

Nuclear Verdicts

An Update on Trends,
Causes, and Solutions

May 2024



U.S. Chamber of Commerce
Institute for Legal Reform



Contents

Chapter

01

- 1 Executive Summary
- 3 Research Findings
- 4 Top States for Nuclear Verdicts
- 5 Drivers of Nuclear Verdicts
- 5 Real World Implications
- 6 Solutions

Chapter

02

- 7 Nuclear Verdict Trends
- 8 Case Breakdown
- 10 Nuclear Verdicts—
Rising Trends
- 14 Preliminary
2023 Data

Chapter

03

- 15 Top States for Nuclear Verdicts
- 19 California
- 20 Florida
- 21 New York
- 24 Georgia
- 25 Illinois
- 27 Washington
- 28 Missouri
- 30 Preliminary
2023 Data

Cary Silverman and Christopher E. Appel,
Shook, Hardy & Bacon LLP

© U.S. Chamber of Commerce
Institute for Legal Reform, May 2024.
All rights reserved.

This publication, or part thereof, may not
be reproduced in any form without the
written permission of the U.S. Chamber
of Commerce Institute for Legal Reform.

Chapter

04

- 31 **Fueling Nuclear Verdicts**
- 32 Reptile Tactics
- 34 The Rise in Noneconomic Damages
- 35 Anchoring Tactics
- 37 Multi-Plaintiff Trials
- 39 Inundating the Public and Jury Pool With Ads Touting Nuclear Verdicts
- 40 The Rise of Third Party Litigation Funding
- 43 Expansion of State Wrongful Death Acts

Chapter

05

- 45 **Real World Implications**
- 46 Higher Costs and Insurability Problems
- 49 Unreasonable Demands and Nuclear Settlements
- 50 Prolonged Litigation
- 51 Loss of Confidence in the Rule of Law

Chapter

06

- 53 **Solutions**
- 54 Adopt Pre- and Post-Nuclear Verdict Civil Justice Reforms
- 55 Address Misleading Lawsuit Advertising
- 57 Promote Sound Science in the Courtroom
- 58 Adopt Third Party Litigation Funding Disclosure and Other Safeguards
- 59 Prohibit Manipulation of Juries Through Anchoring Tactics
- 59 Adopt the McHaffie Rule
- 60 Reject Proposals That Would Fuel More Nuclear Verdicts

Chapter

07

61 Conclusion

Appendix

A

63 Methodology

Appendix

B

65 Frequency and Median Verdicts: Current and Historic Data Tables

67 Endnotes

Executive Summary

Chapter

01

Nuclear verdicts—defined as verdicts of \$10 million or more—are on the rise. This paper analyzes nuclear verdicts in personal injury and wrongful death cases over a 10-year period between 2013 and 2022, discussing national and state trends, causes of nuclear verdicts, real-world implications of these verdicts, and solutions to improve fairness in damage awards.

“When excluding the pandemic years, the data shows an upward trend in the frequency of reported nuclear verdicts at all levels over the 10-year study period.”

This analysis focuses on these extreme and fundamentally unpredictable verdicts because these jury awards play an outsized role in the civil justice system. They are “nuclear” in the sense that such a verdict can have devastating impacts on businesses, entire industries, and society at large, even when a verdict is later thrown out or substantially reduced by an appellate court. These verdicts can drive up the costs of goods and services, adversely affect the cost and availability of insurance, and undermine fundamental fairness and predictability in the rule of law.

To be sure, cases that result in nuclear verdicts can involve catastrophic, life-long injuries or tragic deaths. Two questions arise in these cases:

Did the defendant’s conduct actually cause the plaintiff’s injury or did skilled attorneys manipulate jurors into reaching a plaintiff’s verdict through tactics that inflame the jury? And how much is a reasonable amount of compensation for an injury?

In many cases, there is no clear and objective way to place a monetary value on the injuries claimed by the plaintiff. Awards in the tens or hundreds of millions, or even billions of dollars, however, are often far afield from serving a truly compensatory purpose. Understanding how and why unsupportable nuclear verdicts can arise, including efforts by members of the plaintiffs’ bar to further escalate these verdicts, is essential to recognizing what can and should be done to curb them.

Research Findings

This paper analyzes 1,288 nuclear verdicts delivered between January 1, 2013, and December 31, 2022,¹ a period that includes the COVID-19 pandemic during which courthouses temporarily closed, delaying trials. It builds upon prior U.S. Chamber of Commerce Institute for Legal Reform (ILR) research, published in 2022, which analyzed nuclear verdicts during the 10-year period from 2010 through 2019.²

A key takeaway of the study is that while nuclear verdicts dropped significantly during the COVID-19 pandemic, they rebounded to near their prior levels by the third quarter of 2021. When excluding the pandemic years, the data shows an upward trend in the frequency of reported nuclear verdicts at all levels over the 10-year study period.

Approximately half of nuclear verdicts during this period were between \$10 million and \$20 million, and

over one-third were between \$20 million and \$50 million. The remaining 19% of nuclear verdicts exceeded \$50 million; a group that included 115 “mega” nuclear verdicts of \$100 million or more. Awards at higher levels have become more common since the previous study. There were a record number of mega nuclear verdicts in 2022, which preliminary data indicates was again broken in 2023.³

The median nuclear verdict during the study period was \$21 million, though it was higher in product liability and intentional tort cases. The median nuclear verdict in product liability cases peaked at \$36 million in 2022—a 50% rise over a decade.

The mean nuclear verdict overall was \$89 million, which is considerably higher than the median because it is affected by the most extreme awards. This level is a significant increase from the earlier study, particularly for product liability, auto accident, and other negligence trials.

The study also revealed concentrations of nuclear verdicts with respect to certain types of cases and jurisdictions. Product liability, auto accident, and medical liability cases continue to comprise two-thirds of the reported nuclear verdicts. Juries in state courts, as compared to federal courts, produced the vast majority of all nuclear verdicts.

Only about one-quarter of nuclear verdicts included punitive damages, although, when awarded, they were often extraordinary sums. Economic damages, such as awards for lost income, medical costs, or other expenses, in comparison, accounted for only about 10% of total damage awards. Many reported nuclear verdicts do not include a complete breakdown of each component of damages, but where that information was available it showed that nuclear verdicts consist primarily of awards of noneconomic damages, such as pain and suffering. This means that the lion’s share of nuclear verdicts

during the 10-year study period are attributable to subjective damage assessments by jurors that have inflated over time.

Top States for Nuclear Verdicts


Four states—California, Florida, New York, and Texas—host half of the nation’s nuclear verdicts. These states, however,

account for roughly one third of the U.S. population, showing their popularity for nuclear verdicts is not just a function of their size.

When comparing the frequency of nuclear verdicts to a state’s population, Florida is by far the most susceptible to nuclear verdicts. States such as Georgia and

Washington also host more than their expected share given their size. Seven states reached the Top 10 both in total nuclear verdicts and nuclear verdicts per capita during the 10-year period. Chapter 3 takes a deeper dive into the litigation and factors driving nuclear verdicts in those particular jurisdictions.

The median nuclear verdict in product liability cases peaked at \$36 million in 2022—a 50% rise over a decade.



Drivers of Nuclear Verdicts

Nuclear verdicts are fueled by a variety of factors inside and outside of the courtroom.

In the courtroom, plaintiffs' lawyers 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. Plaintiffs' lawyers may also suggest that jurors award a specific, exorbitant amount of damages or apply a method for calculating damages that will produce a nuclear verdict, knowing that jurors will often rely on such "anchors" in assessing damages even though they are completely arbitrary. Plaintiffs' lawyers also urge courts to combine the trials of multiple, unrelated plaintiffs—whose only connection is that they allege an injury from the same product—because this prejudicial tactic hides inadequacies in individual

cases and substantially raises the likelihood of a jury finding a defendant liable and returning a nuclear verdict.

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 not only enables such advertising and speculative claims but also contributes to nuclear verdicts by driving up award demands and widening the gap for parties to negotiate a reasonable settlement.

Finally, in the legislative arena, the plaintiffs' bar is engaged in a campaign

to pass laws that will lead to more nuclear verdicts. These include, for example, expanding damages available in actions such as wrongful death lawsuits and eliminating or weakening existing safeguards on excessive awards, such as statutory limits on noneconomic damages.

Real World Implications

Nuclear verdicts adversely affect society. The prospect of a nuclear verdict makes it more difficult to fairly resolve claims, leading to unnecessary litigation and appeals. Nuclear verdicts can threaten the viability of a business or the availability of a needed product, or create insurability problems for an entire industry.

For example, due in large part to nuclear verdicts, fewer companies offer

“Nuclear verdicts adversely affect society. The prospect of a nuclear verdict makes it more difficult to fairly resolve claims, leading to unnecessary litigation and appeals.”

insurance to commercial trucking companies and the cost has led many independent businesses to stop operating. Meanwhile, premiums for healthcare professionals in areas known for nuclear verdicts, such as Georgia and Illinois, are rising. Nuclear verdicts resulting from New York’s “Scaffold Law” have made it significantly more expensive to build schools and bridges, and difficult to develop needed affordable housing.

More nuclear verdicts also mean more “nuclear settlements,” as plaintiffs’ lawyers make higher demands, and businesses, understanding the risk, agree to settlement levels that would have been rejected as unreasonable only a few years earlier. This litigation inflation contributes to the increasing costs of everyday items and services—including food, housing, and medical care—and the cost of automobile, homeowners, and commercial insurance. Rising lawsuit costs can also inhibit job growth

and new investments for businesses or industries.

And the wildly varying damage awards to individuals who have experienced similar injuries and losses erode basic confidence in the rule of law.

Solutions

Legislators can adopt sound civil justice reforms that reduce the likelihood of excessive damage awards before they occur and respond to unjust awards that do occur.

Legislators can, for example, adopt reforms that do not permit lawyers to inappropriately file cases in areas known for nuclear verdicts, but rather where the plaintiff lives or the injury occurred. They can prohibit manipulative trial lawyer tactics, such as arbitrary anchoring arguments, or prejudicial practices, like multi-plaintiff trials, that fuel nuclear verdicts. Legislators and courts can also strengthen standards to screen unreliable scientific evidence used to generate

some of these verdicts. And they can require transparency and prohibit conflicts of interest in third party litigation funding and stop misleading practices in lawsuit ads.

Finally, legislators can reject proposals backed by the plaintiffs’ bar that would authorize more subjective forms of damages or weaken or repeal laws that have helped ensure that damages awarded provide reasonable compensation for a plaintiff’s injury.

Together, these actions can restore confidence, fairness, and predictability in jury awards.

Nuclear Verdict Trends

Chapter

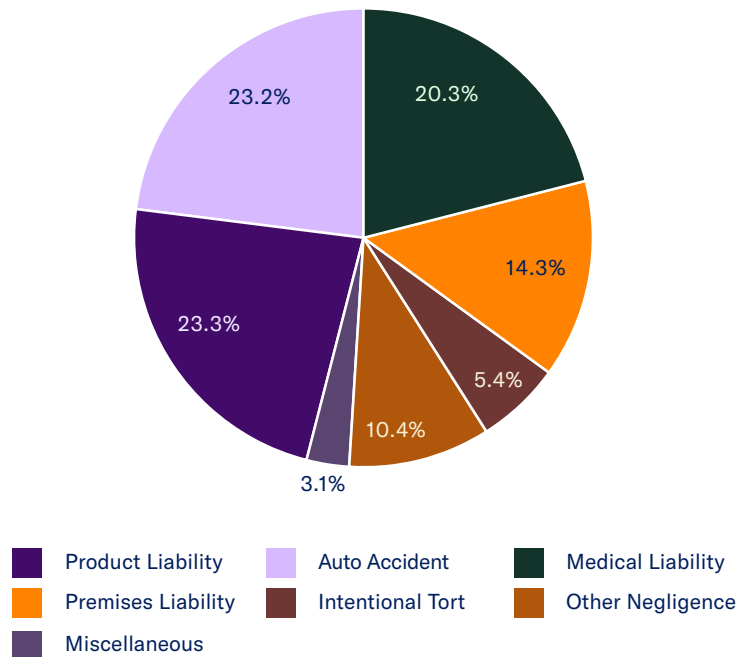
02

This paper analyzes 1,288 reported nuclear verdicts (jury verdicts of \$10 million or more) in personal injury and wrongful death cases over a 10-year period between January 1, 2013, and December 31, 2022. This period includes the COVID-19 pandemic, during which courts shut down or suspended trials.

Case Breakdown

Nationwide, nuclear verdicts in personal injury and wrongful death cases were most frequent in product liability (23.3%), auto accident (23.2%), and medical liability (20.3%) cases. These three areas made up two-thirds of nuclear verdicts in personal injury and wrongful death cases during the 10-year study period. The case-type breakdown has not significantly changed since the prior study.

Figure 1: Nuclear Verdicts by Case Type, 2013 – 2022



Product liability trials resulting in multiple nuclear verdicts included cases targeting talcum powder products, herbicides, automobiles, pelvic mesh implants, earplugs, and alleged exposure to polychlorinated biphenyls (PCBs). Asbestos claims and tobacco lawsuits also led to

dozens of nuclear verdicts during the study period.

Nuclear verdicts stemming from auto accidents arose in a wide range of cases involving severe injuries or deaths. While any auto accident case can involve catastrophic injuries and deaths, cases involving

commercial trucks, primarily tractor-trailers, are particularly susceptible to nuclear verdicts. Approximately one in four auto accident trials that resulted in a verdict of \$10 million or more involved a commercial trucking company.⁴

Common types of medical liability cases resulting in nuclear verdicts include lawsuits alleging that a child was born with permanent injuries due to complications during delivery that a healthcare provider might have avoided or that an elderly resident’s death resulted from substandard care at a nursing home.

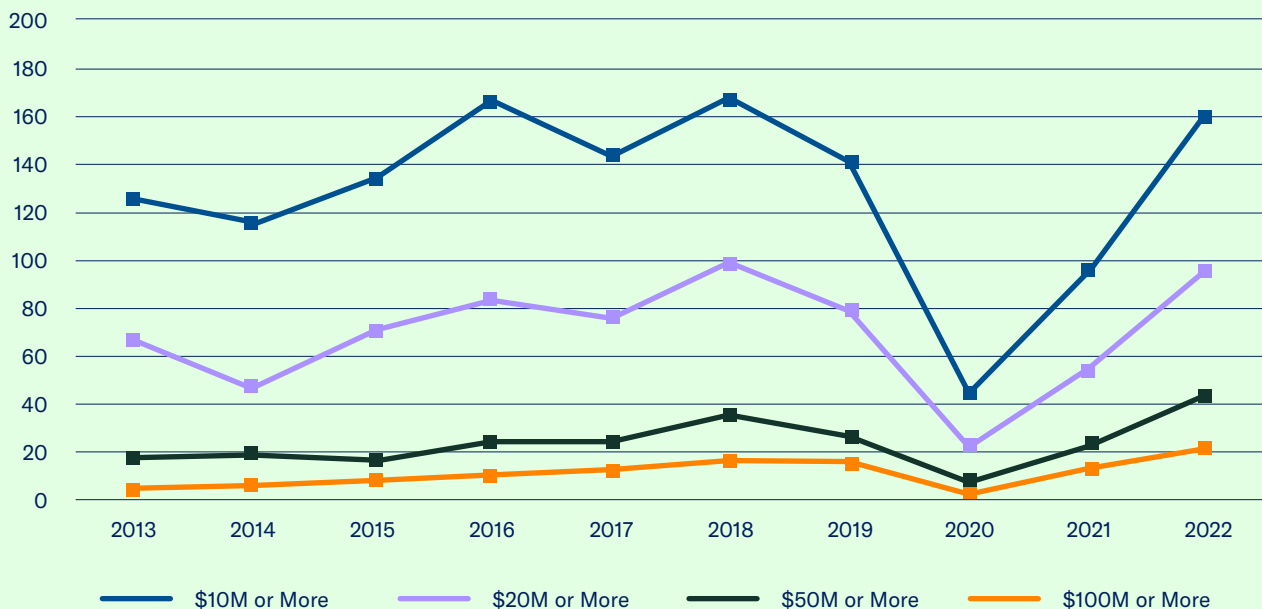
Premises liability (14.3%), other negligence (10.4%), intentional tort (5.4%), and other claims (3.1%) make up the remaining shares of nuclear verdicts in personal injury/wrongful

death litigation. Premises liability claims encompass a broad range of actions, from workplace injuries falling outside of the workers’ compensation system to an injury resulting from a falling tree. “Other negligence” claims include, for example, lawsuits alleging that a business negligently hired or supervised an employee who engaged in criminal conduct or lacked sufficient security to prevent a crime committed by a third party on its property. Intentional tort claims that result in nuclear verdicts are often civil actions against the

perpetrator of a serious crime; however, these cases also sometimes include business defendants. Given the egregious nature of many intentional torts, it is revealing that such serious misconduct comprises a relatively small overall percentage of nuclear verdicts. Awards stemming from negligence or other unintentional conduct and primarily targeting businesses, on the other hand, account for the vast majority of nuclear verdicts.

The case-type percentages vary from year-to-year but

Figure 2: Number of Reported Nuclear Verdicts, 2013 – 2022



did not change significantly over the 10-year period. As discussed in Chapter 3, however, the case mix varies significantly from state to state.

Nuclear Verdicts—Rising Trends

When excluding the pandemic years, the data shows an upward trend in the frequency of reported nuclear verdicts at all levels over the 10-year study period.

The number of reported nuclear verdicts fluctuates significantly each year, as can be expected given their

unpredictability and outlier nature (Figure 2). As anticipated, the frequency of nuclear verdicts dropped dramatically after courthouses largely shut down when the COVID-19 pandemic began in March 2020. The data indicates that nuclear verdicts rose again in the second quarter of 2021 and quickly returned to near pre-pandemic levels in the third quarter of 2021. The number of reported nuclear verdicts in 2022 was just shy of the record highs set in 2016 and 2018, and likely was still curtailed by judicial backlogs from the pandemic.

Nuclear Verdicts Are Growing in Size

The size of nuclear verdicts is rising. The median reported nuclear verdict for case types between 2013 and 2022 was \$21 million. Intentional tort cases had the highest median nuclear verdict (\$28.6 million), followed by product liability (\$25 million), miscellaneous cases (\$22.4 million), and auto accident (\$21 million). Medical liability, premises liability, and other negligence verdicts had a \$20 million median over the 10-year study period. The medians for all

Figure 3: Median Nuclear Verdict, 2013 – 2022

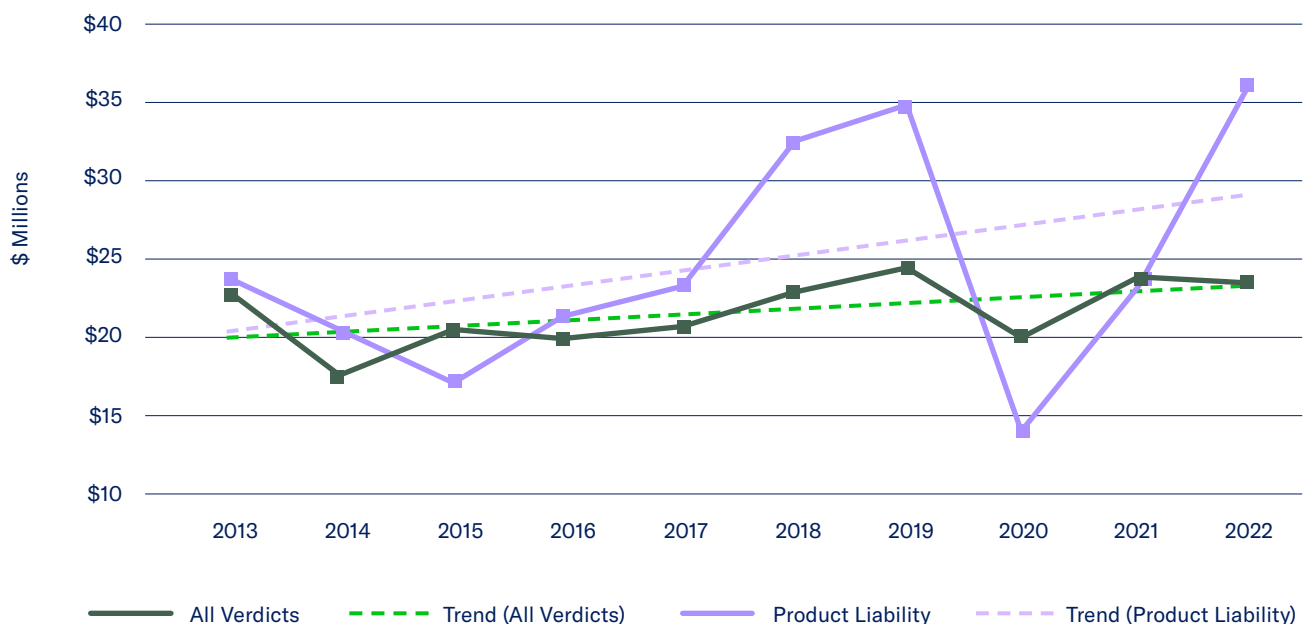


Table 1: Mean & Median Nuclear Verdict by Litigation Type, 2013 – 2022

Litigation Type	Mean	Median
Product Liability	\$215.9 Million	\$25.0 Million
Other Negligence	\$99.8 Million	\$20.0 Million
Intentional Tort	\$94.6 Million	\$28.6 Million
Auto Accident	\$46.4 Million	\$21.0 Million
Medical Liability	\$33.6 Million	\$19.6 Million
Premises Liability	\$32.5 Million	\$20.0 Million
Miscellaneous	\$31.5 Million	\$22.4 Million
All Personal Injury / Wrongful Death	\$88.9 Million	\$21.1 Million

nuclear verdict case types collectively in 2021 and 2022, were approximately \$23.8 million and \$23.4 million, respectively—levels exceeded only in 2019.

Overall, nearly half of nuclear verdicts (45.9%) were between \$10 million and \$20 million. Around one third of nuclear verdicts (35.6%) were between \$20 million and \$50 million. Awards of \$50 million or more constituted 18.6% of reported nuclear verdicts over the 10-year period. Between 2020 and 2022, however, 25% of nuclear verdicts reached this level.

