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**Mock Trials and the Debate between Litigation Driven Versus Management Driven
Models of Business Law Instruction**

Authors:

**Pamela Gershuny, J.D., M.B.A.
Associate Professor
Southeast Missouri State University**

**Accounting and Management Information Systems
Southeast Missouri State University
1 University Plaza, MS 5815
Cape Girardeau MO 63701
pgershuny@semo.edu
573-651-2097**

**Carolyn Rainey, Ed.D.
Professor
Southeast Missouri State University**

**Accounting and Management Information Systems
Southeast Missouri State University
1 University Plaza, MS 5815
Cape Girardeau MO 63701
crainey@semo.edu
573-651-2096**

**Charles D. McAllister, Ph.D., PE
Assistant Professor
Southeast Missouri State University**

**Accounting and Management Information Systems
Southeast Missouri State University
1 University Plaza, MS 5815
Cape Girardeau MO 63701
cdmcallister@semo.edu
573-986-4911**

Do I drive a Hybrid? Mock Trials and the Debate between Litigation Driven Versus Management Driven Models of Business Law Instruction

Abstract

This article offers a compromise position in the longstanding and often heated scholarly debate between proponents of the Management Driven Model for teaching undergraduate Legal Environment of Business courses and those scholars supporting the Litigation Driven Model. The goal in both camps is to stimulate a desire to learn. This is especially challenging for business law professors, however, as undergraduate business students usually enroll because it is required, not because they have a deep and profound interest in learning the law.¹ This study was designed to gain a greater understanding of the learning outcomes associated with the mock trial as an active teaching method used by those who advocate the Litigation Driven Model. Participating in a product liability mock trial presents students with the complex interplay of administrative regulations and common law with all the harsh constraints of time pressures, less than perfect trials, and financial objectives. The results may intrigue and satisfy those who believe that the use

¹ Carol J. Miller, *Mock Jury Trial: A Model for Business Law I Courses*, 6 J. LEGAL STUD. EDUC. 91, 91, 94 (1987) (In fact, not only do students lack even a tepid desire for the knowledge their instructors find fascinating, “most students have a downright animosity . . .” for legal education.); Shirley M. Rand, *The “Mini-Trial”*: *An Innovative Approach to the Study of Corporations*, 1 J. LEGAL STUD. EDUC. 46 (1983); Arthur Gross Schaefer, *Mock Trials: A Valuable Teaching Tool*, 8 J. LEGAL STUD. EDUC. 199 (1989/90); Lampe, *A New Paradigm for the Teaching of Business Law and Legal Environment Classes*, 23 JLSE 1 (2006); See also Lucien Dhooge, *Appellate Argumentation in the Business Law Classroom: Three Modest Examples*, 17 JLSE 253 (1997).

of legal constraints in business decision making is developed only through the Management Driven Model.

I. Review of Literature Discussing the Management Driven and Litigation Driven Models, Active Learning, and Peer to Peer Bonds

A. The Management Driven Model

An ongoing debate in the pedagogical literature is whether business law classes are overly focused on litigation. Indeed, at least one author, Lawton, has called the litigation driven model an anachronism.² Some authors argue that business students will not become litigators; they will become entrepreneurs and corporate managers.³ Business law instructors, therefore, should focus on a Management Driven Model, i.e., teaching preventative measures to avoid litigation.⁴ Additionally, these scholars assert that 95% of cases settle out of court, so why focus time and effort studying the trial process.⁵ Their argument advocates a focus on the role of managers through business case studies.⁶ For those purist instructors, there is no lack of very high quality case studies readily available from prestigious universities.⁷

² Debra Dobray & David Steinman, *The Application of Case Method Teaching to Graduate Business Law Courses*, 11 J. LEG.STUD. EDUC. 81 (1993); Anne Lawton, *Using a Management Driven Model to Teach Business Law*, 15 J. LEG.STUD. EDUC. 211, 212 (1997). *Contra*, Jordan H. Leibman, *In Defense of the Legal Case Method and the Use of Integrative Multi-Issue Cases in Graduate Business Law Courses*, 12 J. LEG.STUD. EDUC. 171, 174 (1994)

³ Lawton, *supra* note 17, at 215-6.

⁴ Lawton, *supra* note 17, at 215-6.

⁵ *Id.* at 212.

⁶ *Id.*

⁷ Harvard Business Online, <http://www.hbsp.com/relay.jhtml?name=cp&c=c44514> (last visited Sept. 15, 2005) Three cases; "Managing Product Safety: The Ford Pinto, Ginzler et al. v. Kolcraft et al.(the case of the collapsing cribs) , and Managing Product Safety: The Case of the Proctor and Gamble Rely Tampon, are excellent product liability case examples. These three cases do an excellent job of stimulating broad discussions of the role of common law tort litigation as a dispute resolution method, the role of corporate self-regulation and the role of regulatory agencies like the Food and Drug Administration, the National

B. The Litigation Driven Model

In contrast to the Management Driven Model, the Litigation Driven Model of business law instruction has appeal as a traditional gold standard. Undergraduate students participating in mock trials is not a new concept. The American Mock Trial Association began intercollegiate competitions twenty-three years ago.⁸ Business law professors have been writing scholarly articles about holding mock trials in their classrooms for almost as long.⁹ Scholars have discussed the benefits of mock trials as improving critical thinking,¹⁰ increasing long-term retention of material,¹¹ introducing evaluations of the quality of evidence, promoting searches for cause and effect relationships, and forcing the pursuit of logical consistency.¹²

C. Active Learning

Highway Traffic Safety Administration, and the Consumer Product Safety Commission. For traditional students who grow up on the internet, it is worth noting that visits to the websites for these regulatory agencies are worthwhile. By visiting the websites, students can learn how many products the agencies are regulating, how industry interacts with government, and how underfunded many agencies are in view of the number of products they regulate. The business cases discuss litigation and jury verdicts, but do little to bring to life the suffering of the individual plaintiffs.

⁸ American Mock Trial Association, <http://www.collegemocktrial.org> (last visited May 28, 2008). Topics in the competition are not limited to business law.

