



MARATHON
STRATEGIES



CORPORATE VERDICTS GO THERMONUCLEAR

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EXECUTIVE SUMMARY

Nuclear verdicts against corporations are on the rise.

A new analysis by Marathon Strategies found that in the decade following the Great Recession, the median verdict greater than \$10 million against corporate defendants grew 55%. The five years leading up to the COVID-19 pandemic saw a particularly sharp rise in both the sum of these verdicts (178% increase) as well as their median (41% increase).

Though this trend was interrupted amid court closures in 2020, the sum of corporate nuclear verdicts nearly quadrupled in the following two years, from \$4.9 billion in 2020 to over \$18.3 billion in 2022. The median verdict also rose from \$21.5 million in 2020 to \$41.1 million in 2022 – a 95% increase – while the number of verdicts doubled. Civil court juries are once again issuing verdicts for damages in amounts that often rival the annual budgets of small countries, threaten to take down businesses, and provoke spikes in insurance premiums.

This report asserts that the term “nuclear verdict” no longer captures the scale of large jury awards.

Verdicts against corporations have become so large that those in excess of \$100 million, at minimum, now necessitate a “thermonuclear” label. Juries ordered twenty verdicts against companies for over \$100 million in 2022, including four that topped \$1 billion. Overall, since 2009, 191 of these verdicts were “thermonuclear,” including 48 that exceeded \$500 million and 23 that reached above \$1 billion.

Marathon’s analysis identified 882 nuclear verdicts against corporate defendants for a total of \$169 billion. As this report focuses on jury awards and not the ultimate outcome of each case, this total does not reflect reductions for comparative negligence or assignment of fault to settling defendants or nonparties; additurs, remittiturs or reversals; or attorney fees, costs, or other fines, unless awarded by the jury. In several recent cases – such as a 2022 intellectual property matter in which Meta was ordered to pay messaging app firm Voxel over \$174 million in damages for violating two live-streaming patents – the defendant has either begun the appeal process or said they plan to do so.ⁱ

Industry sectors enduring the biggest financial hits due to nuclear verdicts since the Great Recession include tobacco, pharmaceuticals, automobiles, finance, and IT software. Many of the verdicts made mainstream news headlines, including juror awards of \$23.6 billion against tobacco and \$9 billion against pharmaceutical giants in products liability matters.^{ii iii} While the top industries for these verdicts may be self-evident – wrongful death cases from smoking have been litigated for decades, motor vehicle accidents are an entire practice area to themselves, finance is an industry with frequent contract disagreements, and technology is an industry fraught with patent disputes – few sectors have been immune to supersized verdicts. Marathon’s analysis found that since 2009, juries have ordered nuclear verdicts against some 712 companies across 117 sub-industries. Since the pandemic, the top sectors have included semiconductors, trucking, and big tech firms.

While each case is unique, Marathon’s analysis found that nuclear verdicts against companies most often stemmed from cases in products liability (37%) and intellectual property (23%) matters. Since 2009, there have been 211 products liability nuclear verdicts for \$63 billion and 173 intellectual property verdicts for \$41 billion. The next-largest case topics, breach of contract or breach of fiduciary duty, combined for 105 verdicts for \$17.5 billion total. Other top cases for nuclear verdicts include motor vehicle (83 verdicts for \$7.8 billion) or wrongful death accidents (6 verdicts for \$8.2 billion), worker or workplace negligence matters (71 verdicts for \$4.6 billion), and fraud (47 verdicts for \$4.9 billion). As many cases contained allegations across several of these categories, Marathon’s data sorting prioritized the classifications determined by The National Law Journal and LexisNexis’ Jury Verdicts & Settlements database.

Nuclear verdicts span state and federal civil court districts across the country, but juries in some states have been more prone to handing them out than others. Since 2009, Texas, Florida, California, and Pennsylvania topped the list of states that have awarded the largest sums. Overall, state courts accounted for \$108 billion in corporate nuclear verdicts compared to federal courts' \$61 billion. Interestingly, state verdicts dominated in Florida, California, Georgia, and Pennsylvania, while federal verdicts led in Louisiana and Delaware. While it is difficult to account for these discrepancies nationwide, generally, Marathon identified factors like local laws that encourage certain types of cases more prone to large verdicts, the presence or absence of limits on punitive damages, and court procedures that favor plaintiffs, among other factors.

This report on jury awards that surpass \$10 million is a presentation of data as a recording of fact. It is intended to provide a comprehensive picture of both the large amounts awarded, as well as the speed in which they are occurring. The data is meant for both pro-plaintiff and pro-defendant audiences to analyze as desired. This report does not take an ideological position on these cases. It also does not draw case-by-case distinctions, such as differences between jury and bench trials or differences between the plaintiff as a company or as an individual.

This report attempts to focus on what common threads can reasonably be identified through such an analysis – namely, what industries have borne the brunt of these verdicts, which states and courts have been the sites of the largest sums, and which case types have been most frequently associated with them.

A myriad of reasons exist for the increase in the size of these verdicts. Industry analysts, public surveys, and media reports have identified corporate mistrust; social pessimism; erosion of tort reform; public desensitization to large numbers; and shifts in jury pool demographics, among others. To be sure, increasing nuclear verdicts are also linked to increasing corporate misconduct, such as CEO scandals and public controversies.

Some observers have also identified the proliferation of trial tactics such as “reptile theory,” in which plaintiff’s lawyers appeal to the “reptilian,” or emotional part of the brain, to trigger an instinctive safety response in jurors rather than the panelists relying on the rule of law in deciding cases and subsequent damages. Trial lawyers also use a tactic dubbed “anchoring,” in which they suggest an extraordinarily large award to a jury so that number becomes “anchored” in jurors’ minds. Others also employ the “joinder” practice to claims, linking lawsuits or several parties in one, to eschew venue requirements when shopping for a favorable litigation jurisdiction.

Policy makers in some states who believe these verdicts are out of control have attempted to curb them. After four verdicts against the Texas trucking industry in 2021, state legislators approved a bill aimed at hamstringing plaintiff’s counsel from using the reptile theory. The law, in part, bans lawyers from presenting evidence of a motor carrier’s failure to comply with an industry or company regulation or standard unless evidence shows that failure was a cause of the bodily injury or death for which damages are being sought.^{iv}

The U.S. Congress has considered enacting legislation to require third parties investing in lawsuits in exchange for an interest in the proceeds of verdicts to disclose details about the funding. The controversial practice is currently unregulated and not fully understood. Advocates argue litigation financing enables plaintiffs who would not otherwise be able to afford a case with meritorious claims the necessary resources to bring one. Critics argue that the market has been rapidly expanding with virtually no regulatory oversight, and that the industry feeds nuclear verdicts because a funder can afford to hold out for a large settlement to maximize their return. From the corporate vantage point, this sort of investment, at times by private equity firms based on a portfolio of cases, can make it difficult to settle cases. Bloomberg estimates the financing of such cases at \$39 billion globally in 2019 alone.^v

Other factors cannot be resolved through new or revised laws or policies. Each juror brings their life experience, biases, and sensitivities to the courtroom – with age, politics, pandemic experience, opinions about corporations, and more influencing whether they will side with the defendant or the plaintiff, and if they will issue a nuclear verdict.

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ABOUT MARATHON

ABOUT US

Marathon Strategies is an independent communications and research firm that helps corporations, industry associations, brands, and nonprofits realize their organizational goals and manage reputational challenges. We are a team of more than 60 experienced campaign operatives, crisis professionals, researchers, digital and data experts, graphic designers, government aides, reporters, lawyers, and television producers who each bring a unique perspective to every challenge. As a result, we are trusted advisers to a diverse portfolio of clients, all united by a need for independent, candid, and thoughtful counsel.

OUR APPROACH

We believe all successful communications campaigns must be built on a foundation of three core elements: original, compelling written and visual content informed by extensive research; voices that endorse and amplify content; and targeted distribution channels that ensure that the right messages are reaching the right audiences.

CORPORATE VERDICTS GO THERMONUCLEAR

This report examines trends in nuclear verdicts – those greater than \$10 million – delivered against corporate defendants in the United States since the Great Recession, from 2009 through 2022. It argues that the persistence of verdicts which are orders of magnitude greater than the \$10 million threshold necessitates a new subcategory of “thermonuclear verdicts,” which Marathon hereafter refers to as awards greater than \$100 million.

Marathon compiled this report through a new review of verdict data, court records, media reports, and other sources. It analyzes trends over time, breaks down the top 10 states and court venues, and identifies the sub-industries most targeted by nuclear verdicts. The verdicts analyzed in this report were compiled by gross award calculated by the jury, and do not reflect reductions, remittiturs, or reversals, among other case developments.

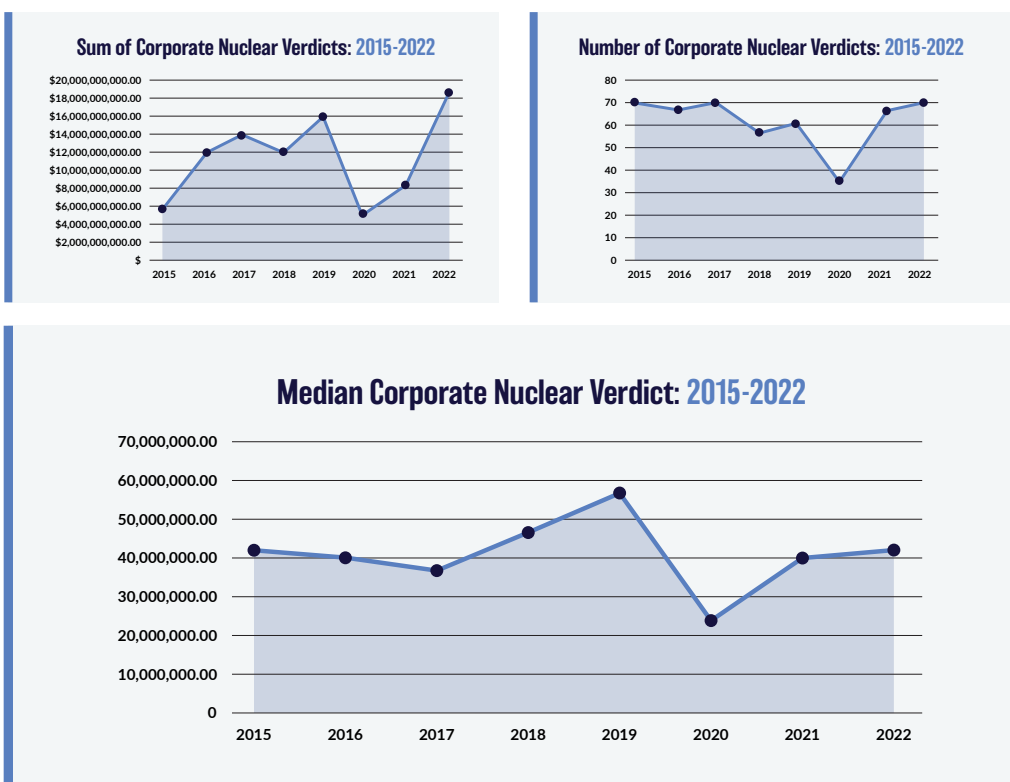
Through additional reviews of jury research papers, polling, and survey data, among other sources, the report also includes an overview of what is influencing the growth of these verdicts – including jurors’ attitudinal and experiential factors, local laws and regulations, and various key court and judicial procedures.

Marathon specializes in this type of analysis, providing a variety of research services to support pending or ongoing litigation, including traditional background and open-source research, asset tracing, witness interviews, and cyber-forensics, among other services.

INTRODUCTION: THE RISE OF CORPORATE NUCLEAR VERDICTS

Marathon Strategies' new analysis of data from *The National Law Journal's* VerdictSearch, court records, and media reports found that **from 2009 to 2019, the median corporate nuclear verdict rose from \$36.7 million to \$57.2 million. This 55% increase outpaced inflation, which rose about 18% during the same period. Notably, their size grew while their number remained stable or relatively declined.**^{vi vii}

The size of corporate nuclear verdicts was growing particularly sharply in the five years leading up to the first year of the COVID-19 pandemic, but stalled in 2020 amid nationwide court closures, case filing decreases, and increasing case backlogs associated with emergency public health measures. However, Marathon's analysis found that **as courts began to return to normal levels of activity, the sum of corporate nuclear verdicts nearly quadrupled, from totals of \$4.9 billion in 2020 to \$18.3 billion in 2022.** The median verdict also rose from \$21.5 million in 2020 to \$41.1 million in 2022 – a 95% increase – while the number of verdicts more than doubled.^{viiiix x}



Overall, Marathon's analysis identified 882 nuclear verdicts from 2009 to 2022 naming at least one corporate defendant. In these cases, **juries ordered some 712 different companies across 117 industries to pay a total of \$169 billion.** An array of sub-industries have been ordered to pay billions in nuclear verdicts, from chemicals to fertilizers, oil & gas to telecommunication services, IT consulting to semiconductors, and more. Several of the verdicts became headline news, particularly in 2014, when jurors awarded astronomical verdicts of \$23.6 billion and \$9 billion against tobacco and pharmaceutical giants, both in products liability matters.^{xi xii}

TOP CORPORATE NUCLEAR VERDICTS (STATE & FEDERAL): 2009-2022				
AMOUNT	TOPIC	CASE	COURT	DATE
\$23,640,612,741	Products Liability	<i>Estate of Johnson v. RJ Reynolds Tobacco Co.</i>	Escambia County (FL) Circuit Court	7/17/14
\$9,001,475,000	Products Liability	<i>Allen v. Takeda Pharmaceuticals North America, Inc.</i>	US District Court for the Western District of Louisiana	4/8/14
\$8,039,179,404	Breach of Fiduciary Duty	<i>Hopper v. JP Morgan Chase Bank, NA</i>	Dallas County Probate (TX) Court	9/26/17
\$8,001,750,000	Products Liability	<i>Murray v. Janssen Pharmaceuticals, Inc.</i>	Philadelphia County (PA) Court of Common Pleas	10/8/19
\$7,375,000,000	Wrongful Death	<i>Goff v. Holden</i>	Dallas County (TX) Court at Law	7/26/22
\$4,690,000,000	Products Liability	<i>Ingham v. Johnson & Johnson</i>	St. Louis (MO) Circuit Court	7/12/18
\$3,014,000,000	Breach of Contract	<i>Hewlett-Packard Co. v. Oracle Corp.</i>	Santa Clara County (CA) Superior Court	6/30/16
\$2,540,000,000	Intellectual Property	<i>Idenix Pharmaceuticals, Inc. v. Gilead Sciences, Inc.</i>	US District Court for the District of Delaware	12/15/16
\$2,315,586,000	Intellectual Property	<i>Pacesetter, Inc. v. Nervicon Co.</i>	Los Angeles County (CA) Superior Court	4/22/11
\$2,175,000,000	Intellectual Property	<i>VLSI Technology LLC v. Intel Corp.</i>	US District Court for the Western District of Texas	3/2/21

While this report does not focus on the specific allegations of each case, Marathon's analysis found that nuclear verdicts against companies spanned dozens of case topics and branches of allegations, which at times overlapped. However, half of all identified verdicts resulted from just two case areas: products liability (37%) and intellectual property (23%). Since 2009, there have been 211 products liability nuclear verdicts for \$63 billion and 173 intellectual property verdicts for \$41 billion.

Nuclear Verdicts by Case Type: 2009 - 2022



FACTORS INFLUENCING JURIES

Marathon's review of media reports, industry analysis, and survey data identified a variety of factors influencing the rise of nuclear verdicts against companies, including: **corporate mistrust among jurors** who want to punish companies; the growth in **litigation financing**, or third parties investing in lawsuits by paying the parties or lawyers in exchange for an interest in the proceeds obtained in the lawsuit; and **social pessimism and jury sentiment favoring plaintiffs**.^{xiii} Additional underlying factors include the **erosion of tort reform** (state courts or legislative bodies modifying existing laws that had limited punitive damages), as well as **public desensitization to large numbers** in an economic environment featuring billion-dollar federal government bailouts and six-figure college debt.^{xiv}

The **attitudes and experiences of jurors** play crucial roles in predicting verdict outcomes. Recent studies conducted during mock trials have found that jurors under greater stress – such as concerns about bills, job security, or contracting COVID-19 – are willing to award higher damages.^{xv}

These factors may be poised to significantly shape the future of jury outcomes, particularly as Millennials and Gen Zers overtake Baby Boomers and Gen Xers as the largest adult populations and the largest share of the electorate.^{xvi} According to surveys conducted at the onset of the COVID-19 pandemic, **Millennials were found to be generally more pro-plaintiff than Baby Boomers** (59% to 38%), suggesting that there may be a correlation between the persistence of “blockbuster” verdicts and the increased presence of Millennials on juries.^{xvii} This generation's formative years were shaped by the war in Iraq, Hurricane Katrina, and two recessions that took place amidst income volatility, increasing underemployment, and meager wage growth.^{xviii} Recent surveys by Deloitte and Morning Consult have found that fewer young people believe corporations have a positive impact on wider society, are **less trusting of the average American company**, and more highly prioritize ethical matters when considering which brands to trust.^{xix xx}

Financial concerns may play an increasing role in accelerating trends in attitudes toward corporations. Deloitte's 2022 Global Millennial Survey notably found that Gen Z (29%) and Millennial (36%) respondents selected cost of living as their greatest concern. Almost half of both groups said they lived paycheck to paycheck, more than a quarter said they were not confident they would be able to retire comfortably, and around three-quarters agreed that the gap between the richest and poorest people in their country was widening.^{xxi} A December 2021 Employee Benefit Research Institute study found similar concerns among Generation X families, including that they were less likely to own a home or have any retirement plan than were Baby Boom families when their family heads were the same ages, and also that they had higher median debt and lower median net worth.^{xxii}

Dovetailing with financial stressors, the individual psychological stress and polarization associated with COVID-19 must be considered as a major factor in shaping future jurors' attitudes and decisions. Studies indicate that **jurors who were anti-corporate before the pandemic will likely at the very least retain that position, while many will likely become more anti-corporate**. This may be due in part to increased scrutiny on unsafe or unfair working conditions as CEO pay soared during the pandemic.^{xxiii xxiv} Corporations are also entering jury trials at a disadvantage post-COVID, comparable to scandals like the subprime mortgage crisis, the Deepwater Horizon disaster, or the Volkswagen emissions cover-up.^{xxv}

At the same time, social pessimism continues to grow. A July 2022 Gallup survey found that Americans were less confident in major US institutions than they were in 2021, while a *New York Times*/Siena College poll found that a majority of American voters across nearly all demographics and ideologies believe their system of government does not work.^{xxvi xxvii} Similarly, a June 2022 PwC survey found a “jarring” 57-point gap in trust between businesses, their customers, and employees.^{xxviii}

Legal experts have argued such pessimism and distrust in government and business contributes to nuclear verdicts, as perceptions take hold within juries that corporations only care about money. Social media and trust problems with news sources further erodes confidence in the US court system – particularly among millennial jurors, who have had access to smartphones and Google from an early age, and can therefore more actively keep up with social, economic, and political issues than past generations. Issues of faith in institutions came to the forefront following the US Supreme Court's overturning of *Roe v. Wade*. A Marist College poll conducted in the aftermath found that 57% of respondents said they think the court's decision was mostly based on politics, compared to 36% who said they considered it mostly based on the law. Overall, the share of Democrats who say the court has too much power has nearly tripled since 2020, according to a September 2022 Pew Research report.^{xxix xxx xxxi}

To be sure, corporate misconduct (and public awareness of it) has likely played a role in influencing jury attitudes, and in turn jury verdicts.

According to executive turnover tracking conducted by PricewaterhouseCoopers, 2018 was the first year in decades that most chief executives were ousted for misconduct and ethical lapses, rather than for their firm's financial performance. PwC's study found that 39% of CEOs who departed that year left for reasons related to allegations of sexual misconduct or ethical lapses connected to fraud, bribery, and insider trading.^{xxxii}

Corporate fraud has also been increasing in scale and frequency for decades. A 2010 study found that the number of fraud cases increased between 1998 and 2007 in comparison with the level in prior 10-years studies, the dollar value of fraudulent financial reporting soared, and companies involved in fraud were much larger than those observed in a 1988-1997 study.^{xxxiii} The Securities and Exchange Commission and US Department of Justice also initiated greater numbers of Foreign Corrupt Practices Act enforcement actions during the 2010s compared to prior decades.^{xxxiv}

The past two years have seen a particular spike in white-collar crime affiliated with the COVID-19 pandemic. For instance, between March 2020 and March 2021, the DOJ publicly charged 474 defendants with criminal offences based on pandemic-related fraud schemes, while the US Small Business Administration received a record-breaking 150,000 complaints related to loan fraud.^{xxxv}

Further, a March 2022 study published in the *British Journal of Management* argued that large companies are rarely toppled by controversy, and often end up benefiting from such publicity. Recent examples include music service Spotify being accused of providing a platform for COVID-19 misinformation and Facebook's role in Cambridge Analytica – all of which it recovered. The study notably argued that being found liable in a court of law “gives weight and depth” to a scandal that might otherwise have disappeared from the public consciousness, citing the Volkswagen emissions scandal and the Deepwater Horizon oil spill.^{xxxvi xxxvii}

LITIGATION FUNDING ON THE RISE

The persistence of these verdicts is also intertwined with the growth of the lawsuit industry over the past decade.^{xxxviii} **Funding of lawsuits by international hedge funds and other third parties reached an apex of \$39 billion in 2019** – a figure that is difficult to determine because plaintiffs' attorneys are not required in most cases to disclose details of third-party funding.^{xxxix}

In addition to hedge funds and private equity firms, sovereign wealth funds and college endowments have recently joined the ranks of deep-pocketed litigation investors, according to Bloomberg. These entities are drawn to the practice by high margins, IRRs in excess of 30%, and that litigation finance is an uncorrelated asset class.^{xl} Some financing firms – such as Lex Ferenda Litigation Funding, which launched in December 2022 – are dedicated solely to funding lawsuits.^{xli}

According to CBS News, litigation funding can help individual plaintiffs who would be crushed by corporate defendants with deep pockets. Advocates argue it levels the playing field, and that litigation funders participate in a socially valuable activity of researching the value of meritorious claims that would otherwise lack such support.^{xliii} Critics argue that the market has been rapidly expanding with virtually no regulatory oversight. Others contend the industry feeds nuclear verdicts because a funder can afford to hold out for a large settlement to maximize their return.^{xliii xliiv}

In the US, litigation funding grew from \$2.3 billion in 2019 to \$2.5 billion in 2020. In response to proposed federal legislation, the US Department of Justice said in 2020 that it would begin investigating disclosure of third-party litigation financing in some cases. In 2021, it brought criminal charges against several financiers, including in a multimillion-dollar securities fraud scheme involving an individual who double-pledged investor funds, as well as one who allegedly recruited defendants for staged trip-and-fall cases.^{xlv}

In addition, this industry spends handsomely on marketing its services – a controversial practice. Trial lawyers spent \$6.8 billion on advertising from 2017 to 2021, including more than \$1.4 billion last year.^{xlvi xlvii} Some critics argue that these ads are used to recruit large numbers of potential plaintiffs to force consolidated proceedings that pressure companies into mass settlements, while victims receive little of the money. The National Trial Lawyers assert that firms use advertising to establish credibility, publicize cases, and connect to advocates for referrals and activism.^{xlviii xlix i}

LEGISLATIVE DEVELOPMENTS & CASES TO WATCH

Recent legislative developments suggest that verdicts against companies are likely to continue rising in many states. In August 2022, Pennsylvania's Supreme Court reversed a two-decade-old rule aimed at preventing doctors from leaving the state because of high medical malpractice insurance costs. The ruling allowed plaintiffs to resume filing medical malpractice cases in any county in the state, rather than restricting them to the county where the alleged incident occurred. Critics have argued this ruling will cause a deluge of **venue-shopping**, or filing lawsuits in jurisdictions where juries typically award larger payouts.ⁱⁱ In February 2020, Colorado enacted a bill that increased the state's statutory damages caps for the first time in over a decade, and required damages caps to be adjusted every two years in perpetuity.ⁱⁱⁱ

In October 2022, a federal jury in Illinois broke new ground for lawsuits alleging violations of the state's Biometric Information Privacy Act (BIPA). In *Rogers v. BNSF Railway Co.*, the jury awarded \$228 million to a class of more than 45,000 truck drivers who used fingerprint-scanning technology on a gate system to enter and exit rail yards. As BIPA provides for \$5,000 in statutory damages for intentional and reckless violations and \$1,000 for each negligent violation, the jury found that BNSF violated BIPA 45,600 times (once for each class member), and therefore imposed the maximum penalty of \$5,000 for each violation. Damages in BIPA cases may get worse for defendants. In February 2023, the Illinois Supreme Court held that a separate claim accrues under BIPA each time biometric data or information is collected or disclosed. According to the *National Law Review*, this ruling is likely to have a "profound impact" on the ability of plaintiffs to file BIPA claims and the calculation of liquidated damages for such claims, which are now poised to skyrocket into the billions.^{liii liv}

In 2023, the Georgia Supreme Court is expected to determine the constitutionality of the state's punitive damages cap in an appeal of *Taylor v. Devereux Foundation*, which may have major implications for verdicts in the state.^{lv} In *Taylor*, a Cobb County jury ordered the nonprofit behavioral health organization Devereux to pay a former patient \$7.6 million following allegations that it failed to protect against sexual abuse in its facility. While the initial verdict included \$50 million in punitive damages, the trial court reduced this award to \$250,000 to meet the maximum permitted by Georgia law in non-product liability cases. Georgia's statutory cap on punitive damages was passed by the General Assembly in 1987 and has been upheld

twice by the state Supreme Court.^{lvi} Other leading states for nuclear verdicts, such as California, have no cap on punitive awards.

