Michael Cowen:

This is Michael Cowen and welcome to Trial Lawyer Nation.

Voiceover:

You are the leader in the courtroom, and you want the jury to be looking to you for the answers.

When you figure out your theory never deviate, you want the facts to be consistent, complete, and credible.

The defense has no problem running out the clock, delay is the friend of the defense.

It's tough to grow a firm by trying to hold on and micromanage.

You've got to front load a simple structure for jurors to be able to hold onto.

What types of creative things can we do as lawyers, even though we don't have a trial setting?

Whatever you've got to do to make it real, you've got to do to make it real. But the person who needs convincing is you.

Welcome to the award-winning podcast Trial Lawyer Nation. Your source to win bigger verdicts, get more cases and manage your law firm. And now here's your host, noteworthy author, sought-after speaker, and renowned trial lawyer Michael Cowen.

Michael Cowen:

On today's Trial Lawyer Nation, I am so excited. I have a guest, Sean Claggett. I have wanted to have Sean on this podcast for so long. He has so many eight and even nine-figure verdicts, and great recoveries. He's an incredible lawyer, and also someone that's constantly giving, and giving, and teaching to our trial lawyer community. Thank you so much for coming on today.

Sean Claggett:

Thanks for having me. Thanks, this is great.

Michael Cowen:

And before we jump on, I want to thank LawPods. LawPods produces this podcast, they also introduced us to each other and got this set up. Because you've been on my target list even though we hadn't met before today. And LawPods they produce the podcast, they edit the podcast. All I have to do is sit here and talk to people, and they make my life so easy. So if you ever want to do a podcast, I highly recommend using Rob and LawPods.

Sean Claggett:

Love it.

Michael Cowen:

So Sean, tell me a little bit about yourself.

Sean Claggett:

Well, I'm originally from Idaho. I moved to Las Vegas when I was a kid in about 4th grade, and ended up playing baseball through high school and college, and then had to figure out what to do as an adult, and went to law school and figured I'd be a lawyer. And my journey to become a personal injury trial lawyer, I

didn't know that was what I was going to do. I've really only been engaged in personal injury for about 12, 13 years. So it's been the last... I've learned how to really start doing this in about, started taking some courses in about 2010. And then really got engaged and from 2010, and today, I've been studying the practice.

Michael Cowen:

I think I heard you on another podcast that your first PI trial didn't go so great and then you kind of...

Sean Claggett:

Yeah, well, I was a solo practitioner, so I did everything. I was the criminal defense, family, bankruptcy, credit repair, and I had a personal injury case. So I'm like, well, this is easy, right? I've done a lot of trials in the criminal setting. And here my lady got rear ended. It wasn't her fault. She got hurt, they don't want to settle, I'll go to trial. And then I got defensed. I lost. I'm like, "How do I get nothing when she didn't do anything wrong." And then as a result, I didn't try another personal injury case that was in '05. I didn't try another personal injury case until 2014.

Michael Cowen:

And you're not the only one that's ever been defensed on a rear end case, so don't feel too bad about that.

Sean Claggett:

I got to tell you these great trial lawyers out there that say they've never lost, I can't say that because I lost my very, very first personal injury trial in shocking fashion.

Michael Cowen:

I lost my first three, but then after the fourth, no one remember the first three.

Sean Claggett:

Like they say with Babe Ruth, they remember how many home runs he had, they don't really care about how many times he struck out.

Michael Cowen:

But you have to get past that, that's the big thing.

Sean Claggett:

Yeah.

Michael Cowen:

So I want to talk about this journey then. So your first PI trial, you're like, "Maybe this is one I want to do," what brought you back into it?

Sean Claggett:

So I didn't know if I wanted to be a lawyer, really. I love business. So I had acquired a Denny's restaurant and we were operating that. And then I had started a company called World Series of Fighting, I was the

CEO. And World Series of Fighting is now what people know as Professional Fighters League, which is on ESPN and-

Michael Cowen:

Oh, wow.

Sean Claggett:

... everything. So it was a really cool part of my life where we were working with Caesars Entertainment, NBC Sports, getting a startup, a mixed martial arts company off the ground. So it was a lot of fun and as that part, as I sold out my interest of that position in equity, I now had to make a decision, what do I do moving forward? And my wife was like, "Remember in law school when you did moot court and you were really good, and you won that competition? What do you think about trying to be a trial lawyer doing personal injury? These personal injury lawyers seem to be doing pretty good. Why don't you for three years just give it a shot?" So really it was my wife. My wife was like-

Michael Cowen:

Oh, wow.

Sean Claggett:

... "Give it three years." And so I said, "Okay." And the first thing I did is I went with a buddy of mine from Vegas to LA, and I went and watched Dorothy Clay Sims speak. And blew my mind. And I was like, everybody that ever told me about deposing an expert in a personal injury setting was, "Get in and get out, don't get hurt too bad." And Dorothy Clay Sims was like, "Oh, get in there, get dirty and kill them." And I was like, "I like this." And she had recommended to read two books, Rules of the Road by Rick Freeman, had just come out, and the Reptile by Keenan and Ball. So I went and bought those two books. I read them, and the Reptile book resonated with me. And so I went and met David Ball, I met Don Keenan and began a journey with them for the course of probably five years of learning from those guys, which was great.

