NEXT LEVEL LAWYERING

FDCC WINTER MEETING 2022 - PALM DESERT, CALIFORNIA

Neutralizing Nuclear Verdicts: Sharing Best Practices Limit Our Clients' Exposure

March 7, 2022

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FEDERATION OF DEFENSE & CORPORATE COUNSEL

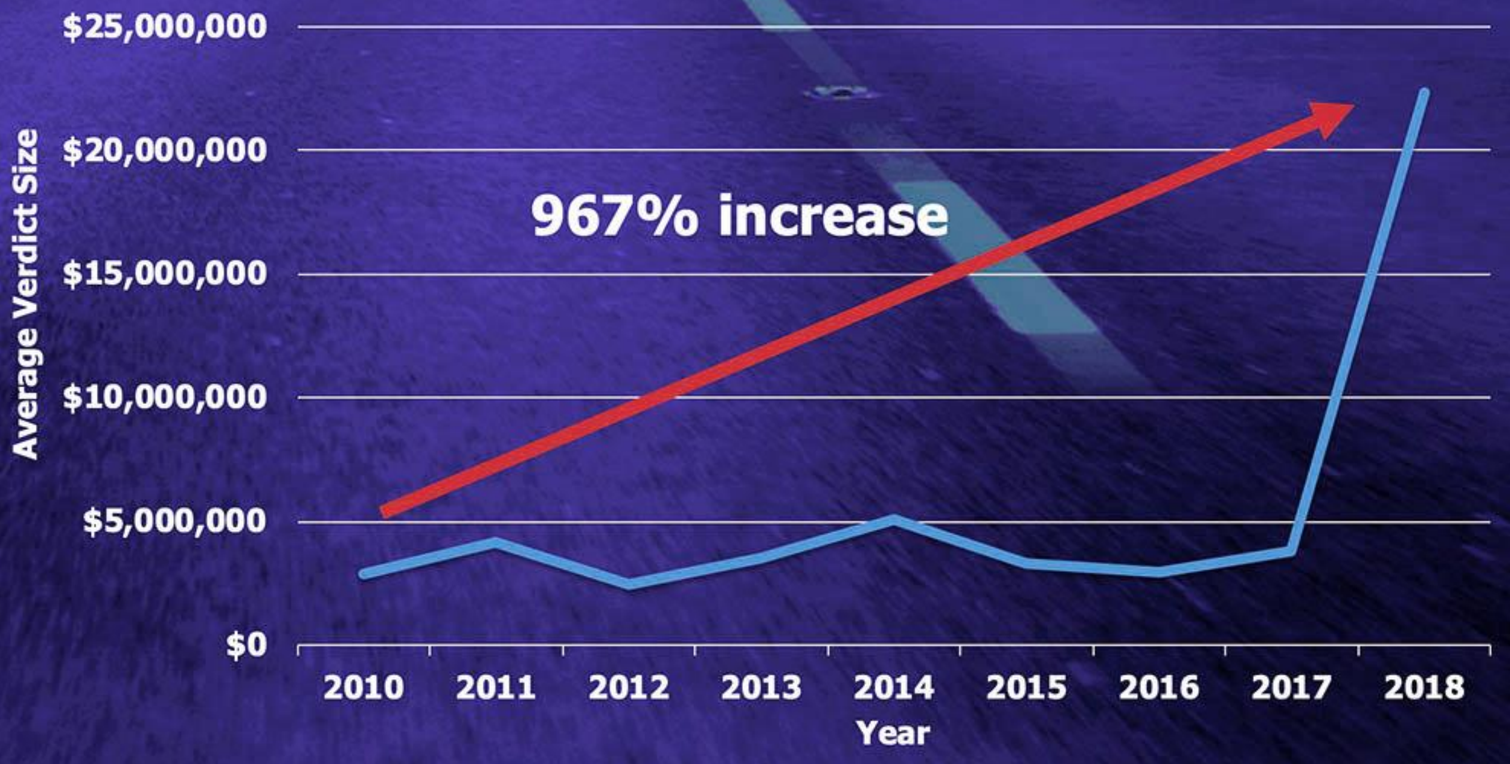
FDCC

DEFENSE LAWYERS. DEFENSE LEADERS.

We Didn’t Start the Fire

A Look at the Inception of Nuclear Verdicts and How to Eliminate Them

Average Verdicts Greater than $1 Million by Year



ATRI American Transportation Research Institute

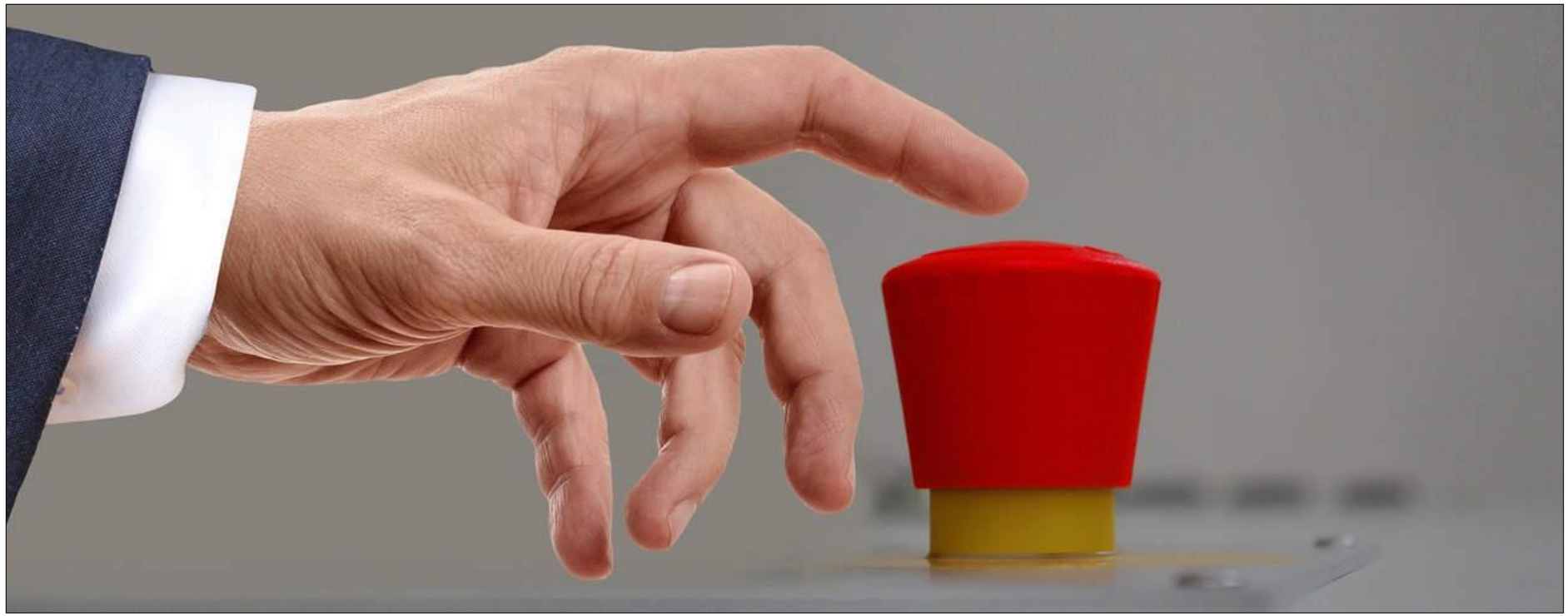
$27 Million Verdict Remanded to Trial Court

