

# Savior or Scoundrel? Jurors' COVID-Era Opinions of the Pharmaceutical Industry – Part 1

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## **Savior or Scoundrel? Jurors' COVID-Era Opinions of the Pharmaceutical Industry – Part 1**

In recent years, “Big Pharma” has become a boogeyman of sorts in both online and public discourse. From the anti-vaccination movement to the persistent rumors that the medical and/or pharmaceutical industry have developed a cure for cancer and are withholding it from the general public,<sup>1</sup> conspiracy theories around the pharmaceutical industry reach into many aspects of our lives. Whether minor or extreme, such attitudes have carried over into how jurors view pharma-related litigation.

Of course, public distrust has been aggravated by a series of high-profile bad actors and investigations into the practices of various pharmaceutical companies. For example, in September 2015, Turing Pharmaceuticals acquired the license to the antiparasitic drug Daraprim, which is used to treat malaria. Shortly after this acquisition, it raised the price from \$13.50 to \$750 per pill,<sup>2</sup> a 5655% increase. Martin Shkreli, the CEO of Turing, was quickly dubbed “the most hated man in America” and “Pharma Bro” for his role in the acquisition and price increase. He was later charged with and convicted of two counts of securities fraud. Turing’s actions also started a charged public debate that led to congressional inquiries regarding the practice of some companies of acquiring the rights to prescription drugs and raising, sometimes drastically, the price.

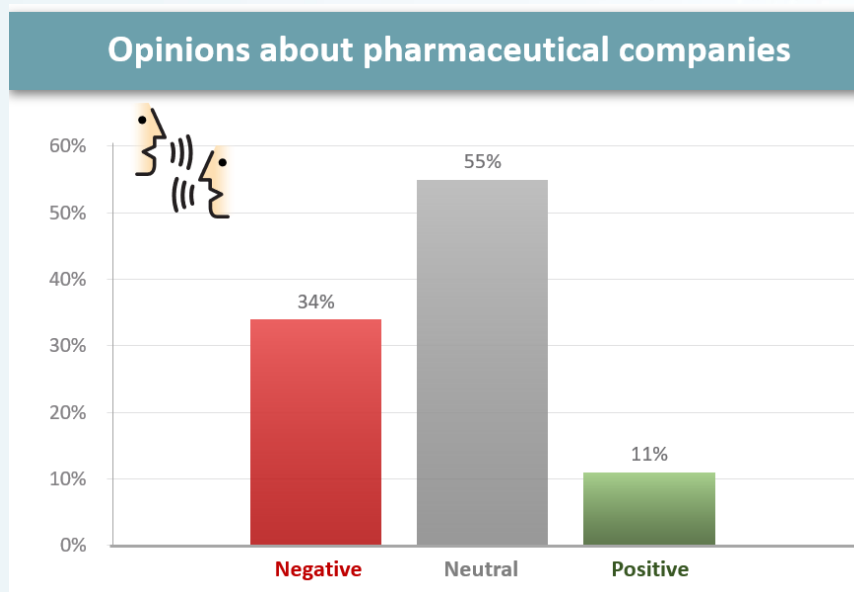
In another high-profile case in 2015, the founder and CEO of Theranos, Elizabeth Holmes, was discovered to have exaggerated claims regarding the effectiveness of a blood test Theranos had developed. She was later charged with fraud by the U.S. Securities

and Exchange Commission. With cases like these making the media rounds, suspicion toward the pharmaceutical industry has only increased in recent years.

Now, as a result of the COVID-19 pandemic, eyes are once again on the pharmaceutical industry as companies race to discover treatments and a vaccination.

With the fast-moving nature of news and science surrounding this pandemic, it will be important that attorneys and their pharmaceutical company clients understand how this affects potential jurors going forward. To that end, Litigation Insights conducted a national survey of jury eligibles to create a “snapshot” of jurors’ current attitudes toward the pharmaceutical industry and, in some cases, compare these attitudes with jurors’ attitudes *pre*-COVID-19.

