

NUCLEAR VERDICTS



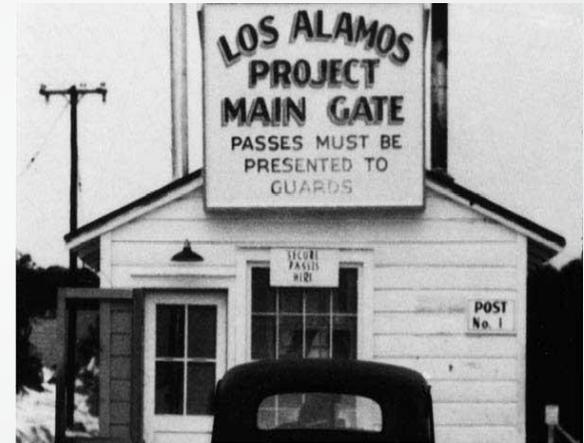
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THE ROAD TO LOS ALAMOS?



- What are nuclear verdicts?
 - Explanation of what defines a nuclear verdict and discussion of increasing frequency
- Reasons why the “bomb” drops
 - Discussion of why we are seeing more nuclear verdicts
- Defusing the bombs
 - Strategies for combatting nuclear verdicts

WHAT ARE NUCLEAR VERDICTS?

- Technically defined as jury awards exceeding \$10 million, often in personal injury or wrongful death lawsuits
- Data confirms that these verdicts are increasing rapidly in both frequency and size of award
- 4 states (California, Florida, New York, and Texas) collectively produce half of the nation's nuclear verdicts. Up until 2023 Florida had the highest per capita occurrence of nuclear verdicts- 197 reported, totaling 33 billion
- Noneconomic compensatory damages continue to play an outsized role in nuclear verdicts-exceeded the total amount of economic damages and punitive damages combined.

WHAT ARE NUCLEAR VERDICTS (Cont.)?

- Study which analyzed 1,288 reported nuclear verdicts in personal injury and wrongful death cases over a 10-year period between January 2013 and December 2022.
- Found that the median nuclear verdict during the 10-year period was about \$21 million

Nuclear Verdicts: An update on Trends, Causes and Solutions, U.S. Chamber of Commerce, Institute for Legal Reform

WHAT ARE NUCLEAR VERDICTS (Cont.)?

2023:

- 89 nuclear verdicts were reported- most since records began some 15 years earlier
- Median nuclear verdicts jumped up to \$44 million-with a total combined amount for the year coming in at \$14.5 billion
- “Thermonuclear” verdicts (over \$100 million) also hit a high with 27 such reported:

Corporate Verdicts Go Thermonuclear, Marathon Strategies, 2024 Edition

WHAT ARE NUCLEAR VERDICTS (Cont.)?

2024:

- 135 nuclear verdicts were reported- a 52% increase over 2023
- Total combined nuclear awards for the year reached \$31.3 billion-a 116% increase over a year
- Thermonuclear verdicts were up to 49 cases- with 5 exceeding \$1billion

Corporate Verdicts Go Thermonuclear, Marathon Strategies, 2025 Edition

EXAMPLES OF NUCLEAR VERDICTS

Recent Examples in Florida:

- On October 17, 2025 jury in Orange County, Florida awarded plaintiff **\$11.4 million** for compensatory damages in suit against Target arising out of a trip and fall accident. Plaintiff was walking near a landscaping island, carrying her daughter and did not see a seam where the asphalt met a concrete curb. Her injuries included a fracture of the left ankle and fractures to the tibia and fibula of her right leg. Case is on appeal.
- *Dzion v AJD Business Services* (2021)-Suit alleging wrongful death of an 18-year-old arising out of a trucking accident which occurred on I-95 in Nassau County. Jury returned a verdict in the amount of **\$1 billion**-\$100 million in compensatory damages and \$900,000 in punitive damages.
- *Neima Benavides v. Tesla* (2025)- Wrongful death suit involving alleged defect in vehicle's autopilot system. Jury awarded verdict of **\$129 million** in compensatory damages and **\$200 million** in punitive damages

REASONS WHY THE BOMB DROPS?