$9.4 Million Verdict

Top 10 Motor Vehicle Accident Verdicts in 2021

1. $1,002,000,000 - Nassau Co., FL
2. $352,772,000 - Harris Co., TX
3. $127,019,343 - Federal Court of Georgia, Northern District: Atlanta
4. $120,000,000 - Alachua Co., FL
5. $66,500,000 - Liberty Co., GA
6. $40,000,000 - Broward Co., FL
7. $35,000,000 - Broward Co., FL
8. $26,100,000 - Early Co., GA
9. $13,100,560 - Richland Co., SC
10. $12,500,000 - Richland Co., SC

Is There Any Way Out?



Let’s Ask the Experts!

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Who or What Is The Culprit?

REPTILES

MILLENIALS

LITIGATION FUNDING

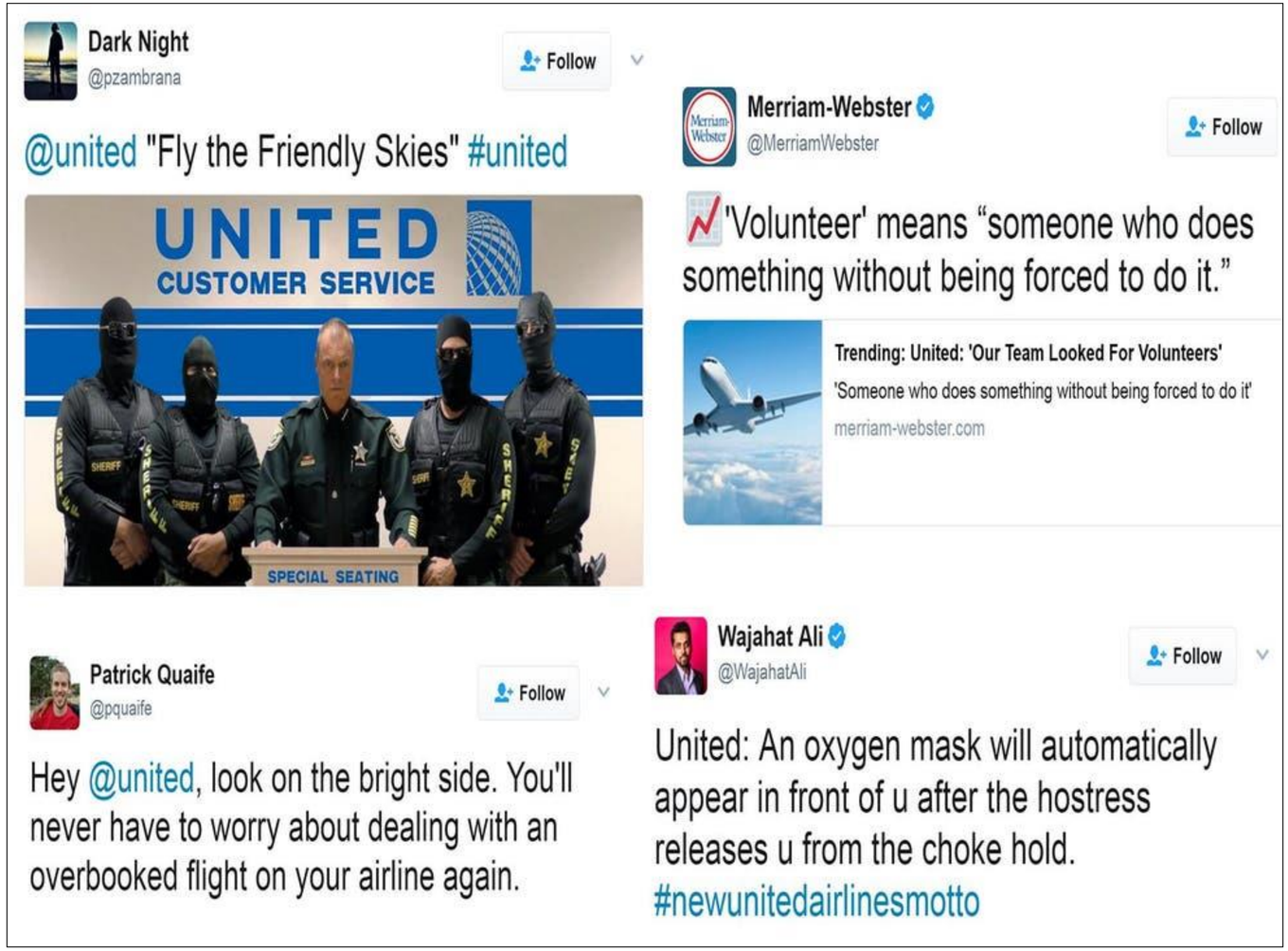
Cultural Shift

- Quotes from the Comments:
- “Incredible result! So happy you were able to help someone so devasted.”
- “Man, if that’s not amazing and inspiring idk what is. #greatwork #goals.”
- “Huge congratulations, Randy. I am sure you provided the best representation for the victim and family.”

