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Nuclear Verdicts in the United States: Can They Be Avoided?

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Agenda

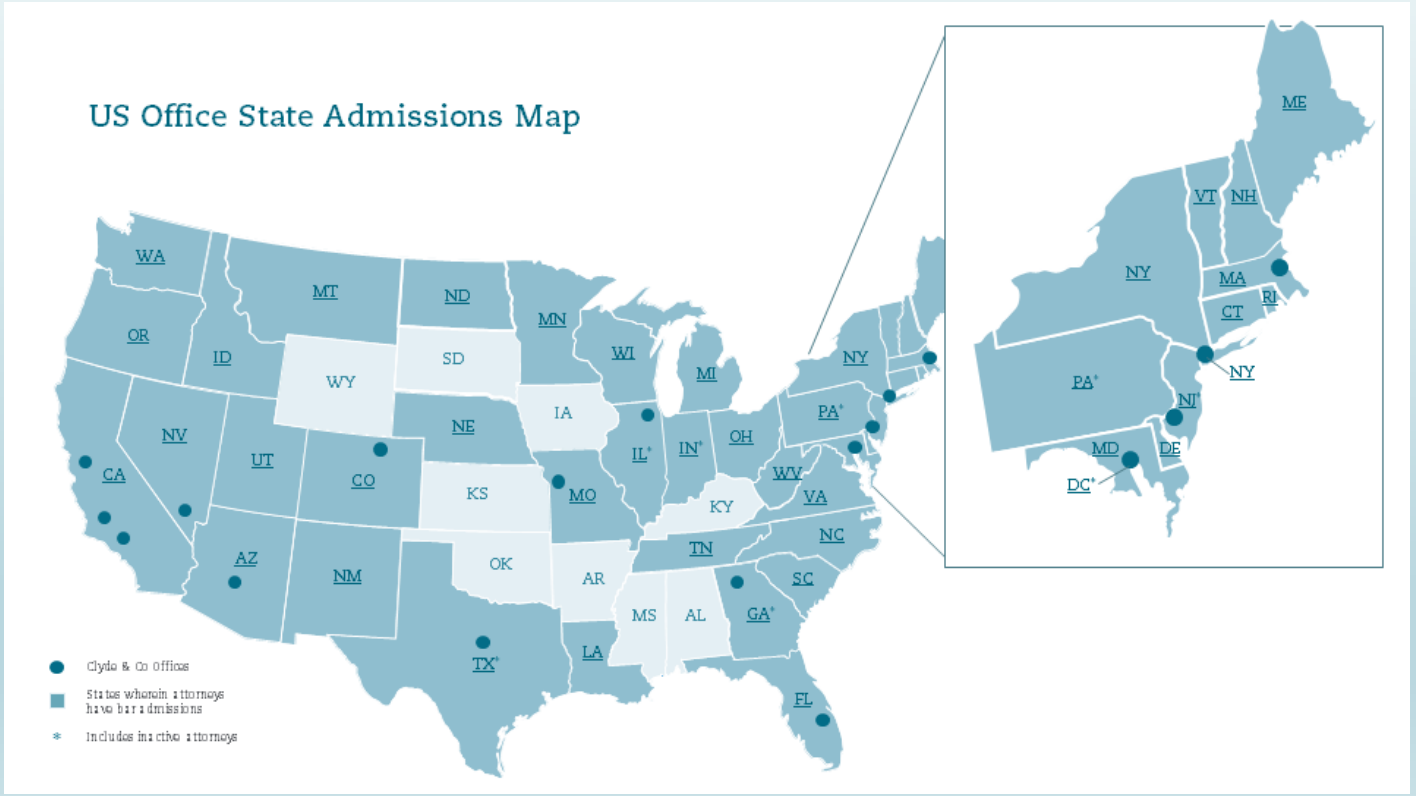
- What are nuclear verdicts and where are they most likely?
- Why the increasing trend towards nuclear verdicts?
- Nuclear verdict examples
- Can nuclear verdicts be avoided?
- Questions

Our Background

- Practice Areas:
  - Marine Insurance
  - Personal Injury Litigation
  - Trucker Broker Liability
- Olivia joined Clyde in 2024
  - Licensed in NY and NJ
- Michelle joined Clyde in 2021 (clerked for a year)
  - Licensed in NY