Then I got to the point where it felt like there was... I didn't like being told that there's one way to do something, that didn't resonate with me, especially as I was doing my focus groups. And depending on the case I was focusing, it seemed like one way would work in one case but not the other. So I started to study other great trial lawyers, which then led me to Courtroom View Network, which is a company that basically records great trial lawyers doing trials. And I just started watching it. And I learned a lot and I started picking up little things. And I saw Mark Lanier speak, and I was like, "Oh wow, dude, that's next level." And so what I started doing is just continuing to learn, continue to read, continue to go to programming, and eventually created a style that works for me.

Michael Cowen:

What was the first PI case you had when you went back that you actually went to trial on?

Sean Claggett:

After the eight or nine year hiatus?

Michael Cowen:

Yeah.

Sean Claggett:

So the first case I had was a case. It was a terrible case, really? I remember, I'll never forget it though, because it's the first time winning a PI case. Now, I had been doing the Reptile learning, and learning, and learning. I'd done so many focus groups by the time I tried this case, but my client was pulling into a gas station and a cab driver was backing out of a parking spot and they bumped into each other.

Michael Cowen:

So before we get into what happened in the trial, I just want to go through, first taste of PI trial, you didn't particularly care for. Done all this work to get back into it, but you got to go back in and get back in the arena. What's that feeling?

Sean Claggett:

At that point I was so excited to go and try the case because now I had a foundation that I knew what I was doing. I actually have a plan of what I'm going to do in this trial. The first trial I did, I had no idea. In criminal defense, you just show up and I don't know, it is what it is. You don't get depositions and discovery.

Michael Cowen:

You just go.

Sean Claggett:

In this case, I was ready and I was excited. Really, it wasn't terrible, I won. But it's certainly not a case that you would hear about... The impact on my client's car was so minimal, and his car was already damaged so much from hitting other things, he couldn't point where the impact actually occurred. There's a reason why I could have easily lost that case, but we ended up getting... The maximum I could get in that case, in the trial program in Nevada that we were in, it's called a short trial, it was 50,000 bucks, and the jury returned 65,000.

Michael Cowen:

Oh, wow.

Sean Claggett:

So I got the max, I maxed out. And I just remember leaving the court that night after that trial winning and the energy and excitement I had, I was like, "I need that feeling. I need the juice." It felt so good. And then after that, it's kind of...

Michael Cowen:

So you actually did focus groups to get ready for a case with a $50,000 cap?

Sean Claggett:

Yeah.

Michael Cowen:

How did you afford to do that?

Sean Claggett:

Well, to me, at the time, I had made the decision that I was going to do focus groups every single Friday at our firm. Our firm was small at the time, but it was called Focus Group Friday. That's what on Friday is what we did, because Fridays are typically slower days in law offices. And I said, "Well, every Friday we're going to do a focus group period." And so I did four hours of focus grouping every single Friday, and I just incurred the cost. I just was like it's going to cost me. Because we were recruiting everybody ourselves, and I'm paying people back then 50 bucks a person. It's going to cost me 500 bucks a week, and I'm just committed to it. So that's what we did.

Michael Cowen:

That's so great. I try to tell my lawyers like, "Okay, when you're working up a case and you're trying to get it settled, you're worried about the budget." You have this rough, you don't want the expenses to be more than 10% of what you think it's going to settle for.

Sean Claggett:

That's right.

Michael Cowen:

But when you go to trial, don't worry about making money. When you go to trial, you're not just setting the value of that case, you're setting the value of every case you have. You're setting the value of what cases will or won't be coming into the firm. And you go to trial, you get it. I don't care if I have to write it off. I don't care if I lose two, 300 grand. We're going to try this case.

Sean Claggett:

I think that's a great way to look at it, that's how we are as well. We've tried plenty of cases, where if you were doing it on a business model to make money, you wouldn't try the case.

Michael Cowen:

Exactly.

Sean Claggett:

But that's not how you become a great trial lawyer, and certainly it's not how you help your clients.

Michael Cowen:

And you don't get to try a lot of the cases that are a good business model to try the case.

Sean Claggett:

Well, I think we need to be better about that. I think there's a huge issue with case selection with plaintiff lawyers that needs to be... I was talking to John Romano this morning about this. We need to do a better job as a group of deciding what cases we're going to take to trial, because too often the model is upside down.

Michael Cowen:

Absolutely.

Sean Claggett:

Most plaintiff lawyers settle all their really good cases, and then on their really crappy cases they can't get offers on, they're like, "I got to go try the case." Well, now you lose. And you're like, "Well, I'm not a good trial lawyer." I'm like, "No, that's not true at all, you just are bad at selecting the cases you're going to try." So at our firm we actually do it the opposite way. Our cases that aren't very good, we settle. And then when we know we have really good cases, we demand full value. And if they don't give it to us, we try it.

