

The Litigation Tactics Behind Nuclear Verdicts – Risk Insights.

By Associates Insurance Agency



Nuclear verdicts are sizeable jury awards, typically \$10 million or more. They've become far more common over the last decade, largely due to shifting litigation tactics designed to enhance settlement leverage. While ongoing social inflation and a steady decline in public sentiment toward businesses also play a role, attorneys are increasingly deploying advanced psychological and deposition techniques, strategic venue selection and third-party litigation funding (TPLF) to further fuel settlement pressure and drive up jury awards.

Altogether, these tactics can influence how corporate lawsuits develop and ultimately affect their outcomes, thereby elevating nuclear verdict risks. The fallout from these awards can be severe for any business, invoking lasting reputational damage, exposing gaps in insurance coverage and triggering major financial disruptions. For this reason, businesses need a solid understanding of the litigation tactics currently driving nuclear verdicts and how to minimize their exposure.

PSYCHOLOGICAL AND DEPOSITION TECHNIQUES

By using certain psychological techniques when arguing or presenting a case, attorneys may appeal heavily to witnesses' and jurors' basic instincts, morals and emotions to secure higher awards. One of the most common techniques is the reptile theory, in which an attorney frames a defendant's actions as a direct threat to personal or community safety. Through this technique, the attorney may get a corporate witness to agree to a broad or absolute safety standard related to a business's alleged wrongdoing. After arguing that the business violated this standard, the attorney may argue that this action (or lack thereof) put the entire community, jury included, in danger. This may motivate the jury to "fix" the perceived safety threat and punish the business by awarding large damages. The reptile theory is especially prevalent in corporate negligence and accountability lawsuits that involve serious injuries or death.

Another common technique is anchoring, in which an attorney suggests a high dollar amount for a final verdict early on (e.g., during jury selection) to serve as a reference point throughout the case. The thought behind this technique is that the elevated figure will remain "anchored" in jurors' minds during final deliberations and steer them toward a larger award. Reptile-style questioning can begin during the deposition process, while anchoring may be used during the settlement discussions or at trial, potentially increasing settlement leverage and influencing the size of the eventual award.

STRATEGIC VENUE SELECTION

While nuclear verdicts have been on the rise throughout the United States, specific litigation trends vary significantly by jurisdiction. As such, some states and municipalities have been deemed more

favorable venues for these awards, whether due to jury pool composition, procedural rules, judicial tendencies or historical precedent.

Considering these factors, attorneys are more likely to seek legally available, plaintiff-friendly jurisdictions where they believe they have a greater chance of favorable outcomes, a practice known as strategic venue selection. In some cases, decisions about which parties or claims to include may also affect where a lawsuit can be filed or whether it can be moved from state to federal court. Venue selection strategies may differ based on the nature of the lawsuit. For example, some jurisdictions have recorded a higher share of trucking nuclear verdicts than others, making venue a critical consideration in litigation across this sector.

Even so, some state and local laws limit where lawsuits can be filed, and the nature of certain cases may permit defendants to challenge or transfer jurisdictions. Regardless, strategic venue selection continues to factor into nuclear verdict exposure, with more concentrated activity in jurisdictions that industry reports consistently flag as plaintiff-friendly, including New York, California, Georgia and Texas.



TPLF

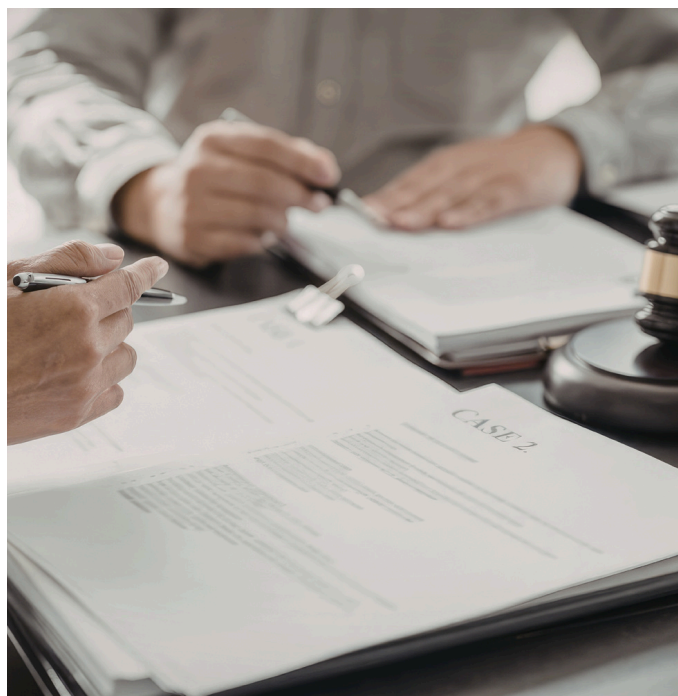
TPLF refers to a third party providing financing for a lawsuit in exchange for a portion of the settlement or other financial return. In the past, the high cost of attorney fees would often discourage many plaintiffs from taking a lawsuit to trial. However, TPLF can help cover costs associated with litigation, potentially allowing plaintiffs to pursue cases longer or take on claims that otherwise may be financially difficult.

As TPLF becomes more common and gives attorneys access to additional plaintiffs, insurers and other industry observers have cited it as a contributing factor to social inflation and rising liability insurance claim severity. This is because plaintiffs can take cases further and seek larger damages without the financial pressure to reach an early settlement.

REDUCING THE EXPOSURE

In light of these litigation tactics, here are some steps businesses can take to limit their exposure to nuclear verdicts:

- **Implement solid response and reporting protocols.** Businesses should have detailed incident response and claims reporting measures in place for any liability scenarios that could prompt litigation, namely third-party injuries and property damage. These measures should be designed to help minimize related losses and reduce the risk of escalation. Key topics to address include coordination across teams, immediate preservation of relevant evidence and comprehensive recordkeeping.
- **Prepare witnesses.** Employees and corporate representatives called as witnesses in the deposition process for a liability lawsuit should be prepared in advance on the reptile theory and how to respond to attorneys' questions about broad or absolute safety standards. Such preparation can help witnesses provide



accurate testimony and avoid inadvertently agreeing to statements that could later be used against the business.

- **Maintain adequate safety documentation.** Businesses should establish detailed and consistent workplace safety policies that accurately reflect company culture, as well as up-to-date incident records and investigation reports. Maintaining this documentation can help a business demonstrate a clear commitment to safety in a liability lawsuit and further support its defense.
- **Ensure a robust insurance portfolio.** Multiple insurance policies can help businesses protect against financial losses from nuclear verdicts, including general liability, commercial auto liability, and umbrella and excess liability coverage. It's best to review specific policy limits, attachment points and overall program structure against current litigation trends and claim severity and update coverage as needed.
- **Consult the experts.** Businesses don't have to navigate nuclear verdict risks alone. They should work alongside trusted insurance professionals and legal counsel to proactively prepare for serious liability lawsuits.

KEY TAKEAWAYS

As nuclear verdicts continue to gain momentum through shifting litigation tactics, businesses that wait until a lawsuit to act are already behind. Bolstering incident response protocols, training staff, documenting safety practices and reviewing insurance coverage now can make all the difference. The right preparation, paired with expert guidance, is key to staying protected.

Contact us today for more risk management guidance and coverage solutions.



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