NEWS & INSIGHTS

Denuclearization Part 6: The Trial Strategy Defense is Still Getting Wrong

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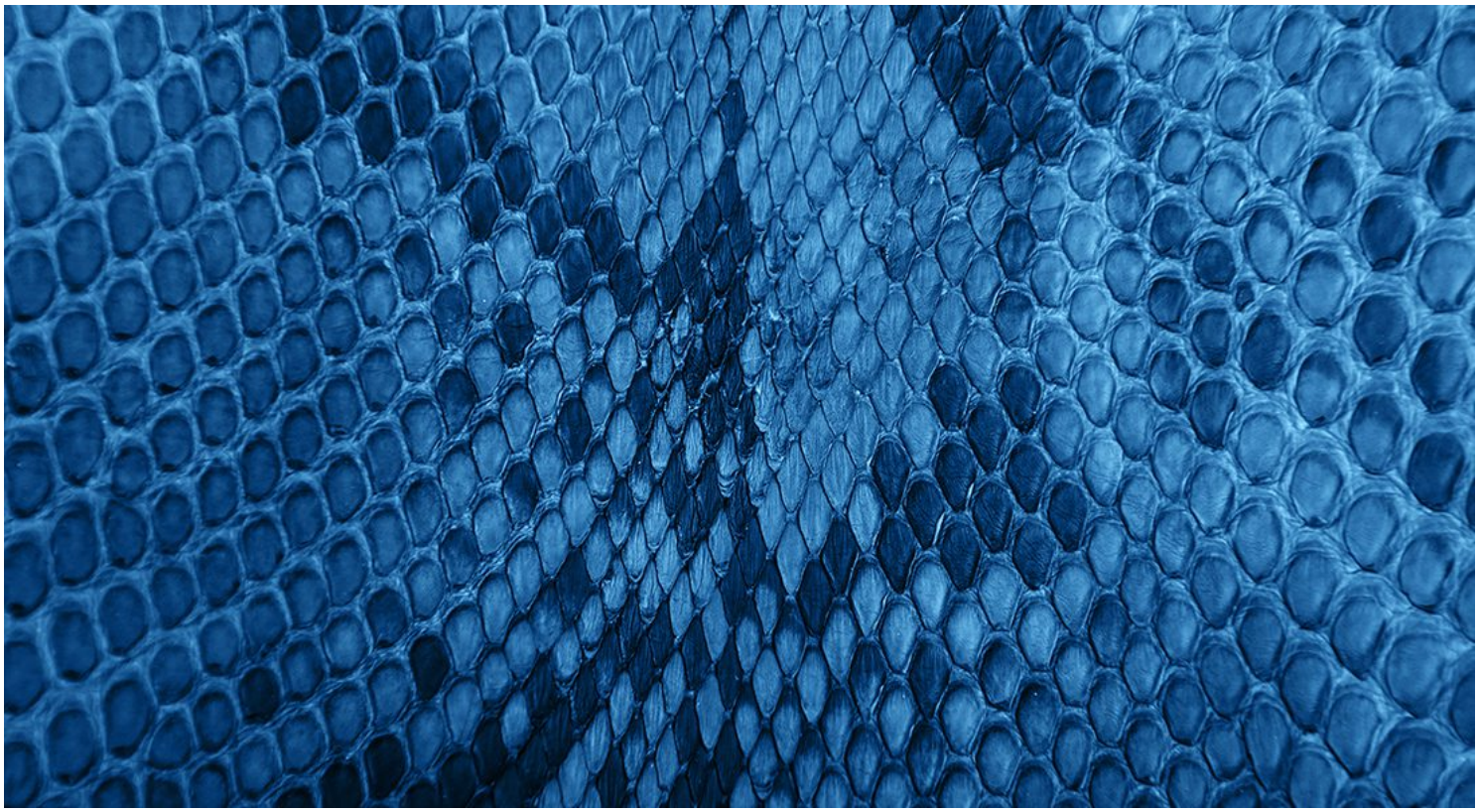

Note: This is Part 6 of the "Denuclearization" series. You can read Part 1 here, Part 2 here, Part 3 here, Part 4 here, and Part 5 here.

Most defense attorneys believe the "Reptile Theory" is just a deposition tactic.

It is not.

It is a comprehensive trial strategy — a theory of how juries make decisions, why they award nuclear damages, and

how plaintiff attorneys deliberately activate community-protective instincts in every juror in the box.

The Reptile Theory, developed by David Ball and Don Keenan in their 2009 book *Reptile: The 2009 Manual of the Plaintiff's Revolution*, is named after the survival-oriented part of the human brain. The premise is that human beings are hardwired to protect their community from perceived danger. Plaintiff attorneys have built an entire litigation strategy around that instinct.

In a reptile case, the question is not, "What happened, and who is responsible?" The question is, "Is this carrier a systemic threat to community safety — and does the jury have an obligation to stop it?" The individual accident becomes almost secondary. The real case is about the organization and its practices.

That reframe changes everything about how the case is tried — and how it must be defended.

Why It Matters

The reptile strategy does not fail because of what happens at trial. It fails — or succeeds — long before trial, based on whether the carrier has given the plaintiff's attorneys the evidentiary building blocks the strategy requires.

Ball and Keenan acknowledge within the framework itself that three conditions must be present for the strategy to work. Understanding those conditions is the foundation of the defense:

- The case cannot be just an accident. An isolated incident without a broader pattern cannot sustain a systemic community safety narrative.
- The systemic failure argument must be legitimate. Carriers with documented, consistently enforced safety programs are far harder to frame as systemically dangerous.
- There must be something to correct. The verdict-as-remedy argument requires an ongoing problem. If the deficiency never existed — or has already been addressed — the remedial framing collapses.

Last week's DataQs story directly applies here. One of the raw materials plaintiff attorneys use to build a systemic-failure narrative is your CSA record — pulled via the Freedom of Information Act from the Federal Motor Carrier Safety Administration. Inaccurate inspection and crash data that sits unchallenged in the DataQs system is evidentiary ammunition. The new DataQs reform, published April 16, gives carriers a stronger mechanism to challenge that data and clean the record that Reptile Theory cases are built on.

What to Watch

Reptile tactics are visible across the entire litigation lifecycle once you know what to look for. At deposition, its questions designed to establish that the company knew its policies were inadequate, that safety was subordinated to profit, that rules were routinely violated. In discovery, the traits are requests for company-wide data spanning

years — not facts about this accident, but building blocks for a systemic narrative. In opening and closing: *"this company knew," "this will happen again," "the only message they will hear."* These phrases are not rhetoric. They are the markers of a deliberate strategy.

If you or your company have questions about how to combat a Reptile Theory attack, or how to proactively prevent it, please contact me or any member of the Saxton & Stump Trucking and Commercial Transportation Group.

Coming up: Part 7 of the denuclearization series will cover the "Discovery Trap" — how your safety technology, telematics data, and internal communications become the plaintiff's case.

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