

## Best's Insurance Law Podcast

### "Reverse Reptile:" How Defense Counsel Are Turning the Tables - Episode #171

Posted: Tues., Aug. 4, 2020



**Hosted by:** John Czuba, Managing Editor

**Guest Expert:** Dr. Bill Kanasky of [Courtroom Sciences, Inc.](#)

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**John Czuba:** Welcome to “Best’s Insurance Law Podcast,” the broadcast about timely and important legal issues affecting the insurance industry. I’m John Czuba, Managing Editor of *Best's Insurance Professional Resources*.

We’re pleased to have with us today Dr. Bill Kanasky, from Expert Service Provider [Courtroom Sciences](#) in Irving, Texas. Courtroom Sciences partners with corporate legal departments and law firms throughout the entire litigation process, from the moment a crisis occurs through discovery, trial preparation, jury selection, and the trial itself.

What makes CSI unique is the focus on empirical research and scientific methodology in the evaluation of litigation risk, focus groups, and mock trials, and in jury selection, all of which provides data and analysis to improve decision-making and outcome.

Dr. Bill Kanasky is the Senior Vice President of Litigation Psychology for Courtroom Sciences and a nationally recognized expert, author, a speaker in the areas of advanced witness training, jury psychology, and civil litigation.

He consults on more than 200 cases annually in the areas of defendant witness training, jury decision making process, and jury selection strategy. He earned his PhD in Clinical and Health Psychology from the University of Florida.

Dr. Kanasky, thank you very much for joining us today.

**Bill Kanasky:** Happy to be here.

**John:** Today's discussion is the reverse reptile and turning the tables on plaintiffs' counsel. Dr. Kanasky, for our first question, can you tell our audience, what is the reptile theory, and how has it evolved since 2009?

**Dr. Kanasky:** The reptile theory's been here for over 10 years now. What it is, basically its foundation is the establishment of what they call safety rules, and then to show that a defendant violated those safety rules, which the conclusion is that it puts the public and the community at large at risk, puts them in danger.

What the plaintiffs' bar has nicely done is to develop those themes in their cases. It has a very high appeal to a jury when you bring out things like community safety. Many defendants are really helpless against it without the right preparation.

About 11 years later, we're still battling the reptile. I guess the good news is that we've been defeating the reptile quite a bit. What it's really taken is a lot of preparation, work, and effort on the front end of cases by the defense.

If that doesn't happen, the defense really has no chance against the reptile unless they start throwing punches very early in the fight.

**John:** Can you explain how reptile tactics lead to nuclear verdicts and settlements?

**Dr. Kanasky:** Yes, reptile tactics are one of the main causes of nuclear verdicts and settlements. It's probably more on the settlement side of it, because if you think about it, 98 percent of cases settle. They never reach a courtroom.

What happens with the nuclear verdicts is that the plaintiff's attorney, who has essentially reptiled all the defense witnesses, can now come in and give an opening statement essentially saying, "Listen, this company had safety rules that they're required to follow. Their own witnesses, including their corporate representative, have admitted to not following the safety rules."

We have this very bad outcome, which is typically a death or a catastrophic injury. That's what gets jurors upset. Highly effective in the courtroom, putting a lot of the focus on corporate conduct or lack thereof.

I actually think the bigger problem is the nuclear settlement, meaning you go through discovery, these tactics are highly effective with defense witnesses. The way the plaintiff attorney asks the questions regarding safety rules and placing the community at unnecessary risk, or needlessly endangering the community.

When the unprepared and untrained witness starts to agree with all of those questions, then they're juxtaposed next to the case facts, which pretty much contradict the rules they have just agreed to.

What happens is defense goes into a mediation or a settlement negotiation and the plaintiff attorney has five, six, or seven videos, deposition videos of key defense witnesses essentially being trapped and falling for all the reptile tactics, and the defense loses all of its leverage and negotiating power.

The only way to get rid of that case is essentially writing a check to the plaintiff's attorney; a check that's much bigger than the actual value of the case. I think that's happening a lot, unfortunately.

Again, it's really the lack of preparation and the lack of aggressiveness by the defense in discovery that's leading to these nuclear problems.

**John:** Dr. Kanasky, can you explain the concept of the reverse reptile?

**Dr. Kanasky:** What we did, this is actually a funny story. Most stories start with, "I was sitting at a bar." I'm sitting at a bar with a defense attorney, and he had come in very late on a case. He had parachuted in on the case.

