



ALFA International
THE GLOBAL LEGAL NETWORK

2022 Insurance & Professional Liability Seminar June 22-24, 2022

JURY VERDICT TRENDS IN THE MIDST OF A PANDEMIC

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1. Introduction

Before the pandemic, jury verdicts were already trending upwards, often surpassing traditional expectations. Additionally, COVID has caused many businesses to change operational standards and, in many instances, has negatively affected the popular opinion of corporations. The question now arises: what is the correlation between COVID and the current trend of jury verdicts?

2. RECAP: Jury Verdicts Pre-COVID

- a. In the decade leading up to the COVID crisis, jury verdicts were trending steeply upward and far surpassing rational values for the claims in a case. The issue became so bad that the term “nuclear verdict” arose for verdicts exceeding \$10 million, although extreme examples exceed \$1 billion in damages.¹
- b. Although a generally accepted definition of a nuclear verdict is one that exceeds \$10 million, this arbitrary damages threshold fails to capture the problem adequately. A nuclear verdict is the classic disproportionate response: it so far exceeds a reasonable damages amount that only emotional or punitive juror motives can adequately explain it.²
- c. According to a June 2020 research paper published by the American Transportation Research Institute (ATRI), entitled “The Impact of Nuclear Verdicts on the Trucking Industry”, the average size of verdicts from 2010 to 2018 increased from just over \$2.3M to just under \$23M – an increase of nearly 1000%.³

3. Jury Verdicts Since COVID

- a. Initially, data seemed to suggest that post-COVID monetary awards were generally lower than pre-COVID awards. It was believed that jurors might be more apt to provide lower monetary awards in the post-COVID era because a plaintiff’s alleged injuries do not seem to be a “big deal” in light of current events. Plaintiffs who have been injured during work accidents may not receive the same sympathy from jurors as they once would have because many jurors have experienced traumatic events during COVID-19 (e.g., deaths of loved ones, job terminations, and home foreclosures) and many of them did not receive compensation. Therefore, these individuals’ perceptions of an appropriate damage award have been altered.⁴
- b. However, when courts fully reopened in 2021, juries went back to awarding liability claimants huge damages particularly in the auto liability area. As stated by litigation consultant, Shari Belitz, “Nuclear verdicts are absolutely on the rise.”⁵
- c. In 2021, there have been 11 auto liability settlements of \$15 million or more. While the number of claims above that threshold has been on the rise for more than a decade, a handful of massive verdicts issued in 2021 have been very disruptive. So far this year, three auto accident verdicts have exceeded \$100 million. The most headline-grabbing verdict involved the tragic death of a college student in a trucking accident in north Florida that occurred in 2017. In that case, a jury awarded \$1 billion dollars, giving the

¹ <https://riskandinsurance.com/covid-19-and-nuclear-verdicts-disastrous-combination-or-phantom-fear/>

² Id.

³ <https://www.cottinghambutler.com/news/nuclear-verdicts-increasing/>

⁴ <https://www.courtroomsciences.com/blog/litigation-consulting-1/scientific-evaluation-of-juror-damage-awards-post-covid-219>

⁵ https://www.advisen.com/tools/fpnproc/fpns/articles_new_1/P/415596209.html?rid=415596209&list_id=1

surviving family \$100 million in damages for pain and suffering, and assessing \$900 million in punitive damages against the trucking companies deemed to have caused the accident.

- d. Many insurers covering corporations for these large claims expect the trend to continue to grow unabated due to social inflation—the phenomenon of increasing claims costs due to changing societal factors such as legal advertising, litigation financing, the appeal of class action lawsuits, and growing public distrust of corporations.⁶

4. Juror Attitudes in the Wake of COVID-19

- a. Prospective jurors have less trust in corporations and science, as seen in recent controversies over lockdowns, mask and vaccine mandates, supply-chain frustration, and the so-called great resignation.⁷
- b. As the economy collapsed and millions lost their jobs, the stock market soared to new heights, making the richest Americans that much richer. Potential jurors may think deep pockets only got deeper during the COVID crisis.
- c. As a result, many potential jurors see corporate America as hoarding massive profits at the expense of the average person. And they will be more likely to try and punish corporations due to “fairness,” even if the punishment is disproportionate to the actual issues in a case.
- d. Past Examples
 - i. Uptick in hostility towards large corporate defendants after the Enron scandal.
 - ii. The Great Recession of 2008-2009 was followed by a dramatic shift in pro plaintiff, high-award verdicts.
- e. Concern of Infection & Life Disruption
 - i. Potential jurors who expressed significant concern of COVID-19 infection for themselves or a loved one were generally pro-plaintiff and awarded higher damages.
 - ii. Life disruption also related to damages. The more people felt their lives were disrupted, the higher the damages they would award.⁸

5. Preparing for Trial After COVID-19

- a. The COVID-19 pandemic led to the shutdown of a large portion of our country. The psychological impact of quarantine is wide-ranging, substantial, and can be long-lasting. Some research suggests the impacts can last up to three years. Examples:
- b. Increase in Impatience
 - i. Jurors will have even less patience for what they perceive as wasted time.
 - ii. Anything perceived as wasted time will be held against you and lead to an unfavorable opinion of you and your client. Attorneys should be especially conscious to make it clear why every witness matters and why every question is necessary to prove their case.

⁶ <https://www.jdsupra.com/legalnews/what-does-a-billion-dollar-verdict-mean-1862381/>

⁷ https://www.advisen.com/tools/fpnproc/fpns/articles_new_1/P/415596209.html?rid=415596209&list_id=1

⁸ <https://www.decisionquest.com/research/juror-attitudes-in-the-age-of-the-coronavirus/>

- c. Sympathy
 - i. COVID 19 and its impact on a potential juror is likely to have a direct impact on the sympathy they feel for a plaintiff.
- d. Effects of PTSD. The stress and anxiety that results from PTSD and depression could have a significant effect on the attitudes of a juror. A juror may become more sympathetic with a plaintiff who claims to have suffered PTSD or other emotional trauma, since they might find these injuries more legitimate if they have similar symptoms. There is also a risk, however, that a juror will have less sympathy if they see the alleged cause of someone's emotional injury claim as minor or trivial.⁹
- e. Lawyers and judges should use voir dire to assess jurors' comfort or discomfort with participating in the proceedings. It serves neither side's interest to have jurors sitting whose ability to pay attention and deliberate faithfully may be compromised. And lawyers should acknowledge jurors' likely discomfort and try to put themselves in the jurors' shoes.¹⁰

6. Conclusion

- a. No matter where you practice, jury trials will remain. COVID has, however, impacted the way jurors see the world, and how we need to see and assess jurors during jury selection. The information available to us in making these assessments will continue to develop and unfold. We must remain vigilant in monitoring and tracking this information to prepare the best defense for our clients.

⁹ <https://tsongas.com/blog-posts/preparing-trial-after-covid-19/>

¹⁰ <https://www.americanbar.org/groups/litigation/committees/trial-practice/articles/2021/advice-trial-lawyers-jury-trials-covid-19/>