- Why are we seeing this dramatic increase in the amounts being awarded by juries in negligence/tort cases
 1. Lawyer advertising.
 - a. In Q2 of 2025, Morgan & Morgan spent more \$ on “outdoor advertising” than any other company in the U.S.
 - b. Effect of desensitizing jurors to large verdicts- “Dan got me!”
Make it seem like a car accident automatically grants the would-be plaintiff multi-millionaire status
 - c. Use advertising to educate jurors about matters which they are precluded from introducing at trial- “Everyone has insurance”
“Insurance companies are greedy”
 - d. Telling the public (i.e., future jurors) the “median value” of a particular injury.



The Truth About Injury Claim Value and What Your Case Could Be Worth

Every case has its own story and its own value.

Several factors can influence what your claim may be worth, and no two situations are ever the same.





Although every personal injury case varies, there are general value ranges depending on your injuries and the available insurance coverage.

Soft Tissue Injuries (\$5,000 – \$25,000):

These cases typically involve muscle strains, sprains, or general soreness treated primarily through chiropractic care or physical therapy. There are usually no major permanent injuries.

Injuries With MRI Findings (\$10,000 – \$60,000):

If an MRI reveals abnormal findings—such as disc bulges, herniations, or other spinal issues—and you require treatment with an orthopedic specialist or neurosurgeon, including spinal injections, the value of your claim increases. The exact amount depends on your prior medical history and the extent of the injury.

Cases Involving Invasive Treatments like Injections and Surgery (\$25,000 – \$10,000,000 and Up):

If your injuries require invasive treatments like injections or surgical intervention, your medical bills and long-term impact are significantly higher. These cases commonly settle for hundreds of thousands or millions of dollars, depending on the type and number of surgeries performed, as well as the severity of your condition.

At **Trial Pro**, we carefully evaluate every factor to determine the true value of your claim and fight hard to ensure you receive the compensation you deserve.

REASONS WHY THE BOMB DROPS (Cont.)

2. Use of “Reptile Theory” by plaintiff attorney during trial to influence the jury
 - a. Improper appeals to a jury’s emotions by arguing a defendant’s conduct threatens the community’s safety.
 - b. The reptile theory arouses a juror’s self-interest and inspires the juror to punish the defendant with a large verdict. Appeals to anger instead of sympathy.
 - c. Reptile is about community (and thus juror’s own) safety.
 - c. Promoting a jury verdict based on instinct rather than logic.
 - d. Make the plaintiff vulnerable and sympathetic and make the jurors feel personally threatened by the defendant's behavior
 - d. Replaces legal standard of “reasonable care” with an unattainable absolute “safety” standard.
 - e. Examples-“Wouldn’t you agree that the County’s highest priority is safety?”

REASONS WHY THE BOMB DROPS (Cont.)

Examples of Reptile Questions:

- You would agree that safety must always be the County's top priority, right?
- A prudent person does not needlessly endanger anyone, correct?
- Violating a safety rule is never prudent, correct?
- There are specific rules that a driver must follow, correct?
- Like the traffic laws?
- And you agree that the traffic laws are in place to ensure the safety of everyone on the highway, right?
- Do you agree that if someone violates a rule, that person should be held responsible for his or her actions?
- Do you agree that if someone violates a rule and causes an accident, that person and his employer should be held responsible for the damage caused?

REASONS WHY THE BOMB DROPS (Cont.)

Defense Response:

Rule #1—Never Just Say “Yes”!

Reptile-theory questions are designed to allow a plaintiff’s attorney to testify, with a defendant’s witness simply answering “yes” in response to all of the questions. Plaintiff’s attorney wants to get into a rhythm and provoke “yes” answers to the easy questions to establish a pattern.

Rule #2—The “Safety Rule” Is Never Simple!

Plaintiffs’ attorneys want to show that the safety rule at issue is simple. The entire theory depends on a simple safety rule. But almost no rule is simple and absolute. With few exceptions, each decision that a person makes involves some safety risk, and almost every rule has an exception.

REASONS WHY THE BOMB DROPS (Cont.)

Defense Response (cont.):

Rule #3—The Defendant’s Conduct Was Reasonable!

