ASSOCIATION OF BUSINESS TRIAL LAWYERS

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LOS ANGELES

SPRING 2026

HOGS GET SLAUGHTERED: HOW SHORT-TERM EVIDENTIARY WINS CAN COST THE VERDICT ON APPEAL

John A. Taylor, Jr.

A civil verdict is only as strong as the evidentiary rulings that sustain it. The appellate version of the well-known trial maxim—"pigs get fat, hogs get slaughtered"—warns against overreaching during trial for tactical gains that embed reversible error into the record. This principle is illustrated by the recent reversal of a $161 million jury verdict in *Soulliere v. Suzuki Motor Corporation* (Mar. 18, 2026, G063118) 2026 WL 765763 [nonpub. opn.], in which plaintiff's counsel secured an aggressive, favorable evidentiary ruling during trial that looked like an important interim victory—keeping out a key damaging admission by the plaintiff—but that injected error the Court of Appeal could not ignore. The *Soulliere* decision demonstrates a critical practice point: It is almost always better to live with a correct adverse ruling and beat it with facts, experts, and trial craft than to bank a legally erroneous ruling that becomes a wedge for reversal after a hard-won verdict.

Case Background: What Happened in *Soulliere v. Suzuki*

The dispute began when plaintiff Thomas Soulliere crashed his Suzuki GSX-R600 motorcycle ten days after purchase. He later alleged that a front brake defect caused a complete brake failure just before he collided with the SUV that suddenly pulled out in front of him. The investigating police officer, Officer Shaheen, contemporaneously recorded Soulliere's statement that "he was forced to apply his brakes locking up his wheels." But in the first trial the trial court barred Shaheen from reading that statement into evidence as a past recollection recorded and further barred cross-examination of plaintiff's expert with the officer's deposition testimony.

In a December 2020 decision, the Court of Appeal reversed the jury's verdict, which awarded plaintiff $1.4 million in compensatory damages and $6 million punitive damages. Among other grounds for reversal, the court held that Shaheen's recorded recollection should have been admitted under Evidence Code section 1237 (section 1237). The decision noted that a key issue was whether the motorcycle's front wheel had locked before the collision, and plaintiff's statement to the investigating officer indicated that both his front and rear wheels locked when he applied the brakes, supporting the defense theory that the front brake did not fail.

On remand, both sides' experts agreed that whether the front wheel locked before the collision was the fulcrum of the dispute over whether front brake failure caused the accident. But plaintiff's counsel persuaded the trial court to disregard the Court of Appeal's holding on the admissibility of plaintiff's statement to Shaheen, and to again exclude the testimony as hearsay and untrustworthy. This time, the jury returned a verdict awarding plaintiff $11.4 million in compensatory damages and $150 million in punitive damages (which the trial court conditionally reduced to $30 million in the posttrial motion phase).

In a March 2026 decision, the Court of Appeal reversed again. The court held that the trial court erred by again excluding the officer's recorded recollection. The Court of Appeal also held that plaintiff failed to present competent evidence of Suzuki's overall financial condition to support

any punitive damages—because plaintiff's evidence focused only on sales, profits, and income, and disclosed nothing about Suzuki's liabilities, losses, debt load, or long-term obligations. The appellate panel remanded the case for a third trial on liability and compensatory damages, while entirely excluding punitive damages from retrial.

How Overreach Became Reversal: Law of the Case, Repeat Error, and Appellate Remedies

In the second trial, Suzuki urged the law-of-the-case effect of the first appellate decision regarding the admissibility of Shaheen's recorded recollection testimony. But the trial judge, at the urging of plaintiff's counsel, discounted the doctrine's application to renewed evidentiary issues, observing that after remand "the trial starts all over again." Suzuki's briefs on appeal argued that the first decision squarely held the contents of the report were admissible under section 1237 and that repeating the exclusion violated law of the case, citing authorities that an appellate evidentiary ruling becomes the law of the case and must be adhered to on retrial.

But the Court of Appeal did not have to rely on law of the case to reverse; instead, it simply analyzed de novo the application of Evidence Code section 1237 to hold that plaintiff's statement to Shaheen was admissible as a past recollection recorded and that it had been prejudicially excluded. The court identified each foundational element of section 1237—a witness with insufficient present recollection; a statement recorded in writing that would be admissible if given on the stand; and a writing made or adopted when the matter was fresh in memory and affirmed as accurate—and concluded that Shaheen's testimony met every requirement. The appellate court further found that admission of Shaheen's recorded recollection likely would have produced a better outcome for Suzuki—the officer was a neutral witness recounting a near-contemporaneous statement by the plaintiff that tended to show that the brake did not fail. On remand, the court directed that absent materially changed circumstances, the statement should be admitted as a past recollection recorded.

