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### The Exponential Rise of Nuclear Verdicts

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## The Exponential Rise of Nuclear Verdicts

Are extreme jury awards – known as “nuclear verdicts” – the new normal? From 2015 to 2019, the average verdict in the National Law Journal’s Top 100 Verdicts more than tripled from \$64 million to \$214 million. (*National Law Journal’s 2015 and 2019 editions of the Top 100 Verdicts studies*). These socially inflated verdicts are creating challenges for the insurance industry, making it difficult to underwrite potential legal risks, increasing premiums and threatening to put liability insurance out of reach for businesses.

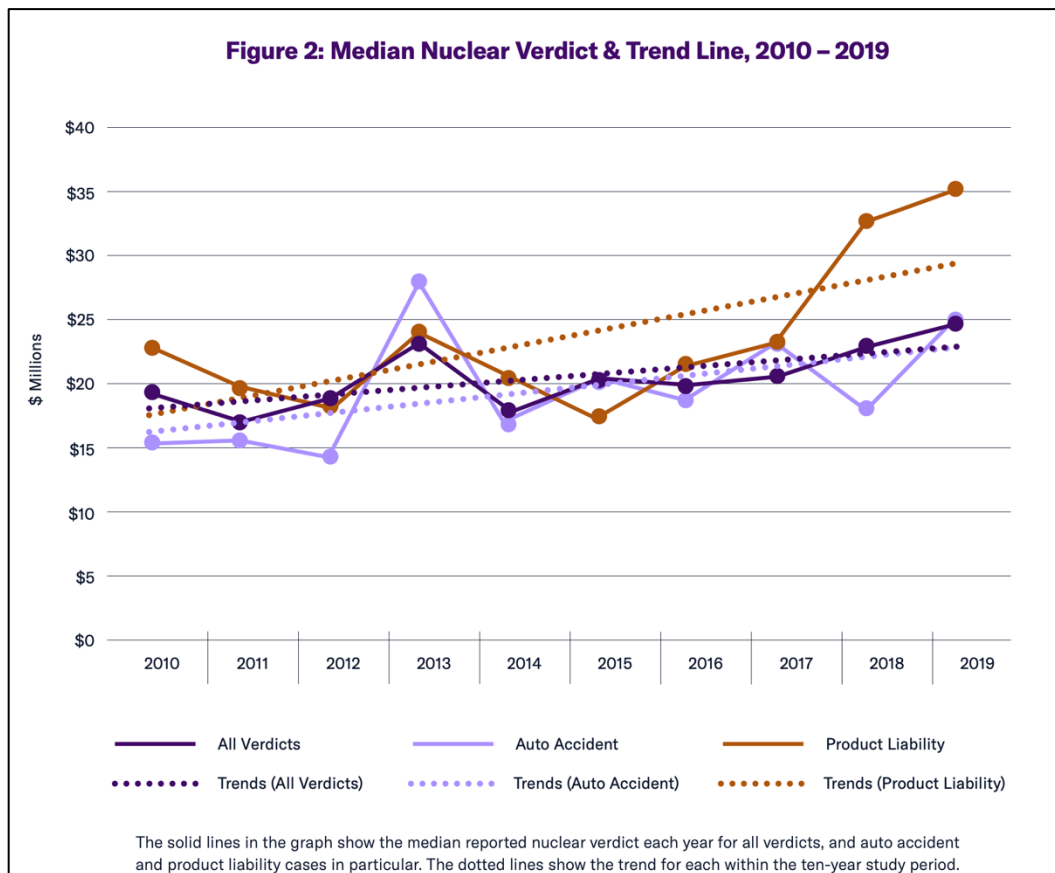


Figure 1: U.S. Chamber of Commerce Institute for Legal Reform: Nuclear Verdicts Trends, Causes, and Solutions

### Nuclear Verdicts Trends & Causes

1. The U.S. Chamber of Commerce Institute for Legal Reform analyzed 1,376 nuclear verdicts between 2010 and 2019. Approximately half of these verdicts were between \$10 million and \$20 million, and about one-third were between \$20 million and \$50 million. The remaining 16% of nuclear verdicts exceeded \$50 million; a group that included 101 “mega” nuclear verdicts that exceeded \$100 million. (*U.S. Chamber of Commerce Institute for Legal Reform: Nuclear Verdicts Trends, Causes, and Solutions*).
2. A key takeaway of the study is that nuclear verdicts are increasing in both amount and frequency. The median nuclear verdict increased 27.5% over the ten-year study period, far outpacing inflation, and there was a clear upward trend in frequency of nuclear verdicts over time. (*Id.*)