Social Inflation

"What we all know, can hurt us."

Social Inflation, Cont’d…



What Are the Warning Signs?

Question:

- What are the WARNING SIGNS you look for in an otherwise small case, that has the potential to explode?
  - Who's running the show?
  - Where are they running it from?

Just a Dude in a Bar Fight?

MLB

Roger Clemens' son Kacy, friend awarded over $3 million in lawsuit against a Houston bar

Scott Boeck USA TODAY

Published 2:07 p.m. ET Feb. 9, 2021 | Updated 2:11 p.m. ET Feb. 9, 2021

Kacy Clemens, seen here at the Under Armour All-American Baseball Game, held at Wrigley Field. *Damen L. Jackson, AP*

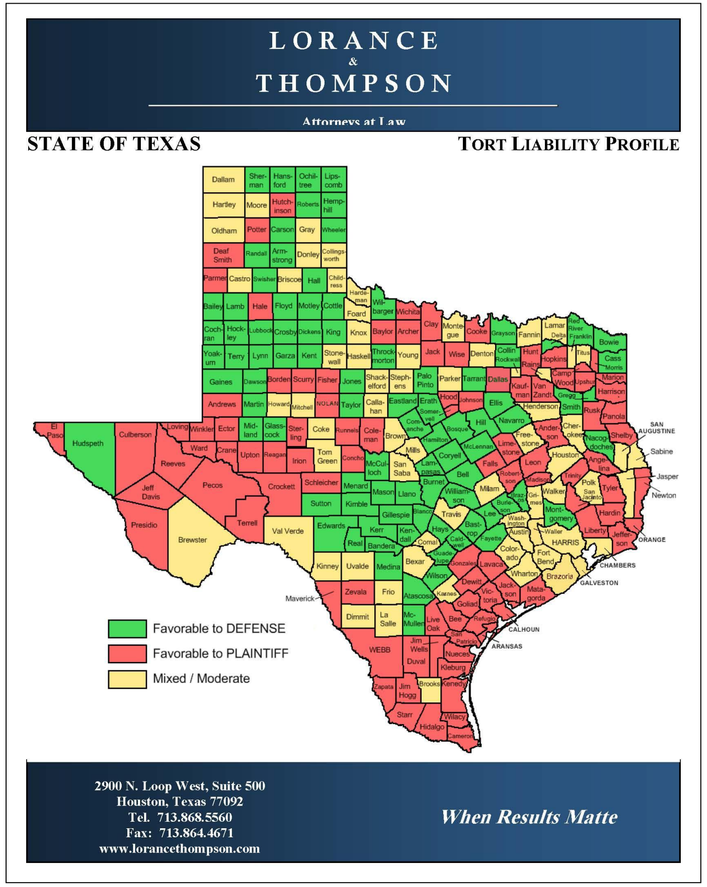
The Expense Is “Explosive” Too

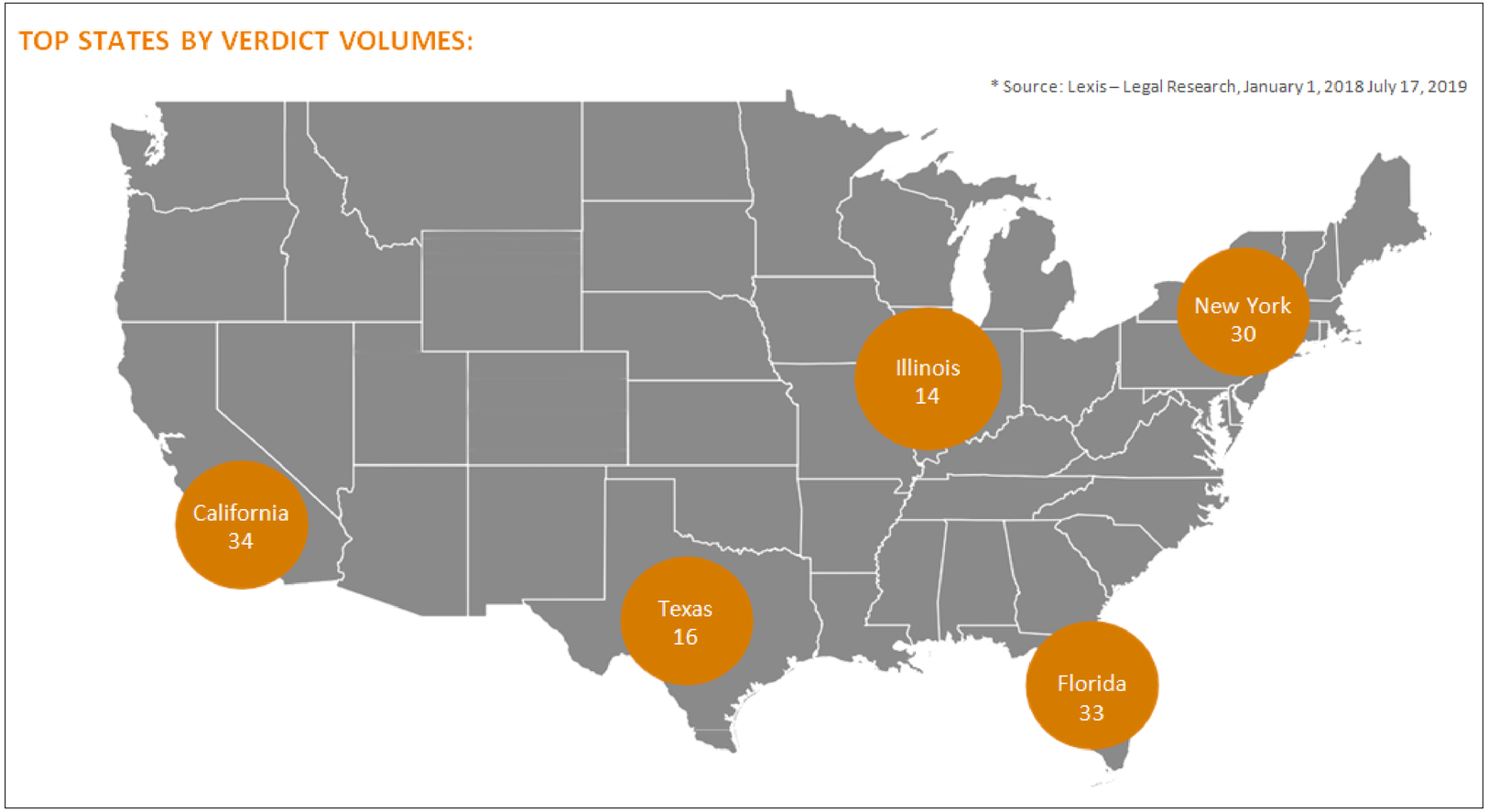
As verdicts increase so does the cost of defense…