On the federal level, though legislation has been introduced to compel litigation funding disclosure at the outset of any class action lawsuit, the bill failed to move out of committee or garner bipartisan support in the 117th Congress.^{lvii}

THE POST-PANDEMIC FUTURE OF CORPORATE VERDICTS

The COVID-19 pandemic's impact on courts – including court closures or reduced schedules, civil case filing decreases, and increasing case backlogs – occurred in tandem with a decline in growth of nuclear verdicts. Marathon Strategies' analysis found that from 2016 to 2019, when incoming federal and state court caseloads remained relatively stable, the largest nuclear verdicts ranged from \$3 billion to \$8 billion, an extraordinary increase from 2009 to 2013's range of \$1.6 billion to \$2.3 billion. However, in 2020, state court case filings dropped 28% (including a 26% drop in overall civil filings), while case backlogs grew from 958 cases in 2019 to 12,309 in 2020. Nuclear verdicts followed suit, as the number declined by nearly half and the largest verdict was \$1.1 billion compared to 2019's \$2.2 billion.

The stability of state court case filings is notable, as Marathon's analysis found that since the Great Recession, **state courts were the site of nearly twice as many nuclear verdicts as federal courts**. From 2019 to 2020, the number of corporate nuclear verdicts in state courts fell 56%, compared to a 20% decline federally.^{lviii lxi lx}

As courts return to pre-pandemic levels, nuclear verdicts against corporations are poised to resume the growth trend seen from 2020-2022. According to recently available data, the number of civil cases pending in state and federal courts increased substantially in 2021, as courts began to get back to normal levels of activity and case management.^{lxi lxii} **At the same time, the number of nuclear verdicts against corporations doubled, while the largest of these verdicts reached over \$7 billion.** According to the National Center for State Courts, the recovery to pre-pandemic numbers of filings may continue through 2023 and into 2024, as federal courts work through the backlog accumulated over the past few years.^{lxiii lxiv lxv}

With nuclear verdicts on the rise, some companies are seeking pre-trial settlements to avoid facing potentially higher jury awards. For example, in July 2022, transportation and logistics giant Werner Enterprises announced a \$150 million settlement of a motor vehicle accident lawsuit in Texas. The case pertained to a collision near Sulphur Springs that led to the death of two children in a parked vehicle. Though Werner disputed plaintiffs' allegations, citing the investigating officers' place of no fault on Werner or the driver, the company chose to voluntarily resolve the case.^{lxvi} The increasing prevalence of in-cab cameras may further encourage the trucking industry to pursue settlements, as additional information allows companies to better predict the outcome of claims.^{lxvii}

2022 CORPORATE NUCLEAR VERDICTS OVERVIEW	
Sum of Verdicts	\$18,328,225,598.20
Number of Verdicts	70
Largest Verdict	\$7,375,000,000.00
Median Verdict	\$41,149,925.00
Top State	Texas
Top State Court	Dallas County (TX) Court at Law
Top Federal Court	US District Court for the Western District of Texas

2022 was a landmark year for nuclear verdicts against corporations, with a total of \$18.3 billion ordered in 70 verdicts. This was driven by a Dallas jury, which in June found the Connecticut-based cable company Spectrum liable in connection with the 2019 death of an 83-year-old customer, ordering a \$7.3 billion verdict largely comprising punitive damages. That verdict was later reduced to \$1.147 billion.^{lxviii} ^{lxix} In August, a Los Angeles jury ordered a verdict of \$464.6 million against Southern California Edison after plaintiffs sued the company for repeated sexual and racial harassment at a South Bay office. That verdict included \$24.6 million in compensatory damages and \$440 million in punitive damages – the latter of which does not have a cap in California. And, in September 2022, an Austin jury ordered Facebook parent Meta Platforms to pay nearly \$175 million for allegedly infringing on two patents owned by walkie-talkie app maker Voxer Inc.^{lxx}

As these trends appear poised to continue through 2023 and 2024 – with both the median and largest verdicts on the rise – “nuclear” is insufficient for describing the size of awards. As juries continue ordering verdicts in the hundreds of millions or billions, it is necessary to coin a new term for these emerging “thermonuclear” verdicts.^{lxxi}

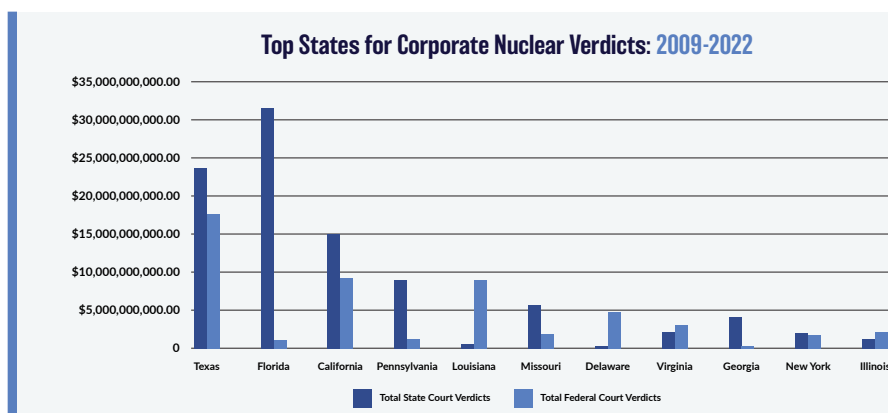
TOP STATES FOR CORPORATE NUCLEAR VERDICTS (2009-2022)

Though it is difficult to predict when and where a nuclear verdict will land, case history and legislative environments provide some indication.

Among the top 10 states (when combining federal and state verdict totals), Marathon’s analysis found significant federal and state court overlap for corporate nuclear verdicts in just one state, New York, which was largely driven by a single billion-dollar case. Overall, state courts accounted for \$108 billion in corporate nuclear verdicts compared to federal courts’ \$61 billion.

CORPORATE NUCLEAR VERDICTS BY COURT VENUE (2009-2022)				
COURT VENUE	SUM OF VERDICTS	NUMBER OF VERDICTS	LARGEST VERDICT	MEDIAN VERDICT
State	\$108,075,775,959.34	578	\$23,640,612,741.00	\$40,129,917.00
Federal	\$61,082,615,247.03	304	\$9,001,475,000.00	\$58,650,000.00
Total	\$ 169,158,391,206.37	882		

Largely, verdicts in the top states were dominated by either federal or state courts in each jurisdiction. This is due to a variety of reasons outlined in the following pages, including local laws that encourage certain types of cases more prone to large verdicts, the presence or absence of limits on punitive damages, court procedures that favor plaintiffs, state regulations friendly to lawsuit financing by third parties, trial tactics common among attorneys in certain states, and volumes of advertising paid for by trial lawyers, among other factors.



TEXAS

TOTAL STATE VERDICTS: \$23,614,440,621

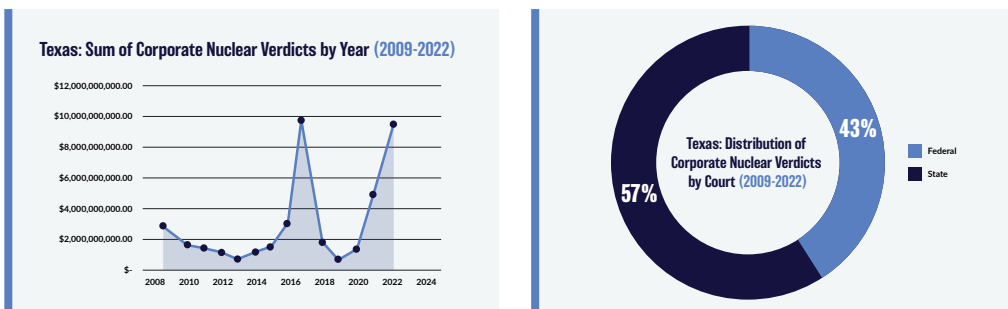
TOTAL FEDERAL VERDICTS: \$17,694,278,078

Top Sub-Industries: Banks, Telecommunications, Technology, Health Care Equipment, Semiconductors

- If Not for Two Massive Verdicts, State Courts Would Account For Half of Total Federal Court Verdicts
- 85% of Federal Verdicts Were Intellectual Property Cases, Mostly Filed in the Eastern District (EDTX)
- EDTX Attracts Patent Plaintiffs Due to Its Patent Rules, A Fast Docket, And High Likelihood of Trial
- Though IP Cases Have Been Moving to Western District (WDTX), July 2022 Order Likely to Curtail This Momentum
- State Verdicts Mostly Concentrated in Dallas (71%) and Harris (7%) Counties
- Legal Services Ads in Texas Increased 40% From 2017 to 2021
- Litigation Finance-Favorable Jurisdiction

OVERVIEW

Texas is the top state for nuclear verdicts due to two extraordinary awards ordered by state juries as well as a consistent flow of intellectual property cases to the US District Court for the Eastern District of Texas (EDTX).



Among the top state awards, the first historic case was *Hopper v. JP Morgan Chase Bank, NA* (2017), a probate matter with an \$8 billion nuclear verdict. In that case, a Dallas jury found that the bank mishandled the estate of a former American Airlines executive. The second was *Goff v. Holden* (2022), a Dallas County Court at Law wrongful death case that led to a preliminary \$7.3 billion jury verdict.

Texas differs from other states in that it has a generally applicable statutory limit on punitive damages, and under state law, courts will reduce an extraordinary punitive damage award to no more than the amount of economic damages plus two times the amount of noneconomic damages. However, these post-trial reductions are not reflected in the overall state total of \$16 billion in nuclear verdicts. The \$8 billion in *Hopper v. JP Morgan Chase Bank*, for instance, consisted largely of punitive damages and was later reduced to \$7 million.^{boxii boxiii}

Marathon's analysis found that federal corporate nuclear verdicts in Texas were largely driven by intellectual property cases. These matters accounted for 85% of identified federal nuclear verdicts, for a total of \$14.36 billion with 69%, or \$9.9 billion, of verdicts issued in the Eastern District. The Western District of Texas (WDTX) followed with \$3.6 billion, the Northern with \$535 million, and the Southern with \$224 million.

CORPORATE NUCLEAR VERDICTS IN TEXAS FEDERAL COURTS BY CASE TOPIC (2009-2022)	
COURT / TOPIC	SUM OF VERDICTS
US District Court for the Eastern District of Texas	\$10,702,331,174.20
Intellectual Property	\$9,901,522,773.20
False Claims Act	\$525,000,000.00
Antitrust	\$131,410,122.00
Products Liability	\$74,398,279.00
Labor and Employment Law	\$70,000,000.00
US District Court for the Western District of Texas	\$3,751,151,471.00
Intellectual Property	\$3,681,571,985.00
Employment	\$28,000,000.00
Breach of Contract	\$21,000,000.00
Taxation	\$20,579,486.00
US District Court for the Northern District of Texas	\$2,325,995,962.00
Products Liability	\$1,790,904,307.00
Intellectual Property	\$535,091,655.00
US District Court for the Southern District of Texas	\$914,799,471.00
Intellectual Property	\$224,779,725.00
Racketeering	\$180,980,001.00
Antitrust	\$160,714,818.00
Worker/Workplace Negligence or Safety	\$100,326,256.00
Fraud	\$92,982,775.00
Breach of Contract	\$91,565,896.00
Insurance	\$32,500,000.00
Consumer Protection	\$30,950,000.00

Verdicts in intellectual property matters were the largest case category in 2022, with a total of \$1.67 billion ordered by juries in EDTX (\$218 million) and WDTX (\$1.45 billion). Though cases have recently surged in WDTX, this trend was largely dominated at first by the EDTX over the past decade.

WHY THE EASTERN DISTRICT OF TEXAS?

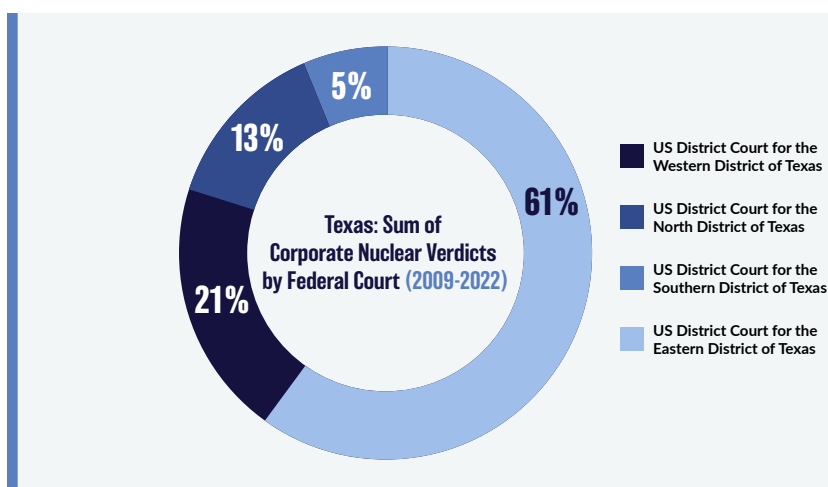
EDTX is made up of 43 of Texas' 254 counties. Though it comprises relatively sparsely populated areas of Beaumont, Lufkin, Marshall, Sherman, Texarkana, and Tyler, it also includes three cities among the state's 20 most populous: Plano, McKinney, and Frisco.

As it has risen in popularity, the Eastern District has drawn accusations of being “a haven for patent pirates” as well as a “hotbed for ‘patent trolls.’” In 2006, the late US Supreme Court Justice Antonin Scalia famously dubbed the court a “renegade jurisdiction,” while other critics chastised its jury pools. According to a December 2017 Science and Technology Law Review study, the court earned an “undeserved yet frequent” reputation for drawing unsophisticated juries from rural areas that were predisposed to rule in favor of plaintiffs. That reputation included explanations such as:

- East Texas jurors have a general distrust of large corporations because few such companies are based in the area;
- East Texans are strong believers in property rights, due to a history of fighting with oil companies over royalties for mineral rights;
- East Texas jurors are generally older, so they come into technology cases with less experience than in younger venues.^{lxiv}

In truth, however, the 2017 study found little evidence that EDTX’s popularity for patent cases was due to its jury pool. Rather, the authors argued, the court draws patent cases due to the presence of local patent rules, judges well-versed in patent litigation, a docket that allows cases to be resolved quickly and efficiently, and a higher likelihood of jury trial, which favors the patentee on average, yielding a high contested-win rate.

Additionally, East Texas judges have tended to disfavor granting summary judgments, which generally favor the accused. Overall, the study found that it is not the jury that primarily drives the perceived advantage for patent plaintiffs in East Texas, and that juries appear to render results in-line with the rest of the country and other popular patent venues. Other studies of the court have similar findings, including one conducted by the Tulane Law Review in 2008.^{lxv}



PATENT CASES ALSO SURGING IN THE WESTERN DISTRICT OF TEXAS

The Western District of Texas (WDTX) has seen an explosion in patent litigation over the past four years, and overtook EDTX in 2022, with a total of \$1.45 billion in nuclear verdicts ordered in these cases.

This court spans from Waco, Austin, and San Antonio in central Texas to El Paso in the west. In 2018, WDTX received 90 patent cases, or 2.5% of such filings nationwide. In 2020, the court received some 850 patent cases, or 22% of filings nationwide, more than any other district in the country.

Nearly all of the cases appeared on the docket of U.S. District Judge Alan Albright, who presided over nearly 2,400 patent matters between his confirmation in 2018 until recently. Albright made concerted efforts to attract patent plaintiffs, including presentations to patent lawyers and in public comments. Studies considering why the WDTX invites so many patent cases have also cited Judge Albright's courtroom procedures as well as actual decisions favorable to plaintiff's lawyers in cases.^{lxvii} ^{lxviii} Albright's plaintiff-friendly processes included rarely transferring cases out of WDTX, a reluctance to stay litigation pending related disputes in other forums, and never invalidating a patent on eligibility grounds, among other procedures.

Of note, over the past few years, Judge Albright has overseen three high-profile intellectual property disputes between VLSI Technology and Intel Corp. Most recently, a jury in Albright's court ordered Intel to pay \$948 million to VLSI in November 2022, finding that the chipmaker infringed on a VLSI patent designed to improve computer processor performance.^{lxviii} Marathon's analysis found that this was the largest 2022 Texas federal court nuclear verdict against a company.

Until July 2022, plaintiffs in WDTX could select the division where they filed their case. Since Albright was the only district judge in the Waco division, plaintiffs could effectively choose him as their judge. But that changed in July, when the WDTX chief judge issued a standing order likely to significantly curtail Albright's purview of patent infringement cases. The order requires random assignment of cases filed in Waco to any one of a dozen district judges throughout the WDTX, which will make it impossible for patent plaintiffs to easily select Albright to oversee their case.^{lxix}

Two nuclear verdicts by juries in WDTX in 2021 included \$2.17 billion in *VLSI Technology LLC v. Intel Corp.* and \$25.9 million in *VideoShare LLC v. Google LLC*. WDTX notably did not see a decline in cases during the COVID-19 pandemic like some other patent-heavy courts, including the District of Delaware, due to the respective states' handling of the court cases during pandemic.^{lxx}

In 2022, WDTX was once again a top venue for IP litigation against Big Tech companies, particularly as those companies expanded on and innovated their platforms. For example, in September, a jury ordered Facebook parent Meta Platforms to pay nearly \$175 million for allegedly infringing on two patents owned by walkie-talkie app maker Voxer Inc. In that case, *Voxer Inc. v. Meta Platforms Inc.*, jurors found that both Meta's Facebook Live and Instagram Live streaming features used Voxer's patented technology.^{lxxi}

STATE COURT TRENDS

Marathon's analysis found that 38 state courts in Texas have issued a nuclear verdict against a corporate defendant since 2009.

DALLAS & HARRIS COUNTY (TX) STATE COURT CORPORATE NUCLEAR VERDICTS (2009-2022)		
COURT	SUM OF VERDICTS	NUMBER OF VERDICTS
Dallas County (TX) Probate Court	\$8,039,179,404.00	1
Dallas County (TX) Court at Law	\$7,388,478,106.19	2
Harris County (TX) District Court	\$ 1,894,962,359.95	29
Dallas County (TX) District Court	\$1,473,036,299.00	19
Dallas County (TX) Circuit Court	\$37,615,817.64	1
Total	\$18,833,271,986.78	52

The majority of state court verdicts emerged from Texas' two most populous and Democratic counties: Dallas (71%, \$16.8 billion) and Harris, which contains Houston (7.6%, \$1.8 billion).^{booxii}
^{booxiii booxiv booxv} However, without the outlier \$8 billion verdict in *Hopper v. JP Morgan Chase* and \$7.3 billion verdict in *Goff v. Holden*, Dallas courts would have accounted for 6.5% of identified state verdicts.

State court verdicts spanned a variety of case types, including motor vehicle, breach of contract, products liability, worker/workplace safety, legal malpractice, consumer protection, insurance, fraudulent inducement, RICO, contracts, premises liability, admiralty/maritime, eminent domain, and more.

According to the US Chamber of Commerce, nuclear verdicts in Texas largely stem from auto accident claims, particularly against the trucking industry.^{booxvi} Marathon's analysis corroborated this finding, as motor vehicle cases accounted for 14% of all identified state verdicts for a total of \$2.3 billion. Of these cases, \$1.2 billion were against trucking companies, including over \$500 million ordered by juries in Harris County alone.

IN STATE COURT TRUCKING VERDICTS, DEEP CORPORATE POCKETS EQUAL BIG VERDICTS

According to the Chamber, liability in some of the trucking cases "appears to be more about who is perceived as able to pay an astounding figure for a tragic injury than about who was actually responsible for the accident." According to the *Texas Tribune*, these verdicts are generally higher because jurors are more likely to find a corporation liable for damages than an individual driver. For instance, if jurors were aware that a commercial vehicle driver worked for a large corporation like Amazon, punitive damages would likely be higher due to the company's vast resources.^{booxvii} The largest trucking verdict identified by Marathon was \$730 million in November 2021 awarded to survivors of a woman killed in a 2016 collision with an oversized cargo truck hauling a propeller. That case included \$480 million in compensatory damages and \$250 million in punitive damages against Landstar Ranger, which operates one of the most extensive transportation services networks in the U.S.^{booxviii}

In response to escalating nuclear verdicts against the industry, the Texas legislature passed a bill in 2021 with some protection for motor carriers in post-crash litigation. Signed into law by Gov. Greg Abbott, the measure requires a jury to find a trucking company or driver liable for a crash before exemplary damages can be sought in a civil case. The law seeks to curtail plaintiff's attorneys use of the "reptile theory" to go after trucking companies, regardless of whether the company was at fault for the accident. As detailed in this report's executive summary, this trial strategy attempts to cast defendants as bad actors rather than focusing on details of the matter.^{booxix}

Marathon's analysis found that the new law may have been effective. No nuclear verdicts against trucking or automobile companies by state court juries were identified in 2022. Only one federal verdict was identified, for \$21.5 million in *Kim v. American Honda Motor Co.*, a product liability case filed in the Eastern District.