⁹ Lampe, (2006), *supra* note 1, William J. McDevitt, *Three Ready-to-Use Mock Jury Trials for the Classroom*, 16 J. LEGAL STUD. EDUC. 149 (1998); Robert B. Bennett, Jr. et al., *Using a Jury Simulation as a Classroom Exercise*, 15 J. LEGAL STUD. EDUC. 191 (1997); Dhooge, (1997) *supra* note 1, Stanley K. Mann, *A Simulated Hearing Modified for Teaching Business Law to Graduate Business Students*, 13 J. LEG.STUD. EDUC. 311 (1995). Stanley K. Mann, *A Simulated Hearing Modified for Teaching Business Law to Graduate Business Students*, 13 J. LEG.STUD. EDUC. 311 (1995). Schaefer, (1989), *supra* note 1; Miller, (1987), *supra* note 1;. *See also*, Anne M. Lawton & Lynda J. Oswald, *The Use of Simulated Hearings in Business Law Courses*, 11 J. LEG. STUD. EDUC. 103 (1993);

¹⁰ *See* Lawton & Oswald, *supra* note 9.

¹¹ Meg Wilkes Karraker, *Mock trials and Critical Thinking*, 41 C. TEACHING, 134, 134-137 (1993) (“Critical thinking requires the ability to clarify meaning, weigh the adequacy of evidence, determine causes and effects, and identify assumptions based on values.”). *See* Schaefer, *supra* note 2.

¹² *Id.* at 7

More recently, active learning methods have become fashionable.¹³ An additional argument in favor of mock trials can be evinced because they are an active learning method. “Education is more than delivering propositions about objects to passive audiences.”¹⁴ Certainly, mock trial participants take a very active, rather than passive role in the classroom. Voicing and applying legal concepts and words makes a more lasting impression and facilitates a greater understanding than rote memorization of terms.¹⁵ For professors attempting to reach students with experiential, rather than visual learning styles, the mock trial is a rare opportunity to abandon lecture mode for a time in a business law classroom. Initially, students may not receive this role change with overwhelming approbation. Lawrence Braskamp states that students often give instructors who try unique pedagogical strategies less favorable ratings.¹⁶ “Student ratings, in particular, presume a pedagogical strategy of the master teacher’s personally presenting knowledge to students—students who often are in a passive mode.”¹⁷ However, student evaluations of the mock trial experience are traditionally positive.¹⁸ The mock trial is also an opportunity to build student peer bonds. Strong classmate relationships increase student satisfaction and also improve learning outcomes.¹⁹

II. Purpose of the Study

¹³ Paul Sukys, *Business Law, Effective Methods of Teaching Business Education*, in NATIONAL BUSINESS EDUCATION ASSOCIATION YEARBOOK, 48, 201-202 (2008).

¹⁴ PARKER PALMER, *THE COURAGE TO TEACH*, at 101 (Jossey-Bass Inc. 1997).

¹⁵ Miller, *supra* note 1, at 94.

¹⁶ Lawrence A. Braskamp, *Toward a More Holistic Approach to Assessing Faculty As Teachers*, NEW DIRECTIONS FOR TEACHING AND LEARNING, Fall 2000, at 27.

¹⁷ Student ratings of **teacher behavior rather than student learning** have served as the primary criterion of the quality of the teaching-learning process.” (emphasis added). *Id.*

¹⁸ Miller, *supra* note 1.

¹⁹ J. M. Bilson & R. G. Tiberius, *Effective Social Arrangements for Teaching and Learning*, in COLLEGE TEACHING: FROM THEORY TO PRACTICE, NEW DIRECTIONS FOR TEACHING AND LEARNING, at 45 (R.J. Menges & M. D. Svincki (eds., 1991) (Jossey-Bass, Inc.).

The purpose of this study is to assess the students' learning experiences with respect to management decision making before, during, and after litigation. The study focuses on discerning student beliefs about the efficacy of litigation as a dispute resolution method given the role of 1) attorney fees, 2) jury trials, 3) settlement timing, and 4) regulatory agencies. One of the purposes of the mock trial is to provide business students with the vocabulary and knowledge to interact with in-house counsel and outside counsel when disputes arise, just as students are educated about management information systems, not to become programmers, but to enhance their ability to work with professionals in the field.²⁰ Role playing attorneys improves the students' understanding of an attorney's perspective on a trial, but does not train them to be litigators.

III. Research Methods and Procedures

Seventy-two students in two required undergraduate Legal Environment of Business classes at Southeast Missouri State University participated in a survey before and after participating in a mock trial exercise. In both classes, three mock trials were conducted by six teams of students. Each team represented either a plaintiff or a defendant in a reenactment of three personal injury product liability cases. Each student was required to play the role of the attorney at some point, in opening statements, closing statements, or direct or cross examination, resulting in a more evenly distributed workload among the team. Because the attorney's role is more demanding than the role of witness, instructors

²⁰ Miller, *supra* note 1, at 93. Miller cites a 1978 Elliott-Wolfe Survey in which businesspeople, 78% of whom were CEO's, rated knowing how to prepare before consulting their attorney and how to work most effectively with lawyers as very important topics to be covered in a business law class.

may assign a class participation grade for the mock trial work.²¹ Students not serving on the active trial team serve as jurors who deliberate and decide the case.

The mock trial exercise begins during the middle of a sixteen week semester. Business law textbooks traditionally begin with the court system, the procedures of litigation, ethics, and dispute resolution mechanisms.²² The product liability mock trial drew upon and reinforced the material covered in the textbook's initial chapters. After introducing the topics of tort and product liability law, the students had a foundation that enabled them to participate in a mock trial. The students covered six chapters in their textbook before the administration of the first or two identical surveys. The second survey was completed after the conclusion of the three mock trials. Each trial and jury deliberation lasts the length of one class period, about one hour. The entire exercise is completed in three class periods with about two hours outside preparation by students.

A traditional, valid argument against implementing a mock trial is the amount of time an instructor must expend in developing the cases.²³ The method used required students to watch a forty five minute documentary film of an original trial outside of class, and then, using the same facts and expert witnesses presented in the condensed film version of the

²¹ McDevitt, *supra* note 4, at 151 (Professor McDevitt discusses assigning grades based on participation as an attorney or in the alternative upon completion of a 2-page paper on the experience.).

²² GAYLORD A. JENTZ ET AL., WEST'S BUSINESS LAW (10th ed.) (2005); FRANK B. CROSS & ROGER LEROY MILLER, WEST'S LEGAL ENVIRONMENT OF BUSINESS (6th ed.) (2006); O. LEE REED ET AL., THE LEGAL AND REGULATORY ENVIRONMENT OF BUSINESS (14th ed.) (2008).