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3. The study also revealed concentrations of nuclear verdicts with respect to types of cases and jurisdictions. Product liability, auto accident, and medical liability cases comprise roughly two-thirds of the reported nuclear verdicts. Premises liability (15.4%), other negligence (7.9%), intentional tort (7.1%), and miscellaneous claims (2.6%) make up the remaining shares of nuclear verdict awards. (*Id.*)
4. Juries in state courts, as compared to federal courts, also produced the vast majority of all nuclear verdicts. Half a dozen states, namely California, Florida, New York, Texas, Pennsylvania, and Illinois, hosted around 63% of the nuclear verdicts during the ten-year study period. Personal injury lawyers have long preferred to try cases in state courts—which they often perceive as having more plaintiff-friendly judges, jurors, and court rules—than more neutral, federal courts with lifetime appointed judges. The data supports that perception. Nuclear verdicts were far more frequent in state courts than in federal courts. State courts hosted nine out of ten reported nuclear verdicts in personal injury and wrongful death cases during the ten-year study period. Federal courts hosted just 151 of 1,376 reported nuclear verdicts (about 11%) and 12 of 101 reported mega nuclear verdicts (12%). (*Id.*)

### *Drivers of Nuclear Verdicts*

1. **Reptile Tactics:** Nuclear verdicts are fueled by a variety of direct and indirect factors. In the courtroom, plaintiffs' lawyers often use tactics that manipulate juror behavior and arbitrarily inflate damages. They may, for example, resort to so-called "reptile theory" tactics that aim to instill a sense of fear or danger in jurors' minds so they lash out at their perceived attackers with inflated damage awards.
2. **The Rise in Noneconomic Damages:** Many nuclear verdicts are comprised primarily of an award of noneconomic damages such as pain and suffering. Plaintiffs' lawyers' ability to manipulate juror determinations of this inherently subjective damages component has led to a transformative increase in these awards. Historically, noneconomic damage awards were modest and rarely exceeded a claimant's economic damages. That began to change in the 1950s as plaintiffs' lawyers sought higher awards and, by the 1970s, pain and suffering awards had become the largest part of tort damages.
3. **Anchoring Tactics:** Personal injury lawyers are aggressively asking jurors to award ever-higher sums. In most states, they are permitted to suggest a damages amount or method of calculating damages as part of closing arguments to a jury. These suggested damages are arbitrary, and often extraordinary, yet can have a profound impact on jurors. The "anchor" proposed by the plaintiffs' lawyer creates a psychologically powerful baseline for jurors struggling with assigning a monetary value to difficult-to-define damages such as pain and suffering.
4. **Inundating the Public with Ads Touting Nuclear Verdicts:** Outside the courtroom, plaintiffs' law firms and "lead generating" companies may flood the airwaves with lawsuit advertising that touts extraordinary verdicts and shapes potential jurors' views of appropriate compensation. Plaintiffs' lawyers are also increasingly bringing litigation funded by third parties seeking a return on their investment, which contributes to nuclear verdicts by driving up award demands and widening the gap for parties to negotiate a reasonable settlement.

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### *Real World Implications*

1. Increases in the frequency and amount of nuclear verdicts do more than lay bare problems in the civil justice system. They adversely affect everyone in society in very real ways. In addition to increasing the costs of everyday items and services—including food, housing, and medical care—and potentially creating insurability problems, escalating lawsuit cost can stymie economic opportunity. They can threaten the viability of any business, and with it the jobs of its employees and others in a community whose livelihoods are connected to the business. Rising lawsuit costs can also inhibit job growth and new investments for businesses or industries, needlessly exhaust judicial resources, and erode basic confidence in the rule of law, all of which can have far-reaching adverse impacts.

### Post-Pandemic Trends Remain Hard to Predict

COVID has caused businesses to change operational standards and, in many instances, has negatively affected the popular opinion of corporations. The question now arises: what impact will COVID and these changes have on the current trend of jury verdicts?

### *Jury Verdicts Since COVID*

1. 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. (<https://www.courtroomsciences.com/blog/litigation-consulting-1/scientific-evaluation-of-juror-damage-awards-post-covid-219>).
2. 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." ([https://www.advisen.com/tools/fpnproc/fpns/articles\\_new\\_1/P/415596209.html?rid=415596209&list\\_id=1](https://www.advisen.com/tools/fpnproc/fpns/articles_new_1/P/415596209.html?rid=415596209&list_id=1))
3. 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. ([https://www.advisen.com/tools/fpnproc/fpns/articles\\_new\\_1/P/415596209.html?rid=415596209&list\\_id=1](https://www.advisen.com/tools/fpnproc/fpns/articles_new_1/P/415596209.html?rid=415596209&list_id=1))