

FRIDAY, DECEMBER 8, 2023

PERSPECTIVE

YEAR-ENDERS

Nuclear Verdicts®: Year-end trends and looking forward

By Robert F. Tyson Jr

In 2023, we saw Nuclear Verdicts® delivered every single day in courtrooms across the country. They are trending up, both in frequency and severity.

A Nuclear Verdict® is typically defined as a jury award of \$10 million or more, or a verdict where the noneconomic damages are disproportionate to the economic damages and the facts in the case. And to be blunt, the implication is these awards are unjust.

The term Nuclear Verdicts® was trademarked in 2021 by Tyson & Mendes with a goal of raising awareness that the defense industry needs to do something to stop these unjust verdicts. Earlier that year, “Nuclear Verdicts®: Defending Justice for All” was published. A second book is on its way by the same firm. But given the continuing rise in Nuclear Verdicts®, not enough is being done. The defense needs to collaborate like the plaintiffs’ bar, educate ourselves and each other, and completely change the way we try lawsuits.

What is happening?

The cases responsible for the rise in Nuclear Verdicts® in 2023 have come in all shapes and sizes. There was a seatbelt defect in Pennsylvania that resulted in a \$980 million verdict. A birth injury in Illinois led to a \$55.5 million verdict. In an employment case in Nebraska, a deaf truck driver received a whopping \$36 million for not being hired by a trucking company. Plaintiff law-



Shutterstock

yers are bragging about setting new jury verdict records every week!

So, what is happening? Are people becoming more injured? Are injuries worse in America than they used to be? Are plaintiffs in more pain than before? Have laws been changed to require juries to award more money? Are judges ordering jurors to award more money?

Of course not! So, what is going on? What is happening across America to cause Americans to award so much more money than they ever have before? What exactly is happening in our courthouses? Well, the answer is pretty simple: Plaintiff lawyers have changed the way they try lawsuits. And, they are really good at it. Combine that with

a defense and insurance industry who has not changed the way we defend jury trials, and you have a wonderful recipe for a Nuclear Verdict®.

Trends

Here are three trends we have seen in Nuclear Verdicts® in the past year:

1. Nuclear Verdicts® are spreading

In 2023, we saw Nuclear Verdicts® happen in jurisdictions outside of the usual judicial hellholes. Places like Iowa and Wyoming were home to verdicts for hundreds of millions of dollars. More conservative jurisdictions used to be viewed as safer for corporate defendants, but that is no longer the case. We also saw Nuclear Verdicts® in less predictable areas of practice. We are used to seeing them in medical malpractice and trucking cases, but as mentioned above, we saw huge payouts in employment and other cases too. Nowhere is safe.

2. Biggest Nuclear Verdicts® are torts

One of the largest wrongful death verdicts this year came out of Missouri. In September, a family was awarded \$745 million after their daughter was killed by a driver who was under the influence of nitrous oxide from popular canisters. Jurors found the drug addicted driver minimally liable for the accident. The distributor of the canisters, meanwhile, was found 70% liable.

Products liability cases also received some of the biggest awards

this year. In October, plaintiffs sued after developing cancer from asbestos exposure in talc products. New Jersey jurors awarded a stunning \$787.2 million. In a similar case, a former janitor's family was awarded by a California jury \$75 million in punitive damages and \$32 million in compensatory damages for his death by mesothelioma resulting from asbestos exposure.

3. Giving a number works - for the Defense too!

No one wakes up in the morning and thinks anything is worth \$10 million, \$20 million, or \$100 million, including jurors. Plaintiff lawyers know this. That is why in over 95% of Nuclear Verdicts®, plaintiff's counsel gave the jury a damages number and usually a huge one. Plaintiff lawyers have studied psychology and adapted their trial methods to include the concepts of priming and recency. The good news for the defense is psychology is the study of all humans, not just plaintiffs! Giving a number works for the defense too!

Studies show in cases where the defense gives a number, the verdict tends to be lower. Makes sense. But are you ready for this:

when the defense gives a number you are more likely to get a defense verdict! This is data; this is science.

In a real-life example, just last month our partners, Harry Harrison and Emily Beck, obtained a defense verdict in an elder neglect case where plaintiffs demanded \$9.4 million at trial. How did they get a defense verdict? Along with other proven Nuclear Verdicts® Defense Methods, they gave a number! They gave the jury a number of \$150,000, asked for a defense verdict, and got just that. You want a defense verdict? Give the jury a defense number!

2024 and beyond?

What does the future hold for Nuclear Verdicts®? Unfortunately, more of the same. If anything, they are increasing. Here is our reality: data shows that Nuclear Verdicts® are not happening to new defense lawyers. Rather, Nuclear Verdicts® are happening to some of the best, most experienced defense trial lawyers in America. Great defense lawyers, who have gotten great verdicts their whole careers, are getting killed. It's not fair. It's not just. It must stop.

We can do this. We can change the way we defend cases to respond

to plaintiff lawyers' techniques. Change is never easy, but for the sake of justice and fairness, it must happen. We write, teach, and share these changes that have to be made all the time. Not only do these defense methods work; they are supported by data. Let's make 2024 the year of change. Our clients deserve it, our legal system requires it, and justice demands it.

Robert F. Tyson Jr. is strategic managing partner at Tyson & Mendes LLP.