²³ Although, several excellent trial packages are available. Bennett, *supra* note 4; McDevitt, *supra* note 4; Miller, *supra* note 2. In agreement with the aforementioned authors, it seems best to dispense with "drafting of pleadings, discovery proceeding and pre-trial motion practice." McDevitt, *supra* note 4, at 150. No script is required for the exercise in this article. The facts of the case, the witness names, and brief examples of opening, closing, direct, and cross are presented in each of the documentary films.

trial, to re-enact the trial in class.²⁴ Student teams watched one of three movies involving actual product liability litigation. The first case involved a woman with neurological disease following breast implants,²⁵ the second case, a lifelong smoker with lung cancer,²⁶ and the third, a young man's death in an explosive truck crash.²⁷ Given the fact that documentary films served as the basis for the student reenactment, there was no need for the instructor to develop scripts. While the documentaries gave a brief synopsis of opening statements, direct examinations, cross-examinations, closing statements, and witness testimony, they by no means provided a verbatim script.²⁸ Students were able to bring thespian skills and creativity to their roles as they pursued varying trial strategies, created new questions on direct and cross examinations, and closed, based on the facts that came out in their respective trials. The influence of the judge on a trial was illustrated as the judge overruled or sustained student objections. At a trial's conclusion, the student jurors deliberated openly and rendered their verdict.

In this study, a relaxed environment and good peer relationships began with the assignment of students teams at the start of the first class meeting. In a brief team conference, the students selected a team name, traded contact information, and learned about one of their teammates. The students introduced their teammates to the class,

²⁴ For instructors using Cengage books, several excellent documentary films are available free at http://www.swlearning.com/blaw/video_library/topics.htm (last visited July 16, 2008). For instructors who do not adopt the text, the films may be purchased for \$65.00 each.

²⁵ MAHLUM V. DOW CHEMICAL: SILICONE BREAST IMPLANTS ON TRIAL (South-Western Thomson Learning 2003).

²⁶ CARTER VS. BROWN AND WILLIAMSON TOBACCO ON TRIAL, (West Legal Studies in Business Thomson Learning 1999).

²⁷ MOSELEY VS. GENERAL MOTORS A SON'S DEATH: IS GM AT FAULT? (South-western Thomson Learning 2003).

²⁸ Students are instructed that they may view readily available written definitions and examples of opening, closing, direct, and cross examinations on the internet. .

focusing their attention on someone else, rather than their lack of comfort with public speaking. The team members worked together to present the mock trials. Although team selection was random, instructors could attempt to create homogeneous or heterogeneous groups. To gain student cooperation with the concept of working in teams, the instructor emphasized that work in business often involves team cooperation and that the ability to maintain a cordial working relationship with others is a valued skill.

IV. Findings and Conclusions

The in-class product liability mock trial enhances business school cases by providing a full and robust student experience of the American tradition of post-hoc regulation of business through litigation. After hearing testimony about how the three different products, breast implants, cigarettes, and the exploding caused or did not cause suffering and/or death, student attitudes had shifted in the post-trial survey in two areas.

A. Settlement

The single largest shift in the survey was in the students' views of settlement. Prior to the mock trial, 42% of the students were neutral with respect to considering an early settlement. After the mock trial, only 16% remained neutral with the difference shifting to favor consideration of early settlement. This movement indicates that mock trials could be a valuable learning experience to motivate settling disputes, instead of litigating disputes. Product liability mock trials are notable for the use of expert witness testimony to prove causation. The student jurors openly discuss their understanding or lack of understanding of the technical details of the expert testimony. In addition, the student jurors often miss or completely discount a trial team's critical, but non-technical

testimony. While this shift in view on settlement may occur in any mock trial, it is perhaps especially likely to occur in a product liability mock trial.

A second dramatic shift occurred in the students' opinions about attorney fees and settlement offers. After the mock trial experience, students were far more likely to include the cost of attorney fees when considering settlement offers. After the jury deliberates and renders its verdict in the classroom, the students are asked how much money they would have earned if they were plaintiff or defense attorneys. Earlier in the course, prior to their mock trial experience, students study contingency and hourly fee agreements. However, it is participating in the trial that changes their position on factoring in the cost of trying the case as opposed to settling the case.

The survey indicates a confusing result however, with respect to controlling the timing and amount of settlement offers. After the mock trial experience, students expressed an increase in negative attitudes toward business managers controlling the amount and timing of settlement offers. At the same, it indicates an increase in negative attitudes toward attorneys controlling the timing and amount of settlement offers. It appears that students did not want business managers or their attorneys to direct the amount and timing of settlement offers. An open question is who the students thought best able to decide the amount and timing of settlement offers.

B. Efficacy of Trial Process

Students were asked a number of questions about the trial process. The distribution of their opinions on the importance of both expert witness testimony and skilled attorneys did not vary markedly. From pre to post surveys however, when asked whether they believed the truth would emerge during the trial process, student views reversed. After the mock trial experience, more students believed that the truth would not emerge during the trial process. This result may indicate the birth of a healthy skepticism about resolving disputes through litigation. Again, in the product liability mock trial, jurors are asked to evaluate expert witness testimony that is often complex. The open deliberation shows how challenging it is to evaluate complex testimony.

More students agree that they understood how effective trials are to resolve disputes against businesses. In fact, litigation does result in a final outcome. However, it is not clear at the conclusion of this project how highly students would rate trials in effectiveness.

C. Litigation, Legislation, and Business

Surprisingly, there was an increase after the trials in the number of students believing frivolous lawsuits against businesses present a problem in the United States. This attitude change occurred despite the fact that the three trials enacted by students involved serious injuries and verdicts in favor of the plaintiffs. The overwhelming majority of students enrolled in the course are business majors. While that would explain a pro-business bias, it doesn't explain a shift after the mock trial exercise. An instructor can provide the

students with research on whether or not a liability crisis exists to show whether or not this is factually accurate on a state by state basis.²⁹

Also surprising, but possibly supporting the theory that business majors hold a pro-business bias, that may be balanced with the presentation of additional statistical evidence by the instructor,³⁰ was the increase in the number of students who support protective legislation for business, like the “Cheeseburger Laws” banning litigation against fast food companies. This shift in opinion occurred despite the fact that in all three cases, the corporate defendant had concealed research about product hazards from the public prior to marketing the product. Students observed three trials in which the research showing that the products were potentially dangerous only emerged during the discovery process. Absent the litigation, the research may not have become public knowledge. Despite the benefit to the public of learning about the hazards of the product and the financial benefit to the injured plaintiffs, students still support protective legislation banning litigation against corporations in certain industries.