Michael Cowen:

And I think that's got to be one of the advantages. I'm betting you're doing focus groups more than one day a week now.

Sean Claggett:

At our office, it's probably three to five days a week depending-

Michael Cowen:

Oh wow.

Sean Claggett:

... on if there's a trial going. Standard is three days a week. If there's trials coming up, it's five days.

Michael Cowen:

And why do you do that?

Sean Claggett:

Well, A, our firm is bigger now. So a lot of the attorneys need to do focus groups on their cases. We do focus groups prior to taking cases. So if somebody wants to refer us a case, we're going to focus group it most of the time. So our pre-lit teams are focus grouping cases. And then once we're in litigation, our trial teams, we have multiple trial teams within the firm, they're focus grouping. And then any attorney within the firm that is going in to get ready for trial, they're doing usually three or four focus groups the week before trial on voir dire, on opening.

Michael Cowen:

I'm actually in trial right now, and I will tell you that it is. I know that sounds crazy. But we took Friday off, today's Saturday, I'll be back on Monday. But having that practice it is so much easier, and less stressful when you're in there, when you've already given that opening, you've already given that voir dire.

Sean Claggett:

Well, trial lawyers are the only group of human beings that apparently think that they don't need to have rehearsals to be great. There's no actor in Broadway, there's no actors in Hollywood that just show up and wing it, they all do dress rehearsals, they do dry runs, they're figuring it out.

Michael Cowen:

My mom put me in a community, it's called the Camille Playhouse in Brownsville, Texas. And they had a summer workshop for kids in elementary school. Parents and grandparents for the only people in attendance. And we spent weeks rehearsing to put on our little one act play.

Sean Claggett:

That's right. And then lawyers think they can go to trial and be like, "I'm just going to go." Why would you ever have the first focus group be the jury?

Michael Cowen:

Especially when you have hundreds of thousands of dollars, and hundreds of hours put into the case.

Sean Claggett:

Right. To me, it's crazy. I do believe, I say this every time I speak, if you're not doing focus groups, now, today in 2024, you're falling below the standard of care as a trial lawyer.

Michael Cowen:

But y'all are doing a step more than just the traditional focus group now. You have actually a book called JuryBall, that you wrote along with John and Alicia Campbell. And John's been on the podcast before. John is incredible. Tell me, what's this big data thing and how is that helping?

Sean Claggett:

Well, first of all, John and Alicia Campbell, they're dear friends of mine, with my wife and our kids. We're very, very close-knit group. And so we go and visit them in Spain, and they come here and visit us in the US. But John and I got together a while ago, I want to say probably seven years ago, and we started geeking out. He had started doing big data several years before that. I had been using big data for a couple of years with a different company. I understood it. It made sense to me. I had been doing focus groups and collecting... My older brother, Seton Claggett, who's the CEO of Focus Graphics is very, very smart, and understands how to create software. And he created software for me for my live focus groups to collect data.

Michael Cowen:

Oh, wow.

Sean Claggett:

So as we're doing repetitive focus groups, we're collecting data and seeing patterns.

Michael Cowen:

But it's such a small sample size.

Sean Claggett:

Well, it starts out as 10 people per focus group, but if you do 15, 20 focus groups, now you got 150, 200 data points.

Michael Cowen:

Okay, well, there you go.

Sean Claggett:

And this is what John Campbell and I were talking about, and why I started adopting big data 10 years ago or so. Which was if 10 people gives us an idea, what does 150, or 200, or 300, 400, 500 people give us? Well, you take away all the noise. When I started learning how to do focus groups, I was told, "Well, they're great, except they're really not good for telling you if you're going to win or value."

Michael Cowen:

They were just for spotting issues.

Sean Claggett:

And the reason for that, and it makes sense, is that if you only have 10 people, you could have a great variation in how people feel within that 10 people. And so you have noise, a lot of noise. It's like flipping a coin, you got heads and tails. If I flip a coin 10 times, I might only get heads twice. Does that mean that the odds of me flipping the coin the next time is 20% that it's going to be heads? Of course, not. As we flip that coin more and more and more, you flip it 500 times, now you're going to be like, "Oh, wow, it's actually pretty close to 50%," because that's the true likelihood of it happening.

So you're getting rid of the noise the more you do something, so the more data points you have. And so John and I started talking about that, and we actually were talking on the phone a lot, and then he's like, "I'm going to be in Vegas." And I happened to be working with a guy named Alex Alvarez and Bob Kelley on some focus groups in Vegas. And I didn't know John was going to come to town, he's like, "Well, I've got focus groups too." So I'm like, "All right, well, let's grab dinner because we're both working all day." Okay, fine. I go to the focus group and John Campbell's there, Alex Alvarez and Bob Kelley had asked us both to come, which is what we did. John and I started talking about drafting academic articles, because I'm an adjunct to UNLV Boyd School of Law, and John was a full professor at University of Denver.