Overall, the top industries in Texas for nuclear verdicts (including state and federal courts) are banks, telecommunications, technology hardware, and semiconductors.

TEXAS: TOP SUB-INDUSTRIES FOR NUCLEAR VERDICTS (ALL COURTS, 2009-2022)	
SUB-INDUSTRY	SUM OF VERDICTS
Banks	\$8,673,142,914.00
Integrated Telecommunication Services	\$7,591,334,760.00
Technology Hardware, Storage & Peripherals	\$5,224,234,175.20
Semiconductors	\$3,289,196,098.00
Health Care Equipment	\$2,436,461,956.00
Pharmaceuticals	\$2,215,711,935.00
Oil & Gas	\$1,533,374,135.09
Trucking	\$1,238,890,727.64
Communications Equipment	\$734,379,103.00
Construction & Engineering	\$662,077,021.00

LEGAL SERVICES ADVERTISING

According to the ATR Foundation and Kantar, between 2017 and 2021, spending on local advertisements for legal services and/or soliciting legal claims in Texas increased by 28%, while the quantity of ads increased by 40%. Texas is also among the top-five states where, between 2017 and 2021, viewers saw the most legal services ads on television.^{xc}

LITIGATION FINANCE-FAVORABLE JURISDICTION

Texas has been identified as among the top four most attractive states for investing in litigation by the American Transportation Research Institute as the financing of cases is not regulated by statutes. Case law has held that litigation finance agreements are enforceable and not subject to usury laws. There is a very low risk that a litigation funding transaction would be invalidated or subject to usury laws in Texas in the near future, according to the ATRI.^{xc}

2

FLORIDA

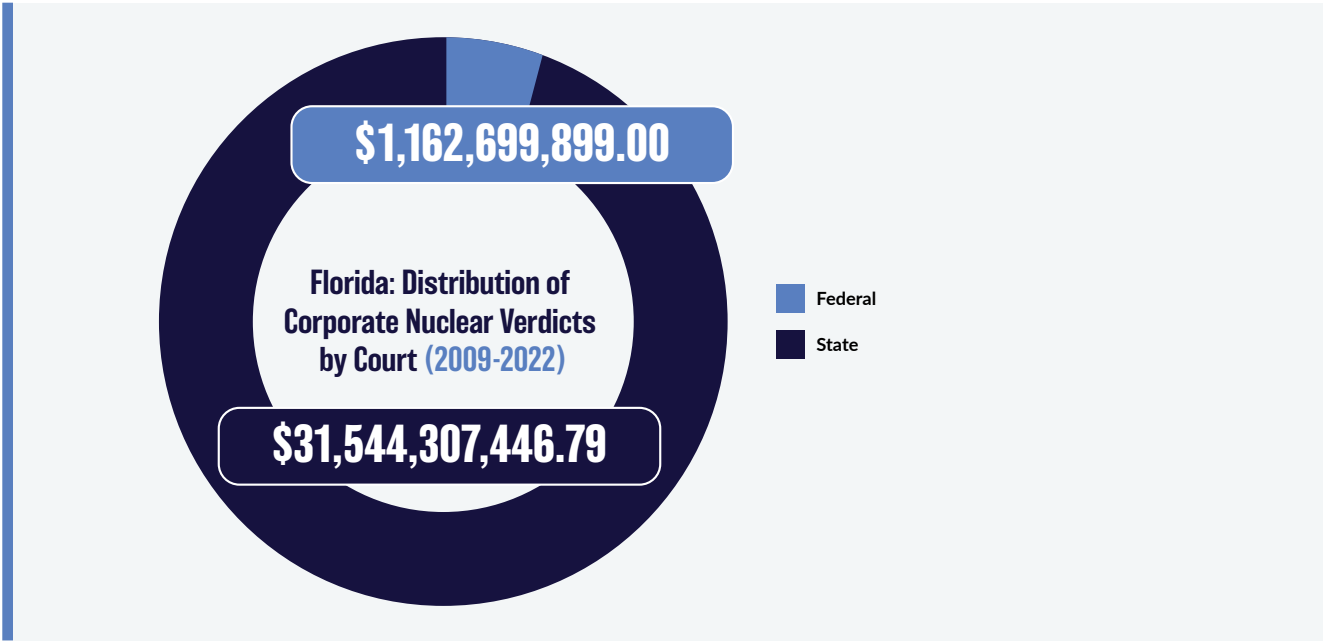
TOTAL STATE VERDICTS: \$31,544,307,446
TOTAL FEDERAL VERDICTS: \$1,162,699,899

Top Sub-Industries: Tobacco, Trucking, Real Estate, Automobiles, Health Care Services

- 35 Nuclear Verdicts Against Tobacco Companies Topped by Historic \$23 Billion Against RJ Reynolds
- Along With Tobacco, Trucking & Automobile Cases Drove Federal/State Nuclear Verdict Gulf
- 80% of State Court Verdicts Were Ordered in Products Liability Cases
- Florida is More Prone to Punitive Damages Awards than Other States
- Legal Services Ads in Florida Increased 60% From 2016 to 2020
- Litigation Finance-Favorable Jurisdiction

OVERVIEW

Marathon's analysis found Florida was the second-highest state for cumulative corporate nuclear verdicts from 2009 to 2022. According to the US Chamber of Commerce, it also ranks among the top 10 in nuclear verdicts per capita.^{xcii} All told, nuclear verdicts in Florida state courts totaled \$31.3 billion; its federal district courts, \$1.1 billion.



Florida's second-place ranking was driven by a historic \$23 billion verdict against RJ Reynolds Tobacco delivered in Escambia County Circuit Court in 2014, the largest verdict identified across all states from 2009 to 2022. Overall, Marathon's analysis found that Florida state courts were the location of 35 out of 39 of the largest nuclear verdicts against tobacco companies, totaling \$25.2 billion. Though this was mostly driven by state courts, one federal court in Florida, for the Middle District, saw three such verdicts totaling \$94 million.

FLORIDA: TOP SUB-INDUSTRIES FOR NUCLEAR VERDICTS (ALL COURTS, 2009-2022)	
SUB-INDUSTRY	SUM OF VERDICTS
Tobacco	\$25,310,196,613.99
Trucking	\$1,287,074,200.00
Real Estate Management & Development	\$1,149,648,912.00
Automobiles	\$1,061,766,805.00
Health Care Services	\$920,870,000.00
Health Care Facilities	\$459,411,285.00
Industrial Conglomerates	\$260,000,000.00
Asset Management & Custody Banks	\$195,039,060.00
Construction & Engineering	\$183,309,105.00
Marine	\$180,450,000.00

Overall, twenty-one different Florida state courts have issued a nuclear verdict since 2009. The counties with the highest totals include Broward (7.7%, \$2.4 billion), Miami-Dade (5.4%, \$1.7 billion), Alachua (3.3%, \$1.01 billion), and Nassau (3.2%, \$1.002 billion).

The Escambia County case, *Estate of Johnson v. RJ Reynolds Tobacco*, is one of thousands of cases spun from the 1990s class action suit *Engle, et. al v. R.J. Reynolds Tobacco Co.*, filed by Florida smokers against tobacco companies. After over a decade of litigation across multiple courts, the Florida Supreme Court decertified the Engle class in 2006, ruling individual plaintiffs could recover if they proved the smoker in each case was addicted to cigarettes. This led to Florida becoming the “center of the tobacco litigation universe,” according to the *Tampa Bay Times*, and largely drove the gulf between its state and federal court nuclear verdicts, as well as between products liability and all other case topics.^{xciii xciv}

CORPORATE NUCLEAR VERDICTS IN FLORIDA STATE COURTS BY CASE TOPIC (2009-2022)	
CASE TOPIC	SUM OF VERDICTS
Products Liability	\$25,559,527,651.99
Motor Vehicle	\$2,269,006,378.80
Nursing Homes	\$1,014,000,000.00
Defamation	\$1,002,000,000.00
Worker/Workplace Negligence or Safety	\$334,633,133.00
Breach of Contract	\$311,576,804.00
Fraud	\$305,131,055.00
Civil Theft	\$195,039,060.00
Breach of Privacy	\$140,100,000.00
Premises Liability	\$131,433,024.00
Construction	\$76,647,545.00
Dram Shop	\$41,956,474.00
Contracts	\$39,290,990.00

CORPORATE NUCLEAR VERDICTS IN FLORIDA STATE COURTS BY CASE TOPIC (2009-2022)	
CASE TOPIC	SUM OF VERDICTS
Assault or Assault & Battery	\$28,500,000.00
Insurance	\$28,321,791.00
Professional Negligence	\$28,000,500.00
Medical Malpractice	\$20,870,000.00
Intentional Torts	\$18,273,040.00

The Florida Supreme Court ruling opened the door to potential fraud. In 2017, two Jacksonville attorneys were ordered to forfeit more than \$9 million by a panel of federal judges who said they filed at least 1,250 frivolous cases against tobacco companies. The order said those attorneys filed claims in 2008 on behalf of hundreds of people who had not authorized them to do so, people who had never smoked, and more than 500 of which were dead.^{xcv}

In its 2006 class decertification ruling, the Florida Supreme Court notably let stand a prior jury's findings that cigarettes are defective, dangerous, and cause disease, and that Big Tobacco was negligent, meaning those issues did not have to be re-litigated in future lawsuits, therefore creating a friendlier environment for potential litigants.^{xcvi} Then, in a May 2022 ruling, the court said plaintiffs must show smokers relied on misleading information from cigarette makers to prevail on claims over smoking-related illnesses, which will likely make things harder for plaintiffs suing tobacco companies.^{xcvii}

In late 2021 and through 2022, corporate nuclear verdicts in Florida have been driven by bellwether federal products liability lawsuits filed against 3M. These cases pertain allegations that defective earplugs manufactured by the company led to hearing loss and tinnitus.^{xcviii} Marathon's analysis found that four cases during this time – all filed in federal court, for Florida's Northern District – totaled \$260 million in nuclear verdicts.

CORPORATE NUCLEAR VERDICTS IN FLORIDA FEDERAL COURTS BY CASE TOPIC (2009-2022)	
COURT / TOPIC	SUM OF VERDICTS
US District Court for the Middle District of Florida	\$724,877,848.00
False Claims Act	\$345,411,285.00
Intellectual Property	\$233,404,600.00
Products Liability	\$94,110,000.00
Fraud	\$31,700,000.00
Employment	\$20,251,963.00
US District Court for the Northern District of Florida	\$260,000,000.00
Products Liability	\$260,000,000

CORPORATE NUCLEAR VERDICTS IN FLORIDA FEDERAL COURTS BY CASE TOPIC (2009-2022)	
COURT / TOPIC	SUM OF VERDICTS
US District Court for the Southern District of Florida	\$177,822,051.00
Fraud	\$56,919,000.00
Intellectual Property	\$43,600,000.00
Products Liability	\$26,744,443.00
Insurance	\$20,315,608.00
Breach of Contract	\$20,000,000.00
Sexual Assault	\$10,243,000.00
Total	\$1,162,699,899.00

MOTOR TORT CASES

In Florida, where motor tort cases have a threshold requiring a more serious injury, jury verdicts are much higher than the national average.^{xcix} Marathon's analysis found that together, trucking and automobile defendants were subject to \$2.3 billion in nuclear verdicts overall in Florida, across only ten cases. Several of the top motor cases filed in the state's courts illustrate the extraordinary size of these verdicts, including \$1 billion in *Dzion v. AJD Business Services* (2021) ordered in Nassau County Circuit Court; a \$844 million verdict in *Estate of Blaikie v. Auto America Automotive Corp.* (2015), in Broward County Circuit Court; and a \$154 million verdict in *Klix v. American Taxi, Inc.* (2017) in Volusia County Circuit Court.

Only two nuclear verdicts against automobile or trucking companies passed through Florida federal courts during the examined period. Those were not related to accidents, but rather intellectual property (*Pods Enterprises, Inc. v. U-Haul International*) and fraud (*Carnival Corp. v. Rolls-Royce PLC*) disputes.

LETTERS OF PROTECTION & "BAD FAITH" LAWSUITS

According to the American Tort Reform Foundation, plaintiffs' lawyers in Florida use "letters of protection" to inflate medical expenses for the purpose of lawsuits. Under state law, jurors learn the amount of initially invoiced medical expenses, which can be up to three times the amount ultimately accepted by a health care provider as full payment. The ATR Foundation argues letters of protection used by personal injury lawyers curtail the ability of judges to adjust verdicts to reflect the actual amount of medical expenses accepted as payment.

The group also argues that bad faith lawsuits targeting insurers are "fertile ground" for trial lawyers in the state – an issue that the Florida legislature has not addressed.^c

SKY-HIGH PUNITIVE DAMAGES

Florida is more prone to punitive damage awards than other states, according to the US Chamber of Commerce. The Chamber's analysis of nuclear verdicts from 2010 to 2019 found 40% of Florida's total included a punitive damage element, compared to 26% nationally.^{ci} While Florida law limits punitive awards in most cases to no more than three times the amount of compensatory damages, in cases where the defendant knew the injurious activity was dangerous, punitive awards can reach four times the compensatory amount.^{cii}

One case identified by Marathon exemplifies this trend. In August 2021, a jury in Nassau County Circuit Court awarded damages in a wrongful death matter (*Dzion v. AJD Business Services*) of over \$1 billion after just five days of testimony and four hours of deliberation. Punitive damages accounted for \$900 million of the award. This case also exemplifies the “reptile theory” trial strategy, in which plaintiffs’ lawyers attempt to use fear and anger to make a jury intensely dislike a defendant.^{ciii}

LEGAL SERVICES ADVERTISING

According to the ATR Foundation and Kantar, between 2016 and 2020, spending on local advertisements for legal services and/or soliciting legal claims in Florida increased by 53.09%, while the quantity of ads increased by 61.19%.^{civ} Florida is also ranked among the top five states with the most TV legal services ads between 2017 and 2021.^{cv}

LITIGATION FINANCE-FAVORABLE JURISDICTION

Florida has been identified as among the top four most attractive states for investing in litigation by the American Transportation Research Institute. The state does not regulate litigation financing and it is unlikely this will change in the near future, according to the ATRI.^{vi}

CALIFORNIA

TOTAL STATE VERDICTS: \$15,066,275,504

TOTAL FEDERAL VERDICTS: \$9,255,333,086

Top Sub-Industries: Application Software, Health Care Equipment, Fertilizers & Agricultural Chemicals, Semiconductors, Pharmaceuticals

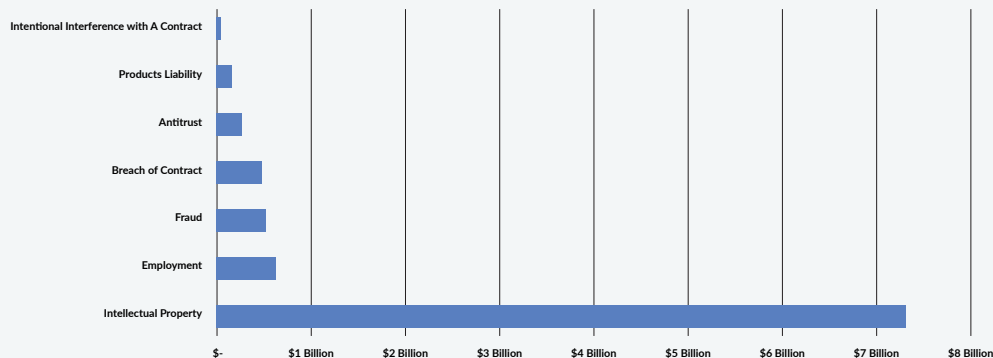
- Unlike Many States, California Has No Cap on Punitive Awards, Which Can Dwarf Damages Awards
- Products Liability Cases Thrive in California Due to Asbestos, Glyphosate, and Weed Killer Claims
- Northern District of California is a Top IP Litigation Venue, With \$4.3 Billion in Nuclear Verdicts
- Trial Lawyers Use “Anchoring” Tactic to Introduce Extraordinarily Large Awards in Jurors’ Minds
- Legal Services Ads in California Increased 115% From 2016 to 2020, While Spending Increased 50%
- Litigation Finance Favorable

OVERVIEW

The high level of nuclear verdicts in both state and federal California venues stems from the state’s size as well as its liability-friendly laws and courts. California’s court system is the largest in the nation, serving about 12% of the total US population.^{cvii}

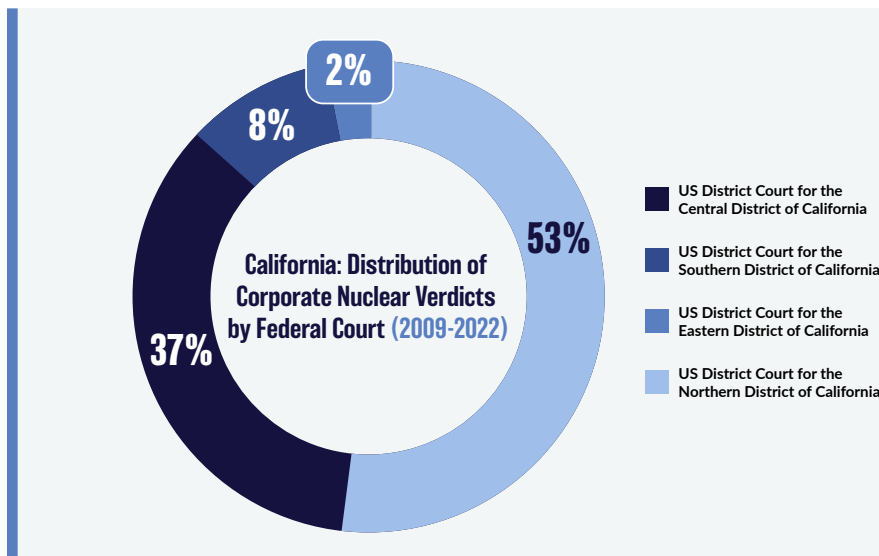
Intellectual property matters accounted for \$6.7 billion of California’s federal nuclear verdict total. According to Bloomberg Law, around 2010, patent cases began shifting from the Eastern District of Texas (EDTX) to the Northern and Central Districts of California, in part due to Texas’ increasingly jammed docket, a growing number of plaintiffs firms in Los Angeles, and an absence of local rules for patent cases. Cases also began to move following the US Supreme Court’s 2017 decision in *TC Heartland v. Kraft Foods*, which found that a corporation is only a resident of its state of incorporation when determining a venue for patent cases. As both the Northern and Central Districts are home to many corporate registrations, they have seen upticks.^{cviii}

Corporate Nuclear Verdicts in California Federal Courts by Case Topic (2009-2022)



The Los Angeles-based Central District of California reigns as the top US court for intellectual property litigation overall.^{cxix} It is also the nation's fourth-busiest patent venue.^{cx} Marathon's analysis found that intellectual property cases in the Central District comprised 26% percent of the state's federal nuclear verdicts at \$2.4 billion. These included high-profile verdicts of \$1.1 billion in *California Institute of Technology v. Broadcom Limited* (2020), \$752 billion in *Juno Therapeutics, Inc. v. Kite Pharma, Inc.* (2019), and \$131 billion in *Alfred E. Mann Foundation for Scientific Research v. Cochlear Corp.* (2014).

Several geographical and procedural advantages account for the rise in popularity of patent litigation in the Central District. Those include speedy average time to trial resolution, a flexible alternative dispute resolution system, and the court randomly assigning judges to cases, which can be attractive for both US and international litigants seeking impartiality. Further, Southern California's diverse business climate has afforded judges experience in unique IP case issues.^{cxii cxiii}



The Northern District of California – Silicon Valley's home court – is also a top venue for technology litigation on intellectual property matters nationwide. This is due in large part to the amount of technology companies headquartered in Silicon Valley. All told, Marathon's analysis found that the Northern District's intellectual property nuclear verdicts accounted for 46% of California's federal court nuclear verdicts at \$4.3 billion, \$1.3 billion of which came in one case, *Oracle US, Inc. v. SAP AG* (2010).

Following SCOTUS' decision in *TC Heartland*, the Northern District saw six nuclear verdicts in intellectual property cases, including for \$54 million in *Oracle America Inc. v. Hewlett Packard Enterprise Co.* (2022), for \$40 million in *Comet Technologies USA v. XP Power* (2022), for \$15 million in *Droplets, Inc. v. Yahoo! Inc. et al* (2022), \$177 million in *Plexxikon, Inc. v. Novartis Pharmaceuticals Corp.* (2021), and for \$30 million in both *LivePerson, Inc. v. [24]7.ai, Inc.* (2021) and *BladeRoom Group Limited v. Facebook, Inc.* (2018).

Outside of nuclear verdicts, the Northern District was one of the top five venues for all new patent cases in 2019, as it was in 2010 and 2015. While the court is not as fast as some other patent-heavy venues, it has resolved cases over the past decade about as quickly as national averages.^{cxiii}

STATE COURTS AND NUCLEAR VERDICTS

Marathon's analysis found Los Angeles County Superior Court accounted for 32% of California corporate nuclear verdicts, comprised of 44 verdicts for a total of \$4.8 billion. These decisions include a \$2.3 billion verdict in the intellectual property matter *Pacesetter, Inc. v. Nervicon Co.* (2011), and two massive product liability verdicts, \$417 million in *Lloyd v. Johnson & Johnson* (2017) and \$208 million in *Evans v. AW Chesterton* (2010).

Santa Clara County Superior Court ranked second among state courts in California, with a total of \$4.3 billion. Twenty percent of the state's nuclear verdict total came from just one verdict in this court, for \$3 billion in the breach of contract matter *Hewlett-Packard Co. v. Oracle Corp* (2016).

PRODUCTS LIABILITY CLAIMS & NUCLEAR PUNITIVES IN CALIFORNIA STATE COURTS

Overall, products liability cases accounted for 27%, or \$4.1 billion, in nuclear verdicts issued in California state courts, including cases involving asbestos, talcum powder and weed killers. While many of the cases identified by Marathon took place in Los Angeles County, several of the largest verdicts were ordered in San Francisco Bay Area courts. These included a \$2.05 billion verdict in *Pilliod v. Monsanto Co.* (2019) in Alameda County Superior Court; a \$289 million verdict in *Johnson v. Monsanto Co.* (2018) in San Francisco County Superior Court; and a \$79.8 million verdict in *Kuhlmann v. Johnson & Johnson* (2015) in Alameda County.