²⁹ Arguments abound on the topic of whether or not a liability crisis justifying tort reform, including damage caps exists. Four law professors concluded that there was no liability crisis in Texas -- that rising insurance premiums over the past several years had not been caused by rising claims or payouts. The study, which looked at closed claims in the state between 1988 and 2002, found that, controlling for population growth and inflation, potential indicators of a liability crisis were stable over that time. Large claims, described as payouts of at least \$25,000 in 1988 dollars, were stable in number, while the number of smaller paid claims declined, according to the study. Total costs per large paid claim, defined as payouts plus defense costs, rose an average of 1% each year, the study reported. Tort filings declined by 1% according to an NCSC study of tort filings in 28 states. This is particularly significant because over 95 percent of all tort cases are filed in state courts and states' populations increased between 1989 and 1998. Bernard Black, Charles Silver, David A. Hyman and William M. Sage, *Stability, Not Crisis: Medical Malpractice Claim Outcomes in Texas, 1988-2002*, (2005) at: <http://papers.ssrn.com/abstract=678601>. In a study of 16 states, NCSC found that the number of tort filings decreased 16% between 1996 and 1998. See NAT'L CTR. FOR STATE CTS, EXAMINING THE WORK OF STATE COURTS, 2002 at 28 (Brian J. Ostrom et al., eds., 2003) available at http://www.ncsonline.org/D_Research/csp/2002_Files/2002_Tort_Contract.pdf. B. Ostrom & N. Kauder, *Examining the Work of State Courts, 1998: A National Perspective from the Court Statistics Project* (National Center for State Courts 1999).

³⁰ *Id.*

Fourteen Question Survey

Survey
Question

- 1 If my business is sued, I will consider an early settlement.
- 2 If a product manufactured by my company causes an injury to someone, I will consider the cost of attorneys' fees when I make a settlement offer.
- 3 If I can afford a very long litigation process, I can push for a more favorable settlement.
- 4 Full compliance with regulatory standards will protect my business and me from being sued.
- 5 If an injured person claims that a product manufactured by my company caused their injury, but I don't believe that our company's product was responsible, I can count on the truth to emerge through the trial process.
- 6 Expert witness testimony is very important to winning trials.
- 7 A skillful attorney is very important in winning a trial.
- 8 I believe that a jury trial is an effective way to resolve disputes.
- 9 Business managers should control the amount and timing of settlement offers.
- 10 Attorneys should control the amount and timing of settlement offers.
- 11 Frivolous lawsuits against businesses are a problem in the United States
- 12 It is important for business managers to understand the use of trials for dispute resolution.
- 13 I understand how effective trials are to resolve disputes against businesses.
- 14 It is a good idea to pass laws to protect businesses against litigation, like the Cheeseburger Laws.

Changes Measured in Student Beliefs

Survey Question	Completely Disagree Change	Partially Disagree Change	Neutral Change	Partially Agree Change	Completely Agree Change
1	1%	2%	-26%	10%	12%
2	-2%	-1%	-7%	23%	-16%
3	0%	-4%	7%	-2%	-2%
4	0%	3%	-5%	6%	-4%
5	9%	8%	4%	-9%	-13%
6	-1%	-2%	2%	-8%	9%
7	-1%	2%	-2%	8%	-8%
8	4%	5%	-9%	0%	0%
9	10%	2%	0%	-10%	0%
10	9%	-11%	9%	0%	-3%
11	3%	-2%	-3%	-3%	8%
12	0%	-2%	9%	-14%	9%
13	1%	-3%	-1%	0%	7%
14	0%	-6%	-8%	8%	3%

Average and Standard Deviation of Student Beliefs³¹

Survey Question	Pre-Mock Trial Average	Pre-Mock Trial St. Dev.	Post-Mock Trial Average	Post-Mock Trial St. Dev.
1	0.45	0.951	0.76	1.088
2	0.79	1.033	0.79	0.771
3	0.88	1.020	0.86	0.990
4	0.26	1.171	0.23	1.156
5	0.32	1.145	-0.29	1.083
6	1.07	0.941	1.23	0.869
7	1.27	0.925	1.23	0.869
8	0.44	0.936	0.33	1.084
9	0.14	0.844	-0.21	0.986
10	0.35	0.905	0.23	0.974
11	0.93	0.893	0.98	1.016
12	0.92	0.900	0.95	0.958
13	0.73	0.838	0.89	0.819
14	0.30	1.033	0.52	1.034

V. Recommendations for Future Research

An interesting question unanswered in this study is whether students learn that ethical business decision making plays a role in avoiding a jury's post-hoc assessment of liability under the basic elements of tort; duty, breach, causation, and injury. While a business always has common law duties, oftentimes, a business manager has little or no regulatory guidelines to follow. During the product liability mock trial, students see business managers make decisions to market products in a regulatory vacuum. For example, Dow Corning produced the breast implants at a time when the FDA had no medical devices division, much less any regulations for the safety of the implant envelope. While this article examines learning in the area of post-hoc regulation of business through litigation,

³¹ The categories were numerically coded as: Completely Agree = 2, Partially Agree = 1, Neutral = 0, Partially Disagree = -1, and Completely Disagree = -2. Therefore, a positive mean indicates overall agreement, and the strength of agreement increases with magnitude.

other areas for future research include assessing learning outcomes in the areas of corporate self-regulation and government regulation of business. The product liability cases in this study raise the interesting questions of the role of regulatory agencies with the attendant issues of the time lag between product introductions and regulation, revolving doors, and well-financed industry lobbying efforts. Once students understand that simply complying with regulatory agencies does not provide immunity from liability under the common law, the topic of ethical business operation, rather mere compliance with potentially outdated or even completely nonexistent regulatory standards, naturally arises.

VI. Implications for Practice

Implementing a mock trial may seem a daunting task; however, students have a starting level of knowledge in the field of product liability. Product liability cases are exciting, highly publicized cases.³² Students are familiar with consumer products like SUV's, cigarettes, breast implants, and fast food. These cases have very high damage amounts at stake. As a result of the high dollar stakes, product liability litigation occurs on a financially level playing field. In the classroom exercise, both plaintiff and defendant teams are able to fund a war chest large enough to call expert witnesses. The enormous

³² Vioxx became a popular pain medication after it was approved in 1999, with annual sales rising to \$2.5 billion, and was used as an anti-inflammatory painkiller for arthritis patients. Merck pulled the drug from the market in September 2004 after a study linked it to an increased risk of heart attack and stroke. Merck settled litigation with 47,000 groups of plaintiffs for \$4.85 billion in 2007. http://money.cnn.com/2007/11/09/news/companies/merck_vioxx/index.htm. Fast food litigation and the attendant passage in the House of Representatives of "Cheeseburger Bills" are two of the most recently highly publicized cases, <http://www.cnn.com/2005/POLITICS/10/20/cheeseburger.bill/index.html>

monetary resources involved in product liability litigation presents a stark contrast to criminal cases with a typically impoverished defendant.