And then we said, "Hey, what if we do a book. Forget about academic writing. Let's just do a book for lawyers." And we said, "Okay, well, we need more results." So it started out being like we conceptually outlined what the book would look like, but then we wanted to make sure we had enough results where we could tell people this was what we hypothesized was going to happen, and now real-world testing proves that we're right. And so then we get to the point where two years ago, a little over two years ago I fly out to Madrid, Spain. And John and Alicia and I basically write a majority of the book, and start having a really good concept of where it's at.

And so we wait, and I had this big trial in New Mexico that we were learning a lot of stuff about big data and the use of it in repetitive studies, which is what we wanted to wait to basically be able to explain how and why that's important in the book. So we waited until when the verdict came out about 11 months ago. And once that was done, then we went in and really did a aggressive effort to finish the book.

It was hard because as you know, being a trial lawyer post COVID, you're just stuck in trial over, and over, and over again. So finishing the book became a little bit difficult, but about two months ago, we finally finished it. And so the book basically walks people through, it's called JuryBall. You can get the book on juryball.com. Along with the book, we also have jury selection software called JuryBall. That's the most powerful, and again, I love Alex Alvarez, he has awesome software too. But I'm self-promoting here. So I'm going to say my software is the best. Alex will probably argue that his is the best. We both have really good software for this. But the JuryBall software works with the way we consult, which is you basically

say you get a questionnaire in a case, and you know you're going to get a questionnaire. You come to us, we run a big data study, 500 people go through it.

We have them all answer the questionnaire you're going to use in your trial. Then we have actual empirical responses of how people respond to that questionnaire and how they vote on the outcome of the case. We then can actually score when your actual jurors fill out that same questionnaire. We now know how the answers are absolutely predictive of whether or not they're good, bad-

Michael Cowen:

Oh my gosh.

Sean Claggett:

... great. And then we load that in, and then every juror scored for you. And then what you're really doing is following up, and making some confirmatory questions to make sure that the questionnaire is filled out accurately.

Michael Cowen:

Wow, my mind is blown.

Sean Claggett:

It's pretty rad. And I've been the beta tester of this software in a bunch of trials over the last two years. And again, Seton Claggett, my brother, amazing. He's the one who basically worked to create the software. We basically told him, "This is what we want." And then he created a team, and those software engineers went to town and created the software. It's awesome.

Michael Cowen:

And how do we get that software? I already ordered your book today.

Sean Claggett:

So we are not making it readily available to everybody.

Michael Cowen:

Good.

Sean Claggett:

But if you work with us on the big data, then we use it when we're helping you jury consult with you to pick your jury, because we want to make sure that it's being used correctly.

Michael Cowen:

And doesn't fall in the wrong hands.

Sean Claggett:

Well, if somebody were able to get it, they would be able to use maybe 1% of what it's capable of, because the real power of it is us basically loading in your case specific data model into the engine of the software.

Michael Cowen:

So besides trying cases, do you consult too?

Sean Claggett:

Yeah, so I do a lot of consulting. A lot of people are like, "Why don't you do more co-counsel?" And I go, "Well, I do a lot of co-counsel." But as you know there's only so many trials that we can do in a year. So what we do is I have Jordan Logan at my office, that's our West Coast team. Jordan Logan, and I do a lot of consulting with Will Sykes my partner, Claggett & Sykes. On the East Coast we have a firm called Claggett, Sykes and Garza, Andrew Garza 36-year-old, amazing trial lawyer who has seven, eight, and nine-figure verdicts already at age 36. It's nuts how talented this guy is. Andrew Garza and then June Hong who's out in New York, helped consult on our East Coast cases.

Michael Cowen:

I've worked with June before. I've worked with Sarah Del Monte, and I've actually when Sarah was sick, she's much better now. But June worked with me on an opening.

Sean Claggett:

Oh, great.

Michael Cowen:

It unfortunately it had to be over video because it was during the COVID time, but it was really, really helpful.

Sean Claggett:

So we've created this awesome East Coast firm with really a amazing attorneys. That's how we do the consulting. And so basically the way the consulting works is you come in, you work with us for... we call them work days. If it's a discovery workday, it's early on. You come in early. We love that. We basically work with you. Ideally, we're doing consulting and we got John Campbell and Alicia Campbell on board.

We run an early data study discovery data, and we figure out, "Hey, what do we need to focus on?" Then we do a discovery workday, make sure everything's dialed in. And then the attorney goes out and does it, and then at the end of the case when, "Hey, we went and got out all the information we needed." And we're working with them along the way, they come back, and then we do two workdays in a row back to back days, where we basically put together their opening statement, their order of proof, and their jury selection.