While the median fluctuates from year to year, the data

shows an upward trend, which is more prominent when excluding pandemic years. Notably, as illustrated in Figure 3, the median nuclear verdict in product liability cases hit a record high of \$36 million in 2022, a rise of 50% from \$24 million in 2013 and significantly higher than the overall median for all other case types that year.

Means and Extremes

When deciding whether to go to trial or settle a case and, if so, how much is a reasonable settlement amount, businesses must consider the worst-case scenario. While the median nuclear verdict over the 10-year period is about

\$21 million, the mean is substantially higher—\$89 million (Table 1). The higher average verdict results from the occasional award in the hundreds of millions or billions of dollars. Mean computations in this paper exclude, however, a symbolic \$301 billion verdict in a 2021 Texas action alleging a pub oversold alcohol to an intoxicated patron (including \$1.04 billion in “actual damages” and \$300 billion in punitive damages),⁵ an outlier even for nuclear verdicts.

Compared to the previous study, the mean nuclear verdict for all claims rose from \$76 million (2010-19) to \$89 million (2013-22), largely due to an increase in the size of awards in product liability, auto accident, and other negligence trials.

As illustrated in Figure 2, like other nuclear verdicts, the frequency of mega nuclear verdicts (\$100 million or more) is rising. There were 115 reports of personal injury or wrongful death verdicts at this level during the 10-year study period. This included 96 reported verdicts

between \$100 million and \$500 million, five verdicts between \$500 million and \$1 billion, and 14 verdicts of \$1 billion or more. The risk of a mega nuclear verdict is greatest in product liability actions, which accounted for one third of nuclear verdicts of \$100 million or more. In 2022, there were a record number of verdicts at this level (22). Preliminary data indicates that this record was shattered in 2023.

Such extraordinary awards are often significantly reduced by a trial court or reversed on appeal. For example, an \$8 billion punitive damage award in a 2019 Philadelphia product liability trial involving the antipsychotic drug Risperdal was reduced by the trial court to \$6.8 million⁶—a more than 99.99% reduction—after which the case settled out of court as appeals progressed. These “send-a-message” verdicts are also, in some cases, symbolic and uncollectable, particularly when imposed on an individual or small business.

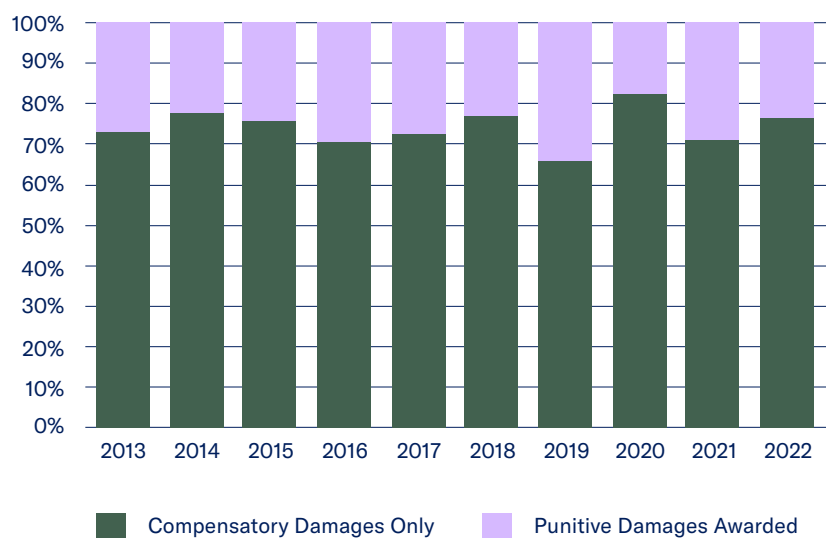
Nevertheless, a business facing litigation must consider the cost of a lengthy appeal that will follow, and the damage to its brand and harm to shareholders from adverse publicity, even if a court ultimately overturns the judgment or reduces the award to a fraction of its original size. When a mega nuclear verdict is reduced or uncollectable, plaintiffs’ lawyers often still tout the award in television, social media, and website advertising to solicit clients to bring new cases (discussed in Chapter 4).

Punitive vs. Non-Economic Damages

Mega nuclear verdicts typically (but not always) include a substantial punitive damage award. For example, all but one of the 14 nuclear verdicts exceeding \$1 billion during the 10-year study period were primarily punitive damage awards. Most “ordinary” nuclear verdicts, however (74% during the 10-year period), are entirely compensatory damages.

The U.S. Supreme Court’s adoption of due process safeguards that protect against excessive punitive

Figure 4: Percentage of Nuclear Verdicts Including a Punitive Damage Award, 2013 – 2022



damage awards, combined with state legislative reforms, have left personal injury lawyers to seek alternative ways to obtain jackpot judgments. As discussed later in this paper, the result is that some plaintiffs' lawyers purposefully inflame juries and improperly urge them to "send a message" through pain and suffering and other forms of noneconomic damage awards. The data supports this observation. While intentional tort and product liability cases are more likely to include a punitive damages element than other types of litigation, overall, three-quarters of reported nuclear verdicts during the 10-year study period did not include a punitive damage award.

As litigators have observed, pain and suffering awards are "the biggest component of most nuclear verdicts" because "[t]he plaintiffs' bar knows how to successfully argue for large non-economic damages."⁷

Jury verdict reports do not consistently or uniformly

break down compensatory damages between economic and noneconomic damages. In addition, some states do not require separate awards for economic and noneconomic damages, or they award elements of damages that combine the two. As a result, it is not possible in every case to track the size of the noneconomic damage award or compare the proportion of economic damages and noneconomic damages.

"The U.S. Supreme Court's adoption of due process safeguards that protect against excessive punitive damage awards, combined with state legislative reforms, have left personal injury lawyers to seek alternative ways to obtain jackpot judgments."

More than half of the reported nuclear verdicts in the data set (729 verdicts) include a full breakdown of damage types. Within this subset of data, economic damages, such as amounts

to cover lost income, medical expenses, or other measurable financial losses, accounted for just 10.2% of the total amount awarded in nuclear verdicts during the 10-year study period. Noneconomic damages and punitive damages accounted for 37.4% and 52.4%, respectively. These figures are skewed, however, due to punitive damage awards in the hundreds of millions and billions of dollars. Even including these outliers (but still excluding the \$301 billion verdict discussed above), in seven of the 10 years of subset data, the total amount of noneconomic damages awarded in nuclear verdicts exceeded the total amount in punitive damages. In six of those 10 years, the total amount of noneconomic damages awarded exceeded the total amount of economic damages and punitive damages combined.

State Courts vs. Federal Courts

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.⁸ The data supports that perception. Nuclear verdicts were far more frequent in state courts than federal courts. State courts hosted nine out of 10 reported nuclear verdicts in personal injury and wrongful death cases during the 10-year study period. Federal courts hosted just 140 of 1,288 reported nuclear verdicts (about 11%) and 15 of 115 reported mega nuclear verdicts (13%). While this may, in part, reflect that most tort claims are decided in state courts, federal courts during the study period, until recently, hosted an increasing number of product liability cases.⁹

Preliminary 2023 Data

Preliminary data includes 129 reported nuclear verdicts in 2023 in personal injury and wrongful death cases. As explained in the Executive Summary, this data is still subject to

“Nuclear verdicts were far more frequent in state courts than federal courts. State courts hosted nine out of 10 reported nuclear verdicts in personal injury and wrongful death cases during the 10-year study period.”

change because there is often a significant lag period between when a verdict is rendered and when it is reported and added to a legal research database (see Methodology in Chapter 7). However, based on the preliminary data, the median 2023 nuclear verdict of \$23.8 million has not significantly changed from the preceding two years, a level that is higher than the median from the full 10-year period (\$21.1 million). The preliminary data also indicates a significant upward shift in award levels in 2023. While 45.9% of nuclear verdicts in the 10-year study period were between \$10 million and \$20 million, in 2023, just 31.8% fell in the lowest range. Instead, 44.2% of reported nuclear verdicts were between \$20 million and \$50 million. As noted earlier, the number of reported

verdicts above \$100 million hit an all-time high in 2023 (at least 23). This would represent a near 400% increase in \$100 million-plus verdicts since 2013.

The preliminary data also indicates that the proportion of nuclear verdicts stemming from medical liability trials in 2023 jumped to nearly 30% (from about 20% during the preceding 10 years). This finding is consistent with a recent analysis by TransRe, an international reinsurance company, which found that “2023 blew away every record previously set among high medical malpractice verdicts.”¹⁰ The proportion of nuclear verdicts in other areas, according to the preliminary 2023 data, did not change significantly, except for premises liability cases, which dropped to about 9% of the total.

Top States for Nuclear Verdicts

Chapter

03

Most nuclear verdicts result from trials conducted in a few states. These states produce the highest levels of nuclear verdicts even when accounting for population differences.

California and Florida are virtually tied for generating the most nuclear verdicts over the 10-year period including 2013 through 2022, followed by New York and Texas. Courts in these four states consistently produce half of the nation's nuclear verdicts. Other states that are prone to nuclear verdicts include Georgia, Illinois, and Pennsylvania. Rounding out the Top 10 jurisdictions for most nuclear verdicts are Washington, Missouri, and Ohio. Together, the Top 10 states accounted for nearly three-quarters of all personal injury and wrongful death verdicts over \$10 million during the 10-year study period.

Seven of the Top 10 states for generating nuclear verdicts also ranked in the Top 10 in terms of nuclear verdicts “per capita”: Florida, New York, Georgia, California, Illinois,

Washington, and Missouri. This “per capita” ranking considers the number of nuclear verdicts based on the average state population during the 10-year study period, according to U.S. Census Bureau data. The per capita computation shows that the larger states produce the highest levels of nuclear verdicts even when accounting for population differences. For example, California's high

“Courts in [California, Florida, New York, and Texas] consistently produce half of the nation's nuclear verdicts.”

total of nuclear verdicts is not simply attributable to being the most populous state; California still ranked eighth when taking its large population into account.

Figure 5: Top 10 States by Cumulative Nuclear Verdicts, 2013 – 2022

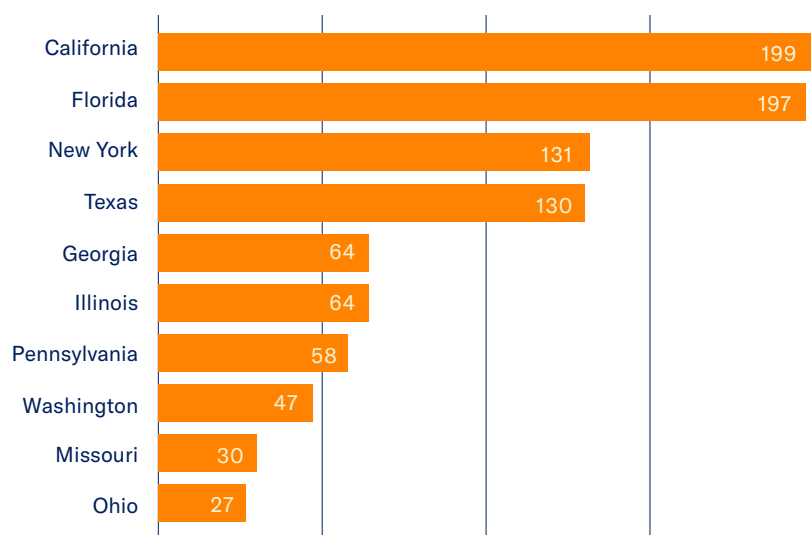


Table 2: Top 10 States by Per Capita Nuclear Verdicts, 2013 – 2022¹¹

State	Per Capita Rank	Cumulative Rank (From Figure 5)	Average State Population	Nuclear Verdicts per 100K People
Florida	1	2	20,975,886	0.939
New York	2	3	19,741,604	0.664
Washington	3	8	7,429,799	0.633
Georgia	4	5 (tie)	10,461,694	0.612
New Mexico	5	-	2,096,622	0.572
Rhode Island	6	-	1,068,310	0.562
Wyoming	7	-	581,307	0.516
California	8	1	39,182,465	0.508
Illinois	9	5 (tie)	12,770,239	0.501
Missouri	10	9	6,116,383	0.490

Florida produced significantly more nuclear verdicts during the study period on a per capita basis than any other jurisdiction. Georgia rose from the seventh most frequent state for nuclear verdicts during the 2010-19 period to tying with Illinois—a larger state with a history of nuclear verdicts—

during 2013-22. On a per capita basis, Georgia rose from eighth to fourth. Washington joined the Top 10 per capita list, largely as a result of recent nuclear verdicts in trials alleging injuries from PCB exposure.

Texas and Pennsylvania, two states that have among the most nuclear verdicts,

fell just outside the Top 10 per capita list, ranking 12th and 13th respectively. Courts in these two states have continued to host verdicts in the hundreds of millions of dollars recently.¹²

New Jersey, which placed eighth in frequency of nuclear verdicts during the previous study period

The per capita computation shows that the larger states produce the highest levels of nuclear verdicts even when accounting for population differences.



(2010-19), fell off the Top 10 list (placing 11th). This drop appears to reflect that virtually no mass tort cases went to trial in New Jersey from the outset of the pandemic until late 2022,¹³ and that there has been a substantial backlog of civil cases in state courts.¹⁴ This could soon change as trials resume and as New Jersey experiences a new surge of mass tort litigation.¹⁵

Each state that is a hot spot for nuclear verdicts has its own unique mix of litigation and factors that contribute to the frequency of these extraordinary awards. The discussion below takes a closer look at the seven states that appear on both the Top 10 “total” and “per capita” lists for the 2013 through 2022 period.

California

199 Reported Nuclear Verdicts | \$9B Awarded | Median \$22M

California hosted the most reported nuclear verdicts between 2013 and 2022, competing with Florida for the top spot across the

study period. As indicated above, California also ranks eighth for nuclear verdicts per capita, demonstrating that the number of nuclear verdicts in the Golden State does not stem from its population but is driven by its liability-friendly laws and courts.

In California, auto accident cases had the lead share of nuclear verdicts (35.2%), while product liability came next (22.6%).

Examples of California’s nuclear verdicts since 2020 in the product liability area include asbestos claims brought by workers or their spouses (including \$43.3 million and \$52.1 million verdicts), and a \$107.3 million verdict to the family of a janitor who died after developing mesothelioma, which was later thrown out as unsupported by the evidence and excessive.¹⁶

There is also a pair of verdicts blaming talcum powder products for plaintiffs’ development of mesothelioma (\$26.5 million and \$27.4 million).¹⁷ Still in

recent memory are \$289 million (2018) and \$2 billion (2019) verdicts in cases alleging that using Roundup caused plaintiffs to develop non-Hodgkin’s lymphoma.¹⁸ These blockbuster verdicts continued in October 2023 when a San Diego jury returned a \$332 million verdict (including \$325 million in punitive damages) in a Roundup trial.¹⁹

“As indicated above, California also ranks eighth for nuclear verdicts per capita, demonstrating that the number of nuclear verdicts in the Golden State does not stem from its population but is driven by its liability-friendly laws and courts.”

In addition, in 2023, an Orange County court reached a \$161 million verdict against a motorcycle manufacturer. That verdict came in a trial in which the plaintiff struck an SUV that had abruptly stopped as the other driver attempted to cross three lanes of traffic to turn left out of a shopping center parking

lot. The plaintiff blamed the accident on the failure of the motorcycle's front brake to work properly.²⁰

Several recent auto accidents involving truck collisions have resulted in nuclear verdicts at levels including \$45.2 million, \$52.9 million, and \$70.6 million. Perhaps the most extraordinary outcome was a \$36 million verdict in Los Angeles County to the family of a 26-year-old motorcyclist (\$18 million to each parent). The motorcyclist died after he hit a pickup truck that, video reportedly showed, was slowly turning out of a driveway.²¹ While the defendant contended that the motorcyclist was going 80 mph on a 35 mph road and had methamphetamine in his system, the jury found the pickup truck driver exclusively responsible for the accident.²²

In a premises liability case, a California hotel was hit with a \$60 million verdict (to which \$30 million was added in prejudgment interest) in a case alleging its employees failed to

discover that a guest had suffered a brain aneurysm in her room after her husband asked the staff to check on her.²³

In one area, California is far less prone to nuclear verdicts than other states. Only 5.5% of California's nuclear verdicts during the study period resulted from medical liability claims (compared to 20.3% nationally). This significant difference may reflect that California's limit on noneconomic damages in healthcare liability actions provides stability in awards and facilitates settlements. That limit stood at \$250,000 since enacted in 1975, but, following a ballot initiative in January 2023, increased to \$350,000 in cases involving injuries and \$500,000 in cases involving a patient death. Those limits will further rise over the next ten years to \$750,000 and \$1 million, respectively, and be subject to a 2% annual inflation adjustment thereafter. These changes will inevitably lead to higher medical liability awards, but California's limits will

continue to constrain nuclear verdicts that can jeopardize the availability of affordable healthcare.

While nuclear verdicts in general occurred across California, Los Angeles County was the most popular area, making up more than one third of the verdicts over \$10 million.

Florida

197 Reported Nuclear Verdicts | \$33B Awarded | Median \$19M

That Florida rivals California for the most nuclear verdicts is surprising given that Florida's population is roughly half that of the Golden State. Florida hosts, by far, the most nuclear verdicts per capita.

Nearly two-thirds of Florida's nuclear verdicts in personal injury and wrongful death cases resulted from product liability (39.1%) and auto accident trials (25.9%) during the study period. This is far higher than the proportion of nuclear verdicts coming from product liability cases nationally (23.3%) and slightly higher than auto

“Florida is more prone to punitive damage awards than other states. During the study period, 36.5% of nuclear verdicts in Florida included a punitive damage element compared to 26% nationally.”

accident cases (23.2%) overall. The 2020 through 2022 period shows some shifting—the proportion of nuclear verdicts associated with product liability trials slightly declined during that three-year period (34.2%) in Florida, while the share resulting from auto accident trials surged (31.7%).

This mix of cases reflects Florida’s continuing, unique tobacco litigation, including a \$43 million verdict in 2021,²⁴ as well as the aggressiveness of the state’s personal injury bar in auto accident cases.

Some of Florida’s highest nuclear verdicts in recent years include trucking accidents. For example, an October 2020 Zoom trial resulted in a \$411.7 million verdict against a trucking company in a case involving a motorcyclist who was severely injured

when he attempted to avoid a 45-car pileup ahead of him and crashed into a truck that had stopped in the emergency lane.²⁵ A jury awarded another \$1 billion against two trucking companies in August 2021, after a semi driver rear-ended a line of cars that had stopped due to another accident, killing a teenage driver.²⁶ Another trial stemming from an accident with a city utility vehicle resulted in a \$120 million verdict in May 2021.²⁷

Florida’s federal multidistrict litigation over whether combat earplugs adequately protected users from hearing loss and tinnitus resulted in a \$110 million verdict to two plaintiffs in January 2022 (\$55 million each),²⁸ followed by \$50 million and \$77.5 million verdicts to two other plaintiffs in March and May that year.²⁹

Florida is more prone to punitive damage awards than other states. During the study period, 36.5% of nuclear verdicts in Florida included a punitive damage element compared to 26% nationally.

As the study period concludes in 2022, it is too early to evaluate whether Florida’s 2023 enactment of landmark tort reform legislation, which included provisions addressing inflated damages for medical care,³⁰ will curb nuclear verdicts in the Sunshine State.

While courts across the state host trials that have produced nuclear verdicts, Broward County and Miami-Dade County were the most frequent areas for such awards.

New York

131 Reported Nuclear Verdicts | \$4B Awarded | Median \$20M

Unlike other states, New York’s nuclear verdicts are concentrated in premises liability (26%) and medical liability (25.2%) trials, with

auto accident cases coming in third (19.9%) during the study period.

A significant contributor to New York's premises liability verdicts is the state's unique 19th-century "Scaffold Law," which subjects employers to "absolute liability" in the tort system for falls at construction sites,³¹ rather than compensating those who are injured through the workers' compensation

system. Whether a worker's carelessness caused his or her own injury—even if the worker was under the influence of alcohol or drugs while at work—is considered irrelevant to liability.³² Trials of Scaffold Law claims resulted in a \$48 million verdict in 2022³³ and a \$53.5 million verdict in 2023.³⁴

Medical liability cases often result in substantial awards in New York. The

Empire State has the highest payouts in medical liability cases of any state, at \$434 million in 2022, also coming in at first per capita.³⁵ Historically, New York's medical liability payouts have dwarfed those of the next highest state, Pennsylvania, and rival the payouts of the entire western United States combined.³⁶ While these figures include payments

A significant contributor to New York's premises liability verdicts is the state's unique 19th-century "Scaffold Law," which subjects employers to "absolute liability" in the tort system for falls at construction sites, rather than compensating those who are injured through the workers' compensation system.



resulting from settlements as well as verdicts, the risk of a nuclear verdict in New York influences settlement demands.

Although product liability cases make up a smaller share of nuclear verdicts in New York than nationwide (13% in New York compared to 23.3% nationally), those awards include verdicts stemming from New York City’s active asbestos litigation docket. Three asbestos cases resulted in verdicts ranging between \$15 million and \$28.5 million since 2020, for example. In addition, New York’s 2019 “reviver” of decades-old childhood sexual abuse claims has resulted in several substantial verdicts, though it appears that claims against organizations alleging that they failed to prevent misconduct typically settle before trial.

Nuclear verdicts in New York are less likely to include punitive damages than in other states. Just 6.1% of nuclear verdicts in New York between

2013 and 2022 included a punitive damages element, compared to 26% nationwide. This may reflect that while New York does not have a statutory cap on punitive damages, its courts have traditionally permitted them only in cases involving malicious or the most irresponsible conduct.

Instead, New York personal injury lawyers urge jurors to return extraordinary noneconomic damage awards. These anchoring tactics contribute to excessive awards in the Empire State. In recent years, plaintiffs’ lawyers have asked New York juries to return amounts as high as \$140 million for pain and suffering.³⁷ In some cases, juries returned the exact amount requested or “compromised” with a still-extraordinary verdict that was clearly influenced by the amount the lawyer urged them to award. Local attorneys observe that these practices are becoming more bold, with plaintiffs’ lawyers asking for amounts that, just a few years ago, they

would have been hesitant to offer for fear that a jury would consider the request outrageous.³⁸ These awards are often significantly reduced on appeal,³⁹ however, New York’s appellate division has repeatedly declined to consider whether plaintiffs’ lawyers may ask for damages at levels state courts have never sustained as “reasonable compensation” in comparable cases.⁴⁰

For many years, New York appellate courts had maintained a de facto \$10 million limit on noneconomic damages for the most catastrophic of injuries. They did so by applying a state law that permits judges to review whether an award is excessive because it “deviates materially from what would be reasonable compensation.”⁴¹ This law allows New York courts to objectively compare the amount of prior awards sustained on appeal involving individuals with similar injuries when reviewing the size of a verdict, rather than apply

a vague, plaintiff-friendly “shocks the conscience” approach. Recent verdicts, however, have breached this cap, leading plaintiffs’ lawyers to argue in settlement negotiations that the \$10 million limit “is kaput.”⁴² As a result, nuclear verdicts and settlements are even more likely in New York.