Some of the most valuable moments in the experience are not measured by the survey. As the trial teams sit silently listening to the jurors deliberate, the trial teams begin to appreciate the human element in trial work. The trial teams are always surprised to learn that the jurors may not have believed or understood their witnesses. It is even more surprising for them to realize that many jurors may not even hear their most important testimony. The gut level experience of the uncertainty involved when choosing litigation as a dispute resolution strategy, even in the best of circumstances, is very apparent at the conclusion of the trials.

Conclusion

In this study, the most notable shift in student opinions occurred in the area of settlement issues, a topic that is not covered in depth in the standard textbook or in the media, yet is the final disposition of most filed cases. Interestingly, both sides of the Management Driven and Litigation Driven debate agree about the impact of the media on students.³³ A student does not enter the classroom as a *tabula rasa*. Prior to class, business students learn about litigation from the media.³⁴ The media typically depicts the courtroom as a place where truth is discovered and justice dispensed.³⁵ This depiction gives business students an unrealistic set of expectations about litigation. Entertainers love to discuss

³³ Karraker, *supra* note 7.

³⁴ *Id.*

³⁵ Lawton, *supra* note 17, at 215. *See* Rob Reiner (director), (1992), A FEW GOOD MEN (Columbia Pictures) (Jack Nicholson makes a surprise confession in court, “You can’t handle the truth!”).

frivolous lawsuits while polemicists stridently discuss our litigious society.³⁶ Through the media, students are aware of multi-million dollar verdicts, however, they are largely unaware that their states are actively setting caps on the amount of non-economic damages. The mock trial proved an opportunity to introduce this topic.

While textbook and lecture material on litigation procedures help to dispel some of the media myths, a mock trial is a different experience. Focusing on a client's financial status and motivation to settle is facilitated by the mock trial exercise. At the outset of the class, students read and hear lectures about attorney fee arrangements. During the mock trial exercise, students experience the importance of hourly fee agreements and contingent fee agreements as they consider how much money they are or are not earning in their role as attorneys as the case progresses. Students learn that client wealth plays an important role in hiring expert witnesses. Most business students overvalue potential recoveries through litigation.³⁷ Even though the majority of filed cases settle, a more realistic ability to appraise the value of a case is gained through participation in the mock trial.³⁸

Perhaps the hybrid approach, combining the study of management cases with a mock trial does the most justice to the topic of business law. As a follow up to the mock trial experience, students read a management case the *Dow Corning and the Breast Implant*

³⁶ For example, everyone is aware of the famous McDonald's coffee case.

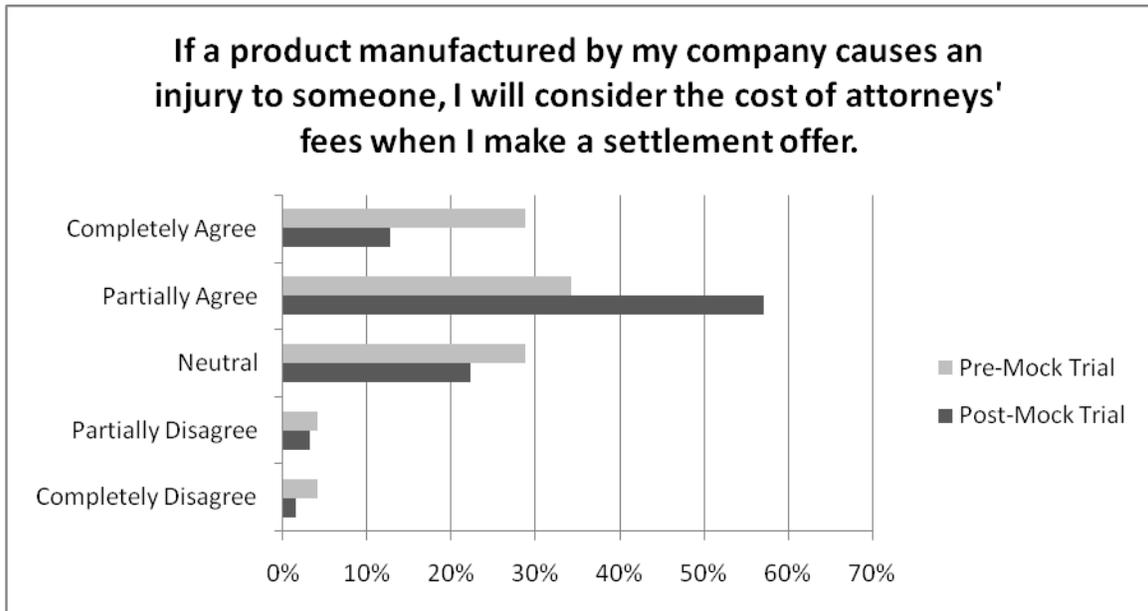
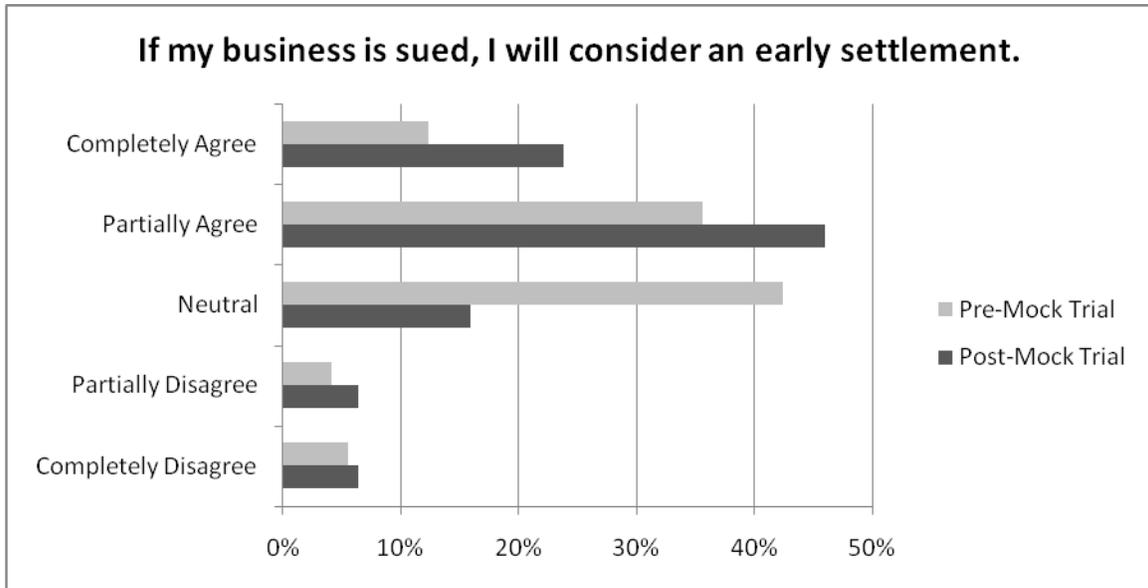
³⁷ Lawton, *supra* note 17, at 227.