Voiceover:

Each year, the law firm of Cowen Rodriguez Peacock pays millions of dollars in co-counsel fees to attorneys nationwide on trucking and commercial vehicle cases. If you have an injury case involving death or catastrophic injuries and would like to partner with our firm, please contact us by calling 210-941-1301 to discuss the case in detail and see where we can add value in a partnership. And now back to the show.

Michael Cowen:

Well, now how do people find you if they have a good case, and they want to try to get the help?

Sean Claggett:

Well, you can go to claggettlaw.com or you can give us a ring, but the best way is go online and reach out to us that way.

Michael Cowen:

Okay, perfect. And we'll have a link in the show notes so people can find it.

Sean Claggett:

My email is Sean, S-E-A-N @claggettlaw.com.

Michael Cowen:

That is so awesome. A lot of people in your position would just say, "I'm making so much money doing these big cases, I don't need to go teach other people or help other people." If you're looking at hourly fees, you could be making, I would think you would make a lot more money just focusing on your big cases and not helping other people. Why do you do it?

Sean Claggett:

That's right. As a young lawyer, I had an attorney that I brought in on a case, a very good trial lawyer, very well respected in our state, and he settled the case. I asked him not to do this, but he ended up settling the case the day before the trial. And then I asked him to help me understand, "Hey, when you did the jury questionnaire, what were you looking at? Can you tell me how you're going to do your opening?" I wanted to learn. I really, really wanted to learn, and I really looked up to this guy. And he settled the case on a Sunday, jury selection was Monday. His schedule had to be open, right?

Michael Cowen:

Yep.

Sean Claggett:

It had to be. And he literally told me, he was like, "I'm busy." And it left such a terrible feeling and taste in my mouth that I said, "I will never, ever, ever, ever do that." And it's really important to me to give back. And then I got involved in an organization that started monetizing, charging everybody all this money to learn. And it just felt gross, especially when they didn't really want to explain the why. Because if you teach the why, somebody may actually know how to do it and when to use it, and then they may not need to come back to your advanced class, and pay you another 1,500 bucks or something.

And so I've just taken the approach that well, things that made me not feel good, things I didn't like, I can control my response and how I help other people moving forward. And so my feeling is I love seeing other people succeed. It makes me genuinely happy. The best feeling I have is when we have a consulting lawyer call me and they're like, "Dude, I just got a $40 million verdict on that case." I'm way more happy for them on their verdicts than I am for myself.

Michael Cowen:

Isn't that wild.

Sean Claggett:

I don't know about you, but when I get verdicts, it's like almost a downer. Not that I'm depressed, that I got a big verdict, but depressed because it's over. That part, that fight, that you know how you're in it, and then it's over. When I'm not in it, I'm just consulting. I'm doing other things, and then I just have pure joy. It's such a weird dynamic of how I feel with my own verdicts versus the verdicts of when we consult.

Michael Cowen:

It's like when one of my associates or partners or friends settles a case, I'm all excited. When I solve a case it's like, "Maybe I should have gotten more." And same for verdicts, it's like, "Well, could I have done it better?"

Sean Claggett:

Right. We are our harshest critics.

Michael Cowen:

Yeah. Like I said, there aren't that many people in your position that are giving back the way you do. I heard you on a podcast when I was flying over here last night and I said, "I need to get this guy on my podcast." There are just not that many people on your level that will go and work with up and coming lawyers and help them reach your level. I think part of that's the huge amount of confidence you have that there's plenty for you and for everybody else.

Sean Claggett:

You know what, I am more busy, I can't do it all. I need other people to do it. And one of the things that John Alicia and I are doing is with our book, with the JuryBall with big data at this conference right now, CLU, Huntington Beach where we're doing this podcast. In my room when I'm teaching less than maybe 10% of people who've even heard of big data, they just don't know what it is. And we really have to educate ourselves as a group of plaintiff lawyers what it is. Because it is so accurate when you put in honest work, when you're fair to the defense,

It makes you a way better lawyer too. To be honest about what the defense case looks like. There's a whole lot of reasons why people that do big data are successful, because they're putting in the work. And then you understand the value. Because the scariest thing in the world is when you realize... I looked in the room when I was presenting, there's a couple hundred people in the room. I said, "Looking in this room, I'm going to say that you've all left about two to four billion dollars on the table on your cases." Because what big data has taught us is that we are losing cases for asking for not enough money. That's true, believe or not.

Michael Cowen:

Wow.

Sean Claggett:

People think, oh, they always knew that asking for too much was dangerous, because it's an overreach. But not asking for enough, you lose too. You get thrown out. You get poured out because you didn't ask for enough money.

Michael Cowen:

How come?

Sean Claggett:

Because the jury's thinking there's a certain value, and it's higher than what you suggest. And then they subconsciously believe you're lying to them about something, you know something they don't-

Michael Cowen:

Oh my gosh.

Sean Claggett:

... and they pour you out. And so it's really crazy the lessons we're learning. So what happens with big data is that we can run the same exact facts to three different groups, 150, 200 people in each group. They then come up with a win rate and a value. What's crazy, it's nuts, is to see how much difference your case has in value by just simply changing the amount of money you ask for. It's incredible. It can be five, 10 million in a case.