Nuclear verdicts in New York are most common in New York City, Kings County (Brooklyn), and Bronx County.

Georgia

64 Reported Nuclear Verdicts | \$6B Awarded | Median \$24M

Georgia has had a series of nuclear verdicts that are concentrated in medical liability (28.1%) and premises liability (25%) cases, followed by auto accident, product liability, and other negligence (15.6% each) trials. After an expected drop-off during the pandemic, Georgia set its record for nuclear verdicts in 2022. Georgia’s nuclear verdicts per capita significantly rose from

the earlier study period (2010-19) to the current period (2013-22) when most other states fell because of trial delays during the pandemic. While data for 2023 is incomplete, it already indicates that Georgia broke the record it set the prior year.

“Georgia is one of a handful of states that has codified a rule allowing plaintiffs’ lawyers to urge juries to return any amount of damages for pain and suffering, no matter how extraordinary.”

Though product liability cases make up a relatively small share of Georgia’s nuclear verdicts, its most extraordinary award in recent years is in that sphere. In August 2022, a Gwinnett County jury awarded \$1.7 billion in punitive damages, on top of \$24 million in compensatory damages, against Ford in a trial alleging that a couple would have survived a tragic rollover accident if their pickup truck had a stronger roof. That verdict, which is

on appeal,⁴³ resulted after a trial court precluded Ford from presenting its defense as a sanction for an expert witness straying into an area that the judge had found off limits. The state attorney general has separately appealed to protect the state’s interest in collecting its 75% share of the punitive damage award, as provided by Georgia law.⁴⁴

Georgia has also experienced a string of nuclear verdicts in cases alleging that a business was responsible for a criminal attack on or near its property due to inadequate security. These cases followed a 2017 Georgia Supreme Court ruling that held that businesses can be held liable for attacks that are “foreseeable.”⁴⁵ A recent Georgia Supreme Court ruling upholding a \$43 million verdict against CVS stemming from a robbery attempt in the store’s parking lot is likely to make Georgia even more prone to these types of awards. In that case, the court ruled that when a jury

considers foreseeability, it must consider the “totality of circumstances relevant to the premises” on a “case-by-case basis,” rather than require a plaintiff to show substantially similar crimes previously occurred on the property.⁴⁶ As a result, business owners risk liability simply because they operate in high-crime areas.⁴⁷

Wrongful death cases in Georgia are also particularly susceptible to astronomical verdicts because state law uniquely asks jurors to award damages for the “full value of life,” which incorporates both economic and noneconomic elements.⁴⁸ That type of award has led some juries, either due to sympathy for a plaintiff or a desire to send a message to a defendant, to return extraordinary amounts.

In personal injury cases, Georgia juries return awards for “general damages,” such as for pain and suffering, without any proof of their amount.⁴⁹ Georgia is one of a handful of states that

has codified a rule allowing plaintiffs’ lawyers to urge juries to return any amount of damages for pain and suffering, no matter how extraordinary.⁵⁰ In the CVS case, for example, the plaintiff’s lawyer asked for \$57 million in damages and the jury returned a \$45 million award (with 5% of the fault allocated to the plaintiff).⁵¹

Some other examples of nuclear verdicts in Georgia since 2020 include \$200 million in a product liability action involving a boy who died in a boating accident,⁵² \$160 million against Sony Music stemming from a shooting at an Atlanta rap concert,⁵³ \$127 million against an auto component manufacturer in a case alleging a seatbelt failed to protect a driver,⁵⁴ \$77 million against an addiction treatment center after a discharged bipolar patient laid down on the interstate,⁵⁵ and \$75 million against healthcare providers for failing to diagnose a stroke.⁵⁶

While some of Georgia’s nuclear verdicts, such as the Ford case, include substantial punitive damage awards, Georgia is on par with the experience of other states in that three-quarters of these awards are entirely compensatory damages. As noted, awards for pain and suffering and the full value of life, which are intended to be compensatory but sometimes used to punish a defendant, contribute to Georgia’s nuclear verdicts.

Georgia’s nuclear verdicts came from across the state, though DeKalb, Fulton, and Gwinnett counties hosted the largest share.

Illinois

64 Reported Nuclear Verdicts | \$2B Awarded | Median \$20M

Of the Top 10 states for nuclear verdicts, Illinois had, by far, the largest proportion of medical liability cases (39.1%) during the 10-year study period. This percentage is nearly double the national average (20.3%). Product liability cases were second

most frequent in Illinois (20.3%), followed by premises liability (14.1%). Auto accidents made up a low percentage of Illinois's nuclear verdicts, just 9.4% compared to 23.2% nationally.

Nuclear verdicts in Illinois in 2021 and 2022 included medical liability verdicts of \$14.75 million, \$42.4 million, \$45.3 million, and


\$49.5 million. Other nuclear verdicts included \$23 million in an asbestos case, \$18.2 million in an accident in which a truck hit a stopped vehicle, and \$10.8 million in a negligent security case against an apartment building owner.

A notable verdict included \$33.5 million against the Village of Dolton after a driver led police on a high-

speed chase, rather than pull over, after he rolled through a stop sign. The jury held the town liable for its officers' failure to abandon the pursuit, awarding the two passengers in the vehicle, one who died and one who was severely injured, \$10 million and \$23 million, respectively.⁵⁷

Illinois' largest nuclear verdict during the 10-year

Legislatively, Illinois is moving in a direction that will make the state more prone to nuclear verdicts.



study period, \$363 million, resulted from a lawsuit alleging that emissions from a medical tool sterilization company's plant led to the breast cancer diagnosis of a woman who lived nearby. It was reportedly the first of 800 lawsuits making similar claims to go to trial. The verdict included \$38 million in compensatory damages and \$325 million in punitive damages. The amount was slightly above the \$346 million the plaintiffs' lawyers urged the jury to award in closing arguments.⁵⁸

Thus far, preliminary data for 2023 includes reports of at least six nuclear verdicts in Illinois courts, half of which were in medical liability cases, ranging from \$14 million to \$40 million. They also include a \$40.75 million asbestos verdict and a \$43.8 million verdict involving a truck accident.

Legislatively, Illinois is moving in a direction that will make the state more prone to nuclear verdicts. In 2023, the state amended its Wrongful Death Act to authorize punitive damage awards,

which are not subject to any limitation.⁵⁹ Two years earlier, Illinois enacted legislation establishing a 6% prejudgment interest rate on personal injury and wrongful death actions, which will effectively make nuclear verdicts even higher.⁶⁰

All but a handful of Illinois' nuclear verdicts in state courts came from the Cook County Circuit Court. Federal courts in Illinois hosted about a dozen nuclear verdicts

Washington

47 Reported Nuclear Verdicts | \$2B Awarded | Median \$19M

Washington's nuclear verdicts stemmed primarily from product liability trials (29.8%) and medical liability trials (25.5%). Premises liability trials placed third (17%).

State courts have hosted a series of nuclear verdicts in trials in which teachers, students, and parents allege that exposure to polychlorinated biphenyls (PCBs) in old fluorescent light fixtures at the Sky

Valley Education Center caused neurological and other health conditions. The homeschool education center, roughly 35 miles northeast of Seattle, installed these lights well before the Environmental Protection Agency banned the chemicals in 1979. Monsanto spinoff Pharmacia LLC, which has not produced PCBs for a half-century, disputes the contention that PCB exposure is the source of the plaintiffs' health problems and says the school ignored its repeated warnings since the 1990s to retrofit the lights.⁶¹ These cases have been largely tried in groups in the King County Superior Court. They have resulted in verdicts at astounding levels including \$62 million (2021) and \$21.4 million, \$82 million, and \$275 million (2022). They continued outside the study period with verdicts of \$72 million, \$165 million, and \$857 million in 2023.⁶² Thus far, these verdicts total about \$1.74 billion.⁶³

Washington also hosted nuclear verdicts in other types of litigation.

For example, in 2021, a Pierce County jury awarded \$91 million against the owner of a convenience store after a robber severely beat a customer who was attempting to call 911.⁶⁴

“More than half of Washington’s nuclear verdicts during the study period originated from King County.”

During the 10-year study period, 17% of Washington’s nuclear verdicts included punitive damages, a level lower than the national average (26%). Between 2020 and 2022, however, Washington exceeded the national average with nearly 30% of its nuclear verdicts containing punitive damages. This level rises to 38% when including preliminary 2023 data. This is notable because Washington law generally does not permit punitive damages in personal injury claims, allowing them only when specifically authorized by statute.⁶⁵ Most of these

cases stem from the Sky Valley litigation. In those cases, Washington courts have applied the law of Monsanto’s home state, Missouri,⁶⁶ effectively circumventing this restriction as well as Washington’s 12-year statute of repose on product liability claims.⁶⁷ Other cases in which Washington courts awarded punitive damage arose under federal statutory or common law.

Washington does not limit noneconomic damages, as the state supreme court invalidated a statutory maximum based on a multiple of the average annual wage and plaintiff’s life expectancy in 1989.⁶⁸

More than half of Washington’s nuclear verdicts during the study period originated from King County. Pierce County and the U.S. District Court for the Western District of Washington also hosted several nuclear verdicts.

Missouri

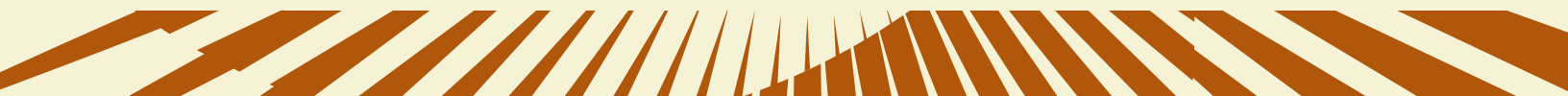
30 Reported Nuclear Verdicts | \$6B Awarded | Median \$26M

Missouri’s nuclear verdicts during the 10-year study period stemmed primarily from product liability trials (36.7%), followed by equal shares resulting from medical and premises liability trials (20%).

In 2016, *Bloomberg* observed that St. Louis had developed a reputation for “fast trials, favorable rulings, and big awards,” drawing product liability lawsuits of out-of-state plaintiffs to Missouri.⁶⁹ For example, Missouri hosted a series of trials stemming from lawsuits alleging that talcum products caused a plaintiff’s ovarian cancer, including a \$72 million verdict in 2016,⁷⁰ a \$110.5 million verdict in 2017,⁷¹ and a \$4.69 billion verdict (\$550 million in compensatory damages and \$4.14 billion in punitive damages) to 22 women in 2018.⁷² A more recent St. Louis talc trial that included three

Nearly half of Missouri's nuclear verdicts during the study period included punitive damages

Missouri Supreme Court decisions ... diluted the standard for awarding punitive damages and invalidated a statutory cap on them in 2014.



plaintiffs, however, ended in a defense verdict in 2021.⁷³

Nearly half of Missouri's nuclear verdicts during the study period included punitive damages (46.7%). This level indicates that Missouri courts are more prone to awarding punitive damages than other states. Facilitating such a rise, Missouri Supreme Court decisions had diluted the standard for awarding punitive damages⁷⁴ and invalidated a statutory cap on them in 2014.⁷⁵

The Missouri legislature responded by raising the burden of proof and adopting a heightened standard for punitive damages in an attempt to restore punitive damages to their intended purpose.⁷⁶ That change took effect in late 2020. Yet, there are indications that Missouri's propensity for nuclear verdicts continues.

In November 2023, a Cole County Circuit Court trial resulted in a \$1.56 billion verdict against Monsanto to three plaintiffs who

blamed Roundup for their development of non-Hodgkin's lymphoma. Each plaintiff received \$500 million in punitive damages in addition to compensatory damages of \$5.6 million, \$17.5 million, and \$38 million.⁷⁷ The trial court judge later reduced the punitive damage portion of the award by two-thirds from \$1.5 billion to \$549.9 million.⁷⁸

Another recent notable nuclear verdict, \$745 million (primarily punitive damages), resulted from a case in which a 20-year-old driver who had passed out after inhaling a food propellant crashed his SUV into the plaintiff's car and killed her. The family sued the distributor of the product and the local smoke shop that sold it, claiming that they knew customers purchased the

product, which includes nitrous oxide, intending to get high. A St. Louis County jury found the distributor 70% responsible, the smoke shop 20% responsible, and the driver just 10% at fault.⁷⁹

Preliminary 2023 Data

The top states for nuclear verdicts in 2023 in order of frequency, according to preliminary data, are California, New York, Florida, Georgia, Texas, Pennsylvania, Illinois, and Louisiana. If these results hold firm once complete data collection for 2023 is possible, Georgia's movement into the top four, exceeding Texas, a state three times its population, and falling just shy of Florida, will reaffirm that Georgia courts have become particularly prone to excessive awards.

“If these results hold firm once complete data collection for 2023 is possible, Georgia's movement into the top four, exceeding Texas, a state three times its population, and falling just shy of Florida, will reaffirm that Georgia courts have become particularly prone to excessive awards.”

Fueling Nuclear Verdicts

Chapter

04

Tactics used by plaintiffs’ lawyers—including the ways in which litigation is argued, advertised, and funded—can each contribute to a nuclear verdict. Expansions in the scope of state wrongful death acts and the misuse of procedural rules to hold multi-plaintiff trials also facilitate nuclear verdicts.

There are several factors that contribute to excessive verdicts. Plaintiffs’ lawyers engage in tactics that inflame juror emotions, misuse noneconomic damage awards to “send a message” rather than provide reasonable compensation for an injury, and engage in “anchoring,” in which they manipulate juries into awarding arbitrarily high amounts. In some instances, courts have combined the claims of multiple plaintiffs into a single trial, which raises serious due process concerns and significantly increases the likelihood of a nuclear verdict. In addition, money poured into advertising to generate mass tort litigation, which often touts and normalizes extraordinary verdicts, and the growing use of outside

funding to underwrite these campaigns also play a part. Legislative efforts to expand damages available under state wrongful death acts, if successful, may fuel more nuclear awards in the future.

Reptile Tactics

Plaintiffs’ lawyers have embraced “an array of tactics” consistent with the “reptile theory” to manipulate jurors to award damages based on raw emotion and perceived threats rather than the evidence presented at trial.⁸⁰ These tactics aim to instill a sense of danger in jurors’ minds to suggest that unless they render a verdict that “sends a message” and effectively punishes the defendant, they are doing a disservice to the community and

endangering the public and themselves. The idea behind this strategy is to make jurors feel threatened and angry, so they lash out at their perceived attackers.⁸¹

“Plaintiffs’ lawyers engage in tactics that inflame juror emotions, [and] misuse noneconomic damage awards to ‘send a message’ ...”

A 2009 book coauthored by a trial lawyer and a jury consultant, called “Reptile: The 2009 Manual of the Plaintiff’s Revolution,”⁸² is credited with mainstreaming this approach to litigation, even though the pseudoscience underlying the reptile

theory has largely been debunked. Nevertheless, these tactics can be persuasive in the courtroom because they elicit strong negative emotions from jurors while diverting jurors' attention away from facts and evidence needed to evaluate whether a defendant is responsible for a plaintiff's injury and, if so, an amount that is reasonable compensation.

By playing to jurors' emotions and making cases less about facts and law, plaintiffs' lawyers may circumvent prohibitions against certain conduct known to inflame juror passions and prejudice. For example, courts widely reject so-called "golden rule" arguments that ask jurors to put themselves in an injured plaintiff's shoes because of the risk jurors' emotions overtake their reasonable consideration of evidence.⁸³ Many courts, though, do not recognize similar prohibitions against other litigation tactics implicated by the reptile theory that have the same effect and fuel nuclear verdicts.

Plaintiffs' lawyers prefer to "try the company" instead of the case. Rather than demonstrate that a defendant's conduct or product caused a plaintiff's injury, if permitted, they introduce evidence of a company's general policies, practices, or alleged lack of compliance with government regulations to portray the business as a threat to public safety. For example, in trials involving truck accidents, plaintiffs' lawyers often pursue direct negligence claims against the defendant company—alleging a failure to adequately screen applicants or supervise employees—even when the employer stipulates that if a jury finds its driver negligently caused the accident, it will accept liability (through the vicarious liability doctrine of *respondeat superior*).

Plaintiffs' lawyers will also, if allowed, bring other incidents or accidents to the attention of the jury, even if those situations have little or no relation to the case before the court.

For example, in the \$1.7 billion Georgia verdict against Ford in 2022, the plaintiffs' lawyers presented police reports and a slideshow of photos taken from 79 other severe rollover accidents involving Ford vehicles, imploring the jury to "stop the maiming of innocent citizens." The plaintiffs' lawyers, however, never established any similarity between the accidents or the roof design causing those injuries, which is one of many issues now on appeal.⁸⁴

A \$557 million verdict in Texas against Union Pacific in 2023, including \$500 million in punitive damages, provides another recent example of the reptile theory at work. In that instance, the jury awarded the astronomical verdict after the plaintiffs' attorneys reportedly told the jury of 66 other rail-related deaths and 400 other injuries in Texas during the year the accident occurred, including five deaths and 51 nonfatal injuries in Harris County.⁸⁵ They also alleged that the train's lights were

not bright enough to meet federal regulations and that the operator failed to follow the company's own policy of taking the "safe course" when in doubt by immediately engaging the emergency brake.⁸⁶ The jury found the railroad 80% responsible for the plaintiff's tragic injuries, even though, according to court documents and reports, the plaintiff sat on the tracks, intoxicated, at about 2:30 a.m., and did not respond to bells, gates, and whistles at the crossing.⁸⁷

The Rise in Noneconomic Damages

It is no accident that 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 notoriously difficult-to-measure component of damages has led to a transformative increase in these awards. Historically, noneconomic damage

awards were modest and rarely exceeded a claimant's economic damages.⁸⁸ That began to change in the 1950s as plaintiffs' lawyers developed strategies to enlarge noneconomic awards.⁸⁹ By the 1970s, pain and suffering awards had become the largest part of tort damages.⁹⁰ The push for higher pain and suffering awards appears to have experienced a resurgence over the past three decades, after the U.S. Supreme Court intervened to address a trend of punitive damages "run wild."⁹¹

In a series of decisions, the Supreme Court adopted constitutional constraints on punitive damage awards.⁹² Perhaps most significantly, the Court indicated that "few awards exceeding a single-digit ratio between punitive and compensatory damages ... will satisfy due process" and that, in cases involving substantial amounts of compensatory damages, a lesser ratio "can reach the outermost limit of the due process guarantee."⁹³ Meanwhile,

states adopted judicial and statutory safeguards, such as requiring clear and convincing evidence to support a punitive damage award, providing for bifurcation of liability and punitive damages phases of trials, and placing caps on damages. As a result of these court rulings and legislative reforms, excessive punitive damage awards became more prone to remittitur by trial courts and reversal on appeal.

Personal injury lawyers have responded by placing greater emphasis on obtaining higher awards for pain and suffering and other noneconomic damages. Unlike punitive damages, pain and suffering awards are typically subject to imprecise and ineffective standards of review, such as whether the amount is so high that it "shocks the conscience" of the court or is clearly a result of passion and prejudice. Fewer states have generally applicable statutory limits on noneconomic damages than for punitive damages.⁹⁴

“Some plaintiffs’ lawyers have sought to further fuel the rise in noneconomic damages by manipulating the purpose of these damages, which is to compensate for an injury, to, instead, punish a defendant.”

Some plaintiffs’ lawyers have sought to further fuel the rise in noneconomic damages by manipulating the purpose of these damages, which is to compensate for an injury, to, instead, punish a defendant.⁹⁵ By improperly suggesting jurors blur the lines of compensation and punishment to “send a message” to a defendant, lawyers may inflate a noneconomic damage award and avoid constitutional and other limitations on punitive damages.

Anchoring Tactics

Personal injury lawyers continue to aggressively ask jurors to award ever-higher sums. In most states, courts permit them to suggest a specific sum or offer a method of calculating damages as

part of closing argument to a jury. These suggested damages—known as “anchors”—are arbitrary, and often extraordinary, yet can have a profound impact on jurors.⁹⁶ 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.⁹⁷ Once a plaintiffs’ lawyer drops the anchor, jurors often either accept the suggested amount or “compromise” by negotiating it upward or downward.⁹⁸ While any category of damages may be influenced by anchoring, the practice has the greatest impact on noneconomic damages because these awards are highly subjective and not easily quantified by a dollar amount.⁹⁹

Anchoring can include simply asking the jury for a specific amount (a “lump sum”), say \$50 million¹⁰⁰ or \$200 million.¹⁰¹ More often, “to make large amounts more palatable,” plaintiffs’ lawyers “argue that the jury should fix the plaintiff’s compensation at a set amount per day, week, month, or year, and then multiply that amount by the length of time remaining in the plaintiff’s life expectancy” (referred to as a “per diem” argument).¹⁰² In some cases, the lawyer links the proposed amount or formula to some other aspect of the case, however irrelevant to the claimant’s pain and suffering.¹⁰³ This may be the amount the defendant compensated its CEO¹⁰⁴ or its trial experts.¹⁰⁵ Whatever the approach, the goal is to prompt the jury to reach a multi-million dollar pain and suffering award.