Clyde & Co US LLP

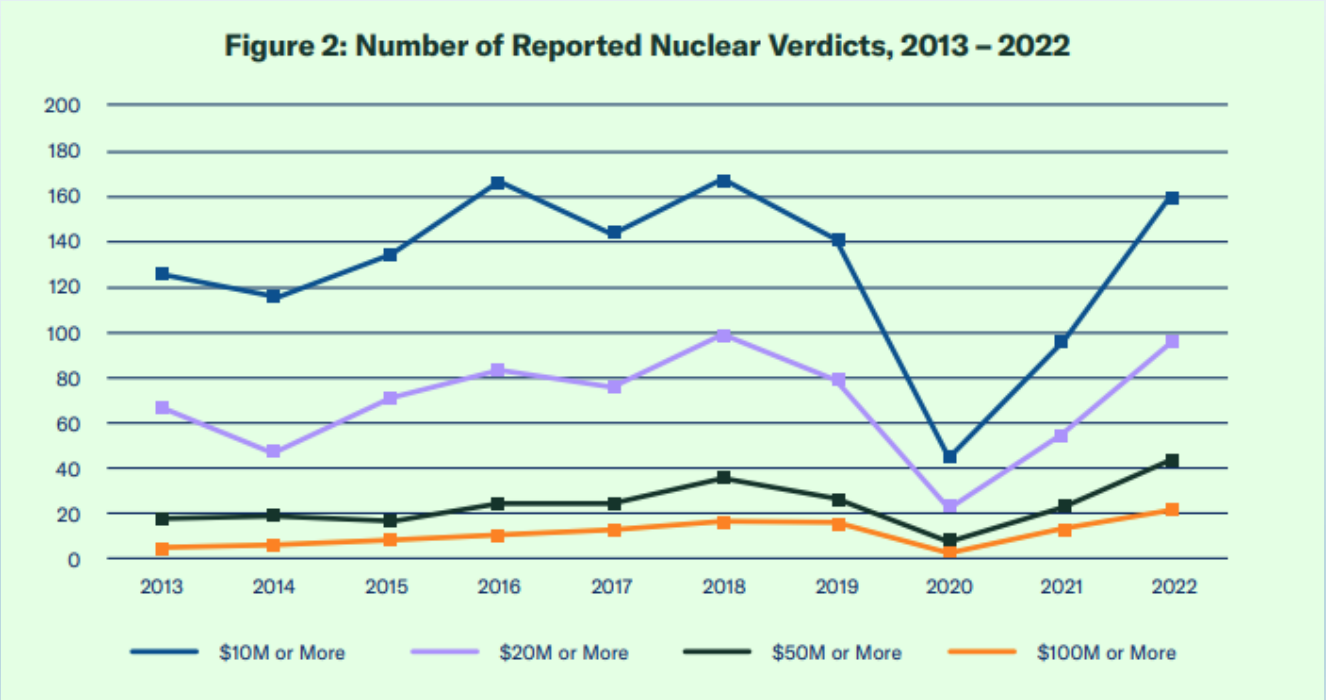
U.S. Offices and Bar Admissions



What Are Nuclear Verdicts?

- An exceptionally high jury award that far exceeds typical precedents for similar cases.
- Nuclear Verdict = Any award that exceeds $10 million
- Thermonuclear Verdict = Awards greater than $100 million
- These awards are “nuclear” in the sense that such a verdict can have a devastating impact of businesses, industries, and insurance.

