



Current Trends in Transportation Litigation: Jury Verdicts and Settlements

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The Runaway Verdict – Strategies for Avoiding and Handling the Worst Case Scenario

Runaway = Nuclear



The Definition of a Nuclear Verdict: Two Scenarios

- **A verdict of more than \$10 million**
- **A verdict of less than \$10 million, but Special Damages that suggested a verdict of less than \$500,000**

Charles Carr, Carr Allison, Birmingham, AL surveyed:

- **Top U.S. motor carrier defense attorneys;**
- **Large number of risk management and / or in-house counsel for major motor carriers and their insurers;**
 - **Conducted interviews; and**
- **Researched publicly available information regarding the verdicts.**

The Disturbing Trend – The Numbers

- **Between 2012-2015, 12 verdicts = \$900 Million**
- **One was \$281 Million**
- **Surpassed Med Mal and Products Liability verdicts**

Key Points

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Plaintiff's Attorneys' Focus has Changed

- **Better caliber Plaintiff's attorneys**
- **No specific legislation controlling nuclear verdicts in transportation area**
- **Spending huge sums – reinvesting huge fees, getting good experts**
- **Big targets – motor carriers have deep, **DEEP**, pockets**
- **No longer big **\$\$** in Med Mal and Products for various reasons**

Key Points

Multiple Factors

There seldom is one factor that leads to a runaway verdict. In most “nuclear” cases, it appears that there are often multiple factors that come together to produce the proverbial “perfect” storm.

Potential Triggers for Nuclear Verdicts

Potential Triggers for Nuclear Verdicts

- 1. Poor pretrial risk analysis**
- 2. Defense counsel / risk manager mistakes**
- 3. Defense strategy unwittingly escalating, as opposed to diffusing, juror emotion**
- 4. Simply being outclassed and outspent in trial preparation**
- 5. Public perception**

Potential Triggers for Nuclear Verdicts

1. Poor Pretrial Risk Analysis

Potential Triggers for Nuclear Verdicts

Identifying Catastrophic Loss Early

- **A catastrophic (from jury's view) injury or death**
- **The Plaintiff (or decedent) sustained a catastrophic injury (death, paraplegia, serious traumatic brain injury, amputation, multiple unhealed fractures, loss of job opportunities at an early age, burns, etc.)**

Potential Triggers for Nuclear Verdicts

Venue Considerations

- **Mixed results – only three states hosted multiple nuclear verdicts: California, Texas, and Louisiana**
- **However, even traditionally moderate or even conservative areas like Santa Fe, Sacramento, Virginia, Ohio and Georgia also appear on the list**

Potential Triggers for Nuclear Verdicts

Know Your Venue

- Judicial **Hellhole** or other High-Risk Venues
- Many of the nuclear verdicts occurred in ATRA-defined judicial hellholes or other high-risk areas: **Texas Valley, Louisiana, Cook County (IL), Beaumont, Los Angeles**, and other similar areas
- **This year's Top 5:**
 - St. Louis, MO
 - California
 - New York City
 - Florida
 - New Jersey
- **Prudent risk managers and defense counsel should know the list of hot counties around the country by heart and when a potential nuclear case surfaces, they should refresh their data with defense counsel and develop defense strategy accordingly.**

Potential Triggers for Nuclear Verdicts

Racial, Socio-Economic, Small Town Realities

- Explain a \$281 million verdict for a single death verdict in Dimmit County, TX?
- It takes more than race alone to trigger a nuclear verdict.
- Unexpectedly high verdicts occur in smaller populated, typically depressed, and often welfare-sustained communities where everyone knows each other and where the plaintiff was loved not just by some potential jurors, but possibly all of them.
- In short, **know your venue**. This knowledge could protect you from the risk that what you believe to be an average value case, will convert into a high verdict case and a higher risk exposure case, into one that goes nuclear.