### **General Attitudes Toward Pharmaceutical Companies**



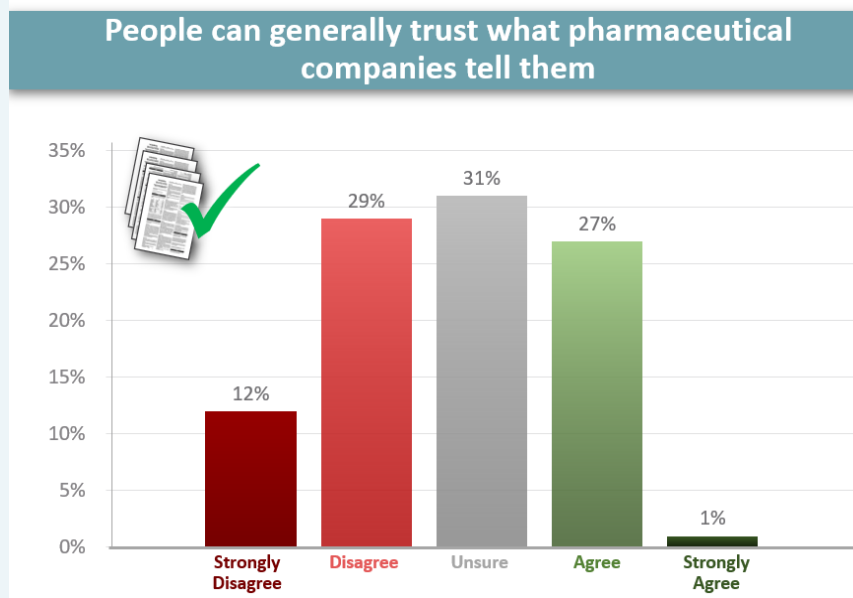
First, we assessed what potential jurors are saying about the pharmaceutical industry overall in light of the COVID-19 pandemic. As the nearby graph depicts, 34% of mock jurors reported holding a negative opinion of pharmaceutical companies, 55% remained neutral,

and 11% held a positive opinion. Interestingly, when this finding is broken down by political affiliation,<sup>3</sup> potential jurors who viewed themselves as conservative were significantly more likely to have a positive view of the pharmaceutical industry than those who identified as liberal.

It should be encouraging for those in the pharmaceutical industry that such a high percentage of individuals listed themselves as neutral. However, those with negative views still comprise a fairly significant percentage of the population; a fair amount of any juror pool comes into the courthouse with negative opinions about pharmaceutical companies.

So, what are some possible reasons potential jurors might hold these negative views? We asked a series of questions to delve deeper.

### **(Lack of) Trust in the Pharmaceutical Industry**

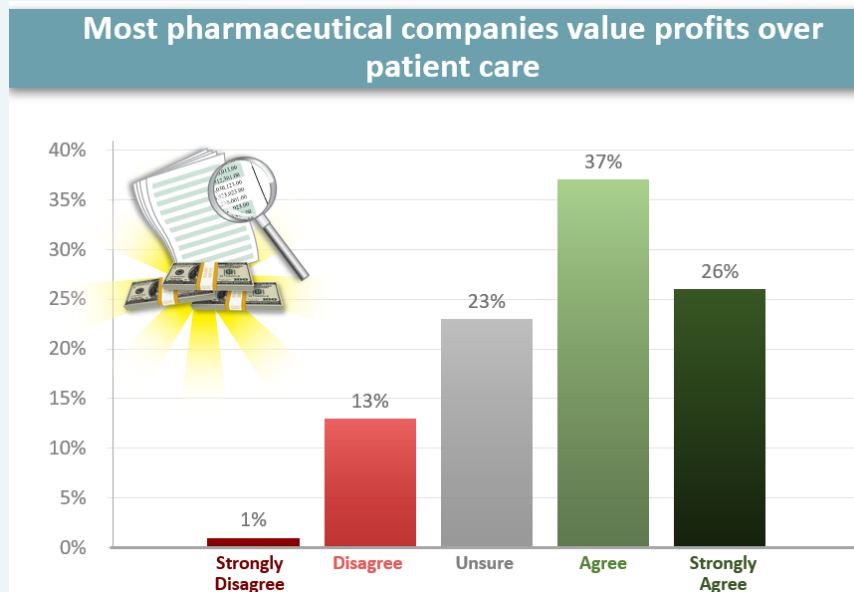


At the core of the issue, many jurors simply don't trust pharmaceutical companies to tell the truth. In our survey, when asked about whether they can trust what pharmaceutical companies tell them, 41% of respondents disagreed, and another 31% were unsure.



When looking at common conspiracy theories surrounding the pharmaceutical industry, this result makes sense. For instance, those theories often revolve around pharmaceutical companies withholding or presenting misleading information about the dangers of their products.

Examining this distrust further, we asked potential jurors how often they believe pharmaceutical companies mislead 1) **government regulators** and 2) **consumers**. Our results show that 36% of potential jurors believed pharmaceutical companies frequently mislead government regulators, and 43% believe they frequently mislead consumers. Even more shocking, 74% of respondents believed pharmaceutical companies definitely or probably avoid developing cures for diseases and illnesses in order to profit more from ongoing treatments.