Empirical evidence has repeatedly demonstrated that “the more you ask for, the more you get.”¹⁰⁶ Whether it is an automobile negligence or medical liability trial, studies have found that jurors presented

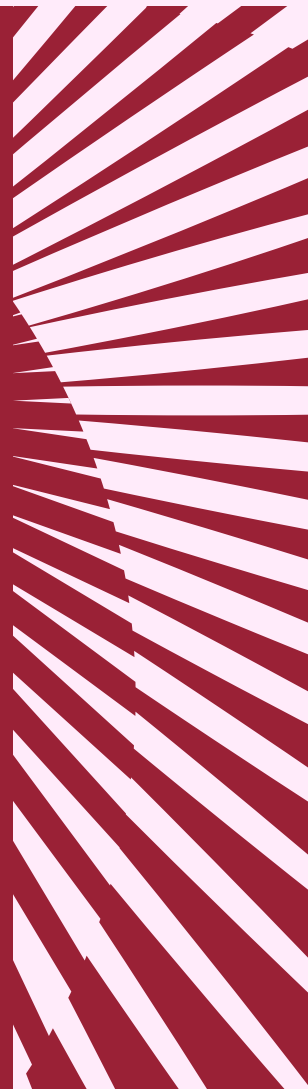
with an anchor return verdicts that are far larger than the amount they would have returned when left to decide a reasonable amount of damages on their own.¹⁰⁷ Studies show that both use of a specific sum or mathematical formula lead juries to reach awards that are double¹⁰⁸ or quadruple¹⁰⁹ the amount they would have awarded

if left to determine a just and reasonable award on their own. Plaintiffs' lawyers are well aware of the effectiveness of this tactic.¹¹⁰

By comparison, defense counsel are often reluctant to offer a counter-anchor because suggesting an amount of money that the jury should award

could be viewed as a concession of liability and the effectiveness of suggesting a lower amount is uncertain.¹¹¹ Even if a defendant counters an absurdly high request, "the plaintiff's counsel hopes that jurors will split the difference between the two numbers, which still allows a nuclear verdict to occur."¹¹²

Whether it is an automobile negligence or medical liability trial, studies have found that jurors presented with an anchor return verdicts that are far larger than the amount they would have returned when left to decide a reasonable amount of damages on their own.



Typically plaintiffs' lawyers have wide latitude to use anchoring tactics, but sometimes they go so far that they push the limits of what courts will tolerate. For instance, in 2023, the Texas Supreme Court ordered a new trial after a plaintiffs' lawyer, in a tragic automobile accident case, referenced the values of objects with no connection to the case, including the \$71 million cost of an F-18 fighter jet and the \$186 million auction price of a coveted painting.¹¹³ The lawyer then suggested that the jury award the families, for mental anguish and loss of companionship, two cents per mile per decedent for every one of the 650 million miles the company's trucks drove during the year of the accident (because "I've been trying to give this company and their lawyers my two cents worth"). In that instance, the court observed that the jury awarded \$39 million, an amount that matched the "two cents" suggestion "within one-half of one percent."¹¹⁴ The Texas Supreme Court found that

“In practice, plaintiffs’ lawyers use consolidation to obtain ‘well-established tactical benefits’ of a joint trial that increases the likelihood of a nuclear verdict by substantially prejudicing defendants and denying them a fair trial.”

these “unsubstantiated anchors,” combined with other improper tactics, required a new trial.¹¹⁵

Only about one-third of states prohibit or limit anchoring practices by placing constraints on the use of “lump sum” arguments, “per diem” arguments, or both.¹¹⁶ As a result, while the Texas Supreme Court acted in this case, these baseless and misleading arguments are allowed in many courtrooms around the nation to generate nuclear verdicts.

Multi-Plaintiff Trials

Another manipulative tactic used by plaintiffs' lawyers to generate nuclear verdicts involves trial consolidation. Court rules of procedure generally permit trial judges to consolidate actions that

involve common questions of law or fact where doing so would promote judicial economy and not result in prejudice.¹¹⁷ In theory, trial consolidation provides a neutral means to address common issues among multiple cases efficiently. In practice, plaintiffs' lawyers use consolidation to obtain “well-established tactical benefits” of a joint trial that increases the likelihood of a nuclear verdict by substantially prejudicing defendants and denying them a fair trial.¹¹⁸

Plaintiffs' lawyers have persuaded some judges to consolidate the claims of multiple plaintiffs who are strangers to one another but allege injury from the same product. By consolidating unrelated plaintiffs' claims in a joint

trial, plaintiffs’ lawyers are able to have a jury hear cumulative evidence of the defendant’s alleged wrongdoing, regardless of whether evidence presented in one plaintiff’s case is relevant—or would even be admissible¹¹⁹—in another plaintiff’s case. As courts have recognized, this creates an obvious potential for jury confusion and bias against defendants.¹²⁰

Consolidation can allow evidence used to prove one plaintiff’s case to mask weaknesses in another plaintiff’s case, blur important legal issues, or simply overwhelm jurors with information. Also, by combining multiple cases for trial, a jury may unjustly assume that if each plaintiff is making similar accusations, such as that a defendant did something wrong or a product is defective, those allegations must be true. In addition, attorneys may use multi-plaintiff trials to gloss over doubts about whether a diverse range of medical conditions are all tied to exposure to a

substance or product.¹²¹ Hearing cumulative evidence from multiple plaintiffs of defendants’ alleged wrongdoing in a single trial can also generate greater juror animosity against defendants, which can improperly contribute to punitive damage awards and facilitate other litigation tactics (e.g., reptile theory) used to inflame jurors and lead to extraordinary verdicts.

Juries are significantly more likely to find for the plaintiff and render a larger damages award in multi-plaintiff trials than when cases are tried individually.¹²² For example, a 2019 study of all multi-plaintiff product liability trials in federal court multidistrict litigation (MDL) proceedings during the previous 10 years reported that juries found in favor of plaintiffs more than 78% of the time in multi-plaintiff MDL trials, compared to less than 37% in single-plaintiff MDL trials.¹²³ The study further found that multi-plaintiff trials resulted in substantially greater awards of damages, which “raise

significant fairness and due process concerns.”¹²⁴

The nuclear verdicts data further shows the effect of multi-plaintiff trial consolidation. Several of the largest verdicts in the nation during the past decade occurred after a trial judge consolidated unrelated plaintiffs’ product liability actions. For example, the \$4.69 billion talc verdict in 2018 was a consolidation of the claims of 22 plaintiffs.¹²⁵

A few years earlier, a Dallas jury awarded more than \$1 billion in a joint trial of six unrelated plaintiffs’ cases involving hip implants.¹²⁶

Between 2020 and 2023, multi-plaintiff trials resulted in nuclear verdicts in product liability cases alleging injuries from PCB exposure (ranging from \$72 million to \$857 million in Washington),¹²⁷ Roundup (\$1.56 billion verdict in Missouri),¹²⁸ 3M Combat Arms earplugs (\$110 million verdict in Florida)¹²⁹ and talcum powder products (\$787 million verdict in New Jersey).¹³⁰ An appellate court later threw out the

New Jersey judgment due to flaws in the expert testimony presented to the jury.¹³¹

That a procedural maneuver may increase a trial’s potential to result in a nuclear verdict provides reason enough for courts to reject the practice. Nevertheless, plaintiffs’ lawyers continue to aggressively pursue trial consolidations as a way to put a thumb on the scales of justice and significantly improve the likelihood of a nuclear verdict irrespective of claims’ merits.

Inundating the Public and Jury Pool With Ads Touting Nuclear Verdicts

The public has become accustomed to viewing advertisements on television, social media, and elsewhere suggesting it is normal for plaintiffs to receive verdicts and settlements in the hundreds of millions or billions of dollars. The amounts advertised often are



White Heart Legal TV Spot, “Talcum Powder: Various Cancers,” published in June 2023 on Facebook, Twitter, and YouTube, Source: iSpot.tv.

misleading because they tout nuclear verdicts without disclosing that trial courts promptly slashed these amounts or that the awards are likely to be further reduced or overturned on appeal.

For example, a Texas attorney advertised a \$1.25 billion “verdict/judgment” in a case on a billboard without disclosing that the plaintiff received no money at all, and that no attempts to collect the judgment were made.¹³² In 2022, the Texas Supreme Court amended the rules for Texas lawyers’ communications about case results to

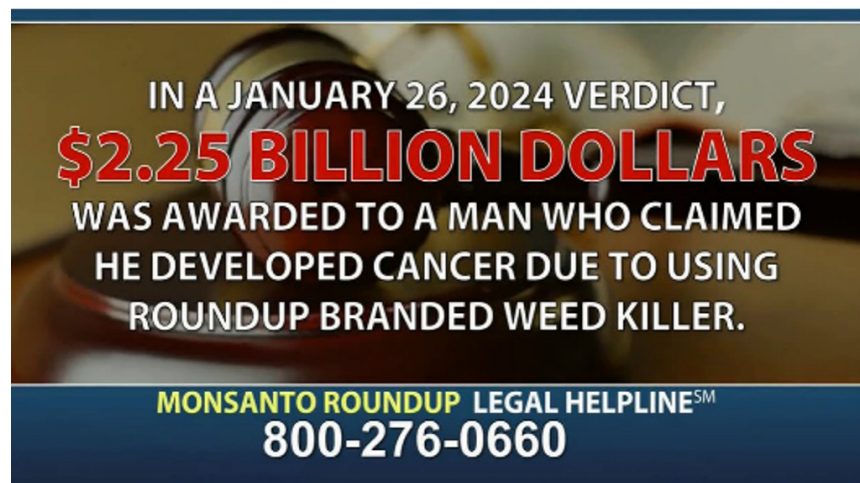
require disclosure of “the amount actually received by the client” where the lawyer “knows that an advertised verdict was later reduced or reversed, or never collected, or that the case was settled for a lesser amount.”¹³³

Lawsuit advertising has expanded well beyond billboards into a multi-billion dollar industry. Plaintiffs’ lawyers and companies that specialize in advertising and amassing claims (known as “lead generators”) spend around \$1 billion each year on television ads alone.¹³⁴ Many of these ads publicize nuclear verdicts and create a false impression

that these amounts are reasonable and that this is what many claimants can expect to receive.

For example, for years, advertising for litigation alleging that the commonly used weed killer Roundup causes non-Hodgkin’s lymphoma “bombarded” the jury pool with television and radio ads in local media.¹³⁵ Prospective jurors, inundated with such ads, responded according to the trial lawyer playbook, as there have been multiple verdicts in the hundreds of millions or billions of dollars. In January 2024, a Philadelphia jury awarded \$2.25 billion to a single plaintiff, which followed a \$1.56 billion verdict only a few months earlier in Cole County, Missouri.¹³⁶ These verdicts, in turn, followed several others exceeding a hundred

“...[T]he constant barrage of ads—built strategically around the lifecycle of a litigation to maximize investment—continues to desensitize the public and potential jurors to nuclear verdicts.”



Wagstaff Law Firm TV Spot, “Monsanto Roundup Legal Helpline,” published in March 2024 on Facebook. Source: iSpot.tv.

million dollars, including a \$332 million San Diego verdict and a \$175 million Philadelphia verdict.¹³⁷

Advertising campaigns touting awards to support these and other mass tort litigations omit that some awards are presumptively unconstitutional due to their size alone.¹³⁸ As a result, the public is less likely to learn the ultimate outcome of

cases after post-trial motions and appeals, or find out that a confidential settlement followed for a substantially lower amount. Yet, the constant barrage of ads—built strategically around the lifecycle of a litigation to maximize investment¹³⁹—continues to desensitize the public and potential jurors to nuclear verdicts.

The Rise of Third Party Litigation Funding

Outside investors looking to transform lawsuits into investment vehicles are increasingly a driving force behind nuclear verdicts.

Hedge funds, institutional investors, foreign sovereign wealth funds, and wealthy individuals front enormous sums of money to law firms in exchange for a portion of any recovery the firm may obtain. These investors view large-scale third party litigation funding (TPLF) as a lucrative opportunity to obtain substantial returns that are not tied to economic or market conditions.¹⁴⁰ The prospect of obtaining a share of a nuclear verdict makes this investment vehicle more attractive.

Although lawsuit funders “have long operated under a veil of secrecy,” their business model has become harder to hide as TPLF has transformed into a multi-billion dollar industry.¹⁴¹ The U.S. Government Accountability Office found that TPLF investments by dedicated commercial litigation funders “more than doubled” from 2017 to 2021.¹⁴² According to data collected from major litigation funders, they alone had \$15.2 billion

invested in U.S. litigation in 2023.¹⁴³ TPLF investments could reach \$31 billion by 2028.¹⁴⁴

Large dedicated commercial litigation funders invest about two-thirds of their resources in “portfolio” litigation rather than individual cases,¹⁴⁵ which includes funding mass litigation. Hence, TPLF plays a key role in bombarding the public with lawsuit ads that can mislead and desensitize viewers about nuclear verdicts.

As experts on litigation finance have explained, TPLF is “reshaping every aspect of the litigation process—which cases get brought, how long they are pursued, when are they settled.”¹⁴⁶ An outside funder’s presence turns what is traditionally a negotiation between two opposing parties into a multi-party affair with an often undisclosed “behind the scenes” constituent interested solely in maximizing a return on investment. Accordingly, TPLF may unreasonably

prolong cases and frustrate settlements—a new paradigm that leading funders recognize “make[s] it harder and more expensive to settle cases.”¹⁴⁷

Further, like a gambler playing with house money, TPLF may fuel speculative mass tort lawsuits that chase nuclear verdicts. Funders recognize that by bankrolling a portfolio of lawsuits, they can spread the cost of litigation and reduce the downside risks of pursuing questionable claims in a particular case for a chance at a financial windfall. In this regard, funders’ interests may conflict with the plaintiff whose case is treated as an investment vehicle, who may not want to go “all in” on a jury trial to achieve the greatest possible return rather than accept a prompt and reasonable settlement.

The full measure of how TPLF distorts litigation and potentially “turns the American justice system into a financial playground”¹⁴⁸ is also unclear because these

Further, like a gambler playing with house money, TPLF may fuel speculative mass tort lawsuits that chase nuclear verdicts. Funders recognize that by bankrolling a portfolio of lawsuits, they can spread the cost of litigation and reduce the downside risks of pursuing questionable claims in a particular case for a chance at a financial windfall.



investments typically occur in secret and are not disclosed to courts or parties. What is clear though is that TPLF increasingly provides the fuel to power the mass tort litigation machine and the explosion of nuclear verdicts.

Expansion of State Wrongful Death Acts

In addition to manipulating the ways in which lawsuits are argued, advertised, and funded, the plaintiffs' bar has sought to change the laws that help prevent excessive awards. Personal injury lawyers across the nation have set their sights on expanding the scope of state wrongful death acts, which govern claims for damages by family members of those who died as a result of negligent or other tortious conduct.¹⁴⁹

States adopted wrongful death acts to address the unfairness of common law rules that completely barred recovery after a person's

death. In codifying a cause of action, legislators were cognizant that opening the door to awards of pain and suffering and other subjective damages in cases arising out of potentially tragic and emotionally charged circumstances could lead to excessive damage awards. These laws developed methodically to circumscribe who can sue and what types of damages that individual can recover. Some state laws also establish upper limits on certain types of damages or incorporate other statutory limits on damages to reduce the potential for excessive awards.¹⁵⁰

Personal injury lawyers have engaged in a nationwide lobbying campaign to expand the scope of wrongful death acts and eliminate existing damage

limitations. While it is common for state wrongful death acts to authorize recovery of pecuniary damages, such as the decedent's lost income or the value of services no longer provided, states vary significantly in their treatment of forms of noneconomic damages that comprise significant portions of most nuclear verdicts. Personal injury lawyers have looked to expand already amorphous categories of noneconomic damages, for instance "loss of comfort, society, and companionship" of the decedent, to create additional "soft damages" categories for "grief and anguish" or "emotional distress." Their goal is to create multiple distinct categories of noneconomic loss for juries to separately award damages that will add up to a nuclear verdict.

“[Plaintiffs’ lawyers’] goal is to create multiple distinct categories of noneconomic loss for juries to separately award damages that will add up to a nuclear verdict.”

For example, legislation in New York that Governor Kathy Hochul has twice vetoed¹⁵¹ proposed authorizing new categories of noneconomic damages for loss of love, companionship and consortium, as well as grief, in a state that already produces among the most nuclear verdicts in the nation.¹⁵² Governor Hochul recognized as much in her veto message, stating the legislation represented an “extraordinary departure from New York’s wrongful death jurisprudence” that could “result in significant unintended consequences.”¹⁵³

In some instances, plaintiffs’ lawyer lobbying efforts have succeeded in expanding damages available under wrongful death acts. For example, in 2023, Minnesota authorized broader wrongful death recoveries, and Maine increased its wrongful death caps on loss of companionship damages and punitive damages.¹⁵⁴ Delaware and Illinois,

meanwhile, amended their wrongful death statutes to add the threat of punitive damages.¹⁵⁵

This trend continued in 2024, with Colorado substantially increasing its existing noneconomic damage limits and New Hampshire significantly raising its statutory limits on loss of consortium damages in wrongful death cases.¹⁵⁶ Meanwhile, a bill advanced in Maryland that, as introduced, would have eliminated the state’s limit on noneconomic damages in personal injury and wrongful death cases. It was amended to instead nearly double the limit (which automatically increases each year), passing the Senate before it ultimately failed.¹⁵⁷

These amendments and other expansions of state wrongful death acts and generally applicable statutory limits do not appear to be supported by any evidence indicating that claimants are not receiving

fair compensation. Indeed, the prevalence of nuclear verdicts in “Top 10” states such as New York and Illinois suggests otherwise and shows that the push for more money in wrongful death actions emanates from personal injury lawyers, not the public.

Real World Implications

Chapter

05

Nuclear verdicts adversely affect society in many ways. They can drive up the costs of goods and services, create insurability problems, inhibit job growth and new investments for businesses or industries, deplete judicial resources, and—perhaps most significantly—undermine confidence in the rule of law.

A jury verdict in a personal injury or wrongful death action that awards tens or hundreds of millions of dollars against a business or other civil defendant often has far-reaching implications. For a relatively small business, the verdict may threaten its viability, and with it the jobs of its employees and potentially others in a community whose livelihoods are connected to the business. A massive verdict can also loom large over a business's operations during the months or years before it is reduced on appeal or settled for a substantially lower amount, delaying the hiring of new workers and other investments that build the business.

For larger businesses, a nuclear verdict can disrupt an entire industry or sector of the economy in addition

to the adverse impacts on the business, its employees, and the public. For example, the multiple nuclear verdicts involving the weed killer Roundup (discussed in Chapter 3) affected the continued availability and use of the world's most popular weed killer.¹⁵⁸ The product plays an invaluable role in agriculture worldwide, especially as a growing population increases the demand for food.¹⁵⁹ Concerns about the product driven by litigation rather than sound science, even led Sri Lanka to ban glyphosate and other chemical pesticides,

which sparked such an agricultural and economic crisis, including protests by farmers, that the country quickly reversed course.¹⁶⁰

Nuclear verdicts can also cause a host of other problems that reverberate throughout society.

Higher Costs and Insurability Problems

Higher costs of lawsuits brought about by inflated damage awards make it more costly to make a product or service available to consumers.

“Nuclear verdicts introduce unexpected costs that may dramatically exceed and distort ranges of reasonable compensation for an injury. This may significantly increase the cost of insurance, pricing some individuals or entities out of the insurance market altogether ...”

The outlier nature of a nuclear verdict can impose substantial added costs in an unpredictable manner that is unrelated to market forces such as the cost of a product's raw materials or labor for a service. As a result, consumers may ultimately bear higher costs and increased volatility as opposed to what they reasonably expect to pay for everyday items and services.

This unpredictability also creates insurability problems. Insurers underwrite policies based on expected costs given particular risks. Nuclear verdicts introduce unexpected costs that may dramatically exceed and distort ranges of reasonable compensation for an injury. This may significantly increase the cost of insurance, pricing some individuals or entities out of the insurance market altogether, or make certain types of insurance so risky and unpredictable that insurers back away from underwriting policies.

In some instances, nuclear verdicts may exceed the limits of a defendant's insurance policy, leaving the insured to cover the remainder of the damages out of pocket. This can be particularly difficult for small businesses, which may not have the financial resources to cover such costs.

Trucking

The trucking industry, which is essential to the availability of countless goods, provides an example of how nuclear verdicts can overwhelm an industry and cause insurability problems. A 2020 study by the American Transportation Research Institute of hundreds of trucking accident cases reported significant increases in the frequency and amount of multi-million dollar verdicts from 2005 to 2019.¹⁶¹ It explained that nuclear verdicts have contributed to dramatic increases in insurance costs for all motor carriers, which caused a number of motor carriers to go out of business.¹⁶² The

remaining motor carriers must incorporate higher insurance costs into the transportation rates they charge entities throughout the supply chain, which are costs ultimately reflected in higher consumer prices for transported goods.¹⁶³

The insurance cost rises spurred by nuclear verdicts are becoming unaffordable,¹⁶⁴ leading many more trucking companies to shut down in recent years.¹⁶⁵ Other companies, due to the rising cost, are scaling back on excess insurance coverage, putting them at risk of bankruptcy should a serious accident occur.¹⁶⁶ Nuclear verdicts were also a likely contributor to a major insurer's decision to pull out of the commercial auto excess and surplus insurance market in 2023.¹⁶⁷

Health Care

Rising nuclear verdicts adversely affect the costs and insurability of other essential services such as the provision of health care. The potential for verdicts at these levels have led

plaintiffs' attorneys to make eight-figure settlement demands, resulting in a widening gap between what insurers view as reasonable compensation based on historic levels and the need to take more cases to trial.¹⁶⁸ The cost of higher settlements, verdicts, defending claims, and increasing unpredictability are reflected in rising insurance premiums for doctors and other medical professionals.