Michael Cowen:

Wow.

Sean Claggett:

Sometimes more. My trial we did in New Mexico, why we wanted to wait to write the book was that the first time we tested the case was, I want to say 135 million, could have the number off slightly, but I think it was $135 million ask. Do the data study. No pushback at all. I'm like, "Oh my gosh, I need to ask for more money." Then we asked up to 500 million, no pushback, I'm like, "What?" So then we tested up to $1.1 billion, and finally we got pushback. And I'm like, "Wow." So 1.1 billion is the number that's the number I have to ask for. And if I ask for that, I'll get $511 million on average. If I try that case a hundred times, my average verdict will be $511 million.

Michael Cowen:

That's insane.

Sean Claggett:

Well, we tried the case, asked for the 1.1 billion and we got $485 million. Now some people will be like, "Oh, you totally missed it." You missed it by 26 million. But we're looking at statistical percentages. I missed it by what 5%?

Michael Cowen:

And most people wouldn't have the guts task for that kind of money even. And I want to go on the facts of that case, because it's a really important case with really important issues. But most people would've been scared to even ask for especially a billion dollars or even $500 million. So first of all, tell us a little bit about that case.

Sean Claggett:

So it's a case that was on its face hard because it involved kids at treatment foster care facilities. This was a individual, single little girl that was raped in treatment foster care. And there was other girls that had

been raped before her and after her, by the same guy. And so that was essentially what the case was. And we were suing the companies that were supposed to be overseeing this guy. And so the defendant was Acadia Healthcare, and some of its subsidiaries, which the court found were the alter ego of Acadia, because of the amount of control that Acadia had over everything that was occurring at those facilities. So a lot of interesting information that comes out of that, which is when children are being hurt like that jurors are going to go big.

And John Simon out of Missouri just had a case where Jordan Logan and I get a call and they're like, "Hey, can you guys help us? You guys have this case very similar to ours. You just got that 405 million verdict. Can you help us?" And we got on the phone, we're like, "We'll help you. Absolutely." We gave them our PowerPoint opening, we gave them our themes, the ideas, and they went with it.

Michael Cowen:

Good.

Sean Claggett:

Paid to protect profit from neglect is what they went with, which was our theme. And they called us up a few weeks later, three or four weeks later, maybe a month, I don't know. And they're like, "Dude, we got $532 million." I was so excited and so happy for them.

Michael Cowen:

And right where it predicted too.

Sean Claggett:

But that's the exciting, when you can be genuinely excited and happy for other people's success-

Michael Cowen:

Oh yeah.

Sean Claggett:

... that's a good place to be.

Michael Cowen:

Well, also telling these companies, they need to pay a little more care to these vulnerable children.

Sean Claggett:

Well, they don't though, right? I've never cried so much after a verdict ever. Doing child cases are real hard for me, because I just love these kids. And you're so angry that somebody would hurt them, especially kids who are already in the system, because their parents maybe weren't the best parents. The reason why the defense thought this was a good market and a good place to make a lot of money, because all the kids in the system are throwaway kids to them. Who cares about them? Their parents don't. Their parents are either dead or in prison on on drugs. So who cares if they get hurt? Who's there to protect them? Nobody.

Michael Cowen:

How did you prove that the company should have known about what was going on?

Sean Claggett:

Well, because the girls were saying that they were being raped for 17 years.

Michael Cowen:

Oh my god.

Sean Claggett:

And every single time a girl would complain about being raped, the company would say, "Well, the girl's a liar." And they'd ship that kid off, usually out of state, get rid of them, bring in the next kid. And that kid would say, "Well, he raped me." And then they'd blame the kid again, and blame the kid again, and blame the kid again.

Michael Cowen:

Were you able to find any of the other kids?

Sean Claggett:

Yeah.

Michael Cowen:

Oh, wow.

Sean Claggett:

We actually have another trial against them in New Mexico with the same guy that raped our three clients that we've already dealt with. This was the third little girl that he raped.

Michael Cowen:

I want to throw up.

Sean Claggett:

... that we're aware of.

Michael Cowen:

Oh my god. Sorry. I want to throw up hearing this.

Sean Claggett:

Well, what's really going to make you want to throw up is that the defense of the case, they were able to hire experts around the United States, a bunch of them to say that all of our little girls were liars.

Michael Cowen:

Oh my God.

Sean Claggett:

And they went with it right up until the point that the guy admitted that he raped them and pled guilty. Yeah, it's disgusting. I look at those defense lawyers that do it, and I'm like, "Shame on you. Shame on you. You have a duty to search for the truth, not perpetrate lies." And they knew all the literature in the United States on this topic, including the literature that Acadia trains their staff on, tells them that kids do not lie about being sexually abused, especially in the foster care system. Yet the response was to blame the little kids, over, and over, and over again. So it really is just when you say you're infuriated, you want to throw up. The defense hired an expert that literally said in that case, he clearly didn't testify, but in the discovery he said, "We need more sympathy for the guys that are doing the abusing. It's not their fault."