California's verdicts also are being driven by increasingly common "nuclear punitives," or unlimited damage awards.^{cxiv} According to Bloomberg, under state law, employers can be held liable for punitive damages based on the acts of their employees "if their own hands are dirty." These nuclear punitives are increasingly dwarfing underlying damages awarded to plaintiffs.^{cxv} In one such recent case, a Los Angeles jury awarded \$24.6 million in compensatory damages and \$440 million in punitive damages in June 2022 against Southern California Edison regarding allegations of repeated sexual and racial harassment at the company's South Bay office.^{cxvi}

To determine the amount of the award, jurors are asked to evaluate the reprehensibility of a defendant's conduct and determine whether there is a "reasonable relationship" between the amount of punitive damages and the plaintiff's harm. Jurors also consider what dollar amount would punish the defendant and discourage similar future conduct.

ANCHORING TACTICS

As in several other top states, California's nuclear verdicts are being driven by trial tactics such as "anchoring." In most states, personal injury lawyers are permitted during closing arguments to relay to juries suggested amounts for damages or to propose a method for calculating damages. When lawyers suggest an extraordinarily large award to a jury, that number can become "anchored" in their minds, and may ultimately influence the case's outcome.

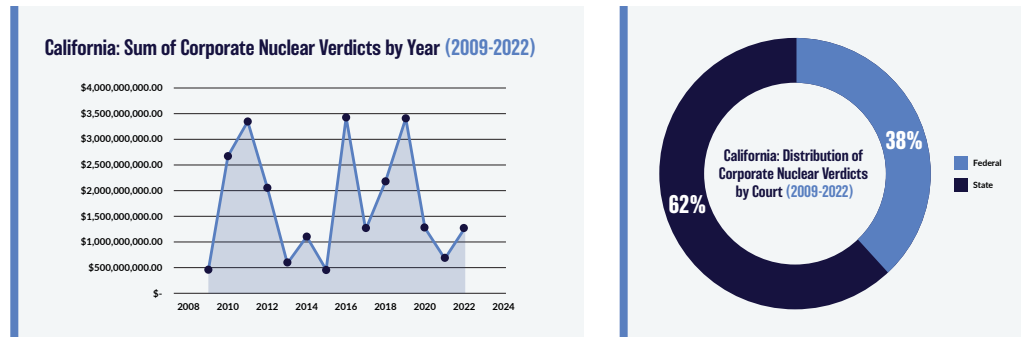
One example of anchoring identified by Marathon occurred in a San Francisco Superior Court case, *Johnson V. Monsanto Co.* (2018) The suit alleged that the weed killer Roundup caused the plaintiff to develop non-Hodgkin's lymphoma. The plaintiff's lawyers asked the jury to award one million dollars per year for pain and suffering for the remainder of the plaintiff's expected life, for a total of \$37 million. The jury awarded this exact sum, in addition to \$2 million in economic damages and \$250 million in punitive damages, for a total of \$289 million, the ninth-largest state court corporate nuclear verdict identified in Marathon's review.

LEGAL SERVICES ADVERTISING

According to the ATR Foundation and Kantar, between 2016 and 2020, spending on local advertisements for legal services and/or soliciting legal claims in California increased by 50.78%, while the quantity of ads increased by 115.81%.^{cxvii}

LITIGATION FINANCE-FAVORABLE JURISDICTION

California has been identified as among the top four most attractive states for investing in litigation by the American Transportation Research Institute. The state does not directly regulate litigation finance by statute. There is a very low risk that California law would invalidate a litigation financing agreement now or in the near future, according to the ATRI.^{cxviii}



CALIFORNIA: TOP SUB-INDUSTRIES FOR NUCLEAR VERDICTS (2009-2022)	
SUB-INDUSTRY	SUM OF VERDICTS
Application Software	\$4,398,330,000.00
Health Care Equipment	\$2,966,292,464.00
Fertilizers & Agricultural Chemicals	\$2,424,727,016.19
Semiconductors	\$2,197,956,349.00
Pharmaceuticals	\$1,701,067,556.16
Technology Hardware, Storage & Peripherals	\$1,486,109,617.00
Integrated Telecommunication Services	\$1,049,393,540.00
Automobiles	\$823,975,757.00
Health Care Technology	\$752,000,000.00
Health Care Services	\$744,223,795.00

PENNSYLVANIA

TOTAL STATE VERDICTS: \$8,960,895,111

TOTAL FEDERAL VERDICTS: \$1,206,024,565

Top Sub-Industries: Pharmaceuticals, Technology, Electric Utilities, Health Care Equipment, Aerospace & Defense

- 97% of Corporate Nuclear Verdicts in State Courts Ordered in Philadelphia's Court of Common Pleas
- Court of Common Pleas' Complex Litigation Center Attracts Mass Tort & Large Verdict Cases
- Philadelphia Employs Unusual Procedures That Increase Liability Verdicts & Compensatory Damages
- Application of Pennsylvania Venue Rule Allows Cases With Limited Connection to Philadelphia to Thrive
- August 2022 Pennsylvania State Supreme Court Ruling Likely to Increase Venue-Shopping in Medical Matters
- Legal Services Ads in Pennsylvania Increased 40% From 2016 to 2020
- Unfavorable Litigation Finance Jurisdiction

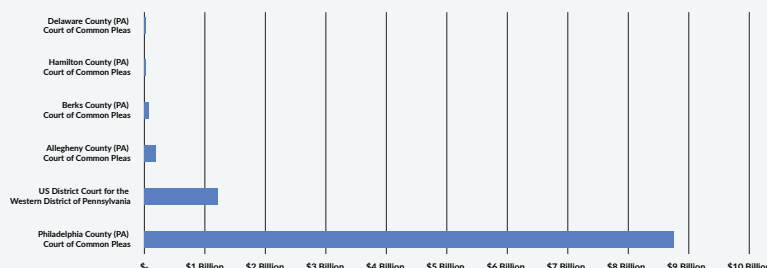
OVERVIEW

Marathon's analysis found that the Philadelphia Court of Common Pleas ranked second among state court venues in corporate nuclear verdicts, with \$8.7 billion ordered against companies since 2009. Philadelphia accounted for 98% of all corporate nuclear verdicts in Pennsylvania, with the remaining 3% spread across the state.

Only two corporate nuclear verdicts were ordered in Pennsylvania federal courts, with its total almost entirely driven by a \$1.17 billion verdict in *Carnegie Mellon University v. Marvell Technology Group* (2012), an intellectual property case filed in the state's Western District. The \$7.7 billion gulf between state and federal verdicts in Pennsylvania was driven by one case, an \$8 billion product liability verdict in *Murray v. Janssen Pharmaceuticals* (2019) in the Philadelphia Court of Common Pleas.

According to an International Center for Law & Economics study, the Court of Common Pleas – when measured against other Pennsylvania state and federal district courts – hosts an especially large number of cases, has a larger docket than expected, hosts plaintiffs less likely to settle than other non-Philadelphia court plaintiffs, and hosts plaintiffs disproportionately likely to prefer jury trials.^{cxix}

Pennsylvania: Distribution of Corporate Nuclear Verdicts by Court (2009-2022)



PHILADELPHIA COURT OF COMMON PLEAS' 'OPEN DOOR' POLICY

According to the ATR Foundation, the Court of Common Pleas is infamous for having an “open door” policy for out-of-state plaintiffs seeking a more favorable trial venue. This is due to judges’ liberal application of Pennsylvania’s venue rule (231 Pa. Code § 2179), which allows plaintiffs to bring an action against a corporation in “a county where it regularly conducts business,” through a “quality-quantity analysis,” even if there is limited connection to Philadelphia County. In a notable March 2021 decision, the Pennsylvania Superior Court determined that venue in Philadelphia County was proper in a case against Husqvarna Professional Products, despite local sales there accounting for .005% of its \$1.4 billion national sales.^{xxx cxxi}

Philadelphia’s litigation environment is also bolstered by the Complex Litigation Center, which specializes in mass torts and other large-verdict cases and has often been cited as a national model for mass torts litigation. The Complex Litigation Center oversees cases regarding asbestos, pharmaceuticals, medical devices, and similar cases, attracting class action matters with minimal connection to Philadelphia County. Judges from the Center have also previously indicated intent to attract litigation from other courts in the state: in 2009, Common Pleas President Judge Pamela Pryor Dembe made numerous calls to make Philadelphia’s mass torts program more attractive to the mass torts bar. The data indicate this unusually public campaign has been successful.^{cxxii}

PENNSYLVANIA: TOP SUB-INDUSTRIES FOR NUCLEAR VERDICTS (2009-2022)	
SUB-INDUSTRY	SUM OF VERDICTS
Pharmaceuticals	\$8,305,196,345.00
Technology Hardware, Storage & Peripherals	\$1,169,140,271.00
Electric Utilities	\$109,000,000.00
Health Care Equipment	\$90,784,140.00
Aerospace & Defense	\$89,000,000.00
Automobiles	\$55,325,714.00
Chemicals	\$50,000,000.00
Environmental & Facilities Services	\$47,887,944.00
Security & Alarm Services	\$46,532,600.00
Banks	\$46,168,000.00

REVERSE BIFURCATION & PLAINTIFF-FRIENDLY PROCEDURES

Philadelphia courts also employ several atypical plaintiff-friendly procedures that lead to disproportionately large shares of litigation and verdicts relative to both Pennsylvania and federal courts. Philadelphia has notable permissive procedures, including a “reverse bifurcation” trial, in which damages from alleged harm are calculated prior to establishing liability. In a typical bifurcated trial, the burden is on the plaintiff to establish liability before proving damages.

One study has indicated reverse bifurcation resulted in a 29% increase in liability verdicts and more than a \$600,000 increase in compensatory damages. Pennsylvania state courts also employ other plaintiff-friendly procedural devices, including lenient standards for expert testimony.^{cxxiii}

In *Murray v. Janssen Pharmaceuticals*, the plaintiff Nicholas Murray originally sued the drug company in Maryland in 2013, alleging he developed gynecomastia after using the company's Risperdal product to treat his autism. In March 2016, a jury awarded him \$1.75 million in compensatory damages, which was later pared down to \$680,000 due to Maryland's cap on non-economic damages.

When Murray brought the case to Philadelphia County, the courts had some 7,000 Risperdal cases pending, with a judge initially barring punitive damages because of a global order in a mass tort program established to coordinate all of the cases. After the order was overturned in 2018, *Murray v. Janssen Pharmaceuticals* became the first case in which a jury was allowed to consider punitive damages awards against the company. The \$8 billion verdict was ordered in October 2019. In January 2020, Judge Kenneth Powell of the Court of Common Pleas slashed the payout to \$6.8 million.^{xxxiv xxxv}

In addition to thousands of pending Risperdal cases, Philadelphia County ranks among the top four most popular jurisdictions for asbestos litigation. 209 such cases were filed in 2020, with over 600 pending through November 2021. The volume of cases soared following a Pennsylvania Supreme Court decision in *Roverano v. John Crane Inc.* in February 2020, which addressed a jury's apportionment of liability on a percentage basis in strict liability asbestos cases as well as the inclusion of bankrupt entities on a verdict sheet. The US Chamber of Commerce and a coalition of business groups had filed an amicus brief in the case urging the state Supreme Court to require trial courts to apportion liability on a percentage, rather than per capita basis. The holding in *Roverano* makes clear that defendants found liable in strict product liability cases will pay an equal share of a damage award, even if they have minimal liability.^{xxxvi}

xxxvii xxxviii xxxix

Nuclear verdicts arising from consumer class action cases in Philadelphia County and Pennsylvania are expected to rise. In August 2022, Pennsylvania's Supreme Court reversed a two-decade-old rule aimed at preventing doctors from leaving the state because of high medical malpractice insurance costs. The ruling allowed plaintiffs to resume filing medical malpractice cases in any county in the state, rather than restricting them to the county where the alleged incident occurred. Critics have argued this ruling will cause a deluge of venue-shopping.^{xxx}

LEGAL SERVICES ADVERTISING

According to the ATR Foundation and Kantar, between 2016 and 2020, spending on local advertisements for legal services and/or soliciting legal claims in Pennsylvania increased by 17.5% while the quantity of ads increased by 40.66%.^{xxxi}

LITIGATION FINANCE-UNFAVORABLE JURISDICTION

Despite its plaintiff-friendly environment, Pennsylvania has been identified by the American Transport Research Institute as among the five least attractive states for investing in litigation. This is due to the high risk that a litigation financing agreement would be invalidated under state law, and a low risk that such an agreement would be subject to usury law. Pennsylvania does not directly regulate litigation finance by statute, but it does recognize the doctrine of champerty, which has been applied to invalidate litigation financing agreements.^{xxxii}

5

LOUISIANA

TOTAL STATE VERDICTS: \$530,961,729

TOTAL FEDERAL VERDICTS: \$9,001,475,000

Top Sub-Industries: Pharmaceuticals, Trucking, Oil & Gas

- Outlier \$9 Billion Federal Verdict Vaulted Louisiana into Top Ten States
- Disproportionate Amount of National Legal Services TV Ads Relative to Population

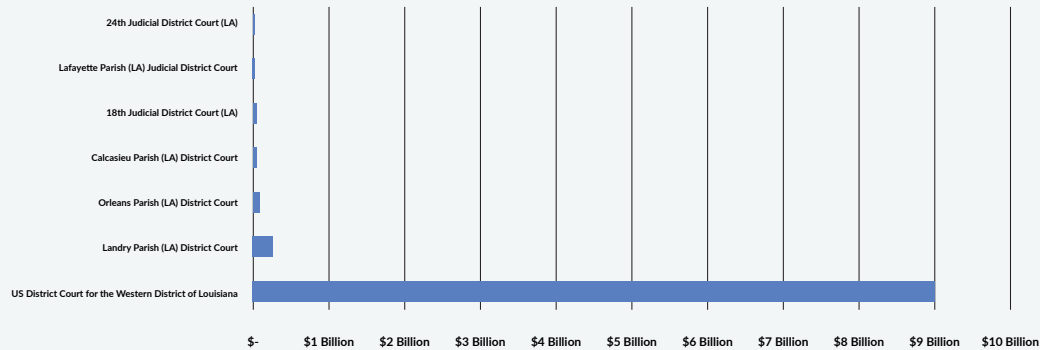


OVERVIEW

Overall, Marathon's analysis found that Louisiana's total corporate nuclear verdicts – and the state's inclusion in the top 10 states – were driven by two cases.

The first, \$9 billion in *Allen v. Takeda Pharmaceuticals North America, Inc.* (2014), was ordered by a jury in US District Court for the Western District of Louisiana, which includes most of the state. The case was a product liability matter concerning allegations that Takeda Pharmaceutical Co. and Eli Lilly & Co. failed to warn users their Actos diabetes drug could raise the risk for bladder cancer. The verdict was later slashed to \$36.8 million by US District Judge Rebecca Doherty, who argued the original award was "excessive" and violated the companies' constitutional rights to due process.^{cxxxiii}

Louisiana: Distribution of Corporate Nuclear Verdicts by Court (2009-2022)



The second-largest verdict in Louisiana, \$257 million in the consumer protection matter *State of Louisiana v. Janssen Pharmaceutical, Inc.*, was ordered by a state court jury in St. Landry Parish District Court in 2010.

Despite its small population, Louisiana ranked sixth on the ATR Foundation's 2021 list of "Judicial Hellholes" due in-part to judicial misconduct, the governor's veto of a bill that sought to limit lawsuit advertising practices, and lost jobs and revenue due to excessive civil court costs: as much as \$3.87 billion in lost economic activity.^{cxxxiv}

The US Chamber of Commerce's September 2022 review of nuclear verdicts – which covered non-corporate cases – ranked Louisiana in the top 10 states due to the number of cases involving auto accidents.^{cxxxv} Louisiana was also one of only two states to receive an "F" grade by R Street Policy's Insurance Regulation Report Card, due to its excessively high auto loss ratio.^{cxxxvi}

Marathon's findings reflect the same, with motor vehicle cases naming a corporate defendant making up 23% of state court verdicts, or \$114 million. The cases included three matters naming a trucking company as a defendant.

LOUISIANA: TOP SUB-INDUSTRIES FOR NUCLEAR VERDICTS (2009-2022)	
SUB-INDUSTRY	SUM OF VERDICTS
Pharmaceuticals	\$9,259,154,000.00
Trucking	\$114,855,184.00
Oil & Gas	\$54,588,392.00
Construction & Engineering	\$36,700,000.00
Health Care Equipment	\$23,125,000.00
Electronic Equipment & Instruments	\$21,733,411.00
Property & Casualty Insurance	\$11,929,722.11
Construction Machinery & Heavy Trucks	\$10,351,020.70

The American Transportation Research Institute has also highlighted recent fraudulent lawsuit activity in the state.^{xxxvii} In December 2019, the US Attorney's Office of the Eastern District of Louisiana indicted eight people for staging a fake crash involving a semi-truck and resulting in a trucking and insurance company paying out \$4.7 million in fraudulent claims associated with the staged accident. In December 2020, four people involved in the incident pled guilty to conspiracy to commit mail fraud.^{xxxviii}

LEGAL SERVICES ADVERTISING

According to the ATR Foundation and Kantar, between 2017 and 2021, spending on local advertisements for legal services and/or soliciting legal claims in Louisiana totaled \$231,416,902. Louisiana is also among the top-five states for aired TV legal services ads between 2017 and 2021. Overall, Louisiana accounts for a disproportionate amount the TV ads and spending by lawyers on the ads considering the state makes up less than 1.5% of the nation's population – 4% of all spending and 5.6% of ads in one quarter.^{xxxix cxi}

MISSOURI

TOTAL STATE VERDICTS: \$5,774,402,604

TOTAL FEDERAL VERDICTS: \$1,961,464,635

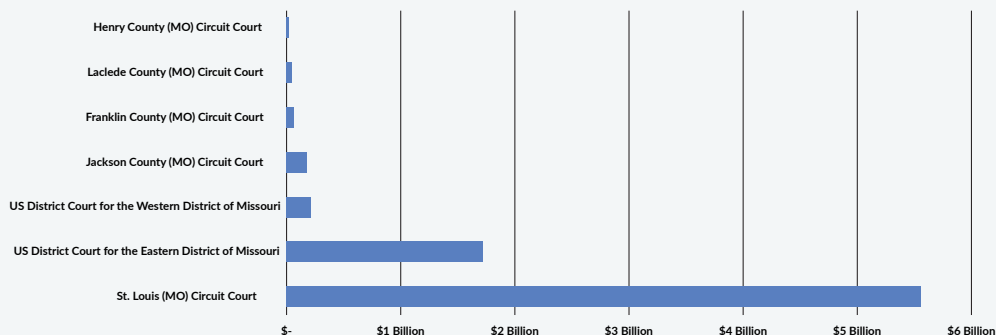
Top Sub-Industries: Pharmaceuticals, Chemicals, Consumer Finance, Construction & Engineering

- St. Louis Juries Drove Corporate Nuclear Verdicts in Both State (84%) and Federal (89%) Courts
- \$4.6 Billion St. Louis County Circuit Court Verdict Underscores Out-of-State Plaintiff Favorability
- 2019 State Law Sought to Restrict “Joinder” Process Which Piggybacks in Out-of-State Plaintiffs
- Legal Services Ads in Missouri Increased 74% From 2016 to 2020

OVERVIEW

Marathon's analysis found that 84% of state court corporate nuclear verdicts in Missouri were ordered by juries in St. Louis County Circuit Court. According to the ATR Foundation, this court is “notorious” for venue shopping and for awarding excessive punitive damages.^{cxii} Three St. Louis cases were among the top nuclear verdicts in the state: \$4.6 billion in *Ingham v. Johnson & Johnson* (2018); \$358 million in *Heilig v. Fluor Corp.* (2011); and \$110 million in *Swann v. Johnson & Johnson* (2017). Though local laws prohibit mathematical formulas, plaintiffs' lawyers in Missouri are permitted to request a specific amount for damages.^{cxiii}

Missouri: Distribution of Corporate Nuclear Verdicts by Court (2009-2022)



Marathon also found that 89% of federal court corporate nuclear verdicts were ordered by juries in the federal US District Court for the Eastern District of Missouri, which is based in St. Louis and has jurisdiction over fifty counties in the eastern half of the state. The court was notably the venue of three of the largest verdicts in the state, \$1 billion in *Monsanto Co. v. E.I. du Pont de Nemours & Co.* (2012); \$491 million in *Jo Ann Howard and Associates PC v. Cassity* (2015); and \$265 million in *Bader Farms, Inc. v. Monsanto Co.* (2020).

Overall, nuclear verdicts against pharmaceutical, chemical, and consumer finance firms drove the state's total.

MISSOURI: TOP SUB-INDUSTRIES FOR NUCLEAR VERDICTS (2009-2022)	
SUB-INDUSTRY	SUM OF VERDICTS
Pharmaceuticals	\$4,997,526,021.00
Chemicals	\$1,000,000,000.00
Consumer Finance	\$573,560,549.00
Construction & Engineering	\$358,500,000.00
Fertilizers & Agricultural Chemicals	\$311,475,000.00
Integrated Telecommunication Services	\$79,014,140.00
Banks	\$77,866,034.00
Health Care Equipment	\$59,000,000.00
Life & Health Insurance	\$54,783,495.81
Metals & Mining	\$48,000,000.00

“JOINDER” PRACTICE NOW REGULATED

In 2019, Missouri's legislature enacted SB 7, a bill aimed at making it more difficult for plaintiffs from outside St. Louis to file lawsuits in its court system. Proponents of the bill argued the court had a reputation for attracting out-of-state plaintiffs: of 13,252 plaintiffs in mass tort lawsuits filed in Missouri in recent years, only 1,035 were from Missouri and only 242 were from St. Louis. The bill put restrictions on the “joinder” of claims, the joining together of several lawsuits or several parties all in one lawsuit, provided the legal issues and the factual situation are the same for all plaintiffs and defendants. Proponents argued plaintiff attorneys have used joinder to get around Missouri's venue requirements, and for piggybacking lawsuits from out-of-state residents onto those of Missouri residents – particularly in St. Louis.^{cxliii cxliv}

The joinder practice was perhaps most exemplified by a \$550 million actual damages and \$4.14 billion punitive damages award in 2018 in a suit filed by 22 plaintiffs alleging that asbestos in Johnson & Johnson talcum powder caused ovarian cancer. Only five of the plaintiffs were Missouri residents. Though an appellate court reduced the damages to \$2.12 billion in June 2020, the Missouri Supreme Court refused to review the verdict later that year.^{cxlv cxlvi}

Also of note, the US Chamber of Commerce's 2017 survey of how businesses believe they are treated by state courts found Missouri ranked 49th out of 50 states for businesses facing injury claims.^{cxlvii}

LEGAL SERVICES ADVERTISING

According to the ATR Foundation and Kantar, between 2016 and 2020, spending on local advertisements for legal services and/or soliciting legal claims in Missouri increased by 15.36% while the quantity of ads increased by 74.02%.^{cxlviii}

7

DELAWARE

TOTAL STATE VERDICTS: \$287,900,000

TOTAL FEDERAL VERDICTS: \$4,819,732,632

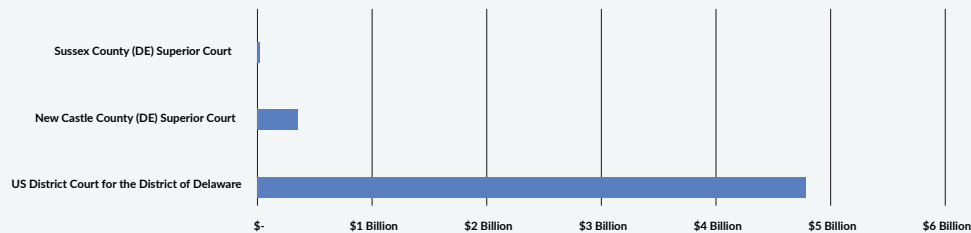
Top Sub-Industries: Health Care Technology & Equipment, Consumer Electronics, Pharmaceuticals

- \$4.8 Billion in Federal Corporate Nuclear Verdicts All Involved Intellectual Property Matters
- 2017 US Supreme Court Decision Resulted in Surge in Patent Cases to Delaware's Federal Court

OVERVIEW

As the stark discrepancy in totals indicates, corporate nuclear verdicts in Delaware are largely driven by the state's federal court.