According to data from the Medical Liability Monitor, a national publication that analyzes liability insurance premiums, premiums for doctors in some areas known for nuclear verdicts, including counties in Illinois and Georgia, have substantially increased.¹⁶⁹ While inflation and claim severity contributed to the rise, "Nuclear verdicts are a real driver of the industry's underwriting losses and remain top of mind for every malpractice insurance company," said Michael Matray, editor for the Medical Liability Monitor.¹⁷⁰ The increasing

liability risk may exacerbate physician shortages, which are projected to worsen in the future.¹⁷¹

Construction

Greater frequency and amounts of nuclear verdicts can also more acutely affect costs and insurance in specific states based on particular laws. For example, New York has experienced spiraling costs of construction projects due to nuclear verdicts and settlements resulting from the state's Scaffold Law (discussed in Chapter 3).¹⁷² This law singlehandedly increases the costs of every construction project in the state. Several estimates conclude the law approximately doubles insurance costs without providing any clear safety benefit for workers.¹⁷³ Most insurers will not underwrite policies for New York construction projects at all, and those that do often restrict or exclude coverage for Scaffold Law claims.¹⁷⁴

These added costs and insurability problems

adversely affect projects ranging from school construction to affordable housing. The higher insurance costs necessitated by this law "mean[] less money for roads, SUNY facilities, and other worthwhile construction projects sponsored by State agencies" as well as fewer classrooms and less money to improve public facilities, according to the New York Building Congress.¹⁷⁵ Likewise, the New York State Association for Affordable Housing says the Scaffold Law has "contributed to skyrocketing insurance rates and driven most insurance companies from the New York market—adding substantial costs to general liability coverage for affordable housing developments."¹⁷⁶ The New York State School Boards Association has estimated that the Scaffold Law costs upstate schools \$200 million annually, largely due to higher insurance costs, as the number of carriers

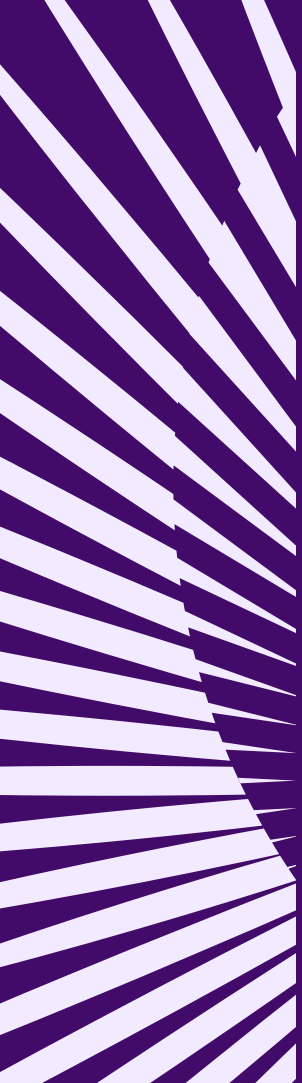
writing liability policies covering the Scaffold Law is dwindling.¹⁷⁷

These are only a few of the ways nuclear verdicts burden society through inflated costs. The reality is that these awards permeate innumerable aspects of every Americans' daily lives. They increase the costs of food, housing, health care

and other valued goods and services, as well as insurance for things such as a car, home, or other property. While some jurors and members of the public might think of a nuclear verdict as "sticking it" to a business, the reality is that they are sticking added layers of costs to themselves and their community, too.

Unreasonable Demands and Nuclear Settlements

The prospect of a nuclear verdict may incentivize plaintiffs' lawyers to make unreasonable settlement demands. After all, if plaintiffs' lawyers feel emboldened enough to ask a jury to return a verdict



... [N]uclear verdicts can lead to a spiral of inflated "nuclear settlements," which are typically confidential and unreported.

of hundreds of millions of dollars in a case,¹⁷⁸ it is not a stretch to demand similarly exorbitant amounts from a defendant outside of public view. In fact, the vast majority of lawsuits are settled or dismissed before reaching a verdict.¹⁷⁹

When valuing a case, lawyers on both sides consider verdicts in cases involving similar injuries and comparable plaintiffs. A personal injury lawyer is likely to use nuclear verdicts to seek amounts that are beyond levels that reasonably and fairly compensate a client for his or her injury—using them as ammunition in settlement discussions with mediators, insurers, and defense counsel.¹⁸⁰ When evaluating such demands, defendants must factor in the rising risk of a nuclear verdict, even if it has strong defenses to the suit. As a result, nuclear verdicts can lead to a spiral of inflated “nuclear settlements,” which are typically confidential and unreported. What settlement data is available

confirms that average and median settlement amounts increased by more than 65% and 70% respectively, in the decade ending in 2022.¹⁸¹ As one prominent plaintiffs’ lawyer observed, “Large verdicts drive the settlement value of cases It’s as simple as that.”¹⁸² These inflated settlements, like nuclear verdicts, can increase the costs of goods, services, and insurance.

In addition, situations arise in which the parties cannot resolve their claims outside of a courtroom because of the wide gap in expectations. Greater frequency and amounts of nuclear verdicts can widen this expectations gap by expanding the range between what actually compensates a party for an injury and what amount of recovery a plaintiffs’ lawyer may nonetheless believe is attainable with an impressionable jury. Parties, therefore, may be more likely to litigate claims that in the past would have settled for a reasonable amount and

perpetuate a cycle in which plaintiffs’ lawyers keep increasing demands.

For example, in a recent case involving a severe workplace injury, Philadelphia’s reputation as a hotspot for nuclear verdicts reportedly led the plaintiff’s attorney to demand between \$51 million and \$101 million as the litigation moved forward.¹⁸³ Defense attorneys observe that in areas prone to nuclear verdicts, “It has gotten to the point where you can’t even mediate a case because the demands are so crazy today.”¹⁸⁴

Prolonged Litigation

When parties cannot reach a settlement due to a widening gap in expectations caused by the prospect of a nuclear verdict, more cases will go to trial. Such litigation, which may last years, wastes the time and resources of the judiciary as well as those of plaintiffs and defendants. It demands the time of a judge, jurors, attorneys, and witnesses.

If a jury returns an extraordinary amount, rather than end the litigation, the nuclear verdict is just the beginning. Following the verdict, the case moves on to motions for remittitur (to reduce the verdict) or for a new trial. A defendant will typically appeal a moderate reduction in the award by the trial court resulting in a smaller, but still excessive, verdict. On the other hand, a substantial reduction of the award to a reasonable level is likely to lead a plaintiff's lawyer to appeal.

“If a jury returns an extraordinary amount, rather than end the litigation, the nuclear verdict is just the beginning.”

Even if the case ultimately reaches a reasonable amount through post-trial litigation or a settlement, the parties will have spent

significant and unnecessary sums to arrive at this result. The plaintiff may wait years before receiving any recovery. Achieving this result may also needlessly exhaust significant judicial resources (both trial and appellate)—with a concomitant effect on other litigants in other matters—perhaps only to arrive at a “reasonable” verdict that could or should have occurred in the first place. The result is inefficiency across the board for parties and the judiciary.

For example, in one of the largest nuclear verdicts in the 10-year study period, a Philadelphia jury awarded \$8 billion to a plaintiff who took the antipsychotic drug Risperdal, which allegedly caused him to develop breasts and gain weight. The plaintiff commenced the action in 2013 and obtained a \$1.75 million compensatory damages award in 2015, which was reduced to \$680,000 in 2016. He then obtained an \$8 billion punitive damages award in 2019.¹⁸⁵ The trial

court reduced the punitive award to \$6.8 million in 2020,¹⁸⁶ prompting further appeal until the case settled eight years after it was filed.¹⁸⁷ Had the case not settled, it would likely have gone on for more than a decade.¹⁸⁸

Loss of Confidence in the Rule of Law

When nuclear verdicts are permitted to stand, such as when appellate courts decline discretionary review, it can understandably shake confidence in the rule of law. A defining characteristic of a stable and just society is that the law is applied even-handedly. This includes subjecting defendants to liability, and awarding damages, in a fair, consistent, and predictable manner.

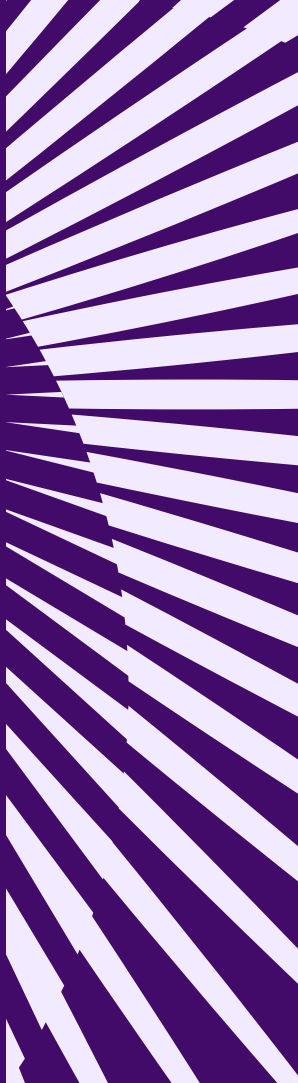
When a defendant must pay radically different sums to compensate individuals for the same or a substantially similar injury, it undermines the rule of law. There is no rational explanation for

why one person should recover \$100 million in compensatory damages for an injury when another person with a comparable injury or loss is fairly compensated by a \$5 million award. The American legal system is not a lottery to dole out jackpot awards, yet nuclear verdicts push it in that direction.

Loss of confidence in fairness and predictability in the rule of law may sound abstract, but it has very real societal implications. People start businesses, invest in new technologies, and endeavor to enter markets in the United States based on a fundamental belief in an uncorrupted legal system. For example, a survey of

senior corporate lawyers and executives revealed that 89% of respondents agreed that a state's litigation environment is likely to impact important business decisions, including where to locate or to do business.¹⁸⁹ When damage awards increasingly display signs of lawlessness, the incentives shift to do business elsewhere.

When a defendant must pay radically different sums to compensate individuals for the same or a substantially similar injury, it undermines the rule of law.



Solutions

Chapter

06

The factors that fuel rising nuclear verdicts provide a blueprint for reforms. Legislators can take a variety of actions to prevent inflated awards before they occur and to respond to nuclear verdicts that occur in spite of safeguards. No single reform will stop all nuclear verdicts, but a comprehensive approach that addresses core causes of nuclear verdicts can mitigate the trends seen during the 10-year study period.

Adopt Pre- and Post- Nuclear Verdict Civil Justice Reforms

There are many ways to curb nuclear verdicts, both before and after unsound damages are awarded, through the adoption of traditional civil justice reforms.¹⁹⁰

A key to promoting fairness and predictability before a nuclear verdict is to ensure jurors hear evidence at an appropriate time, not when it is likely to lead to an unjust result. In this regard, legislators can adopt laws to bifurcate aspects of jury trials so that a jury only considers potentially inflammatory evidence in the right context. Several states have adopted laws to require a trial court,

upon request, to bifurcate a jury's consideration of compensatory and punitive damage claims. These laws help ensure that evidence supporting a punitive award does not improperly lead the jury to find a defendant liable when it did not cause a plaintiff's injury or to inflate a compensatory award to punish a defendant.¹⁹¹

For example, in 2021, Texas adopted a law in commercial motor vehicle accident cases allowing for bifurcated trials so that liability and compensatory damages are assessed in a separate phase before any potential jury consideration

of evidence supporting exemplary damages.¹⁹²

Additionally, legislators can codify the separation of noneconomic damages and punitive damages to require trial judges to better police the presentation of evidence to a jury. For example, the Ohio Legislature, cognizant of the misuse of noneconomic damage awards, enacted legislation that prohibits a jury from considering evidence of wrongdoing, misconduct, guilt, or other evidence offered for the purpose of punishing a defendant when determining noneconomic damages.¹⁹³

“A key to promoting fairness and predictability before a nuclear verdict is to ensure jurors hear evidence at an appropriate time, not when it is likely to lead to an unjust result.”

Another approach to curbing nuclear verdicts before they occur is to ensure that cases are heard in an appropriate venue, not simply steered by plaintiffs' lawyers to a forum with a history of unpredictable nuclear verdicts. Venue reform appears increasingly important in light of rising nuclear verdicts because juries having little or no connection to a case may believe they can award any amount of damages without adversely affecting their community.

Legislators can also enact laws that respond directly to nuclear verdicts. For example, states have adopted limits on pain and suffering awards to provide that some amount of noneconomic damages is “enough” to reflect the reality of a serious injury.¹⁹⁴ In 2023, Iowa enacted new noneconomic damage limits of \$1 million for clinics and \$2 million for hospitals in medical liability actions involving severe injuries or deaths.¹⁹⁵ Governor Kim Reynolds indicated

that the law is intended to protect rural hospitals from nuclear verdicts.¹⁹⁶ Two states—Iowa and West Virginia—recently enacted noneconomic damage limits specifically to address the frequency of nuclear verdicts in cases involving commercial vehicles, though in Wisconsin Governor Tony Evers vetoed similar legislation.¹⁹⁷

In addition, some states place statutory limits on punitive damages, either as a total amount or a multiple of compensatory damages, as a legislative judgment that some amount of punishment of a defendant adequately deters future misconduct. Because noneconomic and punitive damages comprise the bulk of damages in most nuclear verdicts, these civil justice reforms provide a legislative backstop that promotes greater predictability in what damages are ultimately awarded.

Legislators can adopt other reforms that help curb unsound nuclear verdicts, such as by prohibiting

the multiple imposition of punitive damages for the same conduct.¹⁹⁸ Such laws can prevent duplicative nuclear verdicts comprised mainly of punitive damages in product liability or other cases.¹⁹⁹ Legislators should also make clear that punitive damages represent an exceptional remedy which, if included as part of a large verdict, must not be disproportionate to the alleged harm.

Address Misleading Lawsuit Advertising

As discussed earlier, some personal injury firms and “lead generating” companies inundate the public with advertising that touts nuclear verdicts, even where those verdicts are substantially reduced or overturned by an appellate court or later settled for a substantially lower amount. In doing so, these ads portray to potential jurors a highly distorted picture of the civil justice system and what constitutes fair compensation for an injury.

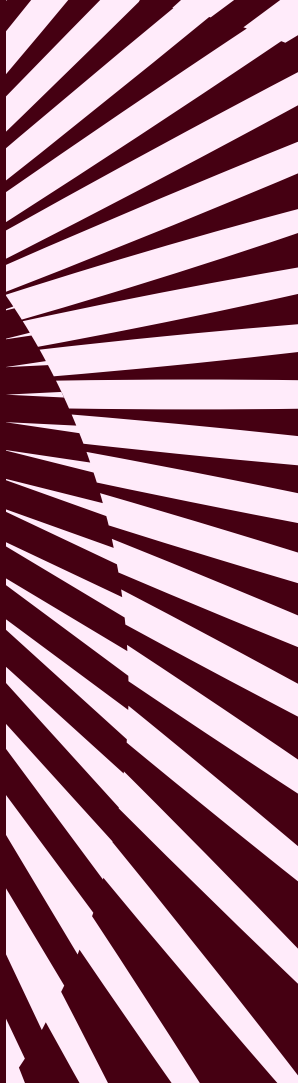
Ads celebrating nuclear verdicts can also endanger the public by incorrectly suggesting that the use of a product, such as a prescription drug or medical device, is so dangerous that people are being compensated for physical injuries to the tune of many millions of dollars. Such advertising has been shown to prompt individuals to stop taking needed medications

or using medical devices without consulting their doctor, leading to incidents of injury and even death.²⁰⁰

Legislators can address both the adverse public health effects of misleading lawsuit advertising and the misleading portrayal of damage awards that seed the ground for unsound nuclear verdicts by regulating lawsuit advertising.

Seven states have enacted legislation to combat misleading lawsuit ads, including Florida, Kansas, Louisiana, Indiana, Tennessee, Texas, and West Virginia.²⁰¹ Legislation can focus on the deceptive advertising of nuclear verdicts by requiring clear disclaimers about product safety, past case results, depictions of events, or any statements that promise

Ads celebrating nuclear verdicts can also endanger the public Such advertising has been shown to prompt individuals to stop taking needed medications or using medical devices without consulting their doctor, leading to incidents of injury or event death.



or imply a lawyer's ability to obtain results in a matter.²⁰² By ensuring that only truthful and complete information about product safety risks and recovered damages are included in lawsuit advertising, states can help protect the public and recalibrate incorrect public perceptions that contribute to inflated damage awards.

Promote Sound Science in the Courtroom

The most common types of personal injury and wrongful death cases that resulted in nuclear verdicts during the 10-year study period, namely product liability, auto accident and medical liability cases (discussed in Chapter 2), often involve the admission of expert testimony. Many cases turn on whether a jury believes an expert with respect to key issues such as whether a product caused an alleged injury or whether a driver or doctor acted negligently. Consequently, when expert evidence is not based

on sound science or is otherwise unreliable, it can mislead jurors into awarding a nuclear verdict.

For example, in 2020, a New Jersey jury returned an award of \$37.3 million in compensatory damages and \$750 million in punitive damages (reduced to \$166.5 million) to four plaintiffs who blamed baby powder for their mesothelioma diagnoses. An appellate court overturned that verdict, finding the trial court had failed to perform its gatekeeping role in admitting the testimony of three of the plaintiffs' expert witnesses.²⁰³

Legislators and, where appropriate, courts, can strengthen expert evidence standards so that jurors only hear expert testimony based on reliable scientific principles and methods that the expert reliably applies to the facts of the case. In federal courts, where nuclear verdicts are far less common, Federal Rule of Evidence 702 instructs judges to screen unreliable expert evidence.²⁰⁴

In December 2023, amendments to the Federal Rules of Evidence took effect that address ways in which courts had misapplied the rule. New commentary in the amended rule clarifies that: (1) the proponent of expert testimony must establish its admissibility to the court by a preponderance of the evidence before it is presented to a jury; and (2) an expert should avoid assertions of a degree of scientific certainty if the methodology is subjective and potentially subject to error.²⁰⁵ The effect of these changes should be that courts regularly evaluate whether proposed expert testimony is reliable before trial, rather than send scientifically unsound theories to the jury by finding that flaws influence the weight of the testimony rather than its admissibility.

States should likewise strengthen their expert evidence rules, such as by following the amended federal rule that took effect at the end of 2023, and curb nuclear verdicts based on

misleading and unreliable scientific evidence.

Adopt Third Party Litigation Funding Disclosure and Other Safeguards

The proliferation of TPLF arrangements that fuel speculative mass tort litigation and drive up settlement demands provides another area in which legislators and courts can take action.

First, legislators and judges should require disclosure of TPLF agreements. Plaintiffs' lawyers enter these agreements with funders in secret. Defendants, other parties, and the court typically do not know that an outside funder may be exerting influence behind the scenes. As discussed, these arrangements can affect crucial issues regarding the resolution of a case and may pressure a law firm to chase a

nuclear verdict, as firms must share any recovery with an undisclosed party that expects the highest return on its investment. Legislators and judges should require those who receive funding from third parties to automatically disclose such agreements. Defendants already regularly disclose insurance agreements in litigation.²⁰⁶ In addition, many federal courts have adopted local rules that require parties to disclose others with a financial interest in the litigation, so that judges can consider any potential conflicts of interest.²⁰⁷

Second, legislators should address ethics concerns raised when an outside party has a financial interest in litigation. They should, for example, prohibit funders from influencing a party's selection of an attorney, choices about litigation strategy, or settlement. Legislation should also

ensure that litigation funders do not drive up damages by referring plaintiffs to specific healthcare providers who may unnecessarily prolong care, charge excessive amounts, or even conduct unnecessary surgeries.²⁰⁸

Third, legislators can protect plaintiffs by making certain that they are aware that their attorney has committed to sharing their recovery with a third party and prohibiting funders from taking a larger share of the recovery than an injured plaintiff receives.

In recent years, several federal courts have required disclosure of TPLF in all cases,²⁰⁹ representative actions such as class actions,²¹⁰ or in specific mass tort litigation.²¹¹ Wisconsin was the first state to require disclosure of all TPLF agreements through legislation in 2018.²¹² Since then, Indiana, Montana, and West Virginia followed by passing legislation that both requires disclosure and adopts safeguards

“Defendants, other parties, and the court typically do not know that an outside funder may be exerting influence behind the scenes.”

for litigation funding arrangements.²¹³

Prohibit Manipulation of Juries Through Anchoring Tactics

A clear way to prevent a jury from latching onto an arbitrary amount of damages suggested by a plaintiffs' lawyer for pain and suffering or another form of noneconomic loss is to prohibit highly influential, manipulative arguments. Judges generally have discretion to bar or limit courtroom arguments that are inflammatory, misleading or unsupported by evidence, but instructing a jury after-the-fact that it should not consider a suggested damages sum or calculation method because the suggestion is only argument and not evidence does not adequately solve the problem. As a practical matter, it is virtually impossible for a jury to move on from a proposed damages award after the plaintiffs' lawyer has dropped a damages anchor.

The better approach is for state legislators to take these baseless and manipulative arguments off the table for use in jury trials. This can be accomplished by something as straightforward as a one-sentence reform stating that no party or counsel may refer to a specific dollar amount, state a range, or offer a formula to suggest to the jury an amount to award for noneconomic damages.²¹⁴

“As a practical matter, it is virtually impossible for a jury to move on from a proposed damages award after the plaintiffs’ lawyer has dropped a damages anchor.”

State legislatures have shown interest in addressing the use of anchoring tactics that contribute to nuclear verdicts. In 2024, the Oklahoma Senate passed legislation to prohibit anchoring, but the bill did not advance in the House.²¹⁵ Legislators introduced similar bills in at least

two other states, Indiana and Missouri, during that session.²¹⁶ Legislation of this type enables jurors to decide on their own the amount of noneconomic damages, if any, a plaintiff should receive free from undue influence that can drive a nuclear verdict.

Adopt the McHaffie Rule

Several states have adopted a doctrine known as the “McHaffie rule” (named for a Missouri Supreme Court decision),²¹⁷ which streamlines trials and limits a tactic used by plaintiffs' lawyers to obtain nuclear verdicts. Courts have primarily applied this doctrine in auto accident cases involving commercial motor vehicles, but it may apply in other contexts in which an employer is subject to liability for an employee's conduct.

The tactic used by some plaintiffs' lawyers is to allege direct negligence claims against an employer—that it was negligent in hiring or supervising an employee,

or entrusting an employee with a vehicle. They pursue these direct negligence claims even when a defendant stipulates that the driver involved in the accident was its employee, was acting in the scope of his or her employment, and, if that employee's negligence caused the accident, the employer will be liable for the plaintiff's injuries.

Plaintiffs' lawyers pursue direct negligence claims to distract the jury from who was actually responsible for an accident and, instead, pull in evidence of completely unrelated accidents or company policies to vilify a company as "an unsafe operator" with a "poor safety culture."