Potential Triggers for Nuclear Verdicts

More on Venue

- Like buying real estate – **Location, Location, Location** – Plaintiff’s counsel buy big verdicts by the venue in which they file.
- Why help them by having registered agent in bad venues?
- **WORK WITH INSUREDS AND MOVE AGENTS FOR SERVICE OF PROCESS FROM DIFFICULT VENUES – SANTA FE, COOK COUNTY, PHILADELPHIA, ETC.**

Potential Triggers for Nuclear Verdicts

High-Risk Plaintiff's Counsel

- **A. Top Tier**, i.e., deemed by the company's legal and risk advisors to be within Top 5 plaintiff lawyers in the State where the action is filed and has a history of demanding significant sums to settle, investing significant resources into case preparation / delivery, and / or a corresponding history of receiving significant verdicts.

OR

- **B. Local Legend**, i.e., has a history of significant connectivity with both the citizens of the county (venue) and / or the local trial judge.

Potential Triggers for Nuclear Verdicts

Intense Investigation to Identify Aggravating Factors

- **Early Triage / Catastrophic Loss Response / Early Evaluation**
- **Roster of experienced transportation attorneys**
- **Local attorney who knows venue, the bench, juror pool, etc.**

Potential Triggers for Nuclear Verdicts

Accelerants

- **Driver Misconduct, other Hot Buttons**
 - DUI / Drug Use
 - Cell phone use / texting / distracted driving
 - Hours of service and **driver dishonesty**
 - Speed
 - Violation of safety regulations

Potential Triggers for Nuclear Verdicts

Other Hot Button Factors – Are you Feeding the Reptile Theory?

- **Defendant Driver – Conduct / Appearance**
- **Defendant Corporate Representative – Conduct / Appearance**
 - **The company doesn't care – Inaction, “All Words, No Action”**
- **Emotion / Sympathy – Failure to recognize, failure to address**

Potential Triggers for Nuclear Verdicts

Early Recognition of Company Issues

- It's one thing that the driver exceeded hours of service...it's **ANOTHER** when the company condoned or turned a blind eye to it
- Corporate Responsibility – “Lack of Safety Practices and Training”
- Do policies or company culture demonstrate **Profits vs. Safety?**

Potential Triggers for Nuclear Verdicts

2. Outclassed and Outspent

Potential Triggers for Nuclear Verdicts

Outclassed and Outspent – Part 1

- **A function of inability or unwillingness to commit time, effort, and funds to defend the case on a par with the level of Plaintiff's counsel commitment**
- **Plaintiff's bar is aggressive, cooperative, and organized**

Potential Triggers for Nuclear Verdicts

Outclassed and Outspent – Part 2

- **Often the Plaintiff's counsel is better prepared**
 - **10 cases vs. 100 cases**
 - **Investigators on staff**
 - **Focus groups**

Potential Triggers for Nuclear Verdicts

Preparation Costs Money

- It is a **luxury** to be able to pay the lawyers who will actually try a case to also be the ones to investigate it and interview the witnesses (instead of leaving this critical task to investigators and adjusters).
- However, unless you are paying for top level investigators who are an **integral** part of the defense team, failure to invest in this critical level of detail may make the difference.

Potential Triggers for Nuclear Verdicts

3. Defense Counsel / Risk Manager Mistakes

Potential Triggers for Nuclear Verdicts

Hire the Right Lawyer

- **Many of the best defense lawyers in America wouldn't think of trying your worst nightmare case in an isolated county of their respective state without associating with the best local counsel available.**

Potential Triggers for Nuclear Verdicts

Selection of Local Counsel

- **What if that local judge spent a lifetime as a Plaintiff's lawyer and had a long running feud with that good defense lawyer? Is he / she what you need as local counsel?**

Potential Triggers for Nuclear Verdicts

Failure to Recognize the Catastrophic Loss / Potential Nuclear Verdict

- **Treating it like every other blue car / red car loss**
- **Going at it on the cheap**
- **Cutting corners – lack of proper investigation**

4. Defense Strategy *Backfires*

Potential Triggers for Nuclear Verdicts

Juror Disdain Towards Defense Counsel

- In the case of traumatic brain injury and paraplegia, where defense strategy includes casting doubt on the extent of an injury, **defense counsel must execute this strategy carefully.**
- Some of these cases reflect the likelihood that how the defense approached this delicate issue may have actually **fueled** the verdict fires.
- Does the defense lawyer have the empathetic skills necessary to question the extent of the injury **without alienating** the jury?