Michael Cowen:

That's got to be so hard to not take it all out on that guy, so that the jury has something to do.

Sean Claggett:

The jury was very angry, and the jury was lovely. That jury really, really cared. And we were all crying after the verdict happened, they announced the verdict. Because nobody valued the girl. Her parents didn't value her, the system didn't value her. And this jury, I asked them, I told the jury, I said, "Your verdict can tell my little girl that she has value."

Michael Cowen:

Whether you can collect all of it or not, that's just-

Sean Claggett:

And afterwards, we all were hugging and crying, and there were so many tears. I've never been involved in a trial. Because normally you're thankful, but I'm a professional. I've been there. I've done that. I've never had a case where I was so relieved that a jury valued my little girl, validated her as a human. And she'll know that her whole life. She's still little now, but when she gets older, she's going to really understand that this jury valued her.

Michael Cowen:

And for someone in foster care especially, [inaudible 00:34:15] that gives her the power to overcome all the shit she's gone through.

Sean Claggett:

We certainly hope so. She has enough money to make sure that whatever services she needs to work through, kids that are abused like this, it's catastrophic. It's not good.

Michael Cowen:

Is she still in the foster care system.

Sean Claggett:

Yeah. She'll be in the foster care system for another four years.

Michael Cowen:

Sorry, I got something else I want to ask you. I just need a moment to...

Sean Claggett:

No, it's fine. But that case, the thing about my duty to my client in that case though, to ensure that I get her the fair value, what's fair value? Fair value is what the average person would think is the right verdict with those set of facts. If I would've gone with my gut and asked for 135 million, I would've gotten about a $100 million dollar verdict. And people around the country would've been giving me high-fives telling me how great I am, but the reality would've been I would've left $385 million on the table.

What duty do I owe to my client? That's why you got to do big data, because you really need to figure out what your cases are worth. And the number one reason why verdicts are devalued is the plaintiff lawyer's self limitation. As plaintiff lawyers, we devalue our cases and it's our fault, and we owe a duty to our clients to stop that behavior. And the only way you're going to stop devaluing it is actually doing big data. Because if you're asking the past generation about, "Hey, what's that two level fusion car wreck case worth?" And they're like, "Well, I think it's worth about 600,000." Are you leaving two million, three million, four million, five million on the table? I don't know. But I can tell you the $600,000 is not what the jury thinks it's worth.

Michael Cowen:

That's so good. It's almost hard to talk about another case after we talked about your Rio Arriba, New Mexico case. But I think it's important when we're going to talk about what big data can do. Some people might say, "Well, that's an exceptional case." the rape of a child is the worst possible thing. But there's another case where you turn down, I think up to 15 million in settlement offers, which was not as obvious of a big hit. Can you tell us a little bit about that case?

Sean Claggett:

Well, so the case we're talking about is the Espana versus Republic services case in which a Republic Service truck was making a right-hand turn, and ran over an 11-year-old girl in a crosswalk and killed her. And in that particular case, the way that the case came to us was from a referring attorney who basically went to early mediation. At mediation top offers $250,000. The mediator told the mom, "That's a lot of money for somebody like you."

Michael Cowen:

Wow.

Sean Claggett:

"Should really consider taking it." And they left and came to our office from the mediation, hired our firm. We then worked the case up with the referring attorney. And so we do the case and the referring attorney was great and is kind of the poster child of what we hope our work does. His name is Patrick King.

He's a great trial attorney out of Vegas. At the time, he hadn't had a lot of trial success, but he wanted to learn. So we bring him in, we show him everything we do from start to finish. He's there with us. He really learns what we're doing. And so we run big data on that case, and big data told us a couple of real interesting things. One, we're going to win. Two, punitive damages probably maybe, but maybe not. But compensatory value of the case was about 38 million bucks.

Comparative negligence, get this. I could not wrap my head around that they're going to blame my little girl. No way. I kept getting my little girl, even in my life focus groups was picking up comparative. And the

big data says I'm going to take a range, but average 27% comparative. So we'd go and do the trial. Well, if 38 million with 27% comparative, it basically is still about 29 million bucks.

Michael Cowen:

Yeah, not bad.

Sean Claggett:

So I said, all right. Well, we go to trial and they offer us a million dollars as we walk into pick the jury, which they had claimed was their policy limit. And I'm like, "Not interested." Then we do jury selection and they offer us five million at the end of jury selection, "Not interested." We do opening statements, they offer us 10 million. Talk to my client, "Nope." Rest my case in chief, $15 million offer.

