

## What's Driving Huge Jury Awards? Navigating Legal Liability in the Era of the Nuclear Verdict



The changing cultural attitudes toward corporations, combined with increasingly aggressive plaintiff attorneys, are helping drive unprecedented growth in nuclear liability verdicts and jury awards. A nuclear verdict is defined as a verdict in favor of the plaintiff with a damage award that surpasses \$10 million, but the term is also used to describe an outcome significantly larger than what anyone expected.

From 2015 to 2019, the average verdict in the National Law Journal's [Top 100 Verdicts](#) more than tripled from \$64 million to \$214 million.<sup>1</sup> The same data shows there were 30% more cases in 2019 that pierced the \$100 million threshold than there were in 2015.<sup>2</sup>

The trend toward much larger verdicts and awards is especially noteworthy in auto liability. A study from the American Transportation Research Institute showed a nearly 1,000% increase in large verdicts involving truck crashes. The average verdict size for a lawsuit above \$1 million involving a truck crash increased from \$2.3 million to \$22.3 million over nine years.<sup>3</sup>

### Resources

[Top 100 Verdicts of 2020](#)

[Risk Management Information Services](#)

[Constitution State Services](#)

### For Agents

[Agent Website](#)

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Theories of negligence are now more expansive, so they can be harder to defend. Litigation may be filed sooner in the life of a claim, resulting in extensive discovery, motion practices and numerous issues litigated at trial. The appellate landscape has changed, as well, where it seems more common to see runaway verdicts affirmed on appeal.

## **Businesses Must Adapt to Changing Cultural Attitudes About Fault**

Large, public-facing companies are particularly vulnerable to the impacts of social inflation and not just from the potential monetary impact. The more branding power a company has, the less room it has for error. Negative feedback about brands can go viral on social media, further reinforcing newer cultural attitudes about corporate responsibility.

While some states recognize the scope of the problem and begin to consider legislative action,<sup>4</sup> it is incumbent upon large businesses and organizations to take steps to protect themselves.

Risk managers will find that implementing these recommended practices can help mitigate litigation risk:

- Treat each incident as if it could substantially threaten your business and reputation.
- Ensure leadership in key areas recognizes the shifting societal attitudes impacting the litigation environment.
- Arrange for resources ahead of time.

## **Plaintiffs Lawyers Draw on Popular Disdain for Corporations to Win Big**

There is a growing belief among society that companies should take full responsibility for the safety of their products and services, and workplace injuries no matter how impractical or costly, and ensure the safety of their products—even if the customer is injured while misusing a product.<sup>5</sup>

These changing societal attitudes can affect the way that juries evaluate personal injury cases, the frequency in which they rule in favor of the plaintiff and how they set the value on damage awards.

## Shifting Jury Attitudes

A DecisionQuest<sup>6</sup> study from 2018 that interviewed potential jurors really drives home how society views large companies today:

- 88% of the respondents believe that companies should take “any and all precautions,” no matter how impractical or costly, to ensure the safety of their products.
- 58% of respondents believe a corporation “always” has some responsibility for the injury, even if the customer is injured while misusing a product.

Sensing opportunity as cultural attitudes shift, plaintiffs’ attorneys use increasingly aggressive tactics to redirect focus away from the fundamental and necessary evaluation of liability in order to inflate the value of a claim in a given litigation.

One way they do that is by introducing more robust, expansive and speculative medical plans. For cases with less significant medical costs, plaintiffs’ attorneys will often draw attention to pain and suffering to make an emotional appeal to the jury in order to capitalize on today’s shifting attitudes.

Plaintiffs attorneys’ medical cost inflation tactics can frame an accident involving a mild or moderate injury as something “life-impacting.” For example, not long ago, what may have been considered a simple slip and fall case might now be characterized as a traumatic brain injury that requires a speculative life care plan.

Plaintiffs’ attorneys routinely expand their theories of negligence to include the entities with the broadest public profile and perceived deep financial resources. They may leverage every available tool, including their own data analytics, in an effort to drive up jury awards in both general liability claims and auto liability claims.