³⁸ See also *id.* at 228-231 (Lawton does an excellent job of providing hourly calculations of attorney fees, travel times, and trial preparation work.).

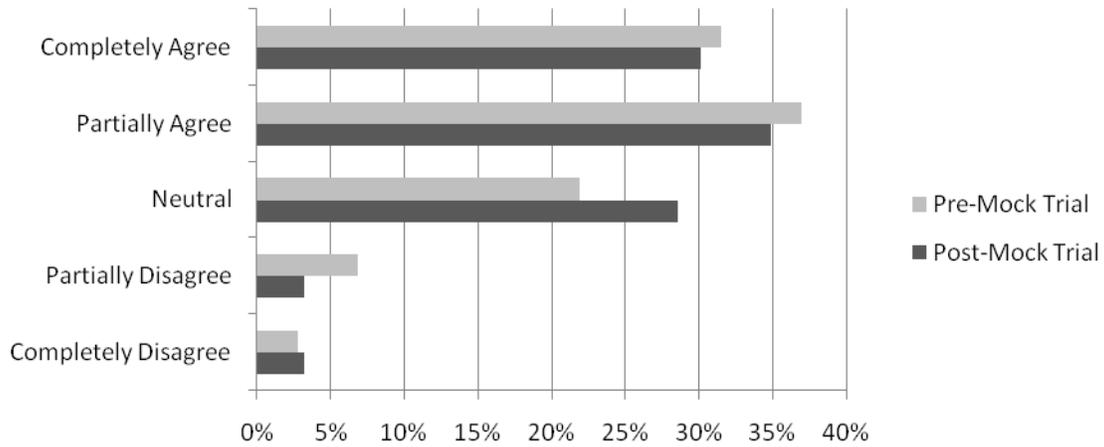
Controversy case.³⁹ The management case provides historically accurate data on corporate managers' actions in the face of horrible injuries and deaths. The case also provides information on how regulatory agencies interact with corporate managers. Supplementing the data in the management case, a mock trial gives a human face to the casualties. It increases students' understanding of the role of the common law in the legal environment surrounding their businesses, dispelling media-created myths about litigation. The mock trial experience better prepares them to talk with attorneys about settlement and evaluate litigation as a dispute resolution strategy. It also builds their enthusiasm for learning the law. An effective approach with undergraduate students may successfully combine the traditional business case method with a mock trial, to excite students, build strong peer relationships, and provide an active learning experience.

³⁹ Harvard Business School Publishing, <http://www.hbsp.com>, (last visited May 28, 2008).

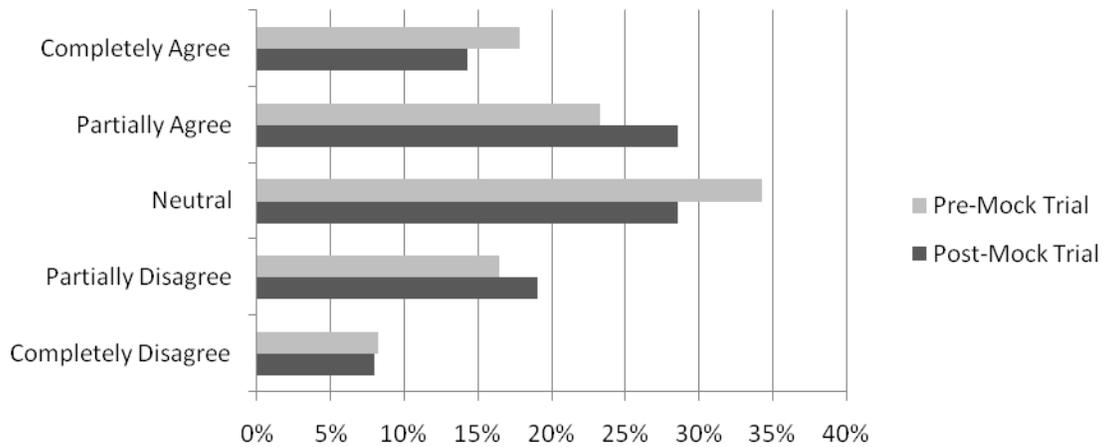
Appendix: Pre and Post Trial Survey Results on Settlement Questions



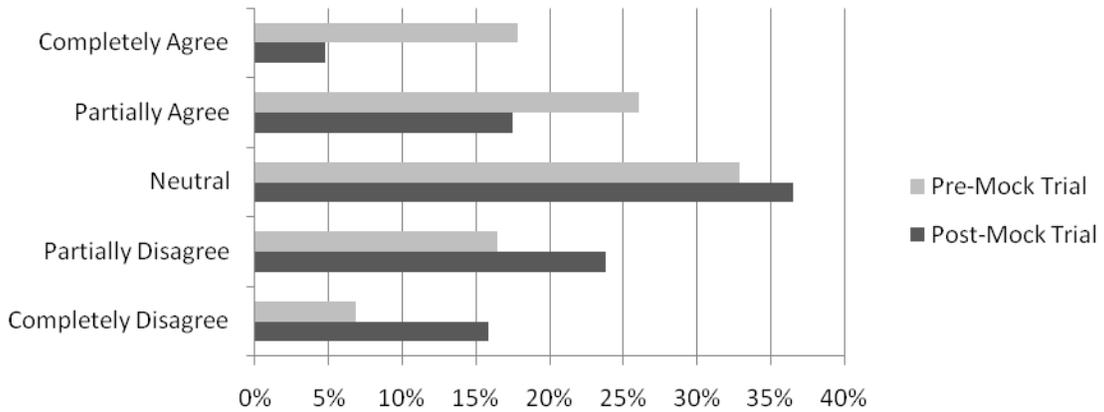
If I can afford a very long litigation process, I can push for a more favorable settlement.