Question:

Should legal spend work its way into the analysis in these matters?

Know Your Venue





Let’s Talk

Communication With Your Team and Their Team

Question:

- With whom and when do you first start communications?
  - Defense Team
  - Plaintiff
  - Opposing Counsel

Defense Team

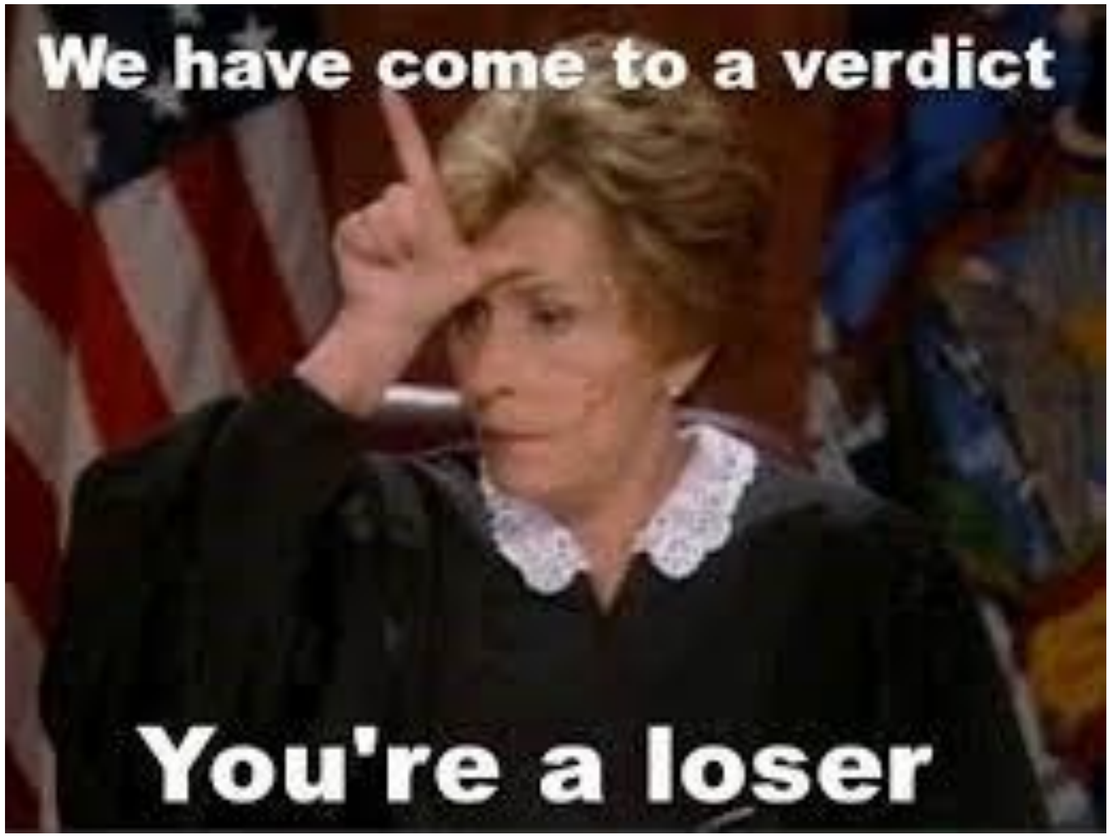
Candor Matters

Always be candid even if potential result is hard to discuss.

Put your pride aside.

Local Counsel?

Know Your “Adversary”



With Plaintiff

- Early outreach is key
- Compassion goes a long way
- Everyday without communication a claimant's frustration builds
- Empathy, regardless of fault must be communicated

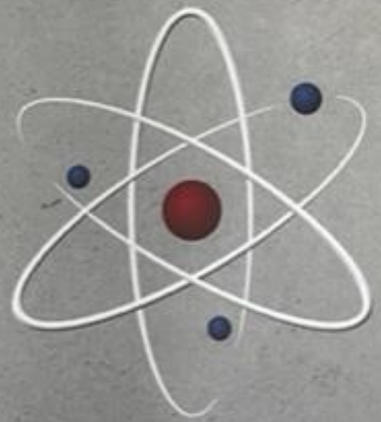
With Opposing Counsel

- Not always useful
- “I’m sorry” vs. “You’re crazy”
- Use your whole bag of tricks

Historical Relationships Can and Do Matter

NUCLEAR VERDICTS

DEFENDING JUSTICE FOR ALL



ROBERT F. TYSON, JR.

Want Ad

- Be Real!
- No one took out a want ad. This was an accident!
- Why would he even make this ad up? Playing on your emotions, trying to get you mad?
- That is prohibited, and the judge will instruct you it is prohibited.

"Nuclear Verdicts – Defending Justice for All" by Robert F. Tyson, Jr.

Per Diem

Point out the flaws, like plaintiff testified he had good days and bad.

- Not all bad every second of every day;
- What about 24/7, really? Even while sleeping?
- Or just another exaggeration by plaintiff's attorney to trick you?