## How Business Can Help Manage the Risks Posed by an Increasingly Aggressive Plaintiff Bar?

With these concrete steps, risk managers can help mitigate potential harm to their companies and organizations from

nuclear verdicts:

1. Plan for the worst and treat each incident as if it could substantially threaten your business and its reputation.
2. Ensure leadership in key areas recognizes the shifting societal attitudes impacting the litigation environment. Potential juries remain predisposed to place broad responsibility on corporations.
3. Line up resources ahead of time by having a liability catastrophe response plan in place. Don't wait until you have a serious claim to assemble your team, including claim, legal, forensics, investigations and risk management.
4. Be on the lookout for funding that is fueling litigation. As plaintiff attorneys cast a broader net when searching for liability targets, financiers are looking for more cases to fund in exchange for a piece of the settlement or judgment. Litigation funding signals the potential for larger than expected damages.
5. Establish reasonable values for cases to present to juries that are realistic and justifiable alternatives to the speculative and life-impacting values that could be presented by plaintiffs' attorneys.
6. Be present during trials and depositions to personalize your organization. Show the public how the negative views they may hold toward big organizations do not reflect the reality of your organization.
7. It is especially important to choose the right insurance carrier – look for one with a track record of experience in the area of liability litigation and a strategic approach to helping their clients navigate difficult claims. For example, Travelers has broad litigation resources and deep litigation expertise to help support their customers.

Litigation on a given claim today can look very different than it did just five years ago. These seven steps can help risk

managers navigate the impacts of this challenging and evolving legal environment.

## How Insurance Carriers Can Help Risk Managers Navigate the New Litigation Landscape

An insurance carrier with deep experience—that can provide access to resources to help defend your business against the rising risks of claims liability—can make all the difference when it comes to helping you avoid potentially nuclear verdicts. [Travelers Claim professionals](#) apply multiple parallel strategies to help clients manage increasingly expansive liability claims.

- When a plaintiff's attorney gets involved with a claim, it can quadruple<sup>7</sup> costs, which means it is a best practice to seek to mitigate attorney representation as soon as incidents are filed. Travelers Claim professionals use [predictive models](#) to understand when attorney involvement may be likely based on key claim attributes. The model captures data on more than 200,000 plaintiff attorneys and 50,000 plaintiff attorney firms. Improved understanding of likely attorney involvement prompts empathetic conversations sooner with claimants to try to avoid unnecessary litigation.
- [Knowledgeable, liability-focused nurses](#) at Travelers work to further ensure there is a clear understanding of the true medical situation. Is a given injury life-impacting or is it more moderate? Sophisticated imaging technology is one example of how Travelers Claim professionals evaluate the extent of an injury. This technology compares a claimant's images with a database of both healthy and injured states to help provide fair and credible third-party estimates of medical costs.
- Proprietary fraud models used at Travelers can evaluate claims for signs of potential fraud. A Claim analytics team checks the findings and, when warranted, sends a referral to our [Investigative Services](#) to follow up.

- If attorney representation or litigation is unavoidable, a team of trial-tested experts including, litigation consultants and top trial counsel, proactively manage litigation.

Travelers Claim management processes are designed to deliver the right approach at the right time and are always focused on outcomes. It's a discipline that requires flexibility, judgment and nuance. The strength of Travelers' approach lies in it's strategy of embedding insights and expertise appropriately throughout the life of the claim process, to help ensure customers have the best possibility of an optimal outcome.

[Contact Travelers](#) to learn more about how we can help you navigate the current liability landscape.

### **Sources**

<sup>1</sup> *National Law Journal's 2015 and 2019 editions of the Top 100 Verdicts studies*

<sup>2</sup> *ibid*

<sup>3</sup> *Study from American Transportation Research Institute published June 23, 2020*

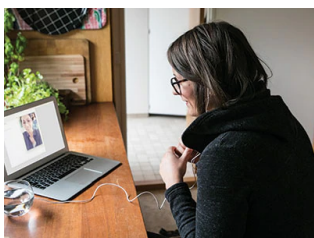
<sup>4</sup> *Truckinginfo.com, June 22, 2021*

<sup>5</sup> *2018 DecisionQuest study*

<sup>6</sup> *ibid*

<sup>7</sup> *2015-2019 Travelers Business Insurance Auto and GL bodily injury claim*

## **Insights & Expertise**

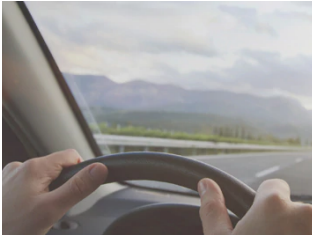


### **The Psychological and Social Impact of Work-Related Injuries**

Addressing more than the physical issues of an injury can help identify and mitigate potential barriers to work and function, resulting in better outcomes.

### **Commercial Auto Losses Risk List**

Learn about six trends driving today's commercial auto losses.



## **How Product, Labor and Legal Trends Are Driving Increased Vehicle Insurance Rates [Infographic]**

Factors ranging from the rise in attorney representation in bodily injury claims to the higher costs of replacement parts for technically complex cars and trucks continue to drive up claim costs for insurance carriers.