Now you're talking real money. Real money. But we have the data that says, "Hey, if we try this case eight times out of 10, we're going to end up net at 30." And because in Nevada, we have offered judgment, we're going to get attorney's fees and costs and prejudgment interest, man, we're going to be at like 50 million bucks. So I talked to my client, you know what my client said? She says, "I've been broke my whole life. I know how to be broke. This is about justice for my girl, for my daughter who they never valued." And so she gave us the green light to push forward to the verdict. And then of course, remember the data said value 38 million with 27% comparative on average, verdict was 38 million with 27% comparative.

Michael Cowen:

Wow. But there's no way most lawyers without that data would be able to turn... $15 million is a lot of money to turn down.

Sean Claggett:

It's a lot of money to turn down. And people would say, I'm crazy, except for when you know that the average return on the set of facts is going to be net 30 plus attorney's fees, cost and interest. $15 million is not a smart thing to do. The big data also tells me my worst day. My worst day in that case would've been... There's Nick Rowley. My worst day was 11 million. Well, with attorney's fees and costs, that would've exceeded 15 million, so I didn't have risk. I actually by not taking it, I didn't risk anything.

Michael Cowen:

That's amazing.

Sean Claggett:

And so we basically have the tool at our disposal now with big data to be able to say, "Look, this is the reality of your risk. You need to know your risk." And once you know your risk, now you can make decisions that really protect your client. And it goes beyond just trial once you have your verdict, because sometimes we hit home runs. We beat the data, and then it goes on appeal. Well, what should you do when the defense offers you at or in excess of the average value of the case of the data predicted? Do you take it or do you roll the dice? Well, I don't know what your issues on appeal are. But one might suggest if you've got some issues on appeal that you're not sure about, maybe you take the settlement at the average verdict that you're going to get if you try it nine times out of 10.

Michael Cowen:

Right. Because if you get a remand, then that's probably what's going to happen. I just love getting rid of some of this blind man's bluff that we've been dealing with our whole career. As I'm sitting here trying to think, I'm trying to pay attention to you, and I'm trying to think, "Okay, what case can I do this on? What's my next trial coming up that I can do this, or big case that's being worked up?"

Sean Claggett:

It's so much fun because when you get your data and then you go try your case because they won't settle with you, of course. And the great thing is now you're demanding. You set up your demand value. "Okay, well, my best day is this. I'm demanding that you pay me this." And you create a parameter and like, "Oh, well, I'll let you come in at mediation at my worst day, and I'll come in at my best day, and we'll go from there." And they never want to do that. So you're literally now creating an environment where every decision you make is based on hard data. It takes all the risk out of what we do.

Michael Cowen:

That is so awesome. I'm sure it's not cheap, but when you're talking about millions of dollars of recovery, it's a really good investment.

Sean Claggett:

Well, part of the consulting we do, this is the thing, there's no reason that people aren't doing it. John and Alicia have created a system for smaller studies at 7,500 bucks.

Michael Cowen:

Oh, wow.

Sean Claggett:

It's not nearly as detailed as a full study, but it's pretty good... you get 75 jurors in there, it's pretty good. But more importantly, if the case has a value in excess of a couple million bucks, we'll seriously consider consulting along with John and Alicia doing the big data as part of the consult. So now there's no reason to it because you just share some of your fee on the consult and there's no risk to you.

Michael Cowen:

Okay. Now I know what case I'm going to talk to you about. Well, we got to go off air for that. I could talk to you all day, but unfortunately... Well, fortunately, because I get to go back to trial. I got to go fly back to Texas a little while.

Sean Claggett:

And I get to go talk in 20 minutes on post verdict settlement negotiation techniques and strategies-

Michael Cowen:

Awesome.

Sean Claggett:

... which we use big data to help guide us as well.

Michael Cowen:

Oh, great. Well, it was so awesome to finally meet you and talk to you, and I'm looking forward to working with you in the future.

Sean Claggett:

All right. This was awesome, man. Thank you, Michael.

Michael Cowen:

No, thank you. Thank you for joining us on Trial Lawyer Nation. I hope you enjoyed our show. If you'd like to receive updates, insider information, and more from Trial Lawyer Nation, sign up for our mailing list at triallawyernation.com. You could also visit our episodes page on the website for show notes and direct links to any resources in this or any past episode. To help more attorneys find our podcast, please like, share and subscribe to our podcast on any of our social media outlets. If you'd like access to exclusive plaintiff lawyer only content, and live monthly discussions with me, send a request to join the Trial Lawyer Nation Insider Circle Facebook group. Thanks again for tuning in. I look forward to having you with us next time on Trial Lawyer Nation.

Voiceover:

Each year, the law firm of Cowen Rodriguez Peacock pays millions of dollars in co-counsel fees to attorneys nationwide on trucking and commercial vehicle cases. If you have an injury case involving death or catastrophic injuries and would like to partner with our firm, please contact us by calling 210-941-1301 to discuss the case in detail, and see where we can add value in a partnership. This podcast has been hosted by Michael Cowen and is not intended to, nor does it create the attorney-client privilege between our host, guest, and any listener for any reason. Content from the podcast is not to be interpreted as legal advice. All thoughts and opinions expressed herein are only those from which they came.