Instead of simply answering ‘Yes’, reframe the answer to focus on the fact that the defendant acted reasonably under the circumstances.

Rule #4—Do Not Answer Damages or “Responsibility” Questions!

A plaintiff’s attorney will almost certainly ask a question about whether a person who causes damage should pay for that damage. It is hard to say “no” to that question, so do not say it. Instead, a defense witness should let the lawyer know that the question sounds like one that should be answered by lawyers

REASONS WHY THE BOMB DROPS (Cont.)

Examples of Alternative Defense Responses:

Q: Safety is always a top priority, right?

A: That is a very broad question, so I guess that I have to say, “It depends.” Firefighters risk their own safety all the time. A police officer speeding to get to the scene of the crime puts other people’s safety at risk. People driving to work at rush hour are creating a safety risk. Every decision is a calculation.

Q: A prudent person does not needlessly endanger anyone, correct?

A: A lot of people get in their cars and drive to work in the morning. If they stayed home, they would not be endangering anyone, but is that needlessly endangering someone? Doctors are prudent people, but they still perform elective surgery. Reasonable people assess every situation and try to make the best decision that they can.

REASONS WHY THE BOMB DROPS (Cont.)

Examples of Alternative Defense Responses (cont.):

Q: There are rules of the road designed to keep people, like [the plaintiff] or any other driver, safe, correct?

A: Not always. Some rules of the road, like rules about tire chains or weight limits, are designed to protect the road surface. Other rules are about saving fuel. And I think that most people can probably think of a rule or two that does not seem to have any purpose.

REASONS WHY THE BOMB DROPS (Cont.)

Deposition preparation:

- Expect Plaintiff lawyers to use aggression, humiliation, and confusion to elicit the desired response.
- Aggression: hostility towards witness through negative volume, tone, and body language
- Humiliation: display of shock, disbelief, and even laughter towards the witness' answers
- Confusion: feigned lack of understanding of answer, encouraging greater or different explanation from witness

REASONS WHY THE BOMB DROPS (Cont.)

3. Jury Anchoring:

- Plaintiff lawyers will suggest specific, often exorbitant, amounts for damages in the hopes of influencing jurors as to the value of a “reasonable” or “fair” verdict.
- Per diem argument for assessment of pain and suffering damages
- Requires defense counsel to change traditional trial tactics of never discussing an award of damages- Give the jury a reasonable number.



REASONS WHY THE BOMB DROPS (Cont.)

4. Third party litigation funding

- Deeply troubling- This industry, is currently estimated to be \$11 billion to \$12 billion in the U.S.
- One federal district court judge described third-party litigation funding this way: “Creative businessmen, ever alert to new opportunities for profit, perceived ... a chance to make money and devised what has come to be known as third party litigation funding, where money is advanced to a plaintiff, and the funder takes an agreed upon cut of the winnings.” (*Miller UK Ltd. v. Caterpillar, Inc.* (N.D. Ill. 2014) 17 F.Supp.3d 711, 718.)
- The “business of law”- Private equity, Wall Street, large accounting firms look to profit from funding/participating in litigation
- Increased frequency of lawsuits, higher defense costs, and more time spent in the court system in lieu of settling.
- Raises ethical questions for lawyers- Who controls litigation? Client, lawyer or third-party funding entity?

REASONS WHY THE BOMB DROPS (Cont.)

Third party litigation funding (Cont.)

- First, plaintiffs and their lawyers will be less likely to settle before trial. If the plaintiff's lawyers are not responsible for advancing the costs of trial, then the defendant loses leverage to persuade the plaintiff to settle before trial.
- Second, litigation funders will use advanced algorithms and artificial intelligence programs to select and fund the cases that are most likely to yield the largest verdicts.
- Third, with the backing of wealthy investors, plaintiff's attorneys can hire jury consultants, conduct mock trials to refine best arguments for maximizing a potential verdict.

REASONS WHY THE BOMB DROPS (Cont.)