"Nuclear Verdicts – Defending Justice for All" by Robert F. Tyson, Jr.

Calculating Pain and Suffering

The law states no fixed standard for calculating pain and suffering.

Must be wary of a suggested calculation because it is against the law, and the judge will instruct you on such.

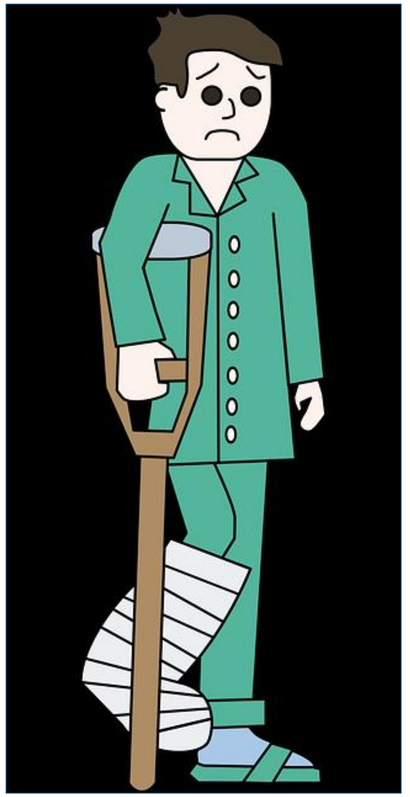
Also may try to pin the amount to the hourly rate of defense experts.

- Address it by asking why plaintiff's attorney would even be talking about a doctor's salary who has had years of education, training, and experience.
- There is no connection whatsoever.
- Only one reason, and that is to play to your emotions.

"Nuclear Verdicts – Defending Justice for All" by Robert F. Tyson, Jr.

Breaking Down Elements of Pain and Suffering

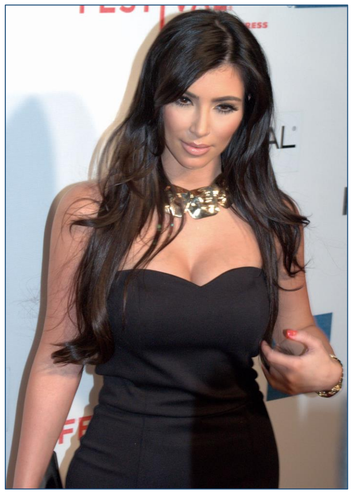
- Explain how plaintiff's attorney's arguments are flawed and wrong.
- Point out there is no must to any award of damages.
- Ask why plaintiff's attorney would present his damage numbers like this, aside from wanting big number up there.
- He wants you to use a formula? Again, there is no fixed standard for calculating damages.



"Nuclear Verdicts – Defending Justice for All" by Robert F. Tyson, Jr.

Stealth Bomber and Kim Kardashian

- Kardashian's salary or the bomber's cost?
- Ask why plaintiff's attorney would even bring those things up.
- Did you hear evidence of that in the trial?
- He doesn't want the jury to look at the plaintiff's life. He wants them to think about things that have nothing to do with this trial, in the hopes that you will not come up with a number that is fair and reasonable.



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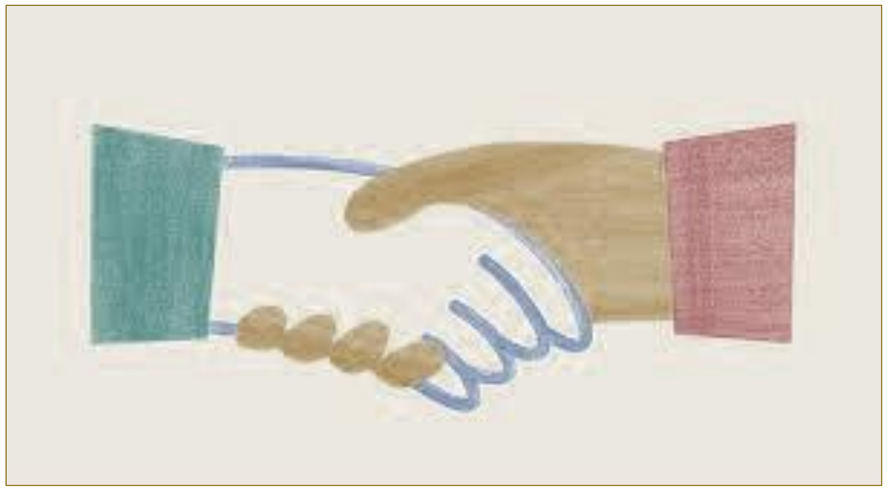
Teaching Awareness

Question:

- How do you train your team to recognize a potential for larger damages?
  - ➢ Understand Claimant’s perspective
  - ➢ Empathize with Claimant
  - ➢ Take Ownership



Overcoming Objections to Pain and Suffering Arguments

- What if objections about how the plaintiff could use the money and sustained.
- Discuss money. Purpose and what it can achieve
- $1 or $500k in our hands does not make us better.
- What money does is help get back some of that inconvenience and mental suffering they have experienced.
- It will have a real impact on their life.

Rapid Response:
What is it and why?

- Mobilization of defense and preservation resources at a moment's notice on a 24/7 basis
- Generally will consist of getting IA, accident reconstructionist, and defense counsel to an accident scene ASAP
- 3 main tasks:
  - Document scene (photos/videos)
  - Preserve equipment, freight, telematics, and other
  - Provide driver and other company employees or vendors scene support

Communication

- Plan your “phone tree” in advance, as “standing orders.”
  - Drivers need to know who to call. Their managers do, too.
- Keep your list of preferred vendors:
  - IAs,
  - Defense attorneys,
  - Accident recons,
  - Drug test compliance, etc.
- Coordinate in advance with TPA, insurance carrier, or broker on process of reporting accidents and incidents.