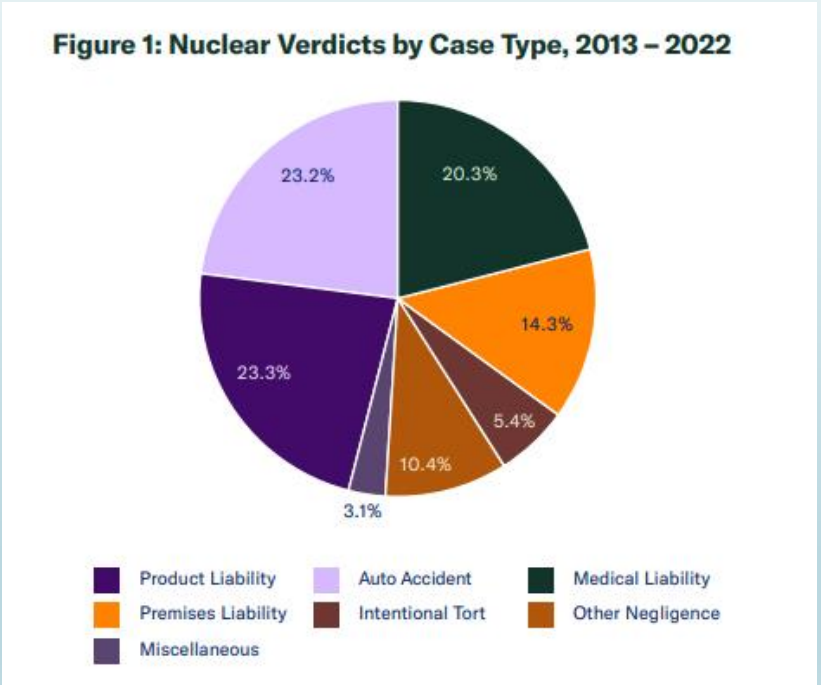
Number of Nuclear Verdicts



Source: https://instituteforlegalreform.com/research/nuclear-verdicts-an-update-on-trends-causes-and-solutions/

What Types Of Cases Are Subject to Nuclear Verdicts

- Products Liability (Bayer AG / Monsanto)
- Wrongful Death (Medical Malpractice)
- Motor Vehicle/Railroad (Bodily Injury)
- Intellectual Property (Google, Samsung)
- Antitrust (Real Estate Commission)
- Workplace Negligence (Premises Liability)
- Employment Law (Discrimination)



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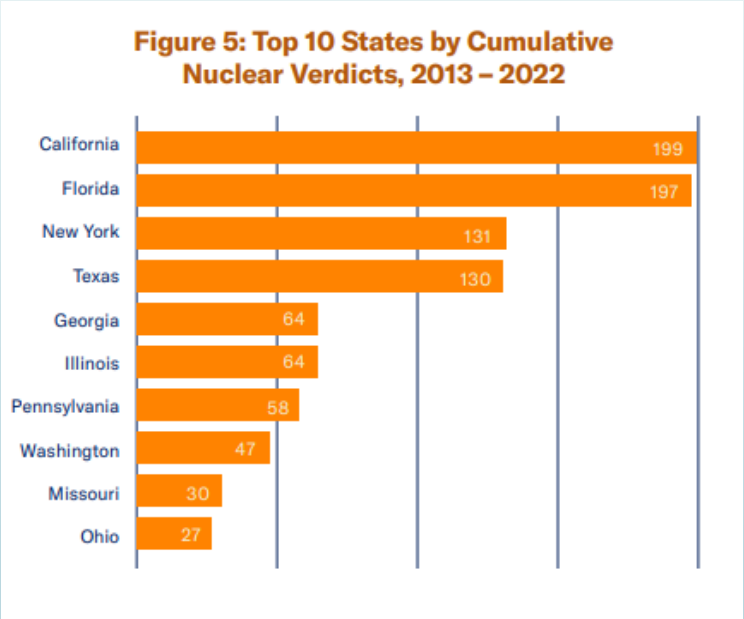
Top States for Nuclear Verdicts

- State courts worse than Federal courts
- Courts in California, Florida, New York, and Texas consistently produce 50% of the nation's nuclear verdicts
- The top 10 states account for nearly 75% of all personal injury and wrongful death verdicts over $10 million from 2013-2022



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What's the Current Landscape?

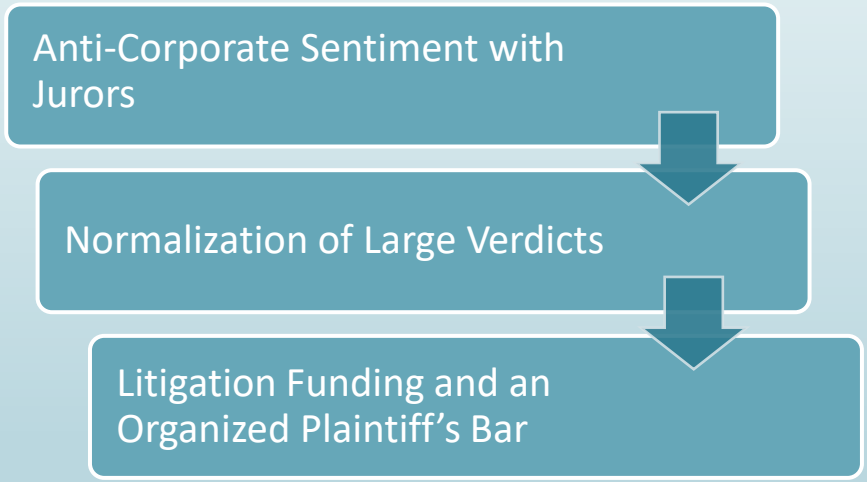
- Nuclear verdicts are on the rise and continue to increase in size and frequency.
- U.S. juries awarded more than $14.5 billion in nuclear verdicts in 2023 — **a 15-year high**.
- In 2023, lawsuits against corporate defendants resulted in:
    - ❑ 89 verdicts of at least $10 million
    - ❑ 27 verdicts of at least $100 million
    - ❑ 8 verdicts of at least $500 million
    - ❑ 2 verdicts of at least $1 billion
- In 2023, the median verdict rose from $21 million to $44 million.