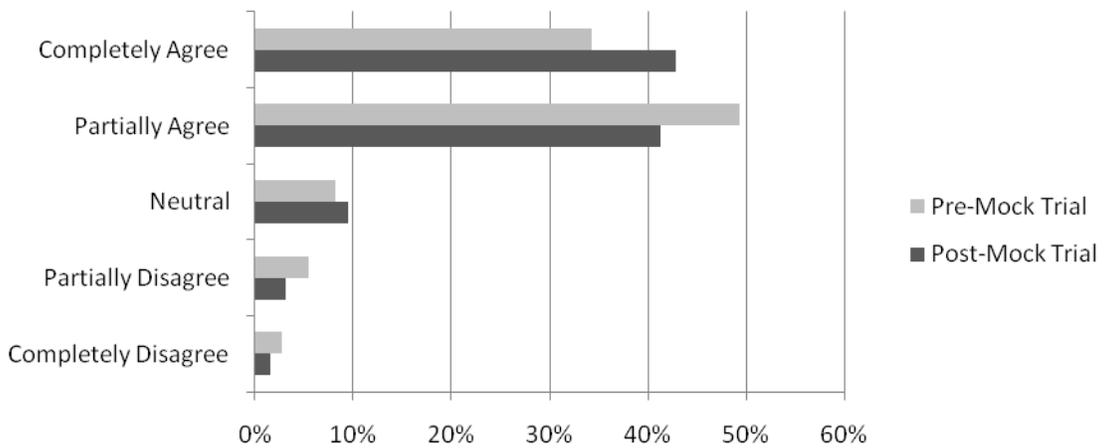
Full compliance with regulatory standards will protect my business and me from being sued.



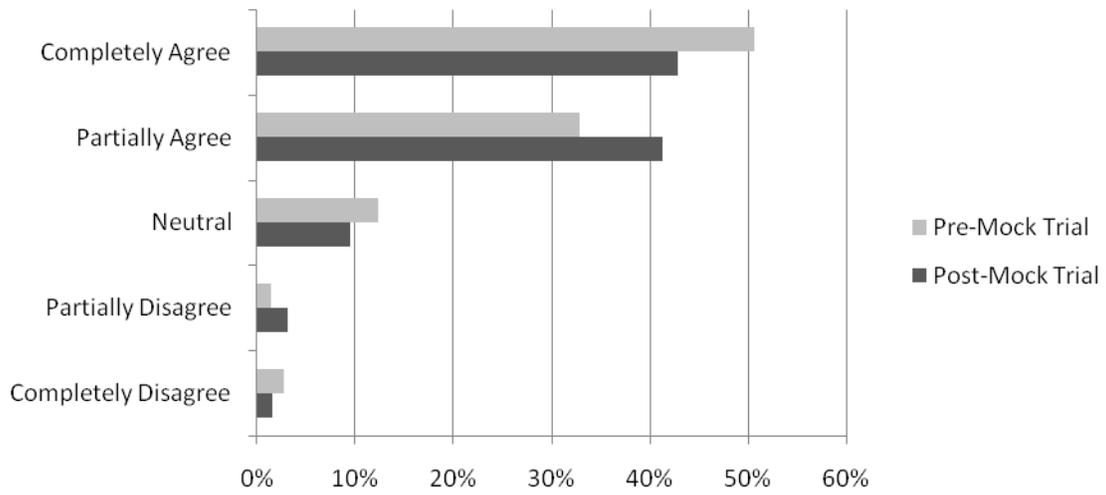
If an injured person claims that a product manufactured by my company caused their injury, but I don't believe that our company's product was responsible, I can count on the truth to emerge through the trial process.



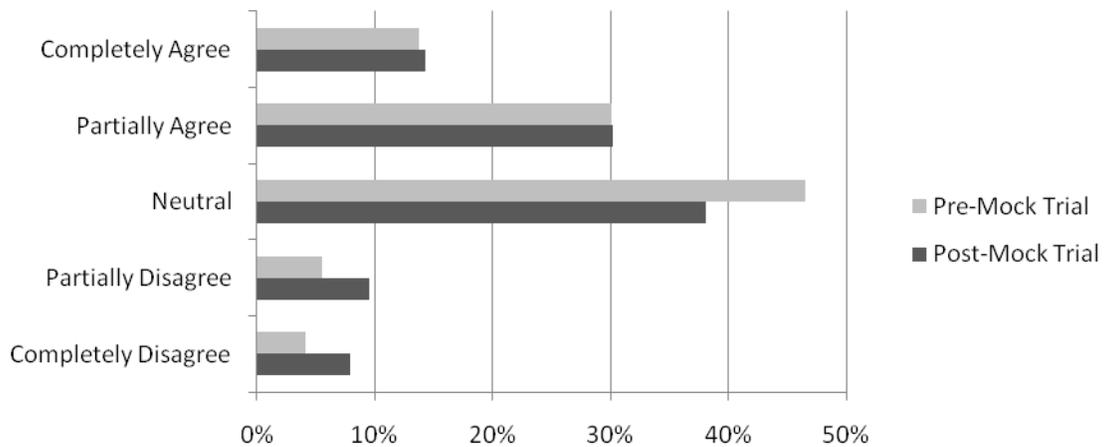
Expert witness testimony is very important to winning trials.



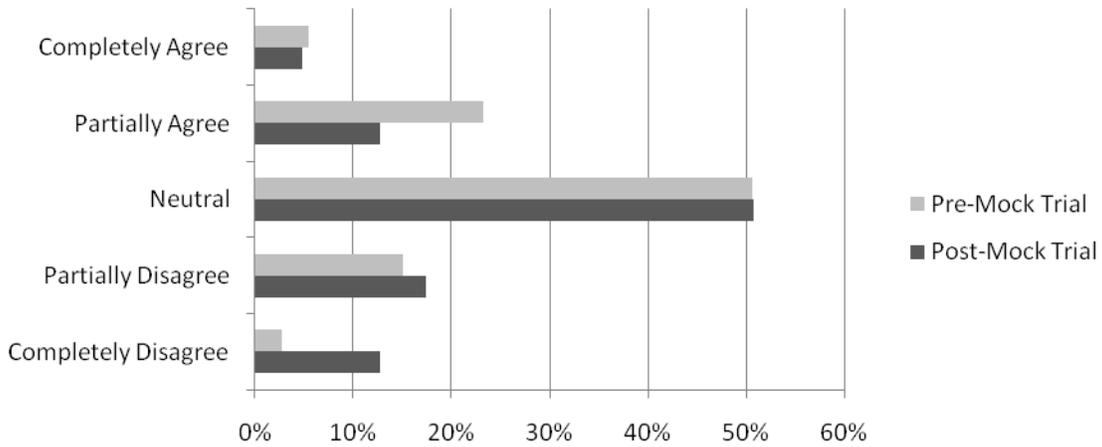
A skillful attorney is very important in winning a trial.