Communication

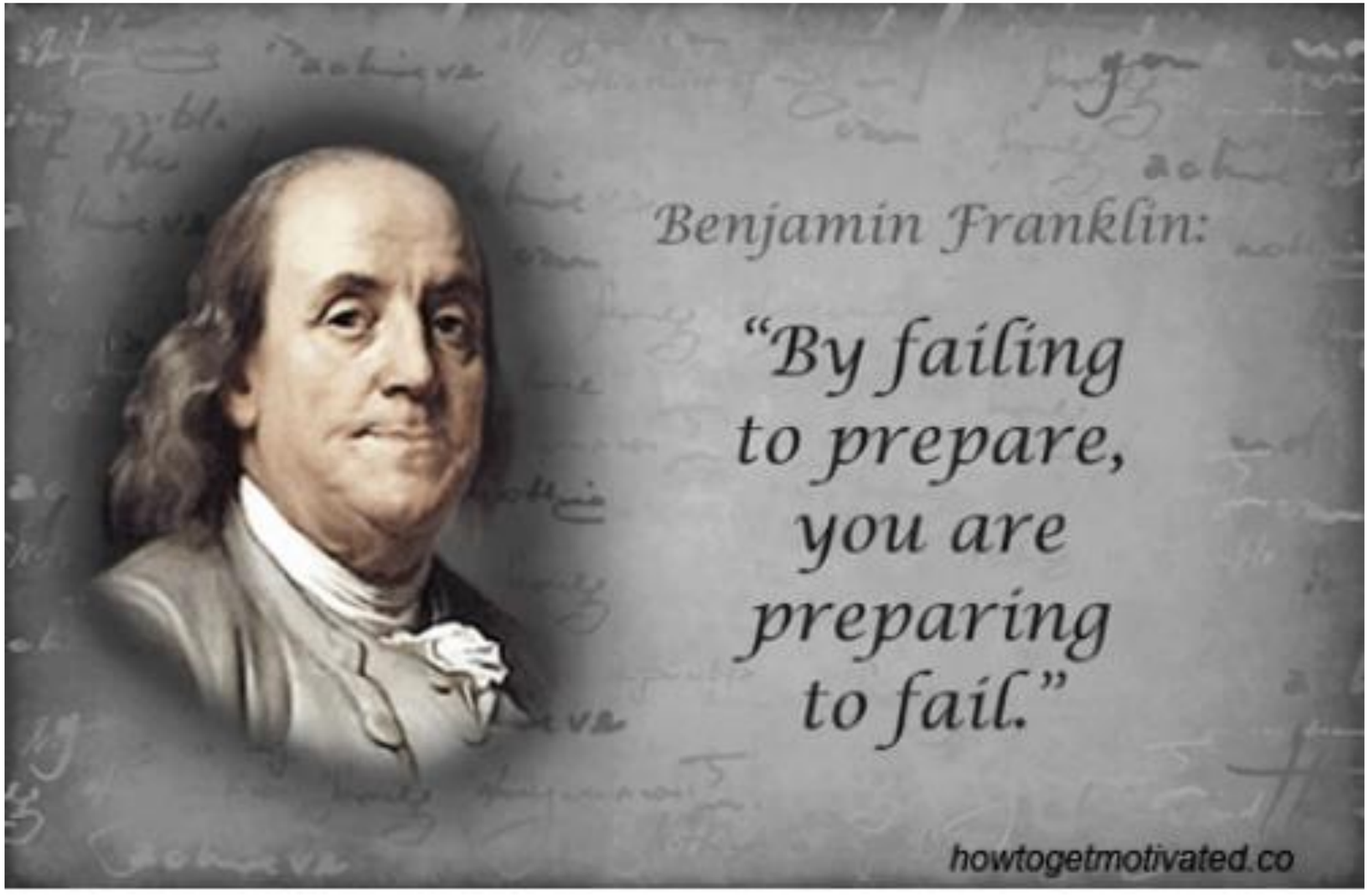
- Coordinate in advance with internal company safety and operations leadership.
  - They, along with managers and dispatchers, need to know what to do in advance; so they can act in response out of good habit and shocked when “claims” or an “IA” calls them for help.
- Do not ever forget the safety of others comes first.
  - Drivers need to make calls, but the most important is 911 for anyone who is hurt or looks hurt.