This outcome powerfully illustrates the practical hazard of asking a trial court to revisit an issue that has already been decided adversely to the proponent in a prior appeal. Even if the trial court is persuaded, counsel succeeds only in injecting the record with the same error that previously required reversal, almost guaranteeing a second reversal. That is precisely what occurred here; the new verdict, which swelled from an original $7.4 million to a $161 million total after a massive punitive-damages phase, was entirely set aside because the same core evidentiary misstep remained baked into the record and could not be deemed harmless. Ultimately, persuading the trial judge to exclude the evidence a second time in the face of a contrary analysis by the Court of Appeal was a precarious and ultimately self-defeating way to win the trial day.

The scope of the reversal is also instructive. The Court of Appeal ordered a new trial on liability and compensatory damages but foreclosed punitive damages entirely at retrial, holding that plaintiff had not carried his burden to present meaningful evidence of Suzuki's overall financial condition—net worth or actual wealth—beyond stipulations to annual sales, profits, and net income. This outcome magnified the strategic cost of trial counsel's overreaching. A favorable but erroneous evidentiary ruling may help secure a large verdict in the moment, yet the price on appeal here included not only a retrial on liability, but also the permanent loss of punitive damages.

Practical Guidance: Building Verdicts that Survive

For trial and appellate counsel alike, the *Soulliere* decision offers a roadmap for evaluating when to push and when to pivot.

First, recognize the acute appellate risk of persuading a trial court to repeat a ruling that an earlier appeal has already rejected. Law-of-the-case principles are designed to prevent iterative errors on remand; even when a court sidesteps the doctrine and conducts a fresh analysis, a party who secures a reprise of a previously condemned ruling is inviting a second reversal and years of delay. In *Soulliere*, repeating the exclusion of Shaheen's testimony achieved a tactical evidentiary advantage at trial but planted the seed for appellate reversal and a new liability trial, with the added consequence that punitive damages were removed from the case altogether for want of proper proof.

Second, prefer correct adverse rulings you can manage at trial over erroneous favorable ones you cannot defend on appeal. Had plaintiff accepted the admission of Shaheen's statement and addressed it with cross-examination, expert framing, and closing argument, the resulting verdict—if achieved—would have rested on rulings far more likely to withstand appellate

scrutiny. By contrast, excluding the statement twice contrary to settled hearsay doctrine and to a prior appellate opinion forced the Court of Appeal to set aside the verdict despite the jury's liability findings, because the exclusion went to a central issue that was reasonably likely to have changed the outcome.

Third, rigorously assess appellate vulnerability before pressing for a favorable ruling. Ask whether there is a clean statutory pathway for the opponent's evidence and whether any contrary authority is distinguishable; if a prior appeal in your case or a closely analogous decision has already spoken, factor law-of-the-case or stare decisis into the calculus. In *Soulliere*, additional case authority sat side-by-side with the 2020 panel's express holding that section 1237 permitted admission of the statement Shaheen recorded; pushing for exclusion again was, in hindsight, a high-risk gambit.

Fourth, consider reputational and professional costs. Appellate courts expect remand proceedings to honor their holdings; disregarding clear guidance invites pointed criticism, undermines credibility, and can complicate future discretionary rulings. Here, the record reflects trial court skepticism about law-of-the-case principles and a willingness to repeat the same evidentiary error, which framed the appeal and narrowed the margin for harmless-error arguments; that dynamic is avoidable with careful adherence to prior appellate instructions.

Conclusion: Durable Verdicts Require Restraint at the Right Moments

Soulliere distills a cautionary tale for business litigators and judges about the difference between winning at trial and winning the case. The plaintiff twice secured exclusion of a potent defense admission, but each time the exclusion proved untenable under Evidence Code section 1237 and party-admission principles; the second time, the cost of that overreach was a reversal of a nine-figure judgment and a new trial limited to liability and compensatory damages, with punitive damages eliminated for lack of meaningful financial-condition evidence. The appellate adaptation of "pigs get fat, hogs get slaughtered" is not about timidity; it is about judgment. A correct adverse ruling can often be absorbed and overcome by trial craft; a legally erroneous favorable ruling, particularly one already flagged on a prior appeal, can jeopardize the entire verdict. The durable win is the one built on evidentiary rulings you can defend, not the one you can momentarily win.

John A. Taylor, Jr. *is a partner at Horvitz & Levy LLP.*