though, I learned after the fact that it sounded like the judge was gonna actually grant the summary judgment 'cause he was stunned. The case settled. Uh. Yeah, there's that. It's called doing the deep dive early and understanding where your, the soft underbelly is on your client and on your case, you know that, that means looking at their website, that means talking to their people.

That means finding out their other litigation, uh, and knowing what people have said in other corporate representative depositions and making sure, hey, okay, if there's a 30 B six or [00:31:00] corporate representative, depends on the state and venue, and if it's federal or. State, depending on how they do it.

Illinois has its corporate representative, and then obviously 30 for federal. If. They say in, just to use a, a, a simple example, if a corporate representative says, we always do X when Y occurs, and that is germane to the case that you're litigating and it's opposite of the defense that you are trying to put forward, you need to know that.

Before you have your corporate and impeach itself, or I'm sorry, give inconsistent testimony because that deposition, bad depositions forever. Joe Power, one of the most accomplished and successful plaintiffs trial lawyers in the country, but in Chicago, he wins his cases in depositions and not enough defense lawyers.

Think about it that way you can lose your case. If your client bombs, and it shouldn't be when the client bombs, that's your first realization that there could be a problem. That problem should have been [00:32:00] farted out to your extensive prep of that client. And you gotta tell the carrier, Hey, we got a problem here.

My prep is not gonna be good enough. Maybe I need a witness consultant to help. Or maybe we need to consider pausing everything and trying resolution because. If this goes, it's gonna drive up the bottom line cost and, and will, you know, lessen the, the effectiveness of a liability defense. So those are really big things.

Plus what we've also talked about here in just attacking the other side, not just, you know, fumbling around in the dark on who, what, where, when, and why take every deposition like it has an opportunity to help your case. It drives me nuts when you go see a deposition transcript. There's multiple defendants.

And every single one of the defendants is like, no questions. No questions, no questions. Well, what did your client just pay, pay you for to sit there, to prepare for, to write up a summary of, I mean, what's your value add [00:33:00] outside of them paying AI to do an automatic summary of this deposition? You gotta prove what your value is in a deposition.

I'm not saying every DE is one where you will say yes, I'm ask questions. I try to find something going in that I know I can get out of this witness, especially if it's my own witness, because I want to put the testimony in the hands of my experts who I've already retained and I want to give them the tools so that come expert time and trial time.

The plaintiffs are like, well, that's nowhere in your deposition. You're just making this up for trial. No, no, no. Those are just some of the things that, that I,

**Courtney Dunn:** no, I think that was a, a great explanation and really detailed points on what to think about and why it's important to know the case and know what you're trying to get at and put before a potential jury at the outset.

Well, thank you so much. I mean, I think we've all read and seen theories on nuclear verdicts, and we're watching the trends and we're watching this develop, but it is an [00:34:00] honor to have that inside scoop from someone who is in the courthouse and working on stuff like this and, and sees it firsthand.

**Paul Motz:** I was happy to be here.

It was a great discussion. Thank you. And thank Carla as well.

**Courtney Dunn:** I'd love to come watch you try a case. So keep us posted on your schedule.

**Paul Motz:** I I will, I will. It's, it's always the question, you know, I'm supposed to have four trials to start this year and everyone settled before closing, so, wow. Very frustrating.

'cause I'm like, I, I got the ring rust. I want to go. I wanna go. I wanna go. Got one, got one going, uh, later, uh, or next month that looks absolutely sure to go. So,

**Courtney Dunn:** okay. Keep me in the loop. We'll see.

**Paul Motz:** I will. I will.

**Courtney Dunn:** Okay, Paul, we will see you in the office and we will look out for your papers and we will talk to you soon.

Thank you.

**Paul Motz:** Thank you so much.

**Courtney Dunn:** Thanks for joining us here on Tort Center. You can listen to us on Apple Podcast or Podbean and for early access. You can follow us there.

Don't forget to rate, [00:35:00] review, and subscribe, and we'll see you next month.