Why the Increasing Trend Towards Nuclear Verdicts?

(1) Social Inflation

The term refers to a phenomenon in which there is an increase in insurers' claims costs above general economic inflation due to litigation costs.

Occurs when jurors become desensitized to large numbers and susceptible to the tactics of plaintiff lawyers who seek to tap into their fears and general distrust of corporations. These conditions may encourage excessive jury verdicts and expensive settlements, or "social inflation."



Why the Increasing Trend Towards Nuclear Verdicts?

(2) Plaintiffs' Counsel Changed the Game

- Reptile theory
  - ❑ Goal is to tap into juror's basic sense of safety
  - ❑ Need to punish corporate defendants for their conduct
- Spending more money on presentation of case

(3) Third-party litigation funding

- Hedge funds and other institutional investors backing high-risk cases with a view to profiting from larger awards

> "When a plaintiff's lawyer successfully employs the reptile theory, jurors are led to believe that if they don't punish a defendant for violating a clear set of safety rules, then the same harm could be inflicted on them or their community.

Top Recent Nuclear Verdicts

$3.8 Billion – March 2025 (Nevada)

- **Product Liability**: Illness from contaminated water

$2.5 Billion – February 2025 (Georgia)

- **Wrongful Death**: Car roof crushed parents in accident

$2.1 Billion– March 2025 (Georgia)

- **Product Liability**: Cancer from exposure to Roundup

Top Recent Nuclear Verdicts (cont'd)

$411 Million – February 2025 (Louisiana)

- **Personal Injury**: Head injury from construction accident

$145.26 Million – April 2025 (Colorado)

- **Insurance**: Bad faith denial of brain injury treatment

$91 Million– December 2024 (Hawaii)

- **Product Liability**: Throat cancer from smoking

Top Recent Nuclear Verdicts (cont'd)

$56 Million – March 2025 (Texas)

- **Personal Injury**: Truck struck man on bicycle

$45 Million – April 2025 (Florida)

- **Medical Malpractice**: Hospital failed to transfer patient

$32.5 Million– March 2025 (California)

- **Personal Injury**: Spinal injury from car crash

Top 10 Recent Nuclear Verdicts (cont'd)

$20 Million – April 2025 (Texas)

- **Personal Injury**: Fall on stairs in apartment building

Nuclear Verdict Awards

For nuclear verdicts awards between 2013 and 2022:

- 25% of awards included punitive damages
  - Punitive damages are awarded to punish defendants for egregious conduct and deter similar future acts
  - More common in thermonuclear verdicts
- Economic damages accounted for 10% of total awards
  - Economic damages are tangible financial losses and include lost income, medical costs, and other expenses
- Large portion of the awards consisted of non-economic damages
  - Non-economic damages are intangible losses, including pain and suffering, emotional distress, and loss of consortium

Top 5 Recent Marine Nuclear Verdicts

$200 Million – August 2021 (Georgia)

- **Wrongful Death**: Young boy died in boat propeller accident

$60 Million – May 2024 (Texas)

- **Personal Injury**: Spinal injury from fall during vessel transfer

$17 Million– July 2021 (Texas)

- **Environmental**: Collision causing oil spill in Houston Ship Channel

Top 5 Recent Marine Nuclear Verdicts (cont'd)