He was very, very worried, because his own defendant, who was a truck driver, had admitted full liability in his deposition, which he did not defend, because he wasn't even involved in the case. We're at a bar talking, having some martinis, and he's like, "I don't know what to do. I don't know what to do. I'm in big, big trouble."

I said, "Well, who's left to be deposed?" He's like, "Well, my co defendant's expert, and they had been blaming us the whole time, our co defendant." I said, "Well, let's reptile our co defendant." They've already blamed us for this accident, which turns out to be a double amputation below the knee, which is a really catastrophic event.

What we did was we designed a deposition script from the reptile theory to essentially turn the tables and actually reptile somebody else. The witness fell, just hook, line, and sinker, fell for all of our traps.

Then when the case went to trial, rather than get 100 percent liability against us, we only got 40 percent. Our co defendant got 50 percent, and the plaintiff actually got 10 percent. What we were able to do was to literally take the reptile attack and use it offensively.

You can use it in some situations where you have maybe a plaintiff who you would like to reptile, because they were perhaps non adherent to medical advice. Or you have a plaintiff that maybe did not read instructions of a product or follow a product's warning label.

Or it may be an empty chair defendant that you're going after. The fact of the matter is the tactics work. There are often times where the defense can actually use the reptile to their advantage.

**John:** What are the types of cases or circumstances in which defense counsel might deploy the reverse reptile?

**Dr. Kanasky:** I think the times that we've used it really effectively are when there's culpability elsewhere besides the defendant. Again, depending on the case, because this is not going to work in all cases. You can really tick off a jury.

You can go after a plaintiff, saying that they violated their own safety rules, and put themselves in this position. Or, again, if it's a co defendant that you're adverse to that could be a product liability case, could be a construction case, could be a trucking case.

Any case where there's culpability amongst multiple parties and the blame game is going on, that would be the time to use this. Now, if you have a case that's maybe a birth injury case, and you have a mom and a child, that's probably not the type of case you're going to want to do this in. There are several other areas that you can use it in very effectively.

**John:** How can insurance companies be best prepared for reptile attacks in litigation?

**Dr. Kanasky:** What the insurance industry has got to get through their head is that you have to fight aggression with aggression. The nature of the reptile tactics, it's very aggressive and very early in the case.

The insurance defense industry is notoriously known for being cheap and for being reactive instead of proactive. The number one way which corporate clients and insurance companies can defeat the reptile is to attack early.

That means very aggressive preparation and training of witnesses for deposition, very aggressive questioning of plaintiffs' experts, and always throwing the first punch. That's just something that's very foreign to the insurance defense industry.

As you know, insurance defense, the philosophy for decades has been, "Save money, save money, save money." Then if the case doesn't settle, "Uh oh, we're going to trial. Now, it's time to spend money."

That's exactly what the reptile folks have figured out. They're taking full advantage of it and exploiting the insurance defense system. They're betting the farm that the defense will never be as aggressive as they will.

Therefore, they maintain most of the leverage in the case, and that's how you end up with your nuclear settlement or nuclear verdict. How we defeat the reptile is very, very aggressive, early intervention. Then you have defense depositions that are highly effective. It really sucks the life out of the case, sucks the value out of the case, and then essentially turns all the leverage back to the defense.

Now, the problem with that, it's going to cost money, and it's going to take time. That's where the insurance defense industry and corporate defendants need to really look in the mirror. Do you want to save a little bit of money upfront, but expose yourself to a multi-million dollar settlement or verdict?



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Or do you want to spend a little bit and be more aggressive upfront to protect yourselves? That's really what the defense has to start doing, being much more aggressive, investing effort and time into attacking early, and not just waiting to get beat up by these reptile folks.

**John:** Dr. Kanasky, thank you so much for joining us today. You've just listened to Dr. Bill Kanasky from [Courtroom Sciences](#) in Irving, Texas. Special thanks to today's producer, Frank Vowinkel.

Thank you all for joining us for "Best's Insurance Law Podcast." To subscribe to this audio program, go to our web page: [www.ambest.com/claimsresource](http://www.ambest.com/claimsresource). If you have any suggestions for a future topic regarding an insurance law case or issue, please email us at [lawpodcast@ambest.com](mailto:lawpodcast@ambest.com).

I'm John Czuba, and now this message.

Transcription by CastingWords

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