

I Registered The Term Nuclear Verdicts® - Here's Why

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In October 2019, a Philadelphia jury delivered an \$8 billion verdict against Johnson & Johnson for its improper marketing of the antipsychotic drug Risperdal as a treatment for some mental health disorders in children.

In May 2019, a California jury issued a \$2 billion verdict against Monsanto after finding that its Roundup weed killer caused a couple's cancer.

Then, in March 2020, the world shutdown due to a pandemic and outrageous jury verdicts finally ended. Wishful thinking!

In November 2020, one of the largest single wrongful death verdicts ever was handed down by a jury in rural Texas to the tune of \$730 million – which included \$480 million for the value of a life, plus \$250 million in punitive damages.

The list of \$10 million, \$50 million, \$100 million and even \$1 billion jury verdicts over the last few years goes on and on.

These are striking examples of the type of runaway jury verdicts that are all too commonplace across the nation. These verdicts are occurring so frequently – and so disproportionately to the value of economic damages associated with the claim/incident – that a new term was coined called Nuclear Verdicts®.

As one of the first to use the term consistently when describing these astronomical awards, I decided to take things a step further last year by trademarking it. Many have asked me why. Ultimately, the reason is to highlight just how bad things are getting, because despite it all, hardly anyone is doing anything about it. It's my way of helping the industry with a bit of a wake-up call. This thing is real, and we need to do something about it now!

How Did We Get Here?

Defense lawyers and the insurers who hire them are the cause of Nuclear Verdicts®. I know, sounds harsh. We can try to blame it on social inflation, litigation funding, a lack of tort reform, attorney advertising, changes in juror perceptions, or even the pandemic. But at the end of the day, we are simply continuing to do what we always do, and therein lies the problem.

For the better part of a decade, I have been saying to anyone who will listen: the defense industry needs to change! The well-organized plaintiff's bar is leaps and bounds ahead of the defense. They have completely changed the way they try lawsuits in the last ten years. This is especially true since the publishing of

“The Reptile Theory” in 2009 – which, among other things, highlighted how inciting anger against a defendant, rather than sympathy for a plaintiff, is the key to achieving an outsized verdict. In addition, they started making astronomical requests of juries. The best way to get a large jury verdict? Ask for it!

And yet, I would venture that most insurance companies and their defense counsel could not come up with even two things they have done differently in trial over the last 10 years in response to all the changes plaintiffs’ lawyers have made.

As a result, defendants and insurance companies are well behind the eight ball. Something needs to be done, and quickly.

Nuclear Verdicts[®], The Book

When I first decided to publish a book that served as a “how-to guide” on the defense methods we have perfected over the last 20 years to stop outrageous awards at trial – and have since trained the rest of the attorneys at Tyson & Mendes on – my partners were hesitant, to say the least.

“You’re giving away the secret sauce!” they cried. “You’re helping our competition, other defense firms,” they said. My response? We’re all in this together! Our real competition is the plaintiffs’ bar and all the creative ways they are able to achieve these exorbitant awards that are ultimately based on fear – not on evidence or law. It is time to bring back fairness and justice to our legal system, and to do that, the entire defense bar needs to change its way of thinking. We can’t do it alone.

In the end, we published “Nuclear Verdicts[®]: Defending Justice for All” in February 2020. Within two months, it became a No. 1 bestseller on Amazon and insurance companies placed bulk orders by the thousands for their claims professionals. It also garnered high praise from my peers in the defense industry for outlining common sense strategies they could implement immediately in their upcoming trials.

The best part, though? The plaintiffs’ bar absolutely hates it! In fact, “Reptile Theory” author David Ball has gone so far as to publicly trash it and has dedicated entire webinars on how to try to defeat the methods contained within. Plaintiffs’ attorneys are clearly afraid of the defense industry catching on, and for good reason. Our methods work and they know it.