Yet, these results

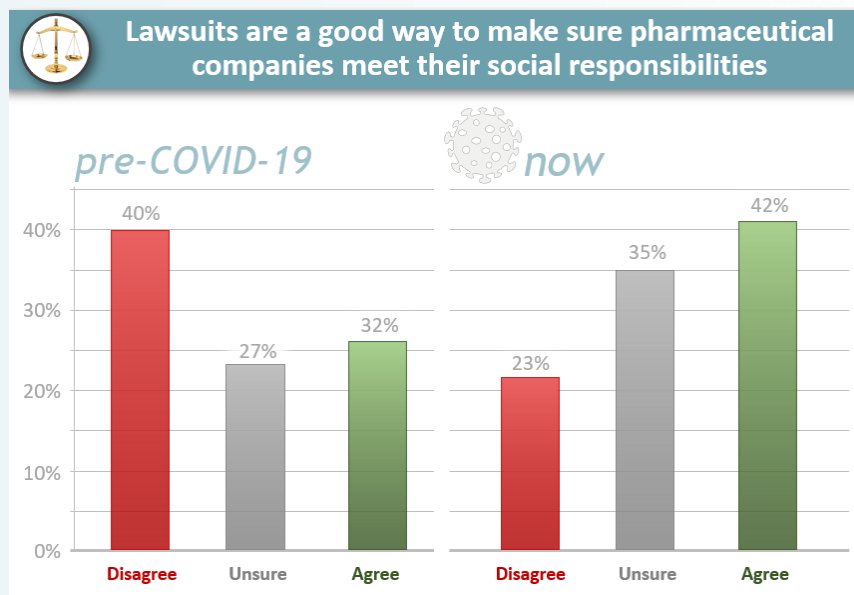
start to make sense in light of one of the most common claims made against members of *any* industry, which is that they valued profits over consumer/patient care or safety. In this survey, 63% of respondents agreed that most pharmaceutical companies place profits over patient care, while only 14% disagreed. Unsurprisingly,

individuals who held negative views of the pharmaceutical industry were significantly more likely to agree with this premise.

### Lawsuits as Remedy

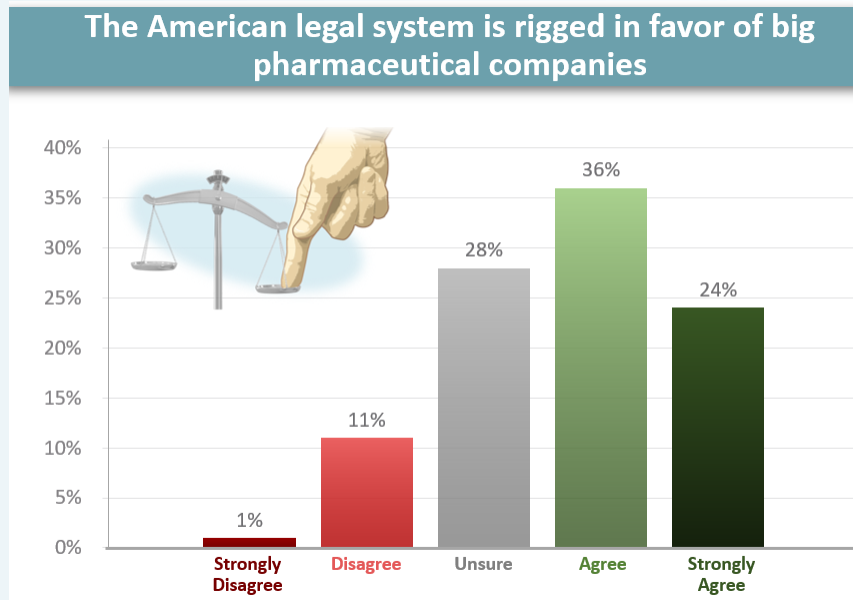
Since a significant portion of jurors distrust pharmaceutical companies, how do they believe pharmaceutical companies should be dealt with when problems arise? And has this result changed in light of COVID-19?

We asked jurors whether lawsuits are a good way to make sure pharmaceutical companies meet their social responsibilities. As the chart below reveals, in our pre-COVID-19 survey only 32% of jurors agreed with this statement; post-COVID-19, that percentage increased to 42%. Likewise, the percentage of jurors who *disagreed* with that statement decreased from 40% pre-COVID-19 to only 23% today. Once again, jurors with a negative overall view of the pharmaceutical industry were significantly more likely to support lawsuits against pharmaceutical companies for perceived misdeeds.



We also asked whether jurors believed the American legal system is rigged in favor of big pharmaceutical companies – and 60% of jurors

believed that it is. When we break this data down by political leaning, potential jurors who identified as liberal were significantly more likely to believe the system is rigged.



So, not only do most jurors believe the pharmaceutical industry places profits over the safety of consumers *and* that lawsuits are a good way to combat this, but many also have little faith in the fairness of that legal system. These attitudes could potentially lead jurors to want to “send a message” to pharmaceutical companies when rendering verdicts in order to “even the playing field.”

## Conclusion

Based on our data, a significant portion of jurors hold negative views of the pharmaceutical industry and do not trust pharmaceutical companies to tell the truth. Further, these jurors increasingly believe lawsuits are a good way to handle perceived wrongs by the industry – yet also believe the legal system is rigged in the industry’s favor.

One can therefore imagine that pharmaceutical company defendants face an uphill battle not only to select a fair jury, but to override remaining negative attitudes and convince jurors of the merits of their



cases (and avoid massive damages). So, in Part 2, we examine jurors' expectations for pharmaceutical companies' actions and transparency, and cover some strategies for addressing these troublesome vulnerabilities at trial.



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