Preservation

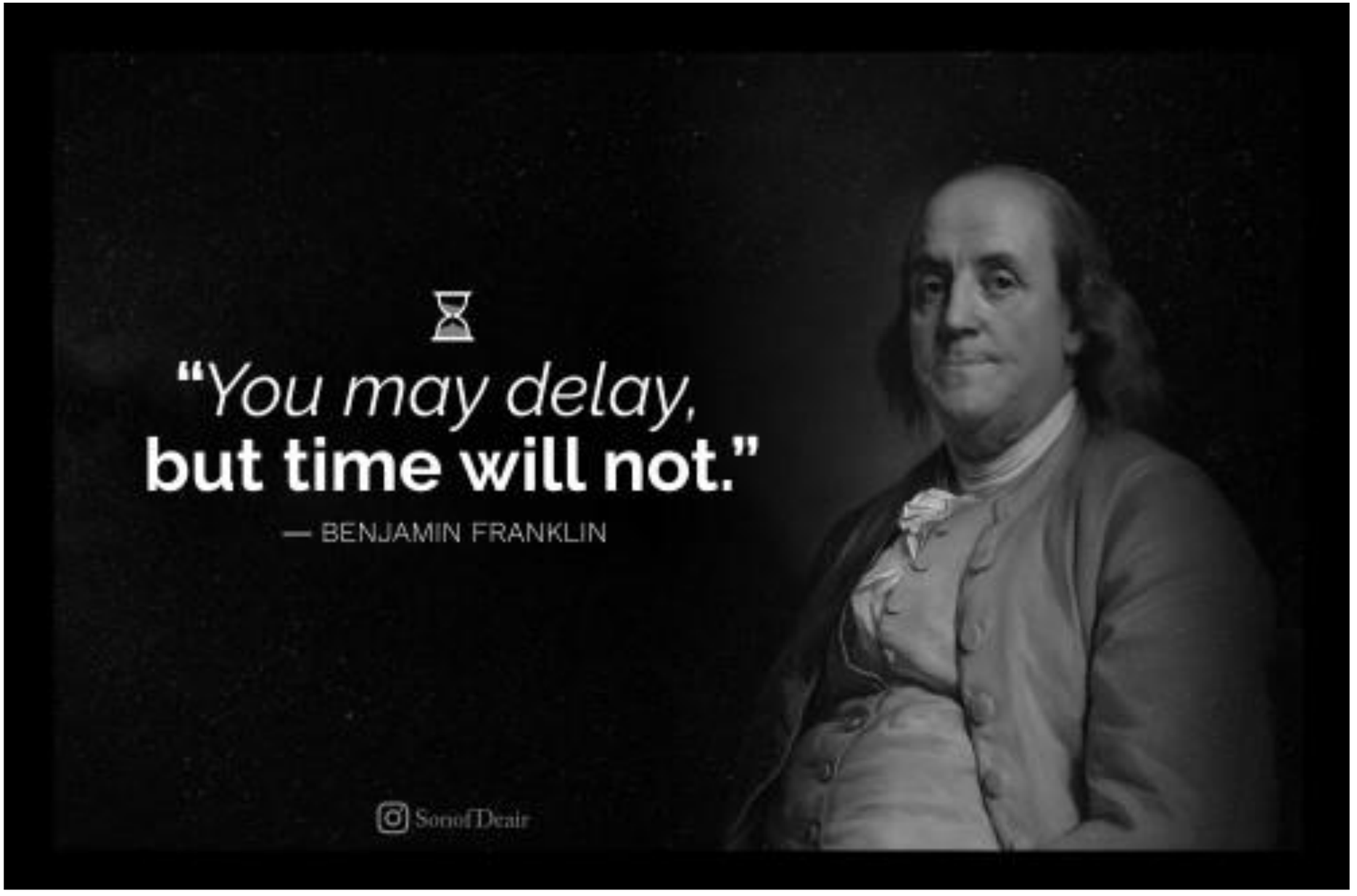
- Equipment.
  - Tractor, trailer, towed away.
  - Photos, measurements, etc.
- Logs, dashcam video, telematics, GPS.
  - Some is on-board, some is remote. Need it all.
- Drug and alcohol compliance.
  - Does the driver need a test? How is that done?
- Freight.
  - Must freight stay with equipment? How long? Operational pressures can mount.

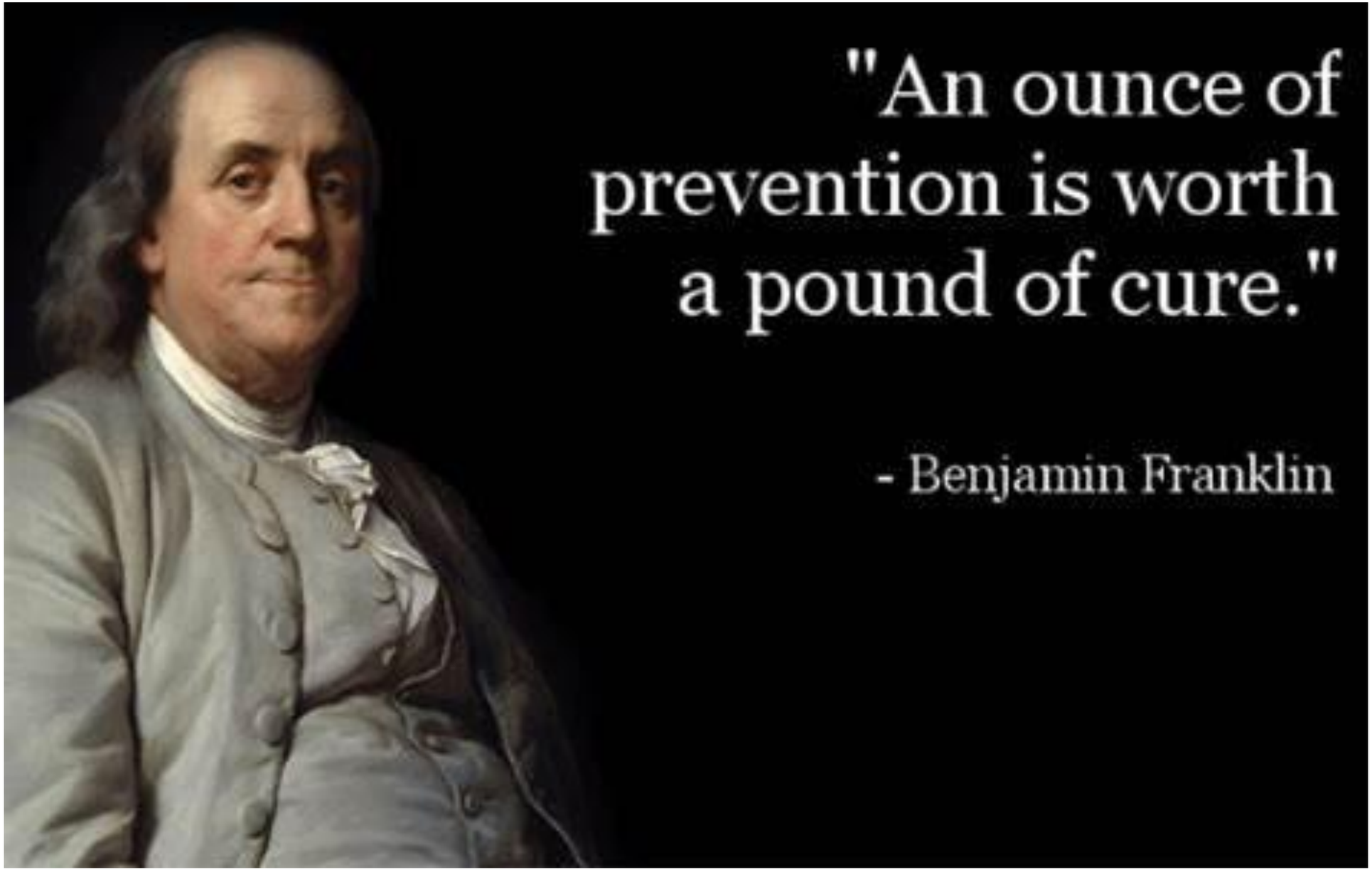
Preservation

- Cell phones.
  - Your driver and other driver(s).
- Other vehicles themselves.
  - Did those have telematics?
- The Accident Scene.
- The immediate or close area.
  - Gas station video, building surveillance video, etc.
- Witness.
  - Names, statements, fleeting knowledge and memory.