Delaware: Distribution of Corporate Nuclear Verdicts by Court (2009-2022)

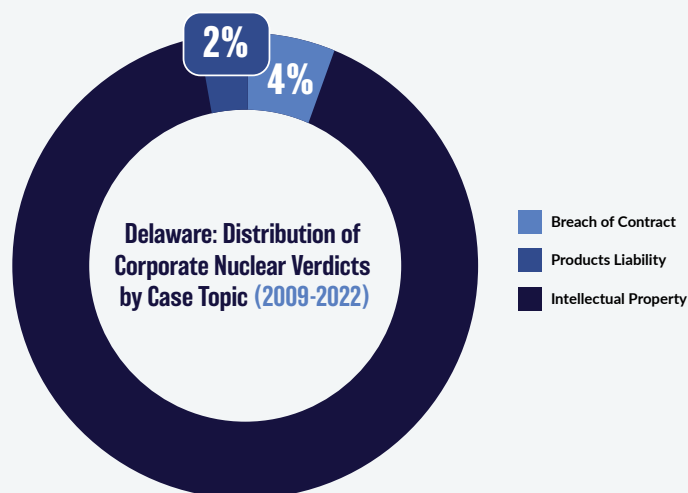


In 2017, the landmark US Supreme Court decision *TC Heartland v. Kraft Foods* found a corporation is only a resident of its state of incorporation when determining a venue for patent cases. This ruling upended nearly 30 years of precedent in patent law and dramatically restricted where patent cases may be litigated. Where the rules for patent infringement lawsuits previously made it easy to select the US District Court for the Eastern District of Texas – which had a reputation for being a friendly venue to patent holders – the Supreme Court's ruling caused a drastic geographic shift in where such cases are filed and tried.^{cxlix}

As a result, patent infringement complaints filed in EDTX dropped by nearly 50% in the first year after the ruling and surged in the US District Court for the District of Delaware, where two-thirds of Fortune 500 companies are incorporated. In 2020, the District of Delaware ranked number two in the volume of intellectual property filings in the country.^{cl cli}

ALL DELAWARE FEDERAL NUCLEAR VERDICTS WERE IN PATENT CASES

Marathon's analysis found that all \$4.8 billion in 20 corporate nuclear verdicts ordered by juries in Delaware's federal court from 2009 to 2022 involved intellectual property matters. The analysis also found that half of the verdicts issued occurred after SCOTUS' 2017 decision in *TC Heartland*. According to Bloomberg, Delaware's average of new patent complaints jumped from 46 before *TC Heartland* to 78 after the ruling. Additionally, patent cases in the court have a higher chance of being resolved on motions or through settlement when compared to EDTX. Judges also allow for more extended discovery than in EDTX, which is known for speed.



Under former Chief Judge Leonard P. Stark, patent cases filed in the District of Delaware comprised 22% of the nation's patent docket over the past decade, with only federal judges Alan Albright and Rodney Gilstrap of the EDTX and WDTX receiving more new cases. Stark presided over more than 60 patent trials and 2,400 cases – nearly half of his docket – before being confirmed by the US Senate to the US Court of Appeals for the Federal Circuit in February 2022. Stark's departure may make the District of Delaware a more defendant-friendly forum, as data suggest he more often sided with patent owners. Cases may therefore shift away from the Delaware court and to other top venues for such matters, including EDTX and WDTX.^{clii cliii cliv}

LEGAL SERVICES ADVERTISING

Comprehensive data concerning legal services advertising were not available for Delaware, which is part of the larger Philadelphia media market.

DELAWARE: TOP SUB-INDUSTRIES FOR NUCLEAR VERDICTS (2009-2022)	
SUB-INDUSTRY	SUM OF VERDICTS
Health Care Technology	\$2,947,732,708.00
Health Care Equipment	\$708,131,492.00
Consumer Electronics	\$466,774,783.00
Pharmaceuticals	\$244,902,333.00
Internet Services & Infrastructure	\$236,836,876.00
Personal Products	\$91,300,000.00
Internet & Direct Marketing Retail	\$82,500,000.00
Communications Equipment	\$70,034,383.00
Chemicals	\$61,770,994.00
Metal & Glass Containers	\$50,313,779.00

VIRGINIA

TOTAL STATE VERDICTS: \$2,110,496,010

TOTAL FEDERAL VERDICTS: \$2,891,586,112

Top Sub-Industries: Software, Telecommunications, Chemicals, Pharmaceuticals

- All \$2.8 Billion In Federal Corporate Nuclear Verdicts Came From the Eastern District of Virginia (EDVA)
- Outlier \$2 Billion Verdict Drove Up State Verdict Total
- Known As the “Rocket Docket,” EDVA’s Speed Creates Element of Surprise
- Majority of Verdicts Were Intellectual Property Cases, Which EDVA Attends to At Same Fast Rate As Other Cases

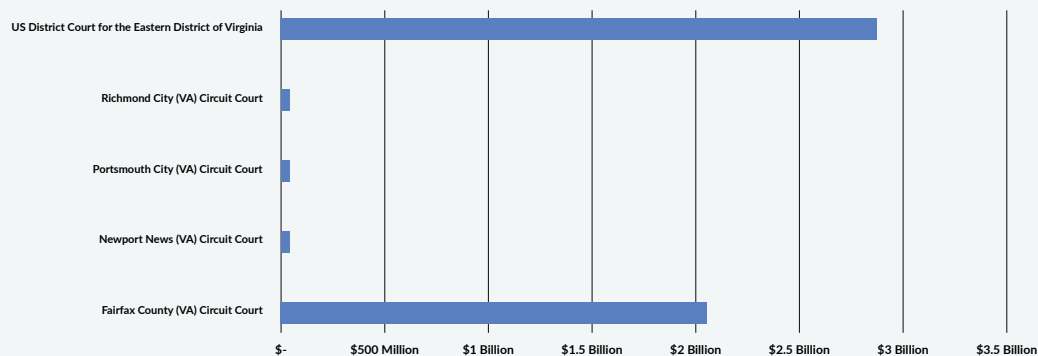
OVERVIEW

Though state and federal nuclear verdicts appear aligned in Virginia, the state total was largely driven by one verdict, for \$2 billion in *Appian Corp. v. Pegasystems Inc.*, an intellectual property matter. In that case, a Fairfax County jury found Pegasystems guilty in May 2022 of trade secret misappropriation and for violations of the Virginia Computer Crimes Act.^{clv}

Virginia notably caps punitive damages at \$350,000; the \$2 billion in *Appian Corp. v. Pegasystems Inc.* was entirely compensatory, which limits the company’s options for having its verdict slashed.^{clvi clvii} Marathon found that without this case, Virginia’s state total for corporate nuclear verdicts would only total \$73 million in three cases.

Overall, Marathon’s analysis found that all \$2.8 billion in federal nuclear verdicts were ordered by juries in one of Virginia’s two district courts, the US District Court for the Eastern District (EDVA). EDVA has jurisdiction over the Northern Virginia, Hampton Roads, and Richmond metro areas and surrounding locations. By contrast, the \$73 million in state verdicts came from three different courts: in Portsmouth City, Newport News, and Richmond City.

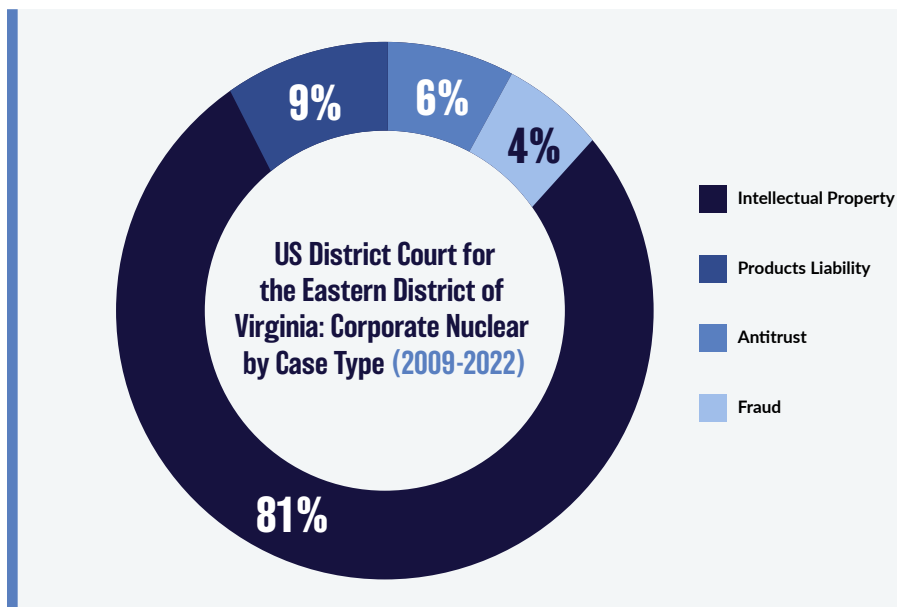
Virginia: Distribution of Corporate Nuclear Verdicts by Court (2009-2022)



EDVA was among the first to be dubbed a “Rocket Docket” following the influence of Judge Albert V. Bryan Jr., who would rule on the spot when motions were argued and could try an entire case in one afternoon.^{clviii} For 11 years through 2018, the EDVA was the nation’s fastest civil trial court – and this pace continued through COVID-19.^{clix clx} This speed is not due to a reduced caseload, as the EDVA has ranked among the courts with the greatest number of complex commercial cases filed annually.

EDVA’s fast docket makes it an appealing venue for sophisticated parties seeking prompt resolution of complex disputes. Court rules streamline the discovery process and discovery disputes are handled immediately. Parties have a short time to complete discovery, and many motions may be briefed and argued with just days’ notice. Objections to discovery must also be filed much earlier than Federal Rules or other courts require.^{clxi} The EDVA’s speed gives special advantage to plaintiffs, who enjoy an element of surprise and preparation before filing a case.^{clxii}

The Rocket Docket has had a reputation for tending to intellectual property matters at the same rate as other types of cases, even in complicated patent matters.^{clxiii clxiv} Unlike other civil litigants, patent holders seek a speedy injunction to prevent further infringement and price erosion, as well as to preserve market share – so a prompt resolution of disputes is key for strengthening the value of intellectual property.



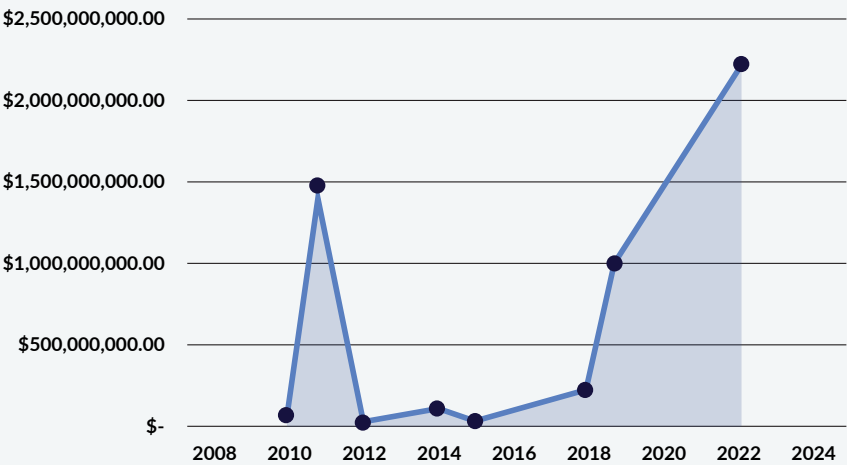
Indeed, Marathon’s analysis found that eight of the twelve federal corporate nuclear verdicts in Virginia arose from complex intellectual property matters. These included the blockbuster 2019 \$1 billion verdict in *Sony Music Entertainment v. Cox Communications, Inc.*, filed in July 2018.^{clxv} In that case, an EDVA jury ordered telecom company Cox Communications to pay over 50 music companies for piracy infringement on more than 10,000 works. The second-highest verdict, for \$919.9 million in *E.I. du Pont de Nemours & Co. v. Kolon Industries*, was also an intellectual property matter concerning the alleged theft of trade secrets related to a fiber used in making Kevlar bulletproof vests. The case was filed in February 2009 and the verdict ordered in September 2011, though it was later voided on appeal.^{clxvi}

Though only one corporate nuclear verdict was ordered by a jury in EDVA in 2022, it was for \$185 million in another intellectual property matter, *The Trustees of Columbia University in the City of New York v. Symantec Corporation*, initially filed in 2013. In this case, the jury found in May 2022 that cybersecurity company NortonLifeLock – formerly Symantec – infringed on two patents owned by Columbia University related to fighting malware. The verdict could rise as high as \$555 million because the jury found that Norton infringed the patents willfully. Columbia filed a motion for enhanced damages in June.^{clxvii clxviii}

LEGAL SERVICES ADVERTISING

Though Virginia has not seen a drastic escalation in attorney advertising, according to the ATR Foundation and Kantar, spending on local advertisements for legal services and/or soliciting legal claims in the state totaled \$70 million from 2017 to 2021.^{clxix}

Virginia: Sum of Corporate Nuclear Verdicts by Year



GEORGIA

TOTAL STATE VERDICTS: \$4,179,475,521

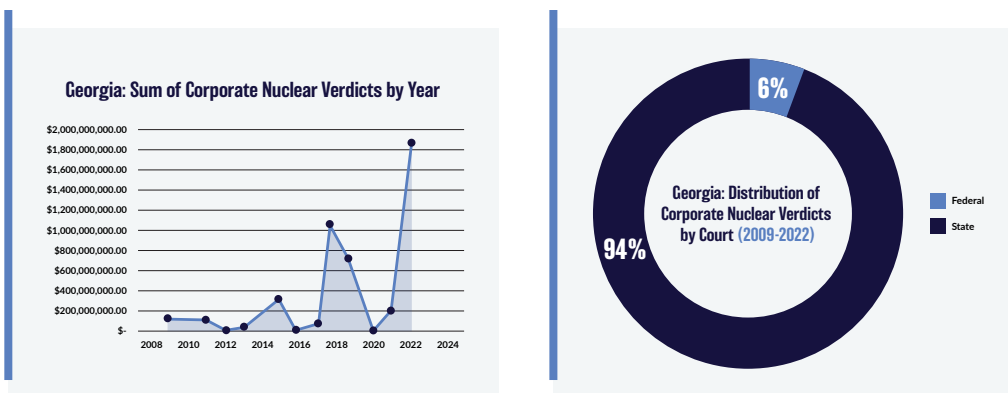
TOTAL FEDERAL VERDICTS: \$246,966,885

Top Sub-Industries: Automobiles, Security & Alarm Services, Multi-Line Insurance, Marine

- In Georgia, Nuclear Verdicts Are Increasing in Size and Frequency, Mainly in State Courts
- Local Factors Influencing State Court Verdicts Include 2017 Supreme Court Ruling On Landlord Liability As Well As Local Law Allowing Plaintiffs' Attorneys To Argue For "The Worth or Monetary Value Of Pain And Suffering" To Juries
- Georgia Supreme Court Expected to Decide on Constitutionality of Punitive Damages Cap in 2023, Which May Further Increase Nuclear Verdicts
- Legal Services Ads in Georgia Increased 38% From 2016 to 2020
- Unfavorable Litigation Finance Jurisdiction

OVERVIEW

In Georgia state courts, nuclear verdicts against corporations have been increasing in both amount awarded and frequency, and peaked in 2022. Georgia's four largest identified nuclear verdicts arrived after 2018 – all ordered by state court juries – while 72% of all identified verdicts since the Great Recession arrived after 2015. These trends led the American Tort Reform Foundation to rank Georgia at the top of its list of "Judicial Hellholes" in 2022, displacing California.^{cbx}

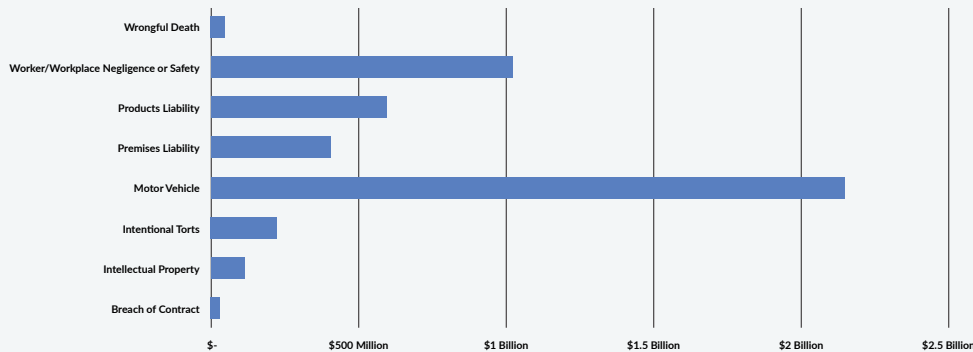


On the federal level, nearly all corporate nuclear verdicts (91%) were ordered by juries in the Northern District, with locations in Atlanta, Gainesville, Newnan, and Rome. The Atlanta division of this court comprises some of Georgia's most populous areas, including Cobb, DeKalb, and Fulton counties.

Nuclear verdicts in state courts are spread throughout Georgia, with Gwinnett (40%) and Clayton counties (22%) ranking at the top due to outlier verdicts of \$1.7 billion and \$1 billion, respectively. Other top counties include Muscogee (9.8%), DeKalb (5.6%), Rabun (4.5%), Decatur (3.4%), and Fulton (3.3%).

Overall, nuclear verdicts in Georgia are largely dominated by motor vehicle (47%), worker/workplace negligence or safety (23%), products liability (12%) and premises liability (8%).

Georgia: Distribution of Corporate Nuclear Verdicts by Case Type (2009-2022)



PREMISES LIABILITY VERDICTS ON THE RISE FOLLOWING 2017 SUPREME COURT RULING

On the state level, several of Georgia's recent verdicts followed the state Supreme Court's 2017 ruling in *Martin v. Six Flags Over Georgia II, L.P.*, which found that a landlord can be held responsible for damages caused by criminal activity even when the damages occur beyond the four corners of their property.^{clxxi}

Martin v. Six Flags stemmed from a violent 2007 beating incident outside a Six Flags in Marietta that left a teenager permanently brain damaged, and which resulted in a \$35 million verdict. In its ruling upholding the verdict, the Supreme Court concluded that because the attack that caused the teenager's injuries began while both he and the assailants were on Six Flags property, Six Flags' liability was not extinguished solely because he stepped outside the property's boundaries while attempting to distance himself from the attackers.^{clxxii clxxiii}

Following this ruling, several nuclear verdicts were ordered in similar cases, all in 2019. These include an \$81 million verdict against supermarket chain Kroger for a shooting in one of its stores' parking lots in DeKalb County. In that case, the plaintiff's attorney argued that Kroger knew the store was located in an unsafe and high-crime area, and yet failed to place security guards in its lot.^{clxxiv} A similar \$45 million verdict was ordered against CVS by a Fulton County jury, following a parking lot robbery attempt. In another case, a Muscogee County jury ordered \$125 million in *Thornton v. Ralston GA LLC*, including \$50 million in punitive damages, against an apartment complex accused of causing a tenant's death due to poor living conditions.

JURISDICTIONAL FACTORS

According to the US Chamber of Commerce, despite its large sum of nuclear verdicts, Georgia is below other states in that 19% of its nuclear verdicts included punitive damages, compared to 26% nationally.^{clxxv}

However, other local factors have contributed to Georgia's sky-high verdict totals in state courts. Georgia is one of few states with a local law permitting plaintiff's attorneys in civil actions to argue for "the worth or monetary value of pain and suffering" to the jury, no matter how large.^{clxxvi} This has allowed anchoring tactics to thrive, such as in *Taylor v. Kroger Co.* (2019), in which the plaintiff's lawyer asked for \$80 million in damages and the jury awarded \$81 million.^{clxxvii}

THE FUTURE OF PUNITIVE DAMAGES IN GEORGIA

In 2023, the Georgia Supreme Court is expected to determine the constitutionality of the state's punitive damages cap in an appeal of *Taylor v. Devereux Foundation*.^{clxxxviii} In that case, a Cobb County jury ordered the nonprofit behavioral health organization Devereux to pay a former patient \$7.6 million following allegations that it failed to protect against sexual abuse in its facility. While the initial verdict included \$50 million in punitive damages, the trial court reduced this award to \$250,000 to meet the maximum permitted by Georgia law in non-product liability cases.

Georgia's statutory cap on punitive damages was passed by the General Assembly in 1987 and has been upheld twice by the state Supreme Court.^{clxxxix} Other leading states for nuclear verdicts, such as California, have no cap on punitive awards. *Taylor v. Devereux Foundation* is therefore a key case to watch in 2023.