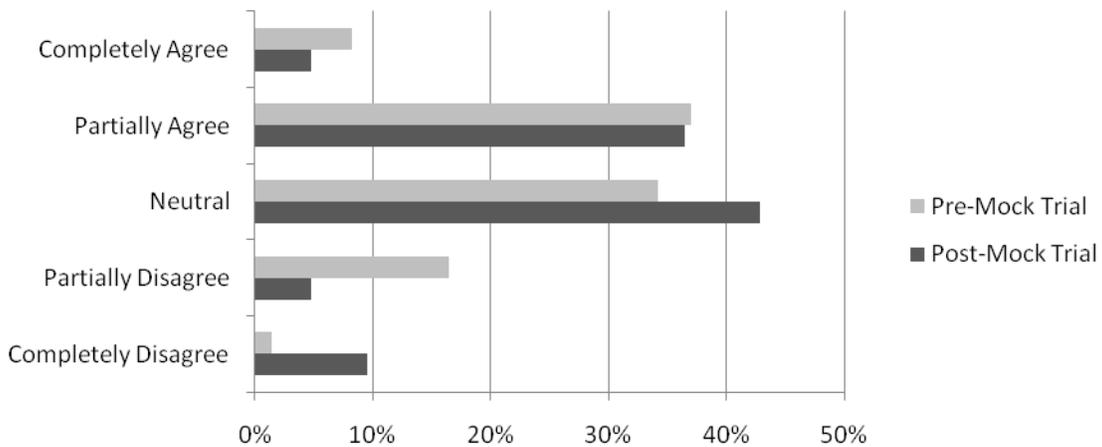
I believe that a jury trial is an effective way to resolve disputes.



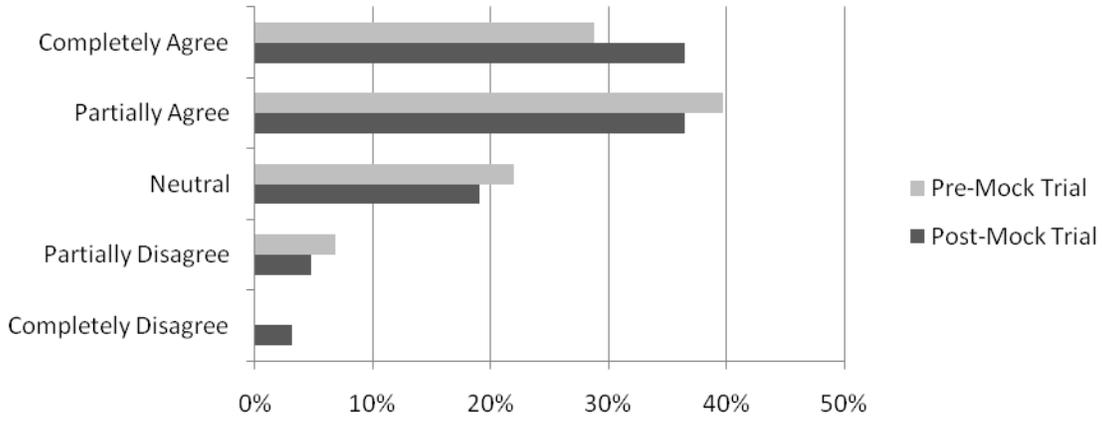
Business managers should control the amount and timing of settlement offers.



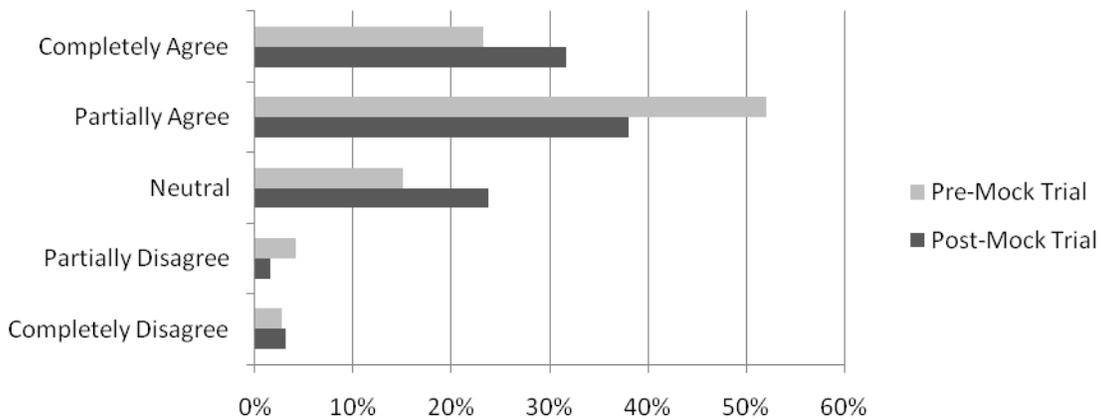
Attorneys should control the amount and timing of settlement offers.



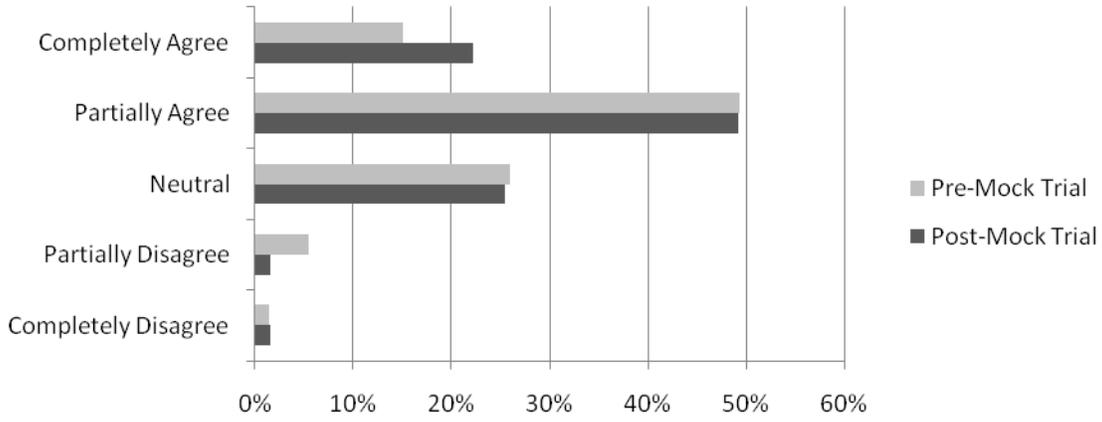
Frivolous lawsuits against businesses are a problem in the United States



It is important for business managers to understand the use of trials for dispute resolution.



I understand how effective trials are to resolve disputes against businesses.



It is a good idea to pass laws to protect businesses against litigation, like the Cheeseburger Laws.