5. Unholy alliance between plaintiff lawyers and health care providers
 - a. Increasingly, the “treating” physicians are no longer “neutral” witnesses at trial- primarily because of established business relationships with plaintiff’s law firm and fact that doctor has a direct financial interest in the outcome of the litigation
 - b. Business relationships between physicians, surgery centers, chiropractors
 - b. Prolific use of life care planners, vocational rehabilitation experts- ties in to availability of additional funding from non-lawyer entities

REASONS WHY THE BOMB DROPS (Cont.)

6. Public sentiment:

- People with lack of trust in government or governmental agencies.
- People with anti-corporate attitudes. “Stealth jurors”- disenfranchised, angry at system-CEO pay, golden parachute-
- As more people distrust large organizations, juries are more likely to award significant damages to the “little guy”.
- Different world over last 5 years- How people perceive/interpret science, information, “facts”, evidence- skepticism towards “experts”-more likely to substitute their own beliefs/opinions as opposed to evidence introduced at trial.
- “My truth!”
- Not limited to any particular political or social beliefs-Difficult to identify during jury selection.

REASONS WHY THE BOMB DROPS (Cont.)

7. Rising cost of medical care. Long-term care for injured plaintiffs is becoming more costly as medical treatments become more advanced, which leads to higher compensation demands.
8. Venue of lawsuit- “Judicial Hellholes”



STRATEGIES FOR DEFUSING BOMBS

Defense litigation strategies

Reverse reptile theory

- Need the right type of case- Focus on whether plaintiff (or co-defendant):
 - Was non-compliant with medical instructions
 - Misused a product
 - Reckless or careless behavior or decision making
 - Did not comply with company or universal safety standards
 - Prepare your witnesses for deposition/trial-How to respond to “reptile” questions.

STRATEGIES FOR DEFUSING BOMBS (Cont.)

Defense litigation strategies (Cont.)

- b. File motion in limine seeking a court order precluding plaintiff's attorney from presenting any evidence *or argument* that appeals to the jury's sense of self-interest and portrays the defendant as a danger to the community.
- c. Involve defense counsel immediately following a serious accident-evidence preservation, fact finding, protection of employees due to confidentiality (attorney/client; attorney work product) e.g. commercial trucking "rapid response teams", Amtrak.
- d. Evaluate the nature of the alleged negligent conduct at issue-Is there an aggravating factor? Do defendant's actions show a blatant disregard for safety or well-being? If so, odds of a nuclear verdict increase exponentially.
- e. Aggressive defense lawyering from outset of the case-
"Everyone has a plan, until you get punched in the face..."-
Mike Tyson
- f. Can't wait until the 9th round to start punching



WHY SHOULD PUBLIC ENTITIES CARE ABOUT NUCLEAR VERDICTS?

- What is the significance of this trend for public entities in Florida?
- Why should we care?
- Have a sovereign immunity cap - \$200,000/\$300,000
- Protected by the claim bill process
- Have liability insurance

WHY SHOULD PUBLIC ENTITIES CARE ABOUT NUCLEAR VERDICTS? (Cont.)

- Not all claims against County are subject to the SI cap- Federal claims (civil rights); State land use/inverse condemnation/taking
- Sovereign immunity cap not always going to remain at the \$200k/\$300k level
- Significant efforts by plaintiff lawyers in last 5-6 Legislative sessions to raise SI limits (last proposal was to raise to \$500k/\$1 million, with an annual COL increase annually thereafter)
- Not entirely sure that the claim bill process is as bullet proof as it was 10-15 years ago
- Nuclear verdict will likely exceed County's available insurance limits
- Most direct impact is in cost of insurance for governmental entities
- Insurance market is global and when costs go up for the private sector, that in turn impacts reinsurance costs and ultimately your insurance premiums

POSITIVE NEWS FOR FLORIDA

- The good news! Tort Reform in Florida -2023
 - Primary components:
 1. Shift from “pure” to “modified” comparative negligence- Bar on recovery if Plaintiff is 51% or more at fault
 2. Disclosures concerning the use of letters of protection (LOP) to obtain medical treatment.
 3. Statute of limitations for negligence suits reduced from 4 to 2 years- But, still 4 years for public entities
 4. Significant limitations on the amounts of medical bills admissible as evidence—or the admission of insurance or Medicare reimbursement rates for comparison. Fla. Stat. § 768.0427(2) (2025).

QUESTIONS??



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