LEGAL SERVICES ADVERTISING

According to the ATR Foundation and Kantar, between 2016 and 2020, spending on local advertisements for legal services and/or soliciting legal claims in Georgia increased by 41% while the quantity of ads increased by 38%.^{clxxx}

LITIGATION FINANCE-UNFAVORABLE JURISDICTION

Despite its increasing nuclear verdicts, Georgia has been identified by the American Transport Research Institute as among the five least attractive states for investing in litigation. This is due to the high risk that a litigation financing agreement would be invalidated under state law, and a moderate risk that such an agreement would be subject to usury law. Georgia law includes a variety of rules that prohibit litigation finance contracts, including a statute that defines "contracts of maintenance or champerty" as void. The state also has a more inclusive definition of usury than other jurisdictions – case law provides that a transaction may be usurious when the parties agree to a rate of interest that is above the legal limit.^{clxxxi}

GEORGIA: TOP SUB-INDUSTRIES FOR NUCLEAR VERDICTS (2009-2022)	
SUB-INDUSTRY	SUM OF VERDICTS
Automobiles	\$1,954,740,401.00
Security & Alarm Services	\$1,000,000,000.00
Multi-Line Insurance	\$280,065,000.00
Marine	\$200,000,000.00
Residential REITs	\$197,960,000.00
Data Processing & Outsourced Services	\$135,107,000.00
Auto Components	\$127,019,343.00
Food Retail	\$81,000,000.00
Hotels, Resorts & Cruise Lines	\$68,000,000.00
Health Care Services	\$60,300,000.00

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NEW YORK

TOTAL STATE VERDICTS: \$2,004,085,567

TOTAL FEDERAL VERDICTS: \$1,902,657,757

Top Sub-Industries: Broadcasting, Pharmaceuticals, Real Estate, Water Utilities, Health Care Equipment

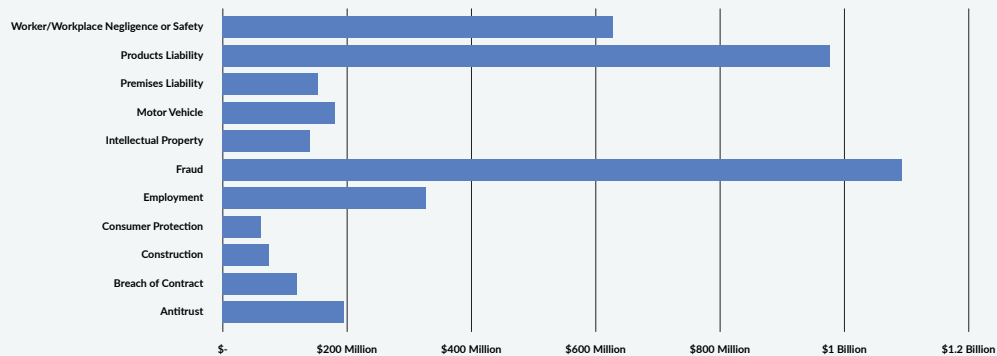
- Alignment of State/Federal Verdicts Skewed By \$956 Million Southern District of New York Verdict
- 42% of State Verdicts Were In Workplace/Premises Liability Matters: New York's "Scaffold Law" Imposes Absolute Liability On Employers for Workplace-Related Injuries At Height
- 46.5% of State Verdicts Were In Product Liability Matters, Including Asbestos Cases, For Which New York Is a Preferred Jurisdiction
- Trial Lawyers Use "Anchoring" Tactic to Introduce Extraordinarily Large Awards in Jurors' Minds
- Legal Services Ads in New York Increased 66% From 2016 to 2020
- Litigation Finance-Favorable Jurisdiction

OVERVIEW

Marathon's analysis found that New York was another state like Virginia, where nuclear verdict trends in state and federal courts appeared similar. However, New York's federal total was largely driven by just two extraordinary verdicts in the US District Court for the Southern District of New York: \$956 million in the fraud matter *Liberty Media Corp. v. Vivendi Universal* in 2012 and \$253 million in the employment case *Velez v. Novartis Corp.* in 2010.

Marathon's analysis found that 42% of corporate nuclear verdicts in New York state courts were ordered in worker/workplace negligence, premises liability, or construction matters. These comprised eleven verdicts totaling \$836.7 million from juries across four Supreme Courts in New York City: New York, Kings, Bronx, and Queens counties.

New York: Distribution of Corporate Nuclear Verdicts by Case Type (2009-2022)



NEW YORK'S LARGE VERDICTS DRIVEN BY MULTIPLE FACTORS

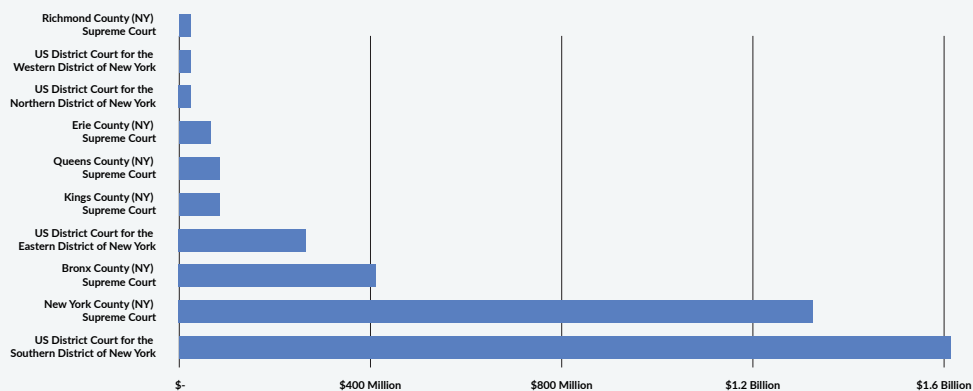
Corporate nuclear verdicts in New York, by and large, have been driven by a variety of state-level, plaintiff-friendly environmental factors, precedents, and local laws. Plaintiffs' attorneys in the state also employ several tactics used by those in California, including "anchoring," which is further detailed in the following section.

Perhaps chief among these local factors is New York's unique Labor Law 240, or "scaffolding law," which imposes absolute liability on employers for workplace-related injuries that occur at height, even if the injured party is at fault.

Initially enacted in the 19th century to protect workers who built New York City's skyline, the scaffolding law has garnered controversy for contributing to high liability insurance rates, project delays, and expensive lawsuits. The law has put trial lawyer lobbyists at odds with the construction industry, the latter of which has argued that the lawsuit lending industry touts the scaffold law as a "safety law" amid increasing construction injuries. According to the Nelson A. Rockefeller Institute of Government, the scaffold law led to a fivefold increase in workplace injury cases from 1990 to 2012.^{cbxxxii cbxxxiii}

Unlike some other states, New York does not set a cap on awards for pain and suffering. N.Y.C.P.L.R. 5501(c) states that the appellate division should determine "that an award is excessive or inadequate if it deviates materially from what would be reasonable compensation." In New York, courts look to prior awards for comparable injuries sustained on appeal for guidance. Prior to the recent surge in nuclear verdicts, only two New York appellate cases surpassed \$10 million in noneconomic damages, and so that number had become established as the state's de-facto limit.^{cbxxxiv}

New York: Sum of Corporate Nuclear Verdicts by Court (2009-2022)



PRODUCT LIABILITY VERDICTS - ASBESTOS LITIGATION

According to Marathon's analysis, 46.5% of corporate nuclear verdicts in New York state courts were ordered in product liability matters. These comprised thirteen jury verdicts totaling \$925.3 million, with most issued in New York County Supreme Court.

New York City has long been a preferred jurisdiction for asbestos litigation, ranking second for mesothelioma case filings in 2020. This is due in part to high rates of exposure in the city. Several of the largest of the product liability verdicts identified by Marathon were asbestos matters, including a \$190 million award to plaintiffs in five cases consolidated for trial in *Assenzio v. AO Smith Water Products Co.* (2013). Other top asbestos cases included a \$75 million verdict in *Robaey v. Air & Liquid Systems Corp.* (2017); a \$60 million verdict in *Macaluso v. AO Smith Corp.* (2018); and a \$19.5 million verdict in *Konstantin v. 630 Third Avenue Associates*.^{clxxxv}

This area of litigation is also ripe for lawsuit abuse. According to a June 2021 New York Civil Justice Institute report, many plaintiff firms adopt a “sue first, discover later” approach, indiscriminately and wrongfully naming asbestos defendants that lack a connection to the plaintiffs suing them. The NYCJI’s review of the New York City Asbestos Litigation (NYCAL) docket found that the average case from 2015-2020 named 30 to 40 defendants, with some cases naming upwards of 90, and a high dismissal rate. The study recommends that New York adopt laws similar to those in other states that require asbestos plaintiffs to include sworn information with their lawsuits proving there is a basis for including all defendants.^{clxxxvi}

NEW YORK: TOP SUB-INDUSTRIES FOR NUCLEAR VERDICTS (2009-2022)	
SUB-INDUSTRY	SUM OF VERDICTS
Broadcasting	\$956,556,000.00
Pharmaceuticals	\$763,100,000.00
Real Estate Management & Development	\$345,951,896.00
Water Utilities	\$285,000,000.00
Health Care Equipment	\$172,381,728.00
Multi-Sector Holdings	\$118,222,000.00
Hotels, Resorts & Cruise Lines	\$104,000,000.00
Movies & Entertainment	\$101,799,768.00
Construction Machinery & Heavy Trucks	\$95,971,644.00
Life & Health Insurance	\$93,100,000.00

TRIAL TACTICS – ANCHORING

According to the US Chamber of Commerce, nuclear verdicts in New York are less likely to include punitive damages than in other states. Rather, personal injury lawyers urge juries to return supersized non-economic damage awards through a tactic known as “anchoring.” This occurs during summation, when lawyers suggest an extraordinarily large award to the jury and that number becomes “anchored” in a juror’s mind. According to the *New York Law Journal*, New York has experienced a trend of upwardly spiraling verdicts for pain and suffering “directly precipitated” by abuses of anchoring. Marathon’s analysis also found instances of anchoring in top California nuclear verdicts.^{clxxxvii}

Anchoring occurred during one of the most prominent New York cases identified by Marathon, *Perez v. Live Nation* (2019), filed in New York County Supreme Court. In that case, plaintiffs' lawyers asked a jury to award \$85 million in noneconomic damages against defendant Live Nation Worldwide Inc. The jury returned with a \$85.75 million pain and suffering award on top of \$13.5 million for medical care and lost wages. The trial court lowered the noneconomic damages to \$40.6 million – still high above what New York courts have permitted – and the appellate court lowered it to \$20 million. According to Bloomberg, the \$20 million pain and suffering award was still a record for New York state.^{chxxxviii}

A September 2022 review by the US Chamber of Commerce found anchoring in 34 nuclear pain and suffering verdicts in New York in which plaintiffs' lawyers asked juries to return amounts between \$20 million and \$140 million. In several of those cases, juries returned the exact amount requested or "compromised" with a nevertheless extraordinarily high verdict that "was clearly influenced" by the amount the lawyer requested. While these awards are often reduced on appeal – such as in *Perez v. Live Nation* – New York's appellate division has frequently declined to consider whether plaintiffs' lawyers may ask for damages at levels state courts have never sustained as "reasonable compensation" in comparable cases, per the Chamber. Now that several recent verdicts have breached the de facto \$10 million limit on noneconomic damages, nuclear verdicts and settlements are even more likely in the state.^{chxxxix}

EFFECTIVE TRIAL ATTACKS

Further, a three-part research study published in the *New York Law Journal* in July 2020 identified a suite of so-called "how-dare-they-defend" trial attacks that purportedly explain the rise of nuclear verdicts in New York courts over the past two decades.^{cxc} These attacks, according to the study, feed off the innate sympathy any injured person deserves, while stripping defendants of rights to defend themselves in a civil trial over just compensation. Attorneys in New York courts attempt to appeal to emotional outrage, employing language like "big corporations" and "hired guns" when speaking to juries. The most frequent lines of attack, per the study, include:

- "Send a message" attacks, based on punishing the defendant financially and creating a "climate of hostility" and appealing to the jury's passion and sympathy, as opposed to ascertaining a just compensatory pain and suffering award;
- "Hired gun" comments where, in so many words, a defense expert or examining physician is vilified to a jury on the basis that they are not treating doctors and/or that their opinions are "bought," an especially cynical attack in an era where injured plaintiffs are routinely referred by their counsel to troupes of litigation-based physicians who audaciously then declare themselves to be treating physicians;
- The "big corporation" attack, which can be subtle or overt, but which, either way, substitutes for a direct reference to the defendant's wealth or insurance;
- "Vouching," where an attorney acts as an unsworn witness, whether to the character of their own client or the supposed bad conduct of their adversary;
- The "golden rule," otherwise known as attempting to inflame and prejudice the jury by asking them to put themselves in the injured plaintiff's shoes;
- The simple "how dare they," whether by denigrating defense counsel's and the defendant's motivations and similar personal attacks, or by expressions of personal indignation or outrage or disgust at the defendant's audacity for exercising its right to defend itself;
- The "dream team" attack, whereby the very excellence of defense counsel's performance and of defense experts' reputation and testimony is styled as a de facto admission of wrongdoing;

- The “unit of time” calculation of damages, encouraging an excessive verdict by proposing a significant figure and then asking the jury to multiply it over a number of years; and of course
- “Improper anchoring,” the tactic of asking for an absurdly large number so that the jury will award a “compromise” figure that is still well above the bounds set by CPLR 5501(c).^{cxci}

LEGAL SERVICES ADVERTISING

According to the ATR Foundation and Kantar, between 2016 and 2020, spending on local advertisements for legal services and/or soliciting legal claims in New York increased by 16.46% while the quantity of ads increased by 65.98%.^{cxci}

LITIGATION FINANCE-FAVORABLE JURISDICTION

New York has been identified as among the top four most attractive states for investing in litigation by the American Transportation Research Institute.

State courts have specifically held that litigation finance agreements are enforceable, while a consent decree between the New York Attorney General and the American Litigation Funding Association ALFA permits litigation finance agreements that include certain minimum disclosures and provide for a five-day “cooling-off” period after execution that would permit consumers to rescind the agreement.

There is a very low risk that a litigation financing transaction would be invalidated in New York as long as it conforms to those guidelines, as well as a very low risk that such an agreement would be subject to the state’s usury law, according to the ATRI.^{cxcii}

11

ILLINOIS

TOTAL STATE VERDICTS: \$1,202,475,870

TOTAL FEDERAL VERDICTS: \$2,134,350,818

Top Sub-Industries: Broadcasting, Casinos & Gaming, Health Care Technology, Pharmaceuticals, Railroads

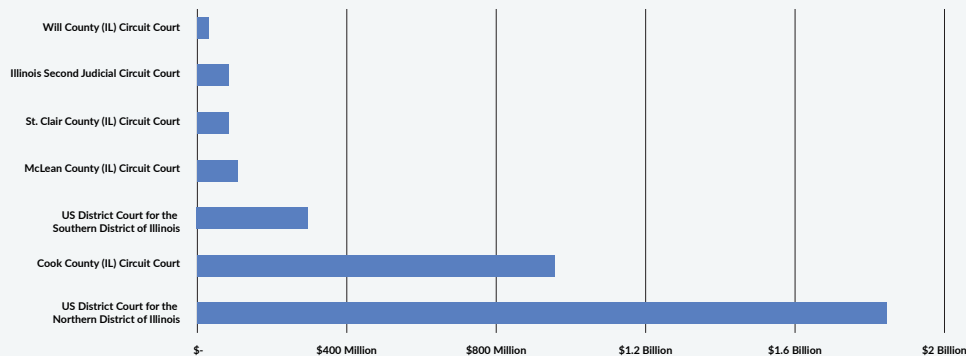
- Chicago Juries Drive Corporate Nuclear Verdicts in Both Federal (87%) and State (79%) Courts
- Cases Include Workplace Negligence, Motor Vehicle, and Product Liability
- New 2022 Precedent in Class Action Biometric Information Privacy Act (BIPA) Cases Suggests Nuclear Verdicts On The Rise
- Legal Services Ads in Illinois Increased 28% From 2017 to 2021
- Illinois Accounted for 9% of Legal Services Ads Mentioning COVID-19 in 2020

OVERVIEW

Illinois nuclear verdicts most often stem from personal injury and wrongful death cases in medical liability trials, which were nearly twice as common compared to other states, according to the US Chamber of Commerce's September 2022 review of a decade of nuclear verdicts – which includes non-corporate cases.

Medical malpractice cases are “dominating” nuclear verdicts in Illinois, according to the Institute for Legal Reform.^{cxiii} Though these cases were not the core focus of Marathon's review, two of the state's largest corporate nuclear verdicts were bellwether trials in multidistrict litigation concerning allegations that AbbVie's testosterone-boosting drug AndroGel caused men to experience heart attacks. The first was for \$150 million in *Mitchell v. Abbvie* (2017), and the second was for \$140 million in *Konrad v. Abbvie* (2017). Both cases were filed in Illinois' Northern District, and were thrown out by the trial court, which found that it was inconsistent for the jury to find that the drug had not caused the plaintiff's heart attack.

Illinois: Sum of Corporate Nuclear Verdicts by Court (2009-2022)

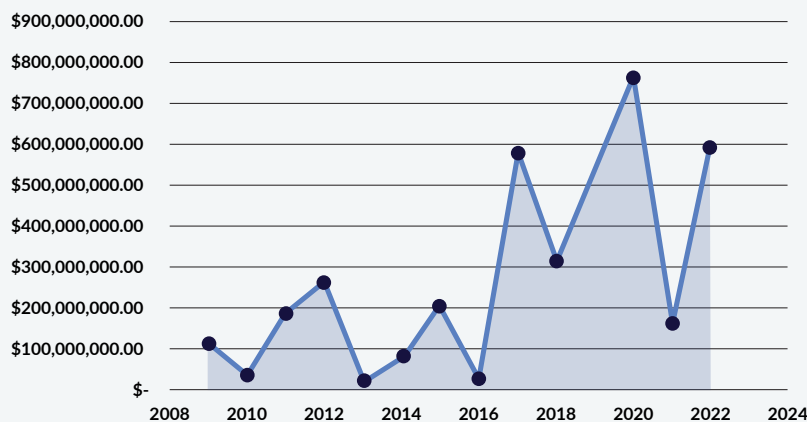


Both state and federal courts in Chicago have largely driven these nuclear verdicts. The US Chamber of Commerce found that two-thirds of all state court nuclear verdicts in Illinois came from trials in Cook County Circuit Court.^{CXCIV} The US District Court for the Northern District, which includes the Chicago metropolitan area, accounted for 87% of Illinois' federal total, according to Marathon's analysis. All but one of the largest verdicts came out of the Northern District, including *Motorola Solutions, Inc. V. Hytera Communications Corp. Ltd* (2020), an intellectual property case resulting in a \$734 million verdict. Other top verdicts in this court were for \$315 million in the antitrust case *Shuffle Tech International v. Scientific Games* (2018) as well as the \$150 million and \$140 million AndroGel verdicts described above.

Similarly, Marathon found that 79% of Illinois' state corporate nuclear verdicts were ordered by Cook County Circuit Court juries and comprised 14 verdicts for over \$957 million. The verdicts were derived from three case categories: worker/workplace negligence or safety (44%); product liability (39%); and motor vehicle accidents (14%). The remaining 21% of Illinois' state corporate nuclear verdicts came from four different courts: McLean, St. Clair, and Will counties circuit courts and the Illinois Second Judicial Circuit Court.

According to the ATR Foundation, Cook, Madison, and St. Clair counties are a magnet for asbestos and "no-injury" lawsuits stemming from the state's Biometric Information Privacy Act.^{CXCV} Marathon's analysis identified one corporate nuclear verdict ordered by a jury in St. Clair County Circuit Court, for \$72 million in *Blackmon v. Cerro Flow Products LLC* (2021), an intentional torts matter. In that case, the jury found that a copper tube manufacturer was liable for emitting pollutants from an Illinois plant that caused cancer and other health issues for nearby residents.^{CXCVI}

Illinois: Sum of Corporate Nuclear Verdicts by Year



As detailed in the introduction of this report, nuclear verdicts in Illinois are poised to rise. In October 2022, a federal jury in Illinois broke ground for lawsuits alleging violations of the Illinois Biometric Information Privacy Act (BIPA). In *Rogers v. BNSF Railway Co.*, the jury awarded \$228 million to a class of more than 45,000 truck drivers who used fingerprint-scanning technology on a gate system to enter and exit rail yards. It was the first biometrics privacy class action to go to trial in the state.

According to the National Law Review, cases brought under BIPA are one of the "hottest areas" of class action litigation in the state, mainly due to the potential for high statutory damages awards that can be recovered by large classes of employees, consumers, and similar groups of individuals for more technical violations of the law.^{CXCVII}

Marathon’s analysis found that *Rogers v. BNSF Railway* was the sole BIPA nuclear verdict against a company in Illinois, but its sum was large enough to rank the case type among the middle of all verdict totals.



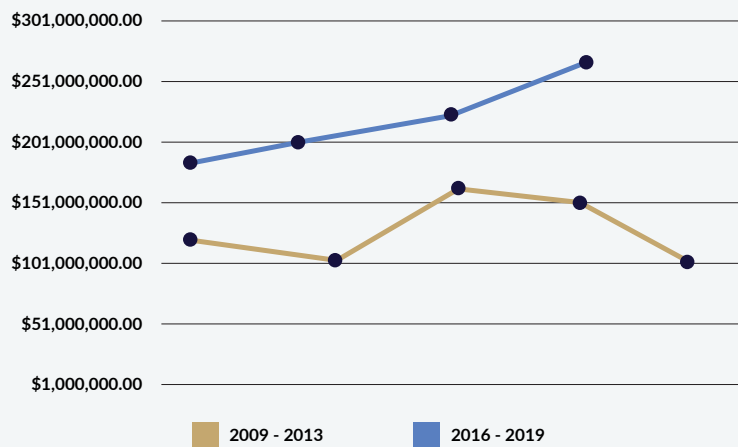
LEGAL SERVICES ADVERTISING

According to the ATR Foundation and Kantar, between 2017 and 2021, spending on local advertisements for legal services and/or soliciting legal claims in Illinois increased by 13%, while the quantity of ads increased by 28%.^{cxcviii} In 2020, Illinois notably accounted for more than 9% of all spending on legal services TV ads mentioning COVID-19 or coronavirus, for a total of \$3.04 million – the majority of which was in Chicago.

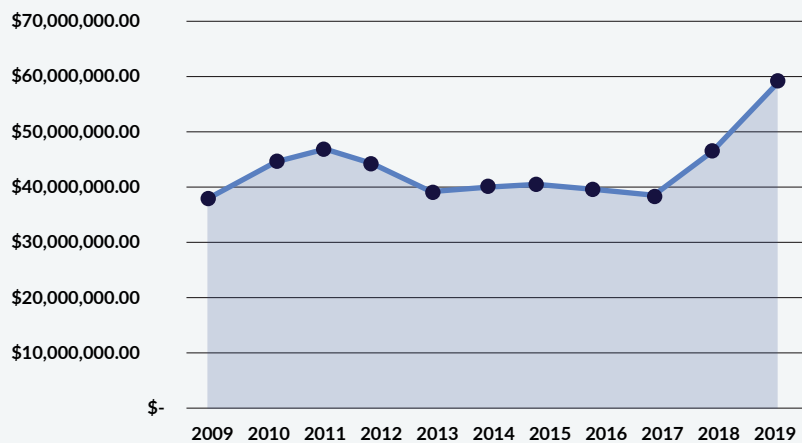
BACKGROUND: NUCLEAR VERDICTS SINCE THE GREAT RECESSION (2009-2022)

In the decade following the Great Recession, the median nuclear verdict against corporate defendants increased 55%. The growth from 2009 to 2019 was not solely driven by outlier verdicts, as both the smallest and largest verdicts grew during this time, while the overall average nuclear verdict increased by \$150 million. During this time, 191 of these verdicts were “thermonuclear,” or over \$100 million. Additionally, 48 were for more than \$500 million, and 23 were for more than \$1 billion. They were growing particularly sharply in the years leading up to the COVID-19 pandemic, from a total of \$5.7 billion in 2015 to \$15.9 billion in 2019.