Courts in many states have ruled that an employer that accepts responsibility for the actions of an employee cannot also face direct negligence claims.²¹⁸

Once an employer stipulates that the person involved was an employee acting within the scope of employment, the issue at trial is whether

the employee's negligence caused the plaintiff's injury. If so, the employer is liable under the doctrine of *respondeat superior*. Courts applying the McHaffie rule reason that additional direct negligence claims are redundant and unnecessary, and could result in a double recovery or prejudicial evidence being admitted against the employer.²¹⁹

Recently, legislatures in two states—Iowa (2023) and Texas (2021)—codified this rule.²²⁰

Reject Proposals That Would Fuel More Nuclear Verdicts

As discussed in Chapter 3, personal injury lawyers and their lobbyists are engaged in a nationwide campaign to expand damages available under wrongful death acts. These efforts include seeking to expand who is eligible to sue, permit broader forms of noneconomic damages (such as compensation for grief or mental anguish),

authorize punitive damage awards, and eliminate or increase statutory limits on awards. In addition, the plaintiffs' bar continues to press state legislatures to raise or eliminate generally applicable limits on noneconomic damages.

Policymakers should carefully consider the full range of damages already available to plaintiffs and their families under current law when considering such proposals. They should also keep in mind that the purpose of the tort system is to provide reasonable compensation for an injury. As the data shows, the largest portion of nuclear verdicts comes from noneconomic damages, due to their highly subjective nature and deferential appellate review. Authorizing new forms of damages for emotional harms or eliminating statutory maximums is a recipe for excessive awards.

Conclusion

Chapter

07

This analysis of nuclear verdicts in personal injury and wrongful death cases over a 10-year period between 2013 and 2022 shows that, after an expected decline during the pandemic, the frequency of nuclear verdicts has quickly returned to prior levels.

Legislators and judges can respond to factors that often combine to produce extraordinary and unsustainable awards.

Legislators can adopt civil justice reforms that ensure damages are reasonable, prohibit “anchoring” practices, and prevent forum shopping to jurisdictions known for nuclear verdicts. It is also critical that they reject bills that go in the wrong direction by authorizing new forms of subjective damages or weakening or repealing existing safeguards.

The judiciary can play a role by requiring trial experts to support their proposed testimony with sound science. Judges can also prevent misuse of noneconomic damage awards to punish defendants and reject proposals to hold multi-plaintiff trials or other prejudicial trial tactics.

Other factors that exacerbate this situation should also be addressed, such as misleading lawsuit ads that reinforce distorted views of product safety and what is a reasonable amount of damages as well as undisclosed funding of litigation by profit-driven investors.

“The consequences of allowing nuclear verdicts to continue to proliferate will be increasingly felt throughout society.”

Understanding the types of cases and jurisdictions in which concerns regarding nuclear verdicts appear most acute can also help inform the development of specific policy responses. Considering that the Top 10 jurisdictions over the 10-year study period accounted for nearly three-quarters of the reported nuclear verdicts, and that

many of these jurisdictions also had the highest concentrations of nuclear verdicts on a per capita basis, those jurisdictions are prime candidates for targeted reforms.

The consequences of allowing nuclear verdicts to continue to proliferate will be increasingly felt throughout society. More litigation will ensue and take longer to resolve. Businesses will need to incorporate rising lawsuit costs into their products and services while simultaneously facing increasingly unpredictable liability. These higher costs and greater unpredictability will trigger higher insurance costs, potentially creating insurability problems. All the while, individuals and businesses will increasingly lose confidence in a fair and predictable civil justice system. These adverse consequences are reversible and now is the time for action.

Methodology

Appendix

A

The findings presented in this paper are primarily based on an Institute for Legal Reform-developed database (ILR database) of 1,288 reported verdicts of \$10 million or more in personal injury and wrongful death cases during a 10-year period between January 1, 2013, and December 31, 2022.

The ILR database, first developed in 2022, initially included verdict reports between January 1, 2010, and December 31, 2019. This paper adds three years of verdict reports to that database (2020, 2021, and 2022), which includes the pandemic period in which courts shut down or delayed trials. We then shift our study window to 2013-2022, to maintain a 10-year period for the sake of clarity. Data from 2013-2022 can be found in Appendix B. The ILR database also includes preliminary data for nuclear verdicts reported in 2023, which, early in 2024, was incomplete due to the typical gap between a verdict and its inclusion in online sources.

The information in the ILR database originates from the LexisNexis jury verdicts and settlements database (Lexis JV database). The Lexis JV database includes verdict reports collected

from federal and state courts in every state. The Lexis JV draws from 718 individual proprietary and licensed sources, such as ALM, Dolan Media, Mealey Publications, Matthew Bender & Company, and American Association for Justice publications, as well as LexisNexis' content and media reports. Lexis JV database reports include a case summary; identify the parties, injuries, and dates involved; and indicate the case resolution and damages awarded (often, but not always, broken down by types of damages). While the sources used to develop the ILR database likely capture verdicts over \$10 million at a high rate, no jury verdict database captures all verdicts in every court.

The ILR database does not include nuclear verdicts in areas outside of personal injury and wrongful death litigation, such as employment,

environmental, or intellectual property litigation. The ILR database is also limited to verdicts, specifically. It does not include individual settlements, many of which are confidential and unreported, nor does it include class action or mass tort settlements.

Damage awards included in the ILR database reflect the amounts awarded by the jury. These amounts do not reflect adjustments by the trial court or on appeal, such as a reduction of the verdict as excessive or the addition of pre-judgment interest.

Cases that involved multiple claims were categorized based on the primary theory of liability. For example, cases involving auto accidents that alleged the injury resulted from a defect in the vehicle were categorized as product liability claims, even if they also included a negligence claim against a driver.

Frequency and Median Verdicts: Current and Historic Data Tables

Appendix

B

The table below includes the frequency and median verdict levels in millions of dollars for all personal injury and wrongful death nuclear verdicts collected between 2010 and 2022.

Year	Nuclear Verdicts	Overall Median	Products Liability Median	Auto Median	Medical Liability Median	Premises Median	Other Negligence Median	Intentional Tort Median
2010	148	\$19.3	\$23.0	\$15.2	\$20.0	\$15.0	\$12.5	\$35.8
2011	136	\$17.1	\$20.0	\$15.5	\$20.4	\$13.7	\$17.8	\$25.4
2012	103	\$18.8	\$18.0	\$14.3	\$19.0	\$17.6	\$17.8	\$28.5
2013	124	\$23.2	\$24.0	\$28.0	\$22.0	\$22.5	\$18.8	\$26.8
2014	115	\$17.7	\$20.0	\$17.4	\$14.5	\$16.8	\$14.3	\$30.6
2015	133	\$20.5	\$17.2	\$20.5	\$19.6	\$24.1	\$16.3	\$20.7
2016	166	\$20.0	\$21.5	\$18.6	\$19.2	\$17.1	\$15.0	\$34.1
2017	143	\$20.6	\$23.2	\$23.5	\$19.4	\$18.6	\$24.8	\$52.0
2018	167	\$22.9	\$32.6	\$18.0	\$23.2	\$18.9	\$30.3	\$22.1
2019	141	\$24.5 ²²¹	\$35.1	\$24.8	\$18.5	\$18.0	\$14.2	\$64.4
2020	45	\$20.0	\$14.1	\$22.5	\$15.2	\$38.6	\$20.0	\$15.1
2021	94	\$23.8	\$23.0	\$20.9	\$27.8	\$29.3	\$18.7	\$23.9
2022	160	\$23.4	\$36.1	\$25.0	\$18.0	\$21.4	\$21.0	\$65.0

Endnotes

- ¹ A full discussion of the data collection and methodology used to develop this report is provided in Appendix A.
- ² Cary Silverman & Christopher E. Appel, *Nuclear Verdicts: Trends, Causes, and Solutions* (U.S. Chamber Inst. for Legal Reform, Sept. 2022).
- ³ There is often a lag time between a jury reaching a verdict and that verdict's publication in jury verdict databases. A database search in early 2024 is not likely to have complete information for the previous year. For that reason, this paper does not include 2023 verdict totals in its charts or statistics, though it presents preliminary 2023 data in the text where relevant.
- ⁴ Other studies confirm this trend. See generally Prasad Sharma, *Roadblock: The Trucking Litigation Problem and How to Fix It* (U.S. Chamber Inst. for Legal Reform July 2023); American Transportation Research Inst., *Understanding the Impact of Nuclear Verdicts on the Trucking Industry* (June 2020).
- ⁵ Alisha Ebrahimji, *A Jury Awarded the Family of Two Drunk Driving Victims More Than \$301 Billion, But They Don't Anticipate Seeing Any of It*, CNN, Dec. 10, 2021 (reporting that the plaintiffs' attorney did not expect his clients to receive money from the already-closed bar).
- ⁶ Katie Thomas, *\$8 Billion Verdict in Drug Lawsuit is Reduced to \$6.8 Million*, N.Y. Times, Jan. 17, 2020.
- ⁷ Michael Bradford, *Shifting Defence Tactics for US Nuclear Verdicts*, Global Risk Manager, Dec. 23, 2021 (quoting Robert Tyson, a partner at Tyson & Mendes).
- ⁸ See, e.g., *Aguayo v. AMCO Ins. Co.*, 59 F. Supp. 3d 1225, 1272 n.18 (D. N.M. 2014) ("Plaintiffs prefer to argue in front of state judges, who are often elected, rather than appointed, and who often do not have law clerks. They also prefer state juries, who are often selected from driver-license registries, to federal juries, who are often selected from voter-registration rolls.").
- ⁹ U.S. Courts, *Federal Judicial Caseload Statistics 2022* (indicating that, compared to the 12-month period ending March 31, 2022, diversity of citizenship cases were 73.8% higher than in 2013 and 65.4% higher than in 2018, which was largely driven by mass tort cases in multi-district litigation). Personal injury/product liability filings have declined since 2021 as a result of the settlement or dismissal of certain mass tort litigation.
- ¹⁰ Alicia Gallegos, *Mega Malpractice Verdicts Against Physicians on the Rise*, Medscape, Feb. 2, 2024 (quoting Richard Henderson, senior vice president for TransRe).
- ¹¹ Calculations involving state populations are based on U.S. Census Bureau data and annual estimates between 2013 and 2022, averaged over the 10-year period. See U.S. Census Bureau, *Population Estimate Tables*, <https://www2.census.gov/programs-surveys/popest/tables/>.
- ¹² See, e.g., Nicholas Malfitano, *Jury Hands Down Near \$1B Verdict for Man Who Was Paralyzed After Seatbelt Allegedly Failed*, Pa. Record Nov. 1, 2023 (reporting Philadelphia verdict); Nicholas Malfitano, *Philly Jury Hands Down \$182.7M Med-mal Verdict Against UPenn Hospital, Largest in Pa. History*, Pa. Record, Apr. 28, 2023 (reporting Philadelphia verdict); Sophia Beausoleil, *Jury Awards More Than \$860 Million to Family of Woman Killed in 2019 Dallas Crane Collapse*, NBC DFW, Apr. 26, 2023 (reporting Dallas County, Texas verdict); Janet Miranda, *Union Pacific Hit with \$557 Million Train Collision Verdict*, Bloomberg Law, Mar. 6, 2023 (reporting Harris County, Texas verdict); Courtney Stern, *Family Awarded \$730 Million in Wrongful Death of East Texas Woman*, Longview News-Journal, Dec. 31, 2022 (reporting Titus County, Texas verdict); Cameron Langford, *Texas Jury Awards \$352 Million to Family of Paralyzed Airport Worker*, Oct. 26, 2021, Courthouse News Service, Oct. 26, 2021 (reporting Harris County, Texas verdict).
- ¹³ Charles Toutant, *As Bellwether Trials Resume, Mass Tort Lawsuits Soar Due to Litigation Funding*, N.J.L.J., July 14, 2022 (reporting that courts had scheduled only a handful of bellwether trials in late 2022 "after a long spell without any cases going to trial").
- ¹⁴ Rick Rickman, *Divorce, Civil Trials Resume in New Jersey But Huge Problems Remain*, New Jersey 101.5, Apr. 8, 2024.
- ¹⁵ Nate Raymond, *Mass Torts Against 3M, J&J Fueled Spike in New Federal Lawsuits in 2023*, Reuters, Mar. 12, 2024 (reporting a 310% rise in personal injury filings in the healthcare and pharmaceutical sector in New Jersey's federal court in 2023 primarily due to talc litigation); Amanda Bronstad, *New Jersey: A New Venue for Monsanto Roundup Trials?*, N.J.L.J., Jan. 29, 2024 (reporting on a request to create a new multicounty mass tort docket in the Atlantic County Superior Court that would include ten Roundup cases filed in New Jersey state courts between December 2023 and January 2024).
- ¹⁶ See Mike Curley, *Judge Cites Misconduct In Nixing \$107M Asbestos Verdict*, Law360, Dec. 14, 2023.
- ¹⁷ See Jamie Smyth, *Johnson & Johnson's 'Texas-two-step' Sparks Outcry Over US Bankruptcy Regime*, Fin. Times, Oct. 28, 2021 (discussing \$27 million verdict awarded to Shawn "Val" Johnson); Cara Salvatore, *California Jury Awards \$26.5M in Talc Mesothelioma Trial*, Law360, Aug. 23, 2021 (reporting on verdict in *Prudencio v. Johnson & Johnson* in Alameda County). Similar nuclear talc verdicts continued in California in 2023. See, e.g., Jef Feeley, *A California Cancer Patient Wins \$18.8 Million from Johnson & Johnson in Baby Powder Trial*, L.A. Times, July 18, 2023.

- ¹⁸ The trial court reduced the \$2 billion award in *Pilliod v. Monsanto* to \$86.7 million, which was upheld on appeal. See *Maria Dinzeo, California Supreme Court Rejects Roundup Damages Appeal*, Courthouse News Service, Nov. 18, 2021. The trial court reduced the \$289 million award in *Johnson v. Monsanto* to \$78 million, which an appellate court further reduced to approximately \$20.6 million. See *Johnson v. Monsanto Co.*, 52 Cal.App.5th 434 (2020).
- ¹⁹ The trial court judge reduced the \$332 million award to \$28 million, finding the amount of punitive damages unconstitutionally excessive. See Amanda Bronstad, *California Judge Reduces \$332M Roundup Verdict to \$28M*, Law.com, Feb. 28, 2024.
- ²⁰ Sean Emery, *OC Jury Orders Suzuki to Pay \$161 Million for 2013 Motorcycle Crash*, Orange County Register, May 5, 2023.
- ²¹ David Siegel, *LA Jury Awards \$36.25M to Family of Motorcyclist Killed by Truck, Beating Insurer's \$2M Settlement Offer*, Court View Network, Sept. 28, 2022.
- ²² See Christer Schmidt, *Despite Meth, Speeding Accusations, Plaintiffs Get \$35M*, Los Angeles & San Francisco Daily Journal, Sept. 19, 2022. In 2023, the trial court reportedly found the jury's verdict contrary to the weight of the evidence and ordered a new trial limited to the issue of the drivers' comparative negligence. See Complex Appellate Litigation Group, Press Release, *CALG Wins New Trial from \$36.3 Million Jury Verdict*, Jan. 23, 2023.
- ²³ *O'Malley v. Diamond Resorts Management, Inc.*, No. G061459 (Cal. 4th App. Dist. Nov. 7, 2023) (affirming \$90 million award, which included \$30 million in prejudgment interest).
- ²⁴ See Arlin Crisco, *\$43M Verdict Hits Philip Morris for Florida Woman's Cancer Death*, Courtroom View Network, Sept. 3, 2021. Florida's unique tobacco litigation, often referred to as "Engle progeny" litigation, stems from a 2006 Florida Supreme Court decision, *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (Fla. 2006), decertifying a proposed class of approximately 700,000 people that had resulted in a \$145 billion punitive damages award. As a result, thousands of individual cases have proceeded in Florida trial courts, some of which have resulted in nuclear verdicts. See Y. Peter Kang, *Philip Morris Can't Ditch \$5.5M Engle-Linked Verdict in Fla.*, Law360, Nov. 15, 2023.
- ²⁵ Cara Salvatore, *Fla. Jury Awards \$412M In Zoom Trial Over Highway Crash*, Law360, Oct. 8, 2020 (reporting on *Duane Washington v. Top Auto Express, Inc.*, No. 18000861 CAA (Fla. Cir. Ct., Gadsden County Oct. 2, 2020); see also Raychel Lean, *Florida Lawyers Obtain a \$411 Million Jury Verdict on Zoom*, Daily Bus. Rev., Oct. 7, 2020. The entire verdict was for noneconomic damages, with the largest amount, \$371,205,000, for future pain and suffering.
- ²⁶ Hailey Konnath, *Fla. Jury Awards \$1B to Family of Big Rig Crash Victim*, Law360, Aug. 24, 2021 (reporting on *Melissa Dzion v. AJD Business Services Inc.*, No. 2018-CA-000148 (Fla. Cir. Ct., Nassau County Aug. 20, 2021); see also Katherine Lewin, *Two Trucking Companies Hit with \$1 Billion Verdict in Death of Jacksonville Teenager Connor Dzion*, Florida Times-Union, Aug. 24, 2021. The verdict included \$900 million in punitive damages and \$102 million in damages for pain and suffering.
- ²⁷ Cindy Swirko, *Jury Awards \$120M in GRU Crash That Left Man Paralyzed*, Gainesville Sun, May 7, 2021.
- ²⁸ Nate Raymond, *3M Hit With \$110 Million Verdict in Latest U.S. Military Earplug Trial*, Reuters, Jan. 28, 2022.
- ²⁹ See Daniel Wilson, *3M Hit With \$77.5M Verdict In Final Bellwether Earplug Trial*, Law360, May 20, 2022; Hailey Konnath, *3M Slapped With \$50M Verdict After Latest Faulty Earplug Trial*, Law360, Mar. 25, 2022.
- ³⁰ H.B. 837 (Fla. 2023) directly addresses inflated damages for medical care. Other provisions, such as a shift from pure to modified comparative negligence and a reduction in the statute of limitations for negligence claims, will also curb tort liability, but not necessarily the size or frequency of nuclear verdicts. Separately, Florida enacted legislation addressing misleading lawsuit advertising practices. See H.B. 1205 (Fla. 2023).
- ³¹ *Rocovich v. Consolidated Edison Co.*, 583 N.E.2d 932, 934 N.Y. 1991).
- ³² See, e.g., *Samuel v Simone Dev. Co.*, 13 A.D.3d 112, 113, 786 N.Y.S.2d 163 (1st Dep't 2004); *Keane v Sin Hang Lee*, 188 A.D.2d 636, 591 N.Y.S.2d 521 (2d Dep't 1992); *Tate v Clancy-Cullen Storage Co.*, 171 A.D.2d 292, 296, 575 N.Y.S.2d 832 (1st Dep't 1991).
- ³³ *Hrychorczuk v. 1677 43rd St. LLC*, Index No.: 502912/2017 (N.Y. Sup. Ct., Kings County, Dec. 16, 2022). The trial court later found the amount awarded for pain and suffering, \$35 million, was excessive and deviated from what is reasonable compensation, and reduced that element to \$19.5 million. *Hrychorczuk v. 1677 43rd St. LLC*, Index No.: 502912/2017, 2024 NY Slip Op 30749 (N.Y. Sup. Ct., Kings County, Mar. 8, 2024).
- ³⁴ *Brooklyn Worker Paralyzed in Fall to Receive \$53 Million for Damages*, BK Reader, Apr. 24, 2023.
- ³⁵ See Diederich Healthcare, 2022 Medical Malpractice Payout Analysis (based on payouts recorded by the National Practitioner Data Bank).