Benjamin Franklin:
"By failing to prepare, you are preparing to fail."
howtogetmotivated.co

~Hollywood

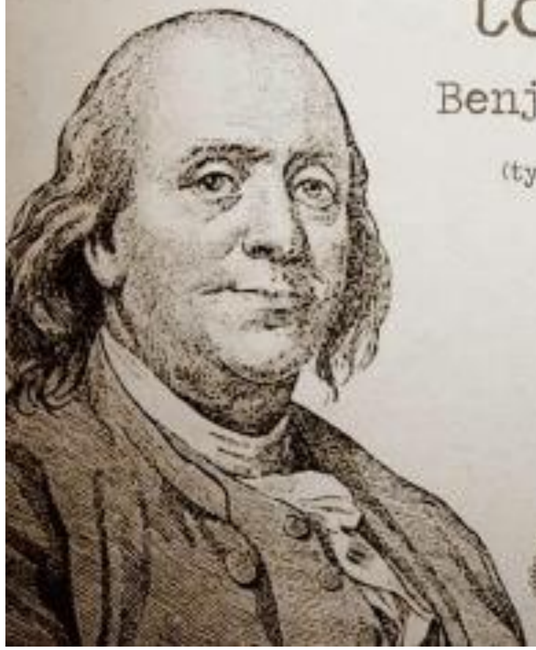

"You may delay,
but time will not."
— BENJAMIN FRANKLIN
SonofDeair


"An ounce of prevention is worth a pound of cure."
- Benjamin Franklin

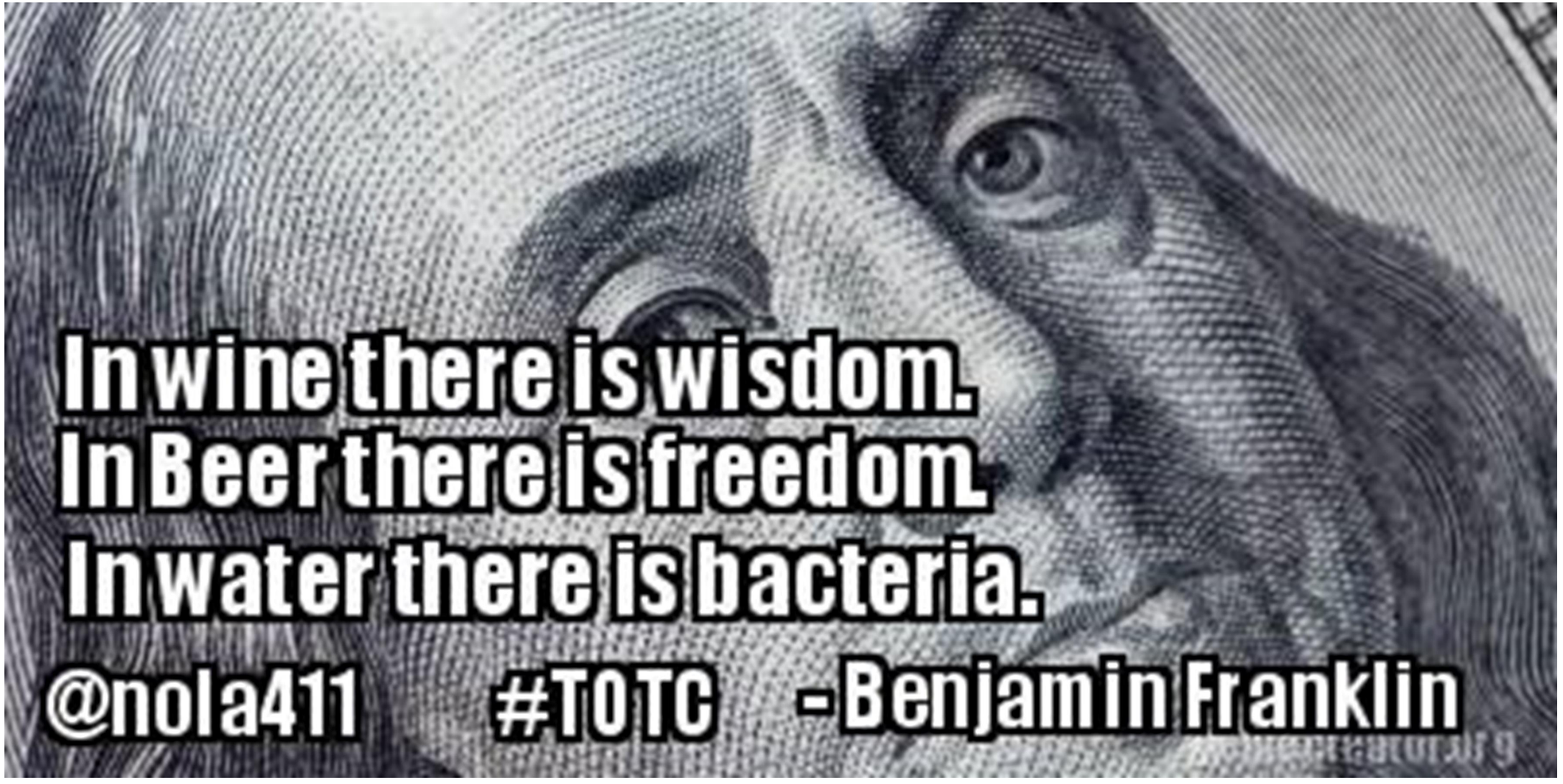
Life's tragedy
is that we get old
too soon and wise
too late.

Benjamin Franklin

(type 'Yes' if you agree)



HIGHER PERSPECTIVE


In wine there is wisdom.
In Beer there is freedom.
In water there is bacteria.
@nola411 #TOTC - Benjamin Franklin

The End