5. Other Explanations for Nuclear Verdicts

Potential Triggers for Nuclear Verdicts

Inflated Perceptions of the Value of Money

**Jurors are becoming immune to
huge verdicts**

Potential Triggers for Nuclear Verdicts

WHY??

- **Society of entitlement vs. eat what you kill / appreciate the value of the dollar**
- **No recognition that large award increases downstream costs to the jurors – instant gratification - credit crisis**
- **Professional athlete, CEO, and actor salaries**

Potential Triggers for Nuclear Verdicts

WHY ?? Continued...

- **TV shows touting wealth and opulence**
- **Prevalence of print media, internet, and TV reporting of huge verdicts and lawyer advertising**
- **\$500 million Powerball jackpot**
- **Remember when a million dollars was a **LOT** of money?**

Potential Triggers for Nuclear Verdicts

Prejudice against Motor Carriers

- **CNBC program highlights “hazardous” transportation industry**
- **Juror personal experience**
- **Infomercials / attorney advertising**
- **Twitter, YouTube, Facebook, etc., etc., - The more you see it the more **REAL** it is**

Potential Triggers for Nuclear Verdicts

How to Counter?

- **Golden Rule / Empathetic Approach**
- **Admit liability – Sincerely and Early – Don't give Plaintiff's counsel an opportunity to argue that it is being done at the last minute**
- **Candor / Sincerity – Pick fights, challenge what you can challenge, concede the rest**

Potential Triggers for Nuclear Verdicts

How to Counter? Continued...

- **Measure what you Treasure / Be Proactive**
 - Safety is taking a back seat to operations
 - \$\$ spent on safety allows trial counsel to argue how far ahead of the curve this “safe company” is over the industry in general
- **Actual Perception – Corporate representatives, websites, PSA’s, etc.**
- **Social Media – Driver and Company**
- **Post-accident public relations and crisis management: NO “No Comment” – Get Help!**

The Last Word – Darden v. City of Chicago

Order Jury Verdict/Pleadings

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Darden
Plaintiff(s)

vs.

City of Chicago
Defendant(s)

NO. 15-L-8311

ORDER

This cause coming forth to be heard for a jury trial, the jury having rendered a verdict in favor of the Plaintiff(s) Tierney Darden and against the Defendant(s) City of Chicago.

IT IS HEREBY ORDERED THAT judgment is entered on the verdict in favor of Plaintiff(s) Tierney Darden against the Defendant(s) City of Chicago in the sum of \$ 148,190,997.00 plus costs.

Without exhibit.

ENTER: [Signature]
Judge Judge's No. _____

Adm. Case Review (M/F) _____
AUG 23 2017 AC
Circuit Court - 1809

Attorney Number: 39550
Attorney Name: Pat Sablitz
Address: 22 W. Washington St. #400
City: Chicago
Telephone: 312-372-1227

2095L8311
Darden Tierney vs City of Chicago
VERDICT FORM

We, the Jury, find for the Plaintiff, TIERNEY DARDEN, and against the Defendant, CITY OF CHICAGO.

We award the damages in the sum of \$148,190,997.00, (ITEMIZED as follows:

Past Loss of a Normal Life	\$ 5,000,000
Future Loss of a Normal Life	\$ 56,000,000
Past Pain and Suffering	\$ 10,000,000
Future Pain and Suffering	\$ 30,000,000
Emotional Distress	\$ 6,000,000
Disfigurement	\$ 2,500,000
Increased Risk of Harm	\$ 3,000,000
Shortened Life Expectancy	\$ 500,000
Past Medical Expenses	\$ 925,411
Future Medical Expenses	\$ 32,000,000
Future Lost Earnings	\$ 2,205,586
PLAINTIFF'S TOTAL DAMAGES:	\$ 148,190,997.00

[Signatures]

Info Case Entered by: _____
AUG 23 2017
Circuit Court - 1809

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ROETZEL

FOCUSED ON WHAT MATTERS TO YOU

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