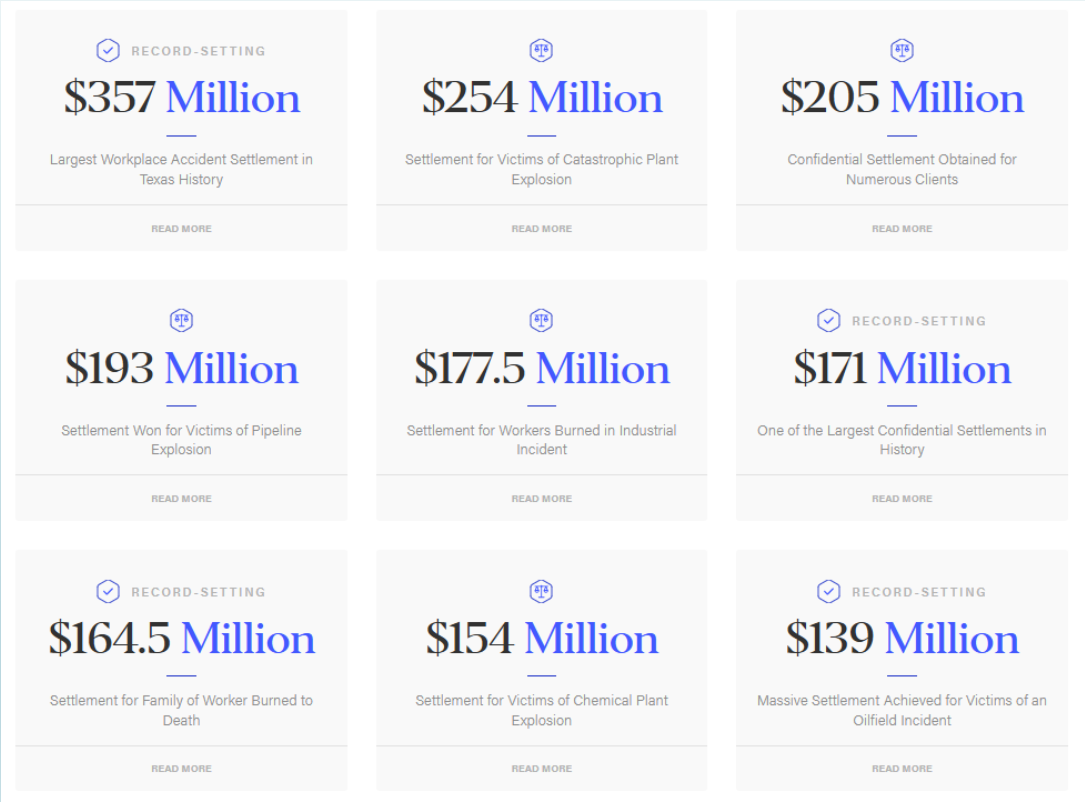
$15 Million – March 2023 (Missouri)

- **Wrongful Death**: Deckhand killed after fall from barge

$11.4 Million – September 2022 (Washington)

- **Personal Injury**: Arm injuries caused by hand winch

Impact on Settlements . . .



Can Nuclear Verdicts Be Avoided?

Requires both proactive and reactive measures

- ✓ Underwriting: Identify high-risk classes and adjust coverage and limits accordingly
- ✓ Responsive and timely claims handling
- ✓ Need to spend **$** to save **$**
  - Selection of attorneys and experts
  - Electronic discovery
  - Presentation and preparation matter

> “
>
> When Rocky is fighting Hulk Hogan like a boxer, but Hulk Hogan is just throwing him round, Rocky’s manager, Mickey, tells him to cut the gloves.

Can Nuclear Verdicts Be Avoided?

Requires both proactive and reactive measures

✓ Adequately assess potential liability

- Are you in a judicial hot spot? Is change of venue possible?
- Is settlement possible?

✓ Tort Reform: Stay up to date on caps on noneconomic damages and limits on litigation funding

A Very Thin Silver Lining:

Some Reduction of verdicts and pre-verdict settlement

- Verdict against Monsanto finding Roundup caused groundskeeper's cancer was reduced from **$289 million** to **$78 million** post-trial
- Due to cap on punitive damages, verdict against hog farm for causing nuisance to neighbors for **$473 million** reduced to **$94 million** in N.C.
- In J&J opioid trial in OK, Purdue and Teva settled out of court for combined **$355 million** w/o admitting wrongdoing (compared to finding of liability and verdict for **$572.6 million** for J&J)
- Payout in brain-damaged baby case in Cook County reduced from jury verdict of **$101 million** to **$50 million** by pre-verdict agreement in which defendant medical center agreed not to appeal

Thank you. Any questions?

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Clyde & Co US LLP , New York

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