- ³⁶ See Lawsuit Reform Alliance of New York, *New York Leads the Nation in Medical Liability Payouts* (citing Diederich Health Care data).
- ³⁷ Timothy R. Capowski & Jonathan P. Shaub, *Improper Summation Anchoring Is Turning the New York Court System on Its Head and Contributing to the Demise of New York State*, N.Y.L.J., Apr. 28, 2020; see also Shaub Ahmuty Citrin & Spratt, *Top NYS Court Pain & Suffering Personal Injury Verdicts & Improper Anchoring (2010-2021 Year End)*.
- ³⁸ See Tim Capowski & Chris Theobaltare, *Anchoring Abuse: Evolution and Eradication*, N.Y.L.J. Online, Aug. 29, 2023.
- ³⁹ Christopher Simone, Jonathan Shaub & Molly Cohen, *Anchoring Away*, N.Y.L.J., Feb. 4, 2022.
- ⁴⁰ See, e.g., *Perez v. Live Nation Worldwide, Inc.*, 193 A.D.3d 517, 518 (N.Y. App. Div. 2021) (“We decline the invitation of defendant and amici to announce a new rule prohibiting the practice of anchoring”); *Hedges v. Planned Sec. Serv., Inc.*, 190 A.D.3d 485, at 489 (N.Y. App. Div. 2021) (same); see also *Redish v. Adler*, 195 A.D.3d 452, 453 (N.Y. App. Div. 2021) (finding \$30 million award for past and future pain and suffering deviates materially from reasonable compensation, but finding other arguments raised “unavailing”).
- ⁴¹ N.Y. C.P.L.R. § 5501(c).
- ⁴² Tom Stebbins, *Ambulance Chasers Fiddle While New York Burns*, Empire Rep., Feb. 1, 2021.
- ⁴³ *Ford Motor Co. v. Hill*, No. A24A0657 (Ga. Ct. App.).
- ⁴⁴ See Brief of Appellant, *Georgia v. Ford Motor Co.*, No. A24A0658 (Ga. Ct. App. filed Dec. 20, 2023) (arguing that the trial court erred in denying the state’s motion to intervene to prevent a settlement that eliminates the state’s share of the recovery); see also Ga. Code Ann. § 51-12-5.1(e)(2).
- ⁴⁵ *Martin v. Six Flags Over Georgia II, L.P.*, 801 S.E.2d 24 (Ga. 2017).
- ⁴⁶ *CVS Pharmacy LLC v. Carmichael*, 890 S.E.2d 209, 222-24 (Ga. 2023).
- ⁴⁷ See William Rabb, *Insurers for High Crime Areas on Notice After Georgia Court Affirms \$43M Verdict*, Ins. J., Nov. 12, 2021.
- ⁴⁸ Ga. Code Ann. § 51-4-2.
- ⁴⁹ Ga. Code Ann. § 51-12-2 (authorizing recovery of general damages that “flow from any tortious act,” which may be recovered “without proof of any amount”).
- ⁵⁰ Ga. Code Ann. § 9-10-184 (“[C]ounsel shall be allowed to argue the worth or monetary value of pain and suffering to the jury”).
- ⁵¹ Greg Land, *Fulton Jury Awards \$43M to Man Shot, Robbed in CVS Parking Lot*, Daily Rep., Mar. 25, 2019.
- ⁵² Karina Mazhukhina, *Family of 7-year-old Boy Killed While Boating on Georgia Lake is Awarded \$200 Million*, Macon Telegraph, Sept. 1, 2021; Andy Peters, *Georgia Jury Awards \$200M to Family of Child Killed in Boat Accident*, Atlanta Journal-Constitution, Aug. 30, 2021.
- ⁵³ Alexis Stevens, *Dekalb Jury Awards \$160 Million Verdict After Underground Atlanta Shooting Deaths*, Atlanta J. Const., Dec. 20, 2022.
- ⁵⁴ Hailey Konnath, *Autoliv Agrees to Pay \$56M to End Defective Seat Belt Case*, Law360, July 27, 2023.
- ⁵⁵ Kate Brumback, *Jury Awards \$77M in Suit Against Addiction Treatment Center*, The Hill, Sept. 7, 2022.
- ⁵⁶ Arlin Crisco, *\$75M Verdict in Med Mal Trial Over Stroke That Profoundly Paralyzed Patient*, Courtroom View Network, Oct. 24, 2022.
- ⁵⁷ Megan Hickly, *\$33.5 Million Verdict Ordered Against Village of Dolton in Deadly 2016 Crash Involving Police*, CBS News, Aug. 4, 2022.
- ⁵⁸ David Struett, *\$363 Million Verdict Against Sterigenics in First Trial Over Toxic Gas Emissions: ‘It’s Been a Long Four Years,’ Plaintiff Says*, Chicago Sun Times, Sept. 19, 2022.
- ⁵⁹ Pub. Act 103-0514 (Ill. 2023) (H.B. 219) (amending 740 ILCS §§ 180/1, 180/2).
- ⁶⁰ Pub. Act 102-006 (Ill. 2021) (S.B. 72) (adding 735 ILCS § 5/2-1303(c)).
- ⁶¹ Clark Mindock, *Monsanto Hit with \$857 Mln Verdict Over PCBs in Washington State School*, Reuters, Dec. 18, 2023.
- ⁶² The trial court reduced the \$857 million verdict to \$438 million in April 2024. See Rachel Riley, *Monsanto Judge Slashes \$857M PCB Jury Verdict*, Law360, Apr. 23, 2024.
- ⁶³ Greg Lamm & Rachel Riley, *Jury Awards \$857M In Yet Another Wash. Monsanto PCB Loss*, Law360, Dec. 18, 2023.
- ⁶⁴ Alexis Krell, *Jury Faults Convenience Store Company, Awards Millions to Man Severely Beaten by Robber*, Tacoma News Tribune, June 18, 2021.
- ⁶⁵ See *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 726 P.2d 8 (Wash. 1986).
- ⁶⁶ See Chris Villani, *Monsanto Hopes to Undo \$600M Verdicts in Wash. Appeal*, Law360, Feb. 17, 2023; see also Rachel Riley, *Monsanto Gets \$185 Million Wash. PCB Verdict Overturned*, Law360, May 1, 2024 (reporting an intermediate appellate court’s reversal of a \$185 million verdict on the basis that

- the trial court failed to apply Washington’s 12-year statute of repose and may have improperly permitted punitive damages).
- ⁶⁷ Wash. Rev. Code § 7.72.060 (twelve-year statute of repose).
- ⁶⁸ *Sofie v. Fibreboard Corp.*, 771 P.2d 711 (Wash. 1989).
- ⁶⁹ Margaret Cronin Fisk, *Welcome to St. Louis, the New Hot Spot for Litigation Tourists*, Bloomberg, Sept. 29, 2016.
- ⁷⁰ A Missouri appellate court reversed the \$72 million verdict on the basis that the St. Louis court lacked jurisdiction over a case brought by an Alabama plaintiff. Nate Raymond, *Johnson & Johnson Wins Reversal of \$72 Million Verdict Over Talc Cancer Risks*, Reuters, Oct. 17, 2017.
- ⁷¹ A Missouri appellate court reversed the \$110 million verdict on the basis that the St. Louis court lacked jurisdiction over a case brought by a Virginia plaintiff. Carl O’Donnell, *Missouri Appeals Court Overturns \$110 Million Johnson & Johnson Talc Verdict*, Reuters, Oct. 15, 2019.
- ⁷² A state appellate court reduced the verdict to \$2.1 billion and the U.S. Supreme Court denied certiorari. See Ariane de Vogue & Jen Christensen, *Supreme Court Won’t Review \$2 Billion Verdict Against Johnson & Johnson in Talc Powder Case*, CNN, June 1, 2021.
- ⁷³ Amanda Bronstad, *Johnson & Johnson Wins Third Defense Verdict in Missouri Talc Trial*, Law.com, Sept. 27, 2021.
- ⁷⁴ See Mark A. Behrens & Jennifer J. Artman, *Missouri Raises Bar for Punitive Damages and Consumer Protection Law Claims*, Legal Op. Letter, Washington Legal Found., May 14, 2020.
- ⁷⁵ *Lewellen v. Franklin*, 441 S.W.3d 136 (Mo. banc 2014).
- ⁷⁶ S.B. 591 (Mo. 2020) (amending Mo. Rev. Stat. § 510.261 to require a plaintiff seeking punitive damages to prove by clear and convincing evidence that the defendant “intentionally harmed the plaintiff without just cause or acted with a deliberate and flagrant disregard for the safety of others”).
- ⁷⁷ Jonathan Capriel, *Jury Awards \$1.56B In Monsanto Roundup Verdict In Missouri*, Law360, Nov. 20, 2023. The trial court judge later reduced the punitive damage award from \$1.5 billion to \$611 million. Hailey Konnath, *Bayer Verdict In Mo. Roundup Cases Reduced to \$611M*, Law360, Apr. 5, 2024.
- ⁷⁸ Hailey Konnath, *Bayer Verdict In Mo. Roundup Cases Reduced to \$611M*, Law360, Apr. 5, 2024.
- ⁷⁹ *Missouri Jury Awards \$745 Million in Death of Woman Struck by Driver Who Used Inhalants*, Assoc. Press, Sept. 11, 2023.
- ⁸⁰ *What Attorneys Need to Know About Reptile Theory*, Thomson Reuters Legal, Sept. 22, 2022; see also Max Mitchell, *With New Tactics Fueling ‘Nuclear’ Verdicts, Can Defense Catch Up?*, Legal Intelligencer, Oct. 23, 2019.
- ⁸¹ Elisa Reiter & Daniel Pollack, *Using and Disrupting Reptile Theory as a Trial Strategy*, Law.com, Oct. 10, 2023 (“To thwart reptile theory, attorneys must appeal to logic rather than to emotion”).
- ⁸² Don Keenan & David Ball, *Reptile: The 2009 Manual of the Plaintiff’s Revolution* (Balloon Press 2009).
- ⁸³ Stephen A. Saltzburg, *Improper Golden Rule Argument*, Am. Bar Ass’n Crim. Justice Magazine, Vol. 35, Issue 1 (Apr. 20, 2020).
- ⁸⁴ See Appellant Ford Motor Company’s Opening Brief, *Ford Motor Co. v. Hill*, No. A24A00659, at 45-50 (Ga. Ct. App. filed Jan. 9, 2024).
- ⁸⁵ *Union Pacific Hit with \$557 Million Verdict in Texas Collision Case*, Trains.com, Feb. 5, 2024.
- ⁸⁶ Moriah Ballard, *\$557M Awarded by Houston Jury to Woman Left Disfigured After Being Struck by Union Pacific Train in 2016*, KPRC 2, Mar. 6, 2023.
- ⁸⁷ Janet Miranda, *Union Pacific Hit With \$557 Million Train Collision Verdict*, Bloomberg Law, Mar. 6, 2023; *Mary Johnson v Dawn Fudge (D/B/A Last Concert Cafe)*; 2023 Jury Verdicts LEXIS 38048.
- ⁸⁸ Ronald J. Allen & Alexia Brunet, *The Judicial Treatment of Noneconomic Compensatory Damages in the 19th Century*, 4 J. Empirical Legal Stud. 365, 397-98 (2007).
- ⁸⁹ Victor E. Schwartz & Christopher E. Appel, *Perspectives on the Future of Tort Damages: The Law Should Reflect Reality*, 74 S.C. L. Rev. 1, 23 (2022).
- ⁹⁰ Victor E. Schwartz & Cary Silverman, *The Case in Favor of Civil Justice Reform*, 65 Emory L.J. Online 2065, 2066-67 (2016).
- ⁹¹ *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 18 (1991).
- ⁹² See, e.g., *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2002); *Cooper Indus., Inc. v. Leatherman Tool Grp. Inc.*, 532 U.S. 424 (2001); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 562-63 (1996); *Honda Motor Co. v. Oberg*, 512 U.S. 415, 420 (1994).
- ⁹³ *Campbell*, 538 U.S. at 425.
- ⁹⁴ See, e.g., Alaska Stat. Ann. § 09.17.010; Colo. Rev. Stat. Ann. § 13-21-102.5; Haw. Rev. Stat. Ann. § 663-8.7; Idaho Code Ann. § 6-1603; Md. Code Ann., Cts. & Jud. Proc. § 11-108; Miss. Code Ann. § 11-1-60(2)(B); Ohio Rev. Code Ann. § 2315.18; Tenn. Code Ann. § 29-39-102. Michigan limits noneconomic damages in product liability actions. Mich. Comp. Laws § 600.1483. Some of these laws include significant exemptions, such as lifting the statutory limit on noneconomic damages in cases of catastrophic injury.

- ⁹⁵ See generally Victor E. Schwartz & Leah Lorber, *Twisting the Purpose of Pain and Suffering Awards: Turning Compensation Into "Punishment,"* 54 S. C. L. Rev. 47 (2002).
- ⁹⁶ See generally Mark A. Behrens, Cary Silverman & Christopher E. Appel, *Summation Anchoring: Is it Time to Cast Away Inflated Requests for Noneconomic Damages?*, 44 Am. J. Trial Adv. 321 (2021).
- ⁹⁷ Kathleen Flynn Peterson et al., *Dropping the Anchor*, Trial (Apr. 2017) ("People often rely on the first number they are given as a baseline when making decisions.").
- ⁹⁸ *Hodge v. State Farm Mut. Auto Ins. Co.*, 884 N.W.2d 238, 255-56 (Mich. 2016) (Markman, J., concurring) (recognizing that "a jury's final award may sometimes be unduly affected by a large initial presentation of damages," which sets the award's range and then may be "discounted" based on the plaintiff's credibility).
- ⁹⁹ Don Rushing et al., *Anchors Away: Attacking Dollar Suggestions for Non-Economic Damages in Closings*, 70 Def. Counsel J. 378, 381 (July 2003); see also Dan B. Dobbs, *Law of Remedies* 8.1(4), at 383 (2d ed. 1993) (observing that there is no standard measurement of pain and suffering or "even a conception of those damages or what they represent").
- ¹⁰⁰ *Perez v. Live Nation Worldwide, Inc.*, No. 158373/2013, 2020 WL 4258745, at *6-7 (N.Y. Sup. Ct. July 24, 2020), *aff'd*, 193 A.D.3d 517 (2021) (plaintiff lawyer requested \$35 million for his client's past pain and suffering and \$50 million for future pain and suffering, and jury awarded \$85.75 million).
- ¹⁰¹ The Top 100 Verdicts of 2019, Nat'l L.J. (report on *Madere v. Greenwich Ins. Co.*, No. SC 17-CV-000106 (Ga. State Ct., Muscogee County, Aug. 23, 2019)) (plaintiff's lawyer requested \$200 million for the value of the deceased plaintiff's life plus punitive damages and attorney's fees, and jury awarded \$150 million for the value of the plaintiff's life, \$30 million for her pain and suffering, and \$100 million in punitive damages).
- ¹⁰² Stacey L. Pietrowicz, *Closing Argument-Plaintiff's Perspective*, Mass. Courtroom Adoc. 10-1, § 10.10.1 (3d ed. 2019).
- ¹⁰³ Valerie P. Hans & Valerie F. Reyna, *To Dollars from Sense: Qualitative to Quantitative Translation in Jury Damage Awards*, 8 J. Empirical Legal Studies 120, 144 (2011) (observing that "[t]he research literature on anchoring includes many successful demonstrations of the anchoring process using arbitrary or nonsense anchors, such as numbers from a roulette wheel spin or the last four digits of a Social Security or telephone number" but "there is a strong expectation that a meaningful anchor will be more persuasive than an arbitrary one").
- ¹⁰⁴ *Chrysler Group, LLC v. Walden*, 812 S.E.2d 244, 248 (Ga. 2018) (involving a Jeep rollover accident in which the plaintiffs' lawyer asked the jury to award \$120 million as the value of the child's life, linking the amount to the compensation of the automaker's CEO, and the jury awarded that amount in addition to \$30 million in damages for pain and suffering).
- ¹⁰⁵ *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Liab. Litig.*, 888 F.3d 753, 787 n.71 (5th Cir. 2018) (ordering a new trial in a product liability case against a hip implant manufacturer after the plaintiffs' attorney told the jury to award damages "by the day, by the hour, by the minute" and argued that if the defendants "will pay their experts a thousand dollars an hour to come in here, when you do your math back there don't tell these plaintiffs that a day in their life is worth less than an hour's time of this fellow, or people they put on the stand," leading to a \$141.5 million noneconomic damages award).
- ¹⁰⁶ Gretchen B. Chapman & Brian H. Bornstein, *The More You Ask for, the More You Get: Anchoring in Personal Injury Verdicts*, 10 Applied Cognitive Psychol. 519, 526 (1996); see also Christopher T. Stein & Michelle Drouin, *Cognitive Bias in the Courtroom: Combating the Anchoring Effect Through Tactical Debiasing*, 52 U.S.F. L. Rev. 393, 395-99 (2018).
- ¹⁰⁷ John Campbell et al., *Time is Money: An Empirical Assessment of Non-Economic Damages Arguments*, 95 Wash. U. L. Rev. 1, 28 (2017) (finding that participants who watched a mock medical liability case presented with a \$5 million anchor returned a median pain and suffering verdict four times the amount of participants who were left to decide a reasonable amount of damages on their own — \$1 million compared to \$225,000); Bradley D. McAuliff & Brian H. Bornstein, *All Anchors are Not Created Equal: The Effects of Per Diem Versus Lump Sum Requests on Pain and Suffering Awards*, 34 L. & Human Behavior 164, 167 (2010) (finding that mock jurors who received a five-page summary of an auto accident case involving an 18-year-old pedestrian with a lump sum or per diem anchor returned a median pain and suffering award just under the lawyer's request, while those whose summary did not include an anchor returned an amount that was less than half that amount).
- ¹⁰⁸ See McAuliff & Bornstein, 34 L. & Human Behavior at 167.
- ¹⁰⁹ See Campbell, 95 Wash. U. L. Rev. at 22.
- ¹¹⁰ See, e.g., Patricia Kuehn, *Translating Pain and Suffering Damages*, Trial (Nov. 2020) ("It is well recognized that a numerical anchor influences jurors' judgment about damages even if they do not recognize that the anchor affected their decision."); Sonia Chopra, *The Psychology of Asking a Jury for a Damage Award*, Plaintiff (Mar. 2013), at 1 ("[O]nce an anchor number has been provided, the number exerts undue

- influence on the final figure” and “can sway decisions even when the anchor provided is completely arbitrary”); David A. Wenner, *Anchoring: A Trial Lawyer’s Tool*, 2013 Annual AAJ-Papers 20 (Am. Ass’n for Justice 2013) (recognizing jurors who are bombarded with information during a trial suffer from “cognitive overload” and “unconsciously welcome the presence of an anchor that will reduce the cognitive effort needed”).
- ¹¹¹ John Campbell et al., *Countering the Plaintiff’s Anchor, Jury Simulations to Evaluate Damages Arguments*, 101 Iowa L. Rev. 543, 551 (2016).
- ¹¹² Bill Kanasky, Jr. & George Speckart, *The Nuclear Verdict, For the Defense*, Vol. 62, No. 4, 14, 18 (DRI, Apr. 2020).
- ¹¹³ *Gregory v. Chohan*, 670 S.W.3d 546, 557 (Tex. 2023).
- ¹¹⁴ *Id.* at 558.
- ¹¹⁵ *Id.* at 559.
- ¹¹⁶ Campbell, 95 Wash. U. L. Rev. at 34-48 (providing 50-state survey).
- ¹¹⁷ See, e.g., Fed. R. Civ. P. 42.
- ¹¹⁸ Ralph A. Davies, *A Balanced Perspective: Welding Fume Litigation*, 49 No. 8 DRI for Def. 14 (2007).
- ¹¹⁹ *Cantrell v. GAF Corp.*, 999 F.2d 1007, 1011 (6th Cir. 1993) (finding in joint trial involving two unrelated plaintiffs that “the potential for prejudice resulting from a possible spill-over effect of evidence ... was obvious”).
- ¹²⁰ See, e.g., Patrick M. Hanlon & Anne Smetak, *Asbestos Changes*, 62 N.Y.U. Ann. Surv. Am. L. 525, 574 (2007) (“[S]mall scale consolidations significantly improve outcomes for plaintiffs.”); Michelle J. White, *Asbestos Litigation: Procedural Innovations and Forum Shopping*, 35 J. Legal Stud. 365, 385-90 (2006); Irwin A. Horowitz & Kenneth S. Bordens, *The Consolidation of Plaintiffs: The Effects of Number of Plaintiffs on Jurors’ Liability Decisions, Damages Awards and Cognitive Processing of Evidence*, 85 J. Applied Psy. 909, 916 (2000).
- ¹²¹ Rachel Riley, *Wash. Families Fight Monsanto’s Bid to Split Up PCB Trial*, Law360, May 8, 2024 (reporting on request to hold a consolidated trial of fourteen plaintiffs, which would be the largest PCB multiplaintiff trial to date).
- ¹²² *Janssen Pharm., Inc. v. Bailey*, 878 So. 2d 31, 48 (Miss. 2004) (finding “little doubt” that a consolidated trial “created unfair prejudice for the defendant by overwhelming the jury with ... testimony, thus creating confusion of the issues”); *Van Waters & Rogers, Inc.*, 145 S.W.3d 203, 211 (Tex. 2004) (“[C]onsolidation risks the jury finding against a defendant based on sheer numbers, on evidence regarding
- a different plaintiff, or out of reluctance to find against a defendant with regard to one plaintiff and not another.”).
- ¹²³ John Beisner et al., *Trials and Tribulations: Contending with Bellwether and Multi-Plaintiff Trials in MDL Proceedings*, at 2 (U.S. Chamber Inst. for Legal Reform, Oct. 2019).
- ¹²⁴ *Id.* at 8.
- ¹²⁵ *Ingham v. Johnson & Johnson*, No. 1522-CC10417-01 (Mo. Cir. Ct.-St. Louis Cty.), modified, 608 S.W.3d 663 (Mo. Ct. App. 2020), cert. denied, 141 S. Ct. 2716 (2021); see also Tiffany Hsu, *Johnson & Johnson Told to Pay \$4.7 Billion in Baby Powder Lawsuit*, N.Y. Times, July 12, 2018.
- ¹²⁶ Jef Feeley & Tom Korosec, *J&J Ordered to Pay Record \$1 Billion for Faulty Hip Implants*, Bloomberg Law, Dec. 1, 2016.
- ¹²⁷ Clark Mindock, *Monsanto Hit with \$857 Mln Verdict Over PCBs in Washington State School*, Dec. 18, 2023 (five former students and two parents); Clark Mindock, *Monsanto Hit with \$165 Million Verdict Over PCBs in Seattle School*, Reuters, Nov. 22, 2023 (six teachers and a custodian); Greg Lamm, *Seattle Jury Awards \$72M in Latest Monsanto PCB Trial*, Law360, July 14, 2023 (seven plaintiffs, in which the jury awarded damages to two plaintiffs and deadlocked on five plaintiffs); Taylor Blatchford, *\$275M Verdict for Toxic Exposures at Monroe School, Adding to Swelling Cost*, Seattle Times (ten students); *Monsanto Told to Pay Teachers \$185M Over Chemical Exposure*, Assoc. Press, July 28, 2021 (three teachers).
- ¹²⁸ Doug Cameron & Patrick Thomas, *Bayer Told to Pay \$1.56 Billion After Losing Roundup Case*, Wall St. J., Nov. 18, 2023 (reporting on verdict resulting from three-plaintiff trial); see also Hailey Konnath, *Bayer Verdict In Mo. Roundup Cases Reduced to \$611M*, Law360, Apr. 5, 2024.
- ¹²⁹ Amanda Bronstad, *3M Hit With Largest-Ever \$110M Earplug Verdict*, Law.com, Jan. 27, 2022 (reporting on \$55 million in damages, \$15 million in compensatory damages and \$40 million in punitive damages, awarded to each of two plaintiffs).
- ¹³⁰ In a four-plaintiff consolidated trial, a jury found Johnson & Johnson liable for \$37.3 million in compensatory damages in September 2019 and in February 2020 a separate jury awarded \$750 million in punitive damages. See Lisa Girion & Michael Erman, *Jury Orders Johnson & Johnson to Pay \$750 Million in New Jersey Talc Case*, Reuters, Feb. 6, 2020. After the trial court reduced the punitive damage verdict to \$186.5 million to comply with New Jersey’s statutory limit, an appellate court threw out the verdict and ordered a new trial, finding the judge had admitted unreliable expert testimony. See Jonathan Capriel, *NJ Appeals Court Reverses \$224M Talc*

