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Ahead to the Past (Part II of III): The Evolution of New Rules of Engagement in the Age of Social Inflation and Nuclear Verdicts

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By **Patricia Kane** | July 20, 2020 at 10:30 AM

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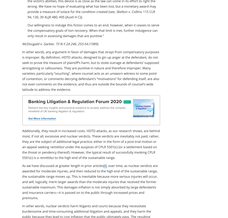

Patrick Dixon, Patrick Dixon, and Patrick Dixon

Ahead to the Past (Part II of III): The Evolution of New Rules of Engagement in the Age of Social Inflation and Nuclear Verdicts: Plaintiffs Lawyers Are Not Immune to Pandemics, Nor Are They Blind to Repair the Broken System for Determining Just Compensation

In part one of this article, we addressed the species of summation misconduct that we classify under the umbrella of "How Does They Defend?" (HDTD) attacks. Drawing on our team's decades long and continuously updated formatory with sustained or nuclear verdicts that are mentally noticed pursuant to CPLR 5501(c), we showed that these verdicts are "sustained" because the appellate courts have repeatedly ruled that the defendants' conduct other words, these tactics, once widely recognized as unacceptable, have become not only commonplace the mainstream, but are plunging a central role in driving damages awards upward.

We then catalogued the various forms of HDTD attacks and called on the judiciary to take a more active role in identifying and policing these tactics (or, rather, remake its formerly more active role in doing so).

HDTD Attacks Irrelevant And Expensive

In brief, HDTD attacks of the kind we catalog in part one are improper both because they have nothing to do with the issues of the case, or determining compensatory damages, and because they lead to increased burdens on litigants, the courts, and the public.

To see their irrelevance, it is useful to begin with the definition of compensatory non-economic damages. Pertaining damages, followed by a refresher course on permissible and impermissible summation:

> "We begin with the familiar proposition that an award of damages to a person injured by the negligence of a tortfeasor is to compensate the victim, not to punish or deter the tortfeasor." Sharapata v. Town of Islip, 56 NY2d 332, 339; Prosser and Keeton, Torts, § 7 (5th ed). Thus, "[t]he measure of damages for personal injuries is the pecuniary loss sustained, which have been recognized had the wrong not occurred." Wrongs, Nature, Kinds, Kindred and Its Goldstein, Damages v. Fort Ticonderoga, 65 N.Y.2d 1, 1,2d, 1, 1, 1

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