And yet, I am somewhat disappointed. Shortly after publishing, my publisher suggested I keep notes of all the input I received from other defense attorneys and insurance folks who read the book and were inspired to put their own spin on the strategies they had learned. This could form a second edition with new tactics to try. But despite selling thousands of books and presenting to thousands of people on this topic, I have almost nothing for a second edition. (Instead, we are now writing a second book exposing the patterns all Nuclear Verdicts[®] share based upon data.) Is the defense really that afraid of change? Are we all still refusing to share and communicate? What a shame!

Time To Innovate

When you think of innovative industries, is insurance on the top of your list? If not, let’s change that. Let’s do something new together. Here are some suggestions on what insurance companies can do to stop Nuclear Verdicts[®] today:

1. Spot Nuclear Verdicts® Before They Happen!

What if you were able to detect potential Nuclear Verdicts® before you went to trial? Would it be helpful or valuable to know which one of your thousands of claims might go nuclear?

Well, now it's possible! We just created an algorithm that can detect Nuclear Verdicts® in claims files for insurance companies. After years of research, and much help from a national university, we have a software solution to the number one question I have received from insurance companies: How do I know if I have a potential Nuclear Verdict® on my desk? Now insurers will be able to run thousands of claims files through an anti-Nuclear Verdict®, AI-aided program that will highlight problem claims for them to address, before they go nuclear. That is innovation!

2. Use These Defense Methods on Every File

Ok, you have spotted a potential Nuclear Verdict® file, but how do you prevent it from happening? Sure, you could pay a lot of indemnity dollars to make it go away, but isn't that the definition of Social Inflation? Wouldn't it be better to ensure your defense counsel have changed the way they litigate your lawsuits, so they are preventing a Nuclear Verdict®? Insurance folks have joked the answer is to hire Tyson & Mendes. That won't work for a number of reasons.

Instead, there will soon be a way to make sure your defense counsel are using proven, anti-Nuclear Verdict® methods on every one of your files across the country – and at a much more reasonable price than hiring all new lawyers. Imagine the value of having a litigation strategy in place to prevent Nuclear Verdicts® on your thousands of litigated claims.

In addition to the Nuclear Verdicts® algorithm, we are also creating a digital educational model for your defense counsel to use in every single one of your files. This program will provide your defense counsel with a step-by-step, claim-specific strategy to prevent a Nuclear Verdict® on each of your files, based on years of data and research. Your defense lawyers will have a specific plan to follow, and they will be trained on how to execute it. That is innovation!

3. Pay Your Lawyers for Results, Not Time!

I will tell you a secret: Do you know which case is the most important to your outside defense counsel? The next one!

The reality is we defense lawyers are in a volume business. We get paid reduced hourly rates in exchange for volume. For the system to work, we need our next case. And 99% of the time, this system works just fine.

But for the less than 1% of your files you are truly worried about – the handful of trials each year that keep you up at night – you want your defense counsel to be as concerned and as focused on them as you are. For that to happen, they need to have some skin in the game. Why not have your defense counsel get paid more if he wins than if he loses? For a couple of files a year, why not pay your defense counsel just like the attorneys he is going up against? Why not pay your defense counsel like a plaintiffs' lawyer?

Our TM HALO is a trial-only defense firm that gets paid for results, not time spent on your case. If you win, we win. If you lose, we lose. It's a firm singularly dedicated to getting the lowest verdict possible

on your biggest, most worrisome cases. There are no metrics, no billing guidelines, no file cycle times, no lit management initiatives, or anything else traditionally found in a volume business. You pay for only one thing: results. That is innovation!

Trademark To Innovate

At the end of the day, I trademarked the term “Nuclear Verdicts®” because something needs to be done to take back justice. These awards are simply not fair, and they are a threat to my clients. It will take a lot more effort – by a lot more people than just our 200-attorney firm – to stop this injustice. But we have to start somewhere. So let’s innovate together to stop Nuclear Verdicts® today!

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