- Verdict Against J&J, Law360, Oct. 3, 2023.
- ¹³¹ *Barden v. Brenntag N. Am., Inc.*, 2023 WL 6430088 (N.J. Super. Ct. App. Div. Oct. 3, 2023); see also Charles Toutant, *Reversed: J&J Crushes \$223 Nuclear Verdict*, Law.com, Oct. 3, 2023.
- ¹³² See Robert Rivard, Op-ed, *My 2 Cents on Thomas J. Henry and His \$1.25 Billion ‘Verdict/Judgment’ Billboard*, San Antonio Rep., Mar. 10, 2022; Patrick Danner, *I Haven’t Gotten Anything: The Story Behind Thomas J. Henry’s Billboard Touting a \$1.25 Billion Court Judgment*, San Antonio Express-News, Dec. 8, 2021.
- ¹³³ Order Amending Comment 10 to Rule 7.01 of the Texas Disciplinary Rules of Professional Conduct, Misc. Docket No. 22-9011 (Tex. Jan. 31, 2022).
- ¹³⁴ Cary Silverman, *Gaming the System: How Lawsuit Advertising Drives the Litigation Lifecycle*, at 1 (U.S. Chamber Inst. for Legal Reform, Apr. 2020).
- ¹³⁵ Defendant Monsanto Company’s Opposition to Plaintiffs’ Motion for Temporary Injunction Precluding Advertisements by Monsanto Relating to Safety, Testing, and Studies on its Products Until After Entry of Judgment in this Action, at 2, *Pilliod v. Monsanto Co.*, No. RG17862702 (Cal. Super. Ct., Alameda County, filed Apr. 3, 2019).
- ¹³⁶ Jef Feeley & Tim Loh, *Bayer Roundup Verdicts Raise Pressure for New Legal Strategy*, Bloomberg Law, Jan. 30, 2024; Tom Hals, *Bayer Ordered to Pay \$1.56 Billion in Latest US Trial Loss over Roundup Weedkiller*, Reuters, Nov. 20, 2023.
- ¹³⁷ *Bayer Ordered to Pay \$332 Mln in Roundup Cancer Trial*, Reuters, Oct. 31, 2023.
- ¹³⁸ See, e.g., Amanda Bronstad, *California Judge Reduces \$332M Roundup Verdict to \$28M*, Law.com, Feb. 28, 2024.
- ¹³⁹ Cary Silverman, *Gaming the System: How Lawsuit Advertising Drives the Litigation Lifecycle*, at 1-4 (U.S. Chamber Inst. for Legal Reform, Apr. 2020).
- ¹⁴⁰ Sara Randazzo, *Litigation Financing Attracts New Set of Investors*, Wall St. J., May 15, 2016.
- ¹⁴¹ Jacob Gershman, *Lawsuit Funding, Long Hidden in the Shadows, Faces Calls for More Sunlight*, Wall St. J., Mar. 21, 2018.
- ¹⁴² U.S. Gov’t Accountability Office, *Third-Party Litigation Financing: Market Characteristics, Data, and Trends*, GAO-23-105210 (Dec. 2022), at 11.
- ¹⁴³ Westfleet Advisors, *The Westfleet Insider: 2023 Litigation Finance Market Report*, at 3 (2024).
- ¹⁴⁴ Swiss Re Institute, *U.S. Litigation Funding and Social Inflation*, at 8 (Dec. 2021).
- ¹⁴⁵ Westfleet Advisors, *The Westfleet Insider: 2023 Litigation Finance Market Report*, at 6, 8 (2024).
- ¹⁴⁶ Leslie Stahl, *Litigation Funding: A Multibillion-dollar Industry for Investments in Lawsuits with Little Oversight*, CBS’s “60 Minutes,” Dec. 18, 2022 (interview with Prof. Maya Steinitz).
- ¹⁴⁷ Jacob Gershman, *Lawsuit Funding, Long Hidden in the Shadows, Faces Calls for More Sunlight*, Wall St. J., Mar. 21, 2018 (quoting Allison Chock, chief investment officer for IMF Bentham’s U.S. division (now Omni Bridgeway)).
- ¹⁴⁸ Donald J. Kochan, *Keep Foreign Cash Out of U.S. Courts*, Wall St. J., Nov. 24, 2022, at A13.
- ¹⁴⁹ Cary Silverman, *Nuclear Verdict Risk Grows as States Expand Wrongful Death Liability*, 32:10 Legal Opinion Letter (Wash. Legal Found., Dec. 1, 2023).
- ¹⁵⁰ See, e.g., Alaska Stat. §§ 09-17-010, -020; Colo. Rev. Stat. § 13-21-203; Idaho Code Ann. § 6-1603; Ind. Code Ann. § 34-23-1-2; Kan. Stat. Ann. §§ 60-1903, 60-3702; Me. Rev. Stat. tit. 18-A, § 2-807; Md. Code, Cts. & Jud. Proc. § 11-108; N.H. Rev. Stat. § 556:12; Wis. Stat. § 895.04.
- ¹⁵¹ Mayssoon Khan, *New York Governor Vetoes Change to Wrongful Death Statute, Nixing Damages for Emotional Suffering*, Assoc. Press, Dec. 29, 2023.
- ¹⁵² A.6698/S.6636 (N.Y. 2023); S.B. 74-A (N.Y. 2022).
- ¹⁵³ Veto #192 (Jan. 30, 2023) (veto message on N.Y. S.B. 74-A (2022)).
- ¹⁵⁴ S.F. 2909, § 33-34 (Minn. 2023) (amending Minn. Stat. § 573.02 to authorize recovery of “all damages”); H.P. 581 – L.D. 934 (Me. 2023) (amending Me. Rev. Stat. tit. 18-C §§ 1-108(2) and 2-807(2)).
- ¹⁵⁵ S.B. 81 (Del. 2023) (amending Del. Code § 3723); H.B. 219 (Ill. 2023) (amending 740 ILCS §§ 180/1 and 180/2, and 755 ILCS § 5/27-6).
- ¹⁵⁶ H.B. 24-1472 (Colo. 2024) (passed May 7, 2024); S.B. 462 (N.H. 2024) (passed May 9, 2024). At the time of publication, both bills had passed but had not yet been signed into law.
- ¹⁵⁷ S.B. 538 (Md. 2024).
- ¹⁵⁸ Patricia Cohen, *Roundup Weedkiller is Blamed for Cancers, But Farmers Say It’s Not Going Away*, N.Y. Times, Sept. 20, 2019.
- ¹⁵⁹ See *id.*

- ¹⁶⁰ See Uditha Jayasinghe, *Sri Lanka Rows Back on Chemical Fertiliser Ban, but Yields May Not Rebound*, Reuters, Nov. 24, 2021.
- ¹⁶¹ Dan Murray et al., *Understanding the Impact of Nuclear Verdicts on the Trucking Industry* (Am. Transp. Research Inst., June 2020).
- ¹⁶² See *id.* at 9, 13.
- ¹⁶³ See *id.* at 50.
- ¹⁶⁴ Christina Commendatore, *Nuclear Verdicts Continue to Push Commercial Auto Rates*, Claims J., July 1, 2020.
- ¹⁶⁵ Jen Frost, *Trucking Bankruptcies Fuel 'Hyper-competitive' Insurance Marketplace*, Ins. Bus., Feb. 26, 2024.
- ¹⁶⁶ Contessa Brewer & Katie Young, *Rise in 'Nuclear Verdicts' in Lawsuits Threatens Trucking Industry*, CNBC, Mar. 24, 2021.
- ¹⁶⁷ David Saric, *What Nationwide's E&S Commercial Auto Exit Means for the Space*, Ins. News, Sept. 11, 2023; see also Brian Baskin, *'Nuclear' Verdicts Have Insurers Running From Trucks*, Wall St. J., Oct. 14, 2016 (reporting that Zurich Insurance Group AG and American International Group Inc. dropped coverage of most for-hire fleets in 2016 as a result of rising verdicts and settlements, even as accident fatalities declined).
- ¹⁶⁸ Alicia Gallegos, *Mega Malpractice Verdicts Against Physicians on the Rise*, Medscape, Feb. 2, 2024.
- ¹⁶⁹ *Id.*
- ¹⁷⁰ *Id.*
- ¹⁷¹ Ass'n of Am. Med. Colleges, *New AAMC Report Shows Continuing Projected Physician Shortage*, Mar. 11, 2024.
- ¹⁷² Jason Schiciano, *Scaffold Law Drives Up Cost of Construction in New York, Insurance Broker Says*, The Journal News, Jan. 9, 2019.
- ¹⁷³ Conner Harris, *Deconstructing New York's Building Costs*, City Journal, Spring 2022.
- ¹⁷⁴ See Schiciano, *Scaffold Law Drives Up Cost of Construction in New York*, *supra*.
- ¹⁷⁵ N.Y. Building Congress, *Debate Continues Over New York State Labor Law 240: The Scaffold Law* (Nov. 2014).
- ¹⁷⁶ NYSFAFH Testimony before the Joint Legislative Budget Committee, *2024-25 New York State Budget, Housing Priorities and Funding*, Feb. 14, 2024, at 3.
- ¹⁷⁷ Robert Duffy, Op-ed, *Costly and Antiquated Scaffold Law Hurts N.Y., Need Repealing*, Rochester Bus. J., Mar. 16, 2018; see also Chelsea Diana, *Construction Groups Urge Cuomo to Grant Moratorium on Scaffold Law as State Reopens*, Albany Bus. Rev., June 19, 2020.
- ¹⁷⁸ Meredith Hobbs, *Are Megamillion Georgia Verdicts 'Nuclear' or Sign of the Times?*, Daily Rep., Oct. 8, 2019 (quoting Bobby Shannon, a defense attorney who tries catastrophic injury and death cases around the country, following a \$280 million verdict in a trucking case as asking, "How have we gotten to the point ... where a plaintiffs' lawyer feels comfortable asking for almost \$400 million?").
- ¹⁷⁹ According to federal court statistics, in 2023, just 0.7% of all civil cases reached a jury or bench trial. U.S. Courts, *Judicial Business 2023, Table C-4: U.S. District Courts—Civil Cases Terminated, by Nature of Suit and Action Taken, During the 12-Month Period Ending December 31, 2023*.
- ¹⁸⁰ Michael A. Mora & Charles Toutant, *'They're Just Killing Us': Defense Bar Confronts Rise in Nuclear Settlements*, Law.com, Apr. 18, 2023.
- ¹⁸¹ *Id.* (citing VerdictSearch data).
- ¹⁸² *Id.* (quoting Thomas Kline of Kline & Specter in Pennsylvania).
- ¹⁸³ Aleeza Furman, *Phila. Jury Hands Up \$6.1M Verdict to Crushed Worker Despite Plaintiff's 'Nuclear' Settlement Demand*, Law.com, Apr. 26, 2024.
- ¹⁸⁴ *Id.* (quoting Theodore Schaer of Zarwin Baum DeVito Kaplan Schaer Toddy).
- ¹⁸⁵ Motion of Defendants for Post-Trial Relief, *Murray v. Janssen Pharmaceuticals, Inc.*, No. 130401990, 2019 WL 7630393 (Pa. Ct. Comm. Pleas Oct. 17, 2019).
- ¹⁸⁶ Katie Thomas, *\$8 Billion Verdict in Drug Lawsuit Is Reduced to \$6.8 Million*, N.Y. Times, Jan. 17, 2020.
- ¹⁸⁷ *J&J Settles Most Risperdal Lawsuits, with \$800 Million in Expenses*, Reuters, Nov. 1, 2021.
- ¹⁸⁸ Christian Hetrick, *Remember that \$8 Billion Risperdal Verdict? A Philly Judge has Drastically Slashed It*, Philadelphia Inquirer, Jan. 17, 2020 (reporting that Janssen Pharmaceuticals planned to appeal the court's exclusion of key evidence that would have shown the jury that the drug's label clearly and appropriately outlined the benefits and risks of the medication).
- ¹⁸⁹ *2019 Lawsuit Climate Survey: Ranking the States*, at 4 (U.S. Chamber Inst. for Legal Reform, Sept. 2019).
- ¹⁹⁰ See generally Victor E. Schwartz & Christopher E. Appel, *Perspectives on the Future of Tort Damages: The Law Should Reflect Reality*, 74 S.C. L. Rev. 1 (2022).
- ¹⁹¹ See, e.g., Mo. Rev. Stat. § 510.263; N.C. Gen. Stat. § 1D-30; Ohio Rev. Code § 2315.21(B); Tex. Civ. Prac. & Rem. Code § 41.009(a).
- ¹⁹² H.B. 19 (Tex. 2021); see also Jim Sitinson, *Texas Trucking Officials Score Tort Reform Win*, Transport Dive, June 18, 2021.

- ¹⁹³ Ohio Rev. Code § 2315.18(C)(3).
- ¹⁹⁴ Tort Reform, WestLaw 50 State Statutory Surveys: Health Care: Medical Malpractice, 0100 SURVEYS 45 (2022); see also Dan B. Dobbs, Paul T. Hayden & Ellen M. Bublick, *The Law of Torts* § 486 (2d ed. 2011) (“Well over half the states have enacted some kind of cap on damages recoverable.”).
- ¹⁹⁵ H.F. 161 (Iowa 2023) (amending Iowa Code § 147.136A). The 2023 law retains a \$250,000 limit on noneconomic damages in medical liability cases that applies to claims that do not allege substantial or permanent loss or impairment of a bodily function, substantial disfigurement, or death.
- ¹⁹⁶ Robin Opsahl, *Gov. Kim Reynolds Signs New Medical Malpractice Liability Limits Into Law*, Iowa Capital Dispatch, Feb. 16, 2023.
- ¹⁹⁷ See S.F. 228 (Iowa 2023) (codified at Iowa Code § 668.12A) (limiting noneconomic damages to \$5 million per plaintiff in any personal injury or wrongful death action arising out of the operation of a commercial motor vehicle); S.B. 583 (W. Va. 2024) (to be codified at W. Va. Code § 55-7-32) (same); see also S.B. 613 (Wis. 2023-24) (vetoed on Mar. 29, 2024) (limiting noneconomic damages to \$1 million in cases involving commercial motor vehicles).
- ¹⁹⁸ Victor E. Schwartz & Leah Lorber, *Death by a Thousand Cuts: How to Stop Multiple Imposition of Punitive Damages*, 7:12 Briefly (Nat’l Legal Ctr. for the Pub. Int. Dec. 2003).
- ¹⁹⁹ See, e.g., Fla. Stat. Ann. § 768.73(2).
- ²⁰⁰ Cary Silverman, *Bad for Your Health: Lawsuit Advertising Implications and Solutions* at 19-31 (U.S. Chamber Inst. for Legal Reform, Oct. 2017); see also Fed. Trade Comm’n, Press Release, *FTC Flags Potentially Unlawful TV Ads for Prescription Drug Lawsuits*, Sept. 24, 2019 (stating that FTC sent warning letters to law firms and lead generators regarding advertising to solicit personal injury clients that may mislead recipients and endanger public health).
- ²⁰¹ H.B. 1205 (Fla. 2023) (to be codified at Fla. Stat. Ann. § 501.139); H.B. 1125 (Ind. 2021) (codified at Ind. Code § 24-5-26.5); S.B. 150 (Kan. 2022) (codified at Kan. Stat. Ann. § 50-6,144); S.B. 378 (La. 2022) (codified at La. Rev. Stat. § 62:3221); S.B. 352 (Tenn. 2019) (codified at Tenn. Code Ann. §§ 47-18-5601 et seq.); S.B. 1189 (Tex. 2019) (codified at Tex. Gov’t Code §§ 81.151 et seq.); Comm. Sub. S.B. 136 (W. Va. 2020) (codified at W. Va. Code Ann. §§ 47-28-1 et seq.); see also Victor Schwartz & Cary Silverman, *State Crackdown On Deceptive Ads For Drug Suits Is Welcome*, Law360, June 10, 2022.
- ²⁰² See, e.g., La. S.B. 383 (2022) (amending La. Rev. Stat. § 37:223 to prohibit deceptive legal services advertisements generally and require disclaimers for certain forms of advertising).
- ²⁰³ *Barden v. Brenntag N. Am., Inc.*, 2023 WL 6430088 (N.J. Super. Ct. App. Div. Oct. 3, 2023).
- ²⁰⁴ Fed. R. Evid. 702 Comm. Notes on Rules—2000 Amend. (discussing purpose of amended rule to “affirm[] the trial court’s role as gatekeeper”).
- ²⁰⁵ See generally Mark A. Behrens, *A Brief Guide to the 2023 Amendments to the Federal Rules of Evidence*, Federalist Society, Jan. 30, 2024.
- ²⁰⁶ See Fed. R. Civ. P. 26(a)(1)(D).
- ²⁰⁷ These districts expand on Federal Rule of Civil Procedure 7.1, which provides for corporate disclosure statements. These local rules typically require a party to disclose the identity of any person or entity, other than the parties to the case, that has a financial interest in the outcome. Some districts limit this disclosure obligation to corporate parties, while others extend the requirement to all private parties. For a compilation of local federal court rules that may require disclosure of TPLF in some circumstances, see Mark A. Behrens et al., *Third-Party Litigation Funding: State and Federal Disclosure Rules & Case Law*, Prepared for Baylor Law, at 3-6 (May 2022).
- ²⁰⁸ See Matthew Goldstein & Jessica Silver-Greenberg, *How Profiteers Lure Women Into Often-Unneeded Surgery*, N.Y. Times, Apr. 14, 2018; see also Brendan Pierson, *Medical Funder Ordered to Pay \$1.3 Mln in Transvaginal Mesh Fraud Scheme*, Reuters, May 9, 2022; Diana Novak Jones, *Surgeon Avoids Prison, Ordered to Pay \$866K After Pleading to Role in Mesh Scheme*, Reuters, Jan. 21, 2022; Diana Novak Jones, *Doctor, Surgical Funder Admit to Roles in Transvaginal Mesh Fraud*, Reuters, Sept. 17, 2021.
- ²⁰⁹ Standing Order Regarding Third-Party Litigation Funding Arrangements (D. Del. Apr. 18, 2022); Loc. Civ. R. 7.1.1 (D. N.J., adopted June 21, 2021).
- ²¹⁰ Standing Order for All Judges of the North District of California, Contents of Joint Case Management Statement (N.D. Cal. Jan. 17, 2023).
- ²¹¹ See, e.g., Case Management Order No. 61 (Third Party Litigation Funding), *In re: 3M Combat Arms Earplug Prods. Liab. Litig.*, No. 3:19-md-02885 (N.D. Fla. Aug. 29, 2023); Pretrial Order #15, *In re Zantac (Ranitidine) Prods. Liab. Litig.*, MDL No. 2924, 2020 WL 1669444, at *5-6 (S.D. Fla. Apr. 3, 2020); Order Regarding Third-Party Contingent Litigation Financing, *In re Nat’l Prescription Opiate Litig.*, No. 1:17-MD-2804, 2018 WL 2127807 (N.D. Ohio May 7, 2018).
- ²¹² Wis. Stat. Ann. § 804.01(2)(bg).
- ²¹³ H.B. 1160 (Ind. 2024); S.B. 269 (Mont. 2023); S.B. 850 (W. Va. 2024).

²¹⁴ See generally Mark A. Behrens, Cary Silverman & Christopher E. Appel, *Summation Anchoring: Is it Time to Cast Away Inflated Requests for Noneconomic Damages?*, 44 Am. J. Trial Adv. 321 (2021).

²¹⁵ S.B. 1523 (Okla. 2024) (prohibiting any party or counsel from seeking or referring to any dollar amount, stating a range, or suggesting a mathematical formula for the jury to consider with respect to an award for noneconomic damages).

²¹⁶ S.B. 134 (Ind. 2024); S.B. 987 (Mo. 2024).

²¹⁷ *McHaffie v. Bunch*, 891 S.W.2d 822, 826 (Mo. 1995).

²¹⁸ See, e.g., *Elrod v. G & R Const. Co.*, 628 S.W.2d 17, 19 (Ark. 1982); *Diaz v. Carcamo*, 253 P.3d 535, 544 (Cal. 2011); *Prosser v. Richman*, 50 A.2d 85, 87 (Conn. 1946); *Clooney v. Geeting*, 352 So. 2d 1216, 1220 (Fla. Ct. App. 1977); *Bartja v. Nat'l Union Fire Ins. Co.*, 463 S.E.2d 358, 361 (Ga. Ct. App. 1995); *Wise v. Fiberglass Sys., Inc.*, 718 P.2d 1178, 1181-82 (Idaho 1986); *Sedam v. 2JR Pizza Enterprises, LLC*, 84 N.E.3d 1174, 1178-79 (Ind. 2017); *Houlihan v. McCall*, 78 A.2d 661, 664-65 (Md. 1951); *Nehi Bottling Co. v. Jefferson*, 84 So. 2d 684, 686 (Miss. 1956); *Karoon v. New York City Transit Auth.*, 241 A.D.2d 323, 324 (N.Y. App. Div. 1997); *Plummer v. Henry*, 171 S.E.2d 330, 333 (N.C. Ct. App. 1969); *Jordan v. Cates*, 935 P.2d 289, 293 (Okla. 1997); *LaPlant v. Snohomish County*, 271 P.3d 254, 256-58 (Wash. Ct. App. 2011); *Bogdanski v. Budzik*, 408 P.3d 1156, 1162-64 (Wyo. 2018); see also *Dewit v. UPS Ground Freight, Inc.*, 2017 WL 2903347 (N.D. Fla. 2017) (rejecting a direct negligence claim as duplicative when the employer admitted vicarious liability); *Adele v. Dunn*, No. 2:12-cv-00597, 2013 U.S. Dist. LEXIS 44602, at *6, 2013 WL 1314944, at *2 (D. Nev. Mar. 27, 2013) (finding that “Nevada would adopt the majority rule such that, in situations in which a motor carrier admits vicarious liability for the conduct of a driver, direct claims of negligent entrustment or negligent training and supervision against a motor carrier would be disallowed where those claims are rendered superfluous by the admission of vicarious liability.”); *Scroggins v. Yellow Freight Sys., Inc.*, 98 F. Supp. 2d 928, 931 (E.D. Tenn. 2000) (applying Georgia law); *Hackett v. Washington Metro. Area Transit Auth.*, 736 F. Supp. 8, 9-11 (D.D.C. 1990) (rejecting direct negligence claims under District of Columbia law).

²¹⁹ See generally Richard Mincer, *The Viability of Direct Negligence Claims Against Motor Carriers in the Face of Admission of Respondeat Superior*, 10 Wyo. L. Rev. 229, 232 (2010) (observing that direct claims against an employer, such as negligent entrustment and training, “were originally intended to provide a potential means of recovery in situations where vicarious liability is otherwise unavailable”).

²²⁰ See S.F. 228 (Iowa 2023) (codified at Iowa Code § 668.12A); H.B. 19 (Tex. 2021) (codified at Tex. Civ. Prac. & Rem. Code § 72.054).

²²¹ In the previous edition of this paper, the overall median nuclear verdict for 2019 was reported as \$24.6 million. This amount has been corrected to \$24.5 million.

202.463.5724 main
1615 H Street, NW
Washington, DC 20062
instituteforlegalreform.com



U.S. Chamber of Commerce
Institute for Legal Reform