Average Corporate Nuclear Verdict:
2009-2013 vs. 2016-2019



Median Corporate Nuclear Verdict: 2009-2019



The size of the largest verdicts nearly quadrupled in the latter half of the decade. From 2009 to 2013, the largest nuclear verdicts ranged from \$1.6 billion to \$2.3 billion, while the number of those verdicts ranged from 56 to 74. From 2016 to 2019, the largest verdicts more than doubled – from \$3 billion to \$8 billion – while the number of those verdicts slightly declined, ranging from 56 to 70. This sharp increase is denoted in gold in the below table. 2014 – an outlier year – saw a peak of \$38.1 billion in nuclear verdicts, driven by two historically large awards against RJ Reynolds (\$23 billion) and Takeda Pharmaceuticals (\$9 billion). The figures dropped in 2015, though the number of verdicts only declined by three from 2014.

CORPORATE NUCLEAR VERDICTS (STATE & FEDERAL COURTS): 2009-2022					
YEAR	SUM OF VERDICTS	VERDICTS	MEDIAN VERDICT	MAX. VERDICT	MIN. VERDICT
2009	\$6,266,427,885.00	56	\$36,791,821.50	\$1,672,594,000.00	\$16,577,118.00
2010	\$7,699,907,964.00	74	\$44,624,435.50	\$1,300,000,000.00	\$20,799,410.00
2011	\$10,035,794,203.00	64	\$46,818,869.50	\$2,315,586,000.00	\$19,042,000.00
2012	\$8,888,373,766.00	59	\$44,714,000.00	\$1,169,140,271.00	\$17,498,392.00
2013	\$6,858,651,773.00	64	\$39,090,119.00	\$1,200,147,117.00	\$20,016,000.00
2014	\$38,104,296,598.40	73	\$40,000,000.00	\$23,640,612,741.00	\$20,004,029.00
2015	\$5,706,311,651.00	70	\$40,552,000.00	\$844,566,000.00	\$20,830,000.00
2016	\$11,845,977,774.34	66	\$39,518,895.00	\$3,014,000,000.00	\$19,999,999.76
2017	\$13,979,965,193.72	70	\$37,243,801.00	\$8,039,179,404.00	\$18,396,745.00
2018	\$12,141,985,623.74	56	\$45,587,750.00	\$4,690,000,000.00	\$22,962,494.66
2019	\$15,947,575,402.22	61	\$57,200,000.00	\$8,001,750,000.00	\$26,622,725.00
2020	\$4,902,591,503.75	33	\$21,513,000.00	\$1,108,042,349.00	\$10,250,272.00
2021	\$8,452,306,270.00	66	\$39,551,208.50	\$2,175,000,000.00	\$19,142,635.00
2022	\$18,328,225,598.20	70	\$41,149,925.00	\$7,375,000,000.00	\$10,014,699.00
Total	\$169,158,391,206.37	882			

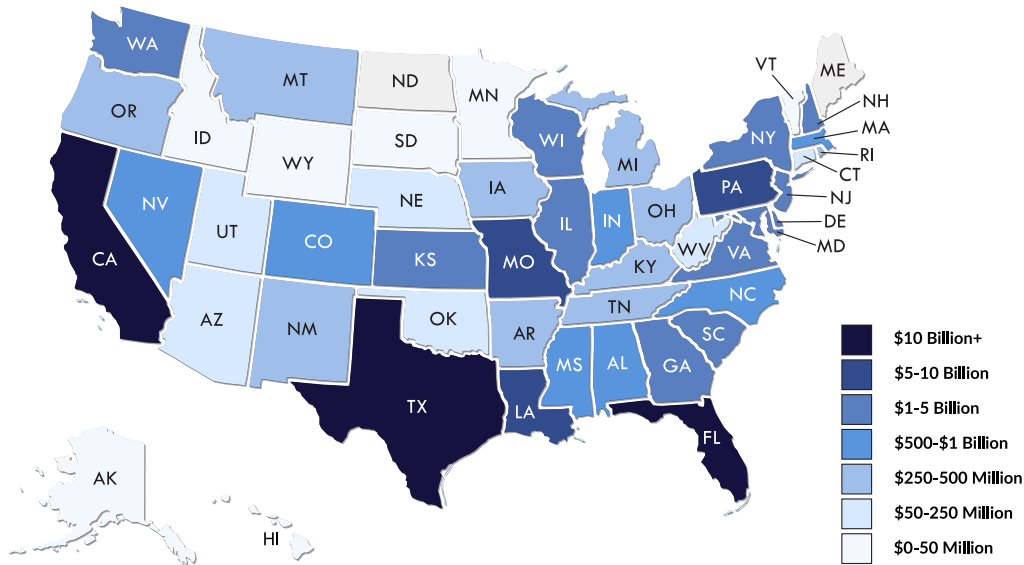
While many cases contain allegations across multiple topics, nuclear verdicts against companies have most often occurred in products liability (37%) and intellectual property (23%) cases. Since 2009, there have been 211 products liability nuclear verdicts for \$63 billion and 173 intellectual property verdicts for \$41 billion. The next-largest case topics, breach of contract or breach of fiduciary duty, combined for 105 verdicts for \$17.5 billion total. Other top cases for nuclear verdicts include motor vehicle (83 verdicts for \$7.8 billion) or wrongful death accidents (6 verdicts for \$8.2 billion), worker or workplace negligence matters (71 verdicts for \$4.6 billion), and fraud (47 verdicts for \$4.9 billion).

CORPORATE NUCLEAR VERDICTS BY CASE TOPIC (STATE & FEDERAL COURTS): 2009-2022		
CASE TOPIC	SUM OF VERDICTS	NUMBER OF VERDICTS
Products Liability	\$63,351,788,385.15	211
Intellectual Property	\$41,329,351,622.91	173
Breach of Fiduciary Duty	\$9,166,538,169.00	10

CORPORATE NUCLEAR VERDICTS BY CASE TOPIC (STATE & FEDERAL COURTS): 2009-2022		
CASE TOPIC	SUM OF VERDICTS	NUMBER OF VERDICTS
Breach of Contract	\$8,432,188,043.00	95
Wrongful Death	\$8,205,045,118.00	6
Motor Vehicle	\$7,815,828,130.00	83
Fraud	\$4,983,351,198.40	47
Worker/Workplace Negligence or Safety	\$4,820,264,878.41	71
Toxic Torts	\$2,999,188,947.00	7
Antitrust	\$2,776,597,851.00	10
Labor and Employment Law	\$2,585,823,090.34	32
Premises Liability or Negligence	\$2,090,107,248.00	51
Consumer Protection	\$1,464,534,628.00	11
Defamation	\$1,428,772,886.00	7
RICO	\$1,361,841,974.00	6
Nursing Homes	\$1,105,500,000.00	3
Intentional Torts	\$1,074,601,842.81	12
False Claims Act	\$870,411,285.00	2
Insurance	\$772,557,263.85	14
Medical Malpractice	\$474,970,000.00	4
Environmental	\$451,105,522.00	3
Legal Malpractice	\$442,599,656.50	5
Biometric Information Privacy Act	\$228,000,000.00	1
Unfair Trade Practices	\$217,700,000.00	1
Breach of Privacy	\$140,100,000.00	1
Malicious Prosecution	\$82,510,549.00	1
Dram Shop	\$81,956,474.00	2
Unjust Enrichment	\$79,014,140.00	1
Eminent Domain	\$71,655,000.00	3
Maritime Law	\$66,104,000.00	2
Intentional Interference with a Contract	\$42,500,000.00	1
Assault	\$38,743,000.00	2
Conversion	\$34,800,737.00	1
Railroad Accident	\$29,560,081.00	1
Constitutional Law	\$22,200,000.00	1
Taxation	\$20,579,486.00	1
Total	\$169,158,391,206.37	882

NUCLEAR VERDICTS BY STATE

Overall, the states that have driven the most growth in nuclear verdicts since the Great Recession – including both federal and state courts – are Texas (\$41 billion), Florida (\$32 billion), California (\$24 billion), Pennsylvania (\$10 billion), and Louisiana (\$9 billion).



- In **Texas**, eight sub-industries were subject to more than \$1 billion in nuclear verdicts: Banks (\$8.6 billion), Integrated Telecommunication Services (\$7.5 billion), Technology Hardware, Storage & Peripherals (\$5.2 billion), Health Care Equipment (\$2.4 billion), Semiconductors (\$2.3 billion), Pharmaceuticals (\$2.2 billion), Oil & Gas (\$1.5 billion), and Trucking (\$1.2 billion). The largest verdict was for \$8 billion in the breach of fiduciary case *Hopper v. JP Morgan Chase Bank, NA* (2017).
- In **Florida**, four sub-industries were subject to more than \$1 billion in nuclear verdicts: Tobacco (\$25 billion), Trucking (\$1.3 billion), Real Estate Management & Development (\$1.1 billion), and Automobiles (\$1 billion). Florida was the location of 37 out of 39 of the top verdicts against tobacco companies, including a \$23.6 billion verdict in *Estate of Johnson v. RJ Reynolds Tobacco Co.* (2014), the largest identified by this report.
- In **California**, seven sub-industries were subject to more than \$1 billion in nuclear verdicts: Application Software (\$4.3 billion), Health Care Equipment (\$3 billion), Fertilizers & Agricultural Chemicals (\$2.4 billion), Semiconductors (\$2.2 billion), Pharmaceuticals (\$1.7 billion), Technology Hardware, Storage & Peripherals (\$1.5 billion), and Integrated Telecommunication Services (\$1 billion). Courts in this state were notably venues to several of the top nuclear verdicts delivered in Intellectual Property disputes nationwide, including for \$2.3 billion in *Pacesetter, Inc. v. Nervicon Co.* (2011), \$2 billion in *Pilliod v. Monsanto Co.* (2019), \$1.3 billion in *Oracle US, Inc. v. SAP AG* (2010), \$1.1 billion in *California Institute of Technology v. Broadcom Limited* (2020), \$845 million in *ASML US, Inc. v. XTAL, Inc.* (2018), and \$752 million in *Juno Therapeutics, Inc. v. Kite Pharma, Inc.* (2019).
- **Louisiana and Pennsylvania's** totals were driven by two exceptionally large verdicts against pharmaceutical companies, for \$8 billion and \$9 billion in the federal case *Allen v. Takeda Pharmaceuticals North America* (2014) and the state case *Murray v. Janssen Pharmaceuticals* (2019).

CORPORATE NUCLEAR VERDICTS BY STATE (COMBINED FEDERAL & STATE COURTS): 2009-2022				
STATE	SUM OF VERDICTS	TOTAL VERDICTS	TOP SUB- INDUSTRY	TOP GICS SECTOR
Texas	\$41,308,718,700.07	188	Banks	Financials
Florida	\$32,707,007,345.79	107	Tobacco	Consumer Staples
California	\$24,321,608,591.46	162	Application Software	Information Technology
Pennsylvania	\$10,139,047,732.00	23	Pharmaceuticals	Health Care
Louisiana	\$9,532,436,729.81	13	Pharmaceuticals	Health Care
Missouri	\$7,735,867,239.81	26	Pharmaceuticals	Health Care
Delaware	\$5,107,632,632.00	23	Health Care Technology	Health Care
Virginia	\$5,002,082,122.23	17	Software	Information Technology
Georgia	\$4,426,442,406.00	29	Automobiles	Consumer Discretionary
New York	\$3,906,743,324.34	44	Broadcasting	Communication Services
Illinois	\$3,336,826,688.00	30	Broadcasting	Industrials
Maryland	\$2,229,602,736.00	10	Oil & Gas	Energy
Massachusetts	\$1,622,180,110.00	11	Tobacco	Consumer Staples
Wisconsin	\$1,621,227,566.34	11	IT Consulting	Information Technology
Kansas	\$1,586,464,162.00	4	Chemicals	Materials
New Jersey	\$1,454,787,446.00	13	Chemicals	Materials
New Hampshire	\$1,143,550,504.00	4	Oil & Gas	Energy
South Carolina	\$1,090,248,211.00	8	Mortgage REITs	Financials
Washington	\$1,085,271,755.00	16	Fertilizers/ Agricultural Chemicals	Industrials
Nevada	\$989,081,792.00	8	Pharmaceuticals	Health Care
North Carolina	\$901,164,891.71	9	Agricultural & Farm Machinery	Industrials
Colorado	\$667,950,768.00	8	Health Care Facilities	Health Care
Minnesota	\$661,030,000.00	5	Banks	Financials
Michigan	\$595,321,011.00	8	Broadcasting	Communication Services
Mississippi	\$546,130,450.00	5	Chemicals	Materials

CORPORATE NUCLEAR VERDICTS BY STATE (COMBINED FEDERAL & STATE COURTS): 2009-2022				
STATE	SUM OF VERDICTS	TOTAL VERDICTS	TOP SUB- INDUSTRY	TOP GICS SECTOR
Alabama	\$531,182,744.40	8	Automobiles	Consumer Discretionary
Indiana	\$503,995,953.00	12	Specialty Stores	Consumer Discretionary
Rhode Island	\$414,500,000.00	2	Systems Software	Information Technology
Oregon	\$373,953,334.00	8	Industrial Conglomerates	Industrials
Montana	\$347,266,180.00	4	Automobiles	Consumer Discretionary
Kentucky	\$337,483,596.72	7	Health Care REITs	Industrials
New Mexico	\$333,533,000.00	5	Air Freight & Logistics	Industrials
Arkansas	\$330,020,280.00	5	Pharmaceuticals	Health Care
Ohio	\$320,898,289.50	9	Chemicals	Materials
Iowa	\$266,658,266.00	2	Human Resources	Industrials
Tennessee	\$263,896,663.00	9	Hotels, Resorts & Cruise Lines	Consumer Discretionary
Nebraska	\$237,925,484.00	5	Packaged Foods & Meats	Consumer Staples
Arizona	\$226,884,300.00	4	Real Estate Management	Real Estate
Oklahoma	\$211,192,082.19	5	Construction & Engineering	Financials
Utah	\$188,336,391.00	2	Electric Utilities	Utilities
West Virginia	\$124,153,057.00	2	Health Care Services	Health Care
Connecticut	\$105,980,055.00	3	Health Care Technology	Health Care
Vermont	\$65,616,378.00	2	Automobiles	Consumer Discretionary
Hawaii	\$53,842,250.00	1	Real Estate Management	Real Estate
Idaho	\$52,084,515.00	1	Health Care Equipment	Health Care
Alaska	\$51,300,000.00	1	Systems Software	Information Technology
South Dakota	\$42,002,750.00	1	Air Freight & Logistics	Industrials
Virgin Islands	\$28,760,723.00	1	Aluminum	Materials
Wyoming	\$28,500,000.00	1	Specialized Finance	Financials
Total	\$169,158,391,206.37	882		

NUCLEAR VERDICTS BY COURT

Top State Courts

Overall, 21 state courts delivered more than \$1 billion in verdicts against corporations since the Great Recession. Most notable were Escambia County, Florida, (the site of a \$23 billion product liability verdict against RJ Reynolds in 2014); Philadelphia County, Pennsylvania (where a jury returned an \$8 billion products liability verdict against Janssen Pharmaceuticals in 2014); and Dallas County, Texas (where a jury ordered JP Morgan Chase to pay \$8 billion in a breach of fiduciary duty matter).

CORPORATE NUCLEAR VERDICTS: TOP STATE COURTS (2009-2022)		
COURT	SUM OF VERDICTS	TOTAL VERDICTS
Escambia County (FL) Circuit Court	\$23,705,310,206.00	3
Philadelphia County (PA) Court of Common Pleas	\$8,703,554,799.00	17
Dallas County (TX) Probate Court	\$8,039,179,404.00	1
Dallas County (TX) Court at Law	\$7,388,478,106.19	2
St. Louis (MO) Circuit Court	\$5,563,367,055.00	11
Los Angeles County (CA) Superior Court	\$4,875,403,582.16	45
Santa Clara County (CA) Superior Court	\$4,341,473,940.00	10
Broward County (FL) Circuit Court	\$2,482,751,217.99	28
Alameda County (CA) Superior Court	\$2,480,619,155.17	11
Fairfax County (VA) Circuit Court	\$2,036,865,046.00	1
Harris County (TX) District Court	\$1,894,962,359.95	29
Gwinnett County (GA) State Court	\$1,762,324,000.00	3
Baltimore County (MD) Circuit Court	\$1,690,220,929.00	2
Miami-Dade County (FL) Circuit Court	\$ 1,782,905,590.00	18
Dallas County (TX) District Court	\$1,473,036,299.00	19
New York County (NY) Supreme Court	\$1,338,849,398.34	20
Merrimack County (NH) Superior Court	\$1,091,268,018.00	2
Middlesex County (MA) Superior Court	\$1,034,614,000.00	2
Clayton County (GA) State Court	\$1,017,716,401.00	2
Alachua County (FL) Circuit Court	\$1,015,800,000.00	3
Nassau County (FL) Circuit Court	\$1,002,000,000.00	1

Top Federal Courts

On the federal level, juries in 14 courts ordered companies to pay more than \$1 billion in verdicts. Texas' Eastern District was notable for seven intellectual property verdicts of more than \$500 million, while Louisiana's Western District saw a jury order Takeda Pharmaceuticals to pay \$9 billion in 2014. Both of California's Northern and Central District courts were the site of billion-dollar verdicts in intellectual property cases, including against SAP AG in 2010, Broadcom in 2020, and Samsung in 2012.

CORPORATE NUCLEAR VERDICTS: TOP FEDERAL COURTS (2009-2022)		
COURT	SUM OF VERDICTS	TOTAL VERDICTS
US District Court for the Eastern District of Texas	\$ 10,702,331,174.20	52
US District Court for the Western District of Louisiana	\$9,001,475,000.00	1
US District Court for the Northern District of California	\$4,863,844,775.68	24
US District Court for the District of Delaware	\$4,819,732,632.00	20
US District Court for the Central District of California	\$3,452,898,130.00	17
US District Court for the Eastern District of Virginia	\$2,891,586,112.23	13
US District Court for the Western District of Texas	\$ 3,751,151,471.00	11
US District Court for the Northern District of Texas	\$2,325,995,962.00	5
US District Court for the Northern District of Illinois	\$1,858,210,819.00	10
US District Court for the Eastern District of Missouri	\$1,796,092,000.00	5
US District Court for the Southern District of New York	\$1,613,740,543.00	9
US District Court for the District of Kansas	\$1,557,647,117.00	3
US District Court for the Western District of Pennsylvania	\$1,206,024,565.00	2
US District Court for the Western District of Wisconsin	\$1,080,106,763.00	4

AFFECTED INDUSTRIES

Since 2009, juries have ordered at least **712 companies across 117 sub-industries to pay a total of \$169 billion** in nuclear verdicts. Sub-industries hit hardest by this trend include **pharmaceuticals, tobacco, banks, technology hardware, healthcare equipment, application software, chemicals, semiconductors, and automobiles**, among others. Companies in these cases were largely sued in products liability (\$63 billion, or 37% of the total verdicts) and intellectual property (\$40 billion, or 23%) matters. Companies in 38 different sub-industries were ordered to pay over \$500 million in nuclear verdicts, while companies in 25 different sub-industries were ordered to pay over \$1 billion.

CORPORATE NUCLEAR VERDICTS BY SUB-INDUSTRY: 2009-2022 (>\$500 MILLION TOTAL)			
SUB-INDUSTRY	SUM OF VERDICTS	TOTAL VERDICTS	LARGEST VERDICT
Pharmaceuticals	\$ 29,398,507,616.16	52	\$9,001,475,000.00
Tobacco	\$ 26,539,657,095.99	41	\$ 23,640,612,741.00
Integrated Telecommunication Services	\$ 9,985,683,153.00	15	\$ 7,375,000,000.00

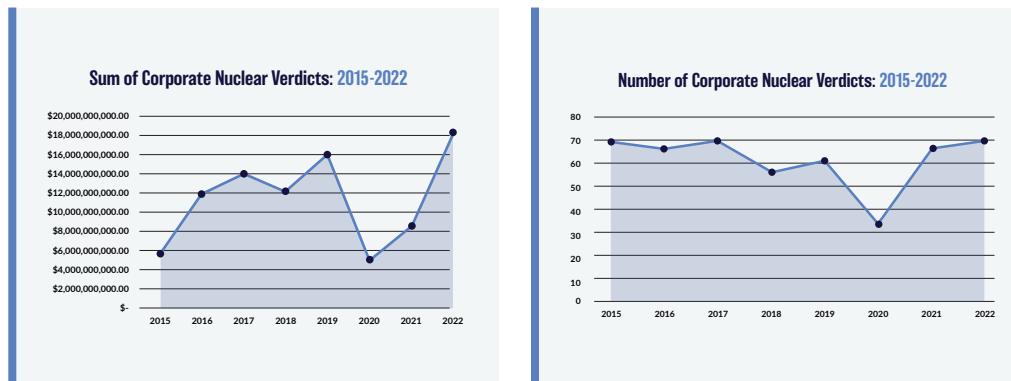
CORPORATE NUCLEAR VERDICTS BY SUB-INDUSTRY: 2009-2022 (>\$500 MILLION TOTAL)			
SUB-INDUSTRY	SUM OF VERDICTS	TOTAL VERDICTS	LARGEST VERDICT
Banks	\$ 9,585,443,311.00	17	\$ 8,039,179,404.00
Technology Hardware, Storage, & Peripherals	\$ 8,151,261,732.20	32	\$ 1,169,140,271.00
Health Care Equipment	\$ 7,361,159,163.00	46	\$ 2,315,586,000.00
Semiconductors	\$5,659,857,047.00	9	\$ 2,175,000,000.00
Automobiles	\$ 5,511,672,885.34	50	\$ 1,700,024,000.00
Application Software	\$ 5,134,160,978.00	9	\$ 3,014,000,000.00
Chemicals	\$ 4,883,509,368.00	18	\$ 1,200,147,117.00
Oil & Gas	\$ 4,551,133,015.09	39	\$ 1,542,130,570.00
Health Care Technology	\$ 4,200,214,443.00	9	\$ 2,540,000,000.00
Trucking	\$ 3,511,193,142.64	40	\$ 1,002,000,000.00
Fertilizers & Agricultural Chemicals	\$ 3,276,655,156.19	9	\$ 2,055,206,172.77
Real Estate Management & Development	\$2,329,472,580.76	29	\$ 1,002,000,000.00
Software	\$ 2,221,977,773.00	2	\$ 2,036,865,046.00
Broadcasting	\$ 2,177,525,351.00	7	\$956,556,000.00
Health Care Services	\$ 2,044,438,137.00	15	\$900,000,000.00
Construction & Engineering	\$ 1,905,344,072.00	29	\$358,500,000.00
IT Consulting & Other Services	\$ 1,499,831,995.00	6	\$940,000,000.00
Security & Alarm Services	\$ 1,291,552,136.00	6	\$ 1,000,000,000.00
Industrial Conglomerates	\$ 1,266,840,510.00	11	\$525,000,000.00
Electric Utilities	\$ 1,157,347,149.00	12	\$486,970,000.00
Health Care Facilities	\$ 1,152,641,773.00	5	\$383,500,000.00
Consumer Finance	\$ 1,063,089,089.00	6	\$491,050,000.00
Systems Software	\$ 908,458,343.00	7	\$388,000,000.00
Communications Equipment	\$ 889,141,465.00	6	\$368,160,000.00

CORPORATE NUCLEAR VERDICTS BY SUB-INDUSTRY: 2009-2022 (>\$500 MILLION TOTAL)			
SUB-INDUSTRY	SUM OF VERDICTS	TOTAL VERDICTS	LARGEST VERDICT
Mortgage REITs	\$ 812,833,692.00	1	\$812,833,692.00
Property & Casualty Insurance	\$ 771,543,827.77	19	\$155,413,344.00
Specialized Consumer Services	\$ 748,319,464.50	13	\$197,793,098.00
Hotels, Resorts, & Cruise Lines	\$ 743,578,120.00	18	\$121,818,800.00
Industrial Machinery	\$ 711,957,754.95	16	\$178,700,000.00
Agricultural & Farm Machinery	\$ 675,687,084.00	7	\$473,500,000.00
Water Utilities	\$ 586,939,000.00	5	\$281,639,000.00
Aerospace & Defense	\$ 586,262,123.00	11	\$122,500,000.00
Consumer Electronics	\$ 561,634,554.00	4	\$466,774,783.00
Air Freight & Logistics	\$ 527,906,982.00	11	\$165,533,000.00
Residential REITs	\$ 512,927,216.00	8	\$180,980,001.00

BACKGROUND: THE PANDEMIC AND POST-LOCKDOWN UPTICK (2020-2022)

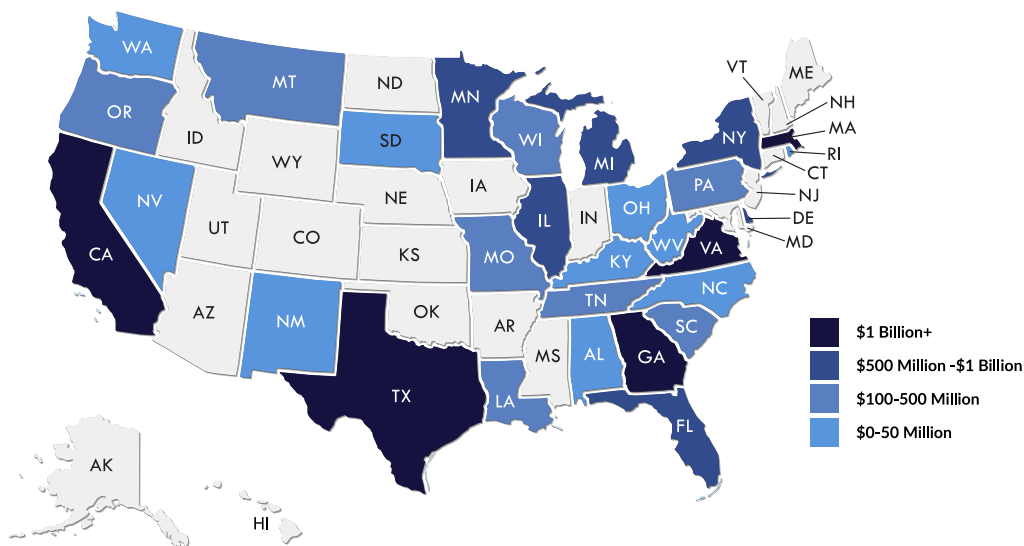
NUCLEAR VERDICTS DURING THE PANDEMIC AND INTO 2022

Nuclear verdicts were growing quickly in the five years leading up to the COVID-19 pandemic but stalled amid lockdowns in 2020. However, as courts began to return to normal levels of activity, corporate nuclear verdicts nearly quadrupled, from totals of \$4.9 billion in 2020 to \$18.3 billion in 2022. The median verdict also rose from \$21.5 million in 2020 to \$41.1 million in 2022, a 95% increase.



NUCLEAR VERDICTS BY STATE

After a decline in corporate nuclear verdicts during the first wave of the pandemic in 2020, **juries in 27 states drove a rebound in nuclear verdicts against corporations in 2021 and 2022.** Several of these were not previously among the top states, including Washington, Wisconsin, South Carolina, Massachusetts, and Nevada. Overall, the states which led the growth of these verdicts in prior years also led the post-lockdown uptick, including Texas, Florida, Illinois, and Georgia.



Among the states that did issue corporate nuclear verdicts in 2020, several saw major increases through 2022: Georgia (8,765%), Texas (600%), and Florida (513%). Nuclear verdicts also appeared in 12 states in 2021 that did not have one the prior year, including South Carolina, Nevada, Kentucky, and South Dakota. In 2022, an additional five states added nuclear verdicts: Minnesota, New York, Pennsylvania, Montana, and Missouri.

CORPORATE NUCLEAR VERDICTS BY STATE (2020-2022)						
STATE	2020 SUM	2020 NUMBER	2021 SUM	2021 NUMBER	2022 SUM	2022 NUMBER
Texas	\$1,203,010,735	6	\$4,943,527,859	20	\$9,360,116,543	14
Virginia	\$0	0	\$0	0	\$2,221,977,773	2
Georgia	\$21,029,363	1	\$200,000,000	1	\$1,864,343,343	4
California	\$1,290,186,838	6	\$693,178,742	9	\$1,275,777,012	14
Massachusetts	\$0	0	\$26,600,000	1	\$1,028,014,000	2
Florida	\$68,083,040	4	\$1,204,147,890	7	\$620,173,171	14
Illinois	\$764,561,156	1	\$159,110,034	4	\$591,000,000	2
Minnesota	\$0	0	\$0	0	\$564,000,000	1
Delaware	\$236,836,876	1	\$58,322,284	2	\$346,701,990	2
Michigan	\$0	0	\$27,798,967	1	\$118,860,052	2
New York	\$0	0	\$0	0	\$108,100,000	2
Louisiana	\$22,280,742	2	\$20,500,000	1	\$49,168,784	2
Oregon	\$0	0	\$26,641,877	1	\$45,215,262	2
Pennsylvania	\$0	0	\$0	0	\$39,100,000	2
Montana	\$0	0	\$0	0	\$36,500,000	1
South Carolina	\$0	0	\$122,000,000	2	\$27,414,519	2
Missouri	\$0	0	\$0	0	\$20,000,000	1
Tennessee	\$23,500,000	1	\$24,705,656	1	\$11,763,148	1
Washington	\$26,051,000	2	\$338,285,000	3	\$0	0
Wisconsin	\$38,164,263	1	\$195,620,000	3	\$0	0
Nevada	\$0	0	\$101,450,512	2	\$0	0
Kentucky	\$0	0	\$74,000,000	1	\$0	0
South Dakota	\$0	0	\$42,002,750	1	\$0	0
Ohio	\$82,262,488	2	\$40,129,917	1	\$0	0
Alabama	\$0	0	\$36,181,725	1	\$0	0
West Virginia	\$0	0	\$32,653,057	1	\$0	0
North Carolina	\$0	0	\$31,950,000	1	\$0	0
New Mexico	\$0	0	\$27,000,000	1	\$0	0
Rhode Island	\$0	0	\$26,500,000	1	\$0	0
Total	\$4,902,591,503	33	\$8,452,306,270	66	\$18,328,225,598	70

NUCLEAR VERDICTS BY COURT

Juries in 24 federal courts and 51 state courts drove the 2021-2022 uptick in corporate nuclear verdicts, largely due to sharp increases in verdicts from venues in Florida, Texas, Washington, Georgia, and California.

While the sum of these verdicts was roughly even across state and federal venues in 2021 – \$4.3 billion to \$4.1 billion respectively – state courts vastly overtook federal courts in 2022, \$13.9 billion to \$3.2 billion. This discrepancy was largely due to *Goff v. Holden* (2022), a Dallas County Court at Law wrongful death case that led to a preliminary \$7.3 billion jury verdict.

CORPORATE NUCLEAR VERDICTS BY COURT (2020-2022)	
YEAR / COURT	SUM OF VERDICTS
2022 Total	\$18,328,225,598.20
State Courts	\$14,081,583,329.20
Dallas County (TX) Court at Law	\$7,375,000,000.00
Fairfax County (VA) Circuit Court	\$2,036,865,046.00
Gwinnett County (GA) State Court	\$1,715,324,000.00
Middlesex County (MA) Superior Court	\$1,008,014,000.00
Los Angeles County (CA) Superior Court	\$594,381,491.00
Cook County (IL) Circuit Court	\$363,000,000.00
Miami-Dade County (FL) Circuit Court	\$193,962,055.00
Orange County (CA) Superior Court	\$120,890,722.00
Reagan County (TX) District Court	\$120,000,000.00
Broward County (FL) Circuit Court	\$81,888,520.00
Harris County (TX) District Court	\$63,996,558.00
Sonoma County (CA) Superior Court	\$47,407,070.00
Multnomah County (OR) Circuit Court	\$45,215,262.00
Philadelphia County (PA) Court of Common Pleas	\$39,100,000.00
Orleans Parish (LA) District Court	\$36,700,000.00
Cascade County (MT) District Court	\$36,500,000.00
Greene County (GA) Superior Court	\$22,000,000.00
St. Louis Circuit Court	\$20,000,000.00
Polk County (FL) Circuit Court	\$16,500,000.00
Duval County (FL) Circuit Court	\$16,433,362.80
Horry County (SC) Court of Common Pleas	\$15,684,519.00
Grayson County (TX) District Court	\$15,681,000.00
New York County (NY) Supreme Court	\$15,000,000.00
Clinton County (MI) Circuit Court	\$14,210,052.00
Sussex County (DE) Superior Court	\$12,900,000.00
St. Charles Parish (LA) Judicial District Court	\$12,468,784.00

CORPORATE NUCLEAR VERDICTS BY COURT (2020-2022)	
YEAR / COURT	SUM OF VERDICTS
Orangeburg County (SC) Court of Common Pleas	\$11,730,000.00
Alameda County (CA) Superior Court	\$10,684,653.40
Volusia County (FL) Circuit Court	\$10,031,535.00
Hillsborough County (FL) Circuit Court	\$10,014,699.00
Federal Courts	\$4,246,642,269.00
US District Court for the Western District of Texas	\$1,453,171,985.00
US District Court for the District of Minnesota	\$564,000,000.00
US District Court for the Central District of California	\$337,413,076.00
US District Court for the District of Delaware	\$333,801,990.00
US District Court for the Eastern District of Texas	\$309,950,000.00
US District Court for the Northern District of Florida	\$237,500,000.00
US District Court for the Northern District of Illinois	\$228,000,000.00
US District Court for the Eastern District of Virginia	\$185,112,727.00
US District Court for the Northern District of Georgia	\$127,019,343.00
US District Court for the Northern District of California	\$109,000,000.00
US District Court for the Eastern District of Michigan	\$104,650,000.00
US District Court for the Southern District of New York	\$93,100,000.00
US District Court for the Southern District of California	\$56,000,000.00
US District Court for the Southern District of Florida	\$53,843,000.00
US District Court for the Southern District of Texas	\$22,317,000.00
US District Court for the District of Massachusetts	\$20,000,000.00
US District Court for the Western District of Tennessee	\$11,763,148.00
2021 Total	\$8,452,306,270.00
State Courts	\$4,325,328,173.00
Nassau County (FL) Circuit Court	\$1,002,000,000.00
Titus County (TX) District Court	\$730,000,000.00
Harris County (TX) District Court	\$473,677,082.00
Fort Bend County (TX) District Court	\$253,914,363.00
King County (WA) Superior Court	\$247,285,000.00
Rabun County (GA) Superior Court	\$200,000,000.00
Los Angeles County (CA) Superior Court	\$182,871,344.00
Jefferson County (TX) District Court	\$113,850,000.00
Clark County (NV) District Court	\$101,450,512.00
Miami-Dade County (FL) Circuit Court	\$96,389,968.00
Pierce County (WA) Superior Court	\$91,000,000.00
Orangeburg County (SC) Court of Common Pleas	\$90,000,000.00
Cook County (IL) Circuit Court	\$87,110,034.00

CORPORATE NUCLEAR VERDICTS BY COURT (2020-2022)	
YEAR / COURT	SUM OF VERDICTS
Broward County (FL) Circuit Court	\$83,257,922.00
Boone County (KY) Circuit Court	\$74,000,000.00
Kern County (CA) Superior Court	\$73,039,191.00
St. Clair County (IL) Circuit Court	\$72,000,000.00
Pennington County (SD) Circuit Court	\$42,002,750.00
Belmont County (OH) Court of Common Pleas	\$40,129,917.00
Glenn County (CA) Superior Court	\$38,972,500.00
Richland County (SC) Court of Common Pleas	\$32,000,000.00
Ottawa County (MI) Circuit Court	\$27,798,967.00
Middlesex County (MA) Superior Court	\$26,600,000.00
Kent County (RI) Superior Court	\$26,500,000.00
Milwaukee County (WI) Circuit Court	\$26,500,000.00
Alameda County (CA) Superior Court	\$25,772,967.00
Hamilton County (TN) Circuit Court	\$24,705,656.00
Dallas County (TX) District Court	\$22,000,000.00
Pointe Coupee Parish (LA) District Court	\$20,500,000.00
Federal Courts	\$4,126,978,097.00
US District Court for the Western District of Texas	\$2,200,900,000.00
US District Court for the Eastern District of Texas	\$1,149,186,414.00
US District Court for the Northern District of California	\$345,022,640.00
US District Court for the Eastern District of Wisconsin	\$125,150,000.00
US District Court for the District of Delaware	\$58,322,284.00
US District Court for the Western District of Wisconsin	\$43,970,000.00
US District Court for the Northern District of Alabama	\$36,181,725.00
US District Court for the District of West Virginia	\$32,653,057.00
US District Court for the Western District of North Carolina	\$31,950,000.00
US District Court for the Central District of California	\$27,500,100.00
US District Court for the District of New Mexico	\$27,000,000.00
US District Court for the District of Oregon	\$26,641,877.00
US District Court for the Northern District of Florida	\$22,500,000.00
2020 Total	\$4,902,591,503.75
Federal Courts	\$3,676,166,101.20
US District Court for the Eastern District of Texas	\$1,111,841,357.20
US District Court for the Central District of California	\$1,108,042,349.00
US District Court for the Northern District of Illinois	\$764,561,156.00
US District Court for the Eastern District of Missouri	\$286,000,000.00
US District Court for the District of Delaware	\$236,836,876.00

CORPORATE NUCLEAR VERDICTS BY COURT (2020-2022)	
YEAR / COURT	SUM OF VERDICTS
US District Court for the Southern District of California	\$85,230,000.00
US District Court for the Southern District of Ohio	\$50,000,000.00
US District Court for the Northern District of Georgia	\$21,029,363.00
US District Court for the Western District of Washington	\$12,625,000.00
State Courts	\$1,226,425,402.55
Middlesex County (NJ) Superior Court	\$787,300,000.00
Bexar County (TX) District Court	\$77,691,272.00
Alameda County (CA) Superior Court	\$54,000,000.00
Racine County (WI) Circuit Court	\$38,164,263.34
Cuyahoga County (OH) Court of Common Pleas	\$32,262,488.50
Pinellas County (FL) Circuit Court	\$26,750,000.00
Sullivan County (TN) Circuit Court	\$23,500,000.00
Madera County (CA) Superior Court	\$21,513,000.00
Marion County (IN) Superior Court	\$20,325,000.00
Pittsburgh County (OK) District Court	\$20,000,000.00
Hendry County (FL) Circuit Court	\$18,273,040.00
Dallas County (TX) Court at Law	\$13,478,106.19
King County (WA) Superior Court	\$13,426,000.00
Henry County (MO) Circuit Court	\$13,000,000.00
Broward County (FL) Circuit Court	\$12,500,000.00
East Baton Rouge Parish (LA) District Court	\$11,929,722.11
Los Angeles County (CA) Superior Court	\$10,845,000.00
Miami-Dade County (FL) Circuit Court	\$10,560,000.00
Yolo County (CA) Superior Court	\$10,556,489.71
Orleans Parish (LA) District Court	\$10,351,020.70

AFFECTED INDUSTRIES

The sub-industries which bore the brunt of the 2021-2022 uptick in nuclear verdicts included integrated telecommunication services, software, automobiles, semiconductors, trucking, oil & gas, tobacco, health care technology, and coal & consumable fuels.

For the industries that had a nuclear verdict in both 2020 and 2021, the industries which saw the greatest growth in the sum of their verdicts were trucking (17,681% increase), oil & gas (1,712%), hypermarkets & super centers (1,109%), automobiles (350%), electric utilities (343%), environmental & facilities services (314%), property & casualty insurance (284%), packaged foods & meats (202%), agricultural & farm machinery (195%), health care equipment (113%), and semiconductors (103%).

Of the 2021 industries, trucking experienced an extraordinary increase due to two verdicts: \$1 billion in *Dzion v. AJD Business Services, Inc.*, and \$730 million in *Ramsey v. Landstar Ranger, Inc.* Oil & gas followed due to a \$222 million verdict in *Most v. Team Industrial Services, Inc.*, a \$73 million verdict in *TRC Operating Co., Inc. v. Chevron USA, Inc.*, and a \$40 million verdict in *Terra LLC v. Rice Drilling D LLC*.

Several industries that experienced nuclear verdicts in 2020 and 2021 also saw significant growth in the sum of their verdicts in 2022. These included electric utilities (2,295% increase from 2020-2022), health care equipment (1,347%), oil & gas (590%), and property & casualty insurance (137%). Three of the largest nuclear verdicts in 2022 were also against industries that did not experience one the prior two years: \$7.3 billion against *Charter Communications in Goff v. Holden* (telecommunications), for \$2 billion in *Appian Corp. v. Pegasystems Inc.* (software), and for \$218 million in *United Services Automobile Association v. PNC Bank N.A.* (banks).

Both the size and scope of these verdicts grew, as 35 industries were subject to a nuclear verdict in 2021 and 2022 that were not in 2020. These included integrated telecommunication services, software, health care technology, coal & consumable fuels, pharmaceuticals, marine, IT consulting, and real estate management & development companies.

CORPORATE NUCLEAR VERDICTS BY SUB-INDUSTRY (2020-2022)			
SUB-INDUSTRY	2022	2021	2020
Total (All Sub-Industries)	\$18,328,225,598.20	\$8,452,306,270.00	\$4,902,591,503.75
Integrated Telecommunication Services	\$7,491,766,200.00	\$0.00	\$0.00
Software	\$2,221,977,773.00	\$0.00	\$0.00
Automobiles	\$1,856,205,535.00	\$171,900,000.00	\$38,164,263.34
Tobacco	\$1,018,028,699.00	\$43,000,000.00	\$49,810,000.00
Semiconductors	\$948,000,000.00	\$2,252,339,436.00	\$1,108,042,349.00
Health Care Technology	\$696,801,990.00	\$0.00	\$0.00
Banks	\$579,684,519.00	\$0.00	\$102,792,510.00
Electric Utilities	\$486,970,000.00	\$90,000,000.00	\$20,325,000.00
Health Care Equipment	\$303,875,000.00	\$44,705,656.00	\$21,000,000.00
Pharmaceuticals	\$293,000,000.00	\$231,023,607.00	\$0.00
Railroads	\$249,000,000.00	\$43,970,000.00	\$0.00
Industrial Conglomerates	\$237,500,000.00	\$22,500,000.00	\$0.00
Consumer Finance	\$218,450,000.00	\$0.00	\$0.00

CORPORATE NUCLEAR VERDICTS BY SUB-INDUSTRY (2020-2022)			
SUB-INDUSTRY	2022	2021	2020
Interactive Media & Services	\$189,530,785.00	\$25,900,000.00	\$0.00
Marine	\$158,750,000.00	\$200,000,000.00	\$0.00
Hotels, Resorts & Cruise Lines	\$143,115,678.00	\$44,618,042.00	\$0.00
Oil & Gas	\$138,000,000.00	\$362,313,513.00	\$20,000,000.00
Auto Components	\$137,703,996.40	\$0.00	\$0.00
Property & Casualty Insurance	\$129,443,037.00	\$209,125,415.00	\$54,472,085.11
Life & Health Insurance	\$121,263,362.80	\$113,850,000.00	\$0.00
Real Estate Management & Development	\$87,992,641.00	\$159,147,922.00	\$0.00
Chemicals	\$81,763,148.00	\$0.00	\$ 837,300,000.00
Trucking	\$65,368,784.00	\$1,822,551,020.00	\$10,250,272.00
Construction & Engineering	\$60,588,520.00	\$100,600,000.00	\$85,714,040.00
Human Resource & Employment Services	\$60,445,361.00	\$0.00	\$0.00
Electrical Equipment	\$58,100,000.00	\$0.00	\$0.00
Beverages	\$56,000,000.00	\$0.00	\$0.00
Building Products	\$55,199,850.00	\$91,500,000.00	\$0.00
Application Software	\$54,000,000.00	\$30,330,000.00	\$0.00
Specialized Consumer Services	\$47,407,070.00	\$0.00	\$32,262,488.50
Agricultural Products	\$22,317,000.00	\$27,798,967.00	\$0.00
Gas Utilities	\$15,466,597.00	\$0.00	\$0.00
Health Care Services	\$15,300,000.00	\$0.00	\$0.00
Construction Materials	\$15,000,000.00	\$0.00	\$13,426,000.00
Environmental & Facilities Services	\$14,210,052.00	\$97,300,000.00	\$23,500,000.00
Technology Hardware, Storage & Peripherals	\$0.00	\$696,226,651.00	\$1,094,278,847.20
Fertilizers & Agricultural Chemicals	\$0.00	\$247,285,000.00	\$ 265,000,000.00
Broadcasting	\$0.00	\$0.00	\$ 764,561,156.00
IT Consulting & Other Services	\$0.00	\$172,554,269.00	\$0.00

CORPORATE NUCLEAR VERDICTS BY SUB-INDUSTRY (2020-2022)			
SUB-INDUSTRY	2022	2021	2020
Industrial Machinery	\$0.00	\$33,889,968.00	\$0.00
Agricultural & Farm Machinery	\$0.00	\$38,322,284.00	\$13,000,000.00
Aerospace & Defense	\$0.00	\$36,181,725.00	\$0.00
Air Freight & Logistics	\$0.00	\$91,145,385.00	\$0.00
Packaged Foods & Meats	\$0.00	\$31,914,363.00	\$10,556,489.71
Asset Management & Custody Banks	\$0.00	\$38,972,500.00	\$0.00
Hypermarkets & Super Centers	\$0.00	\$152,650,100.00	\$12,625,000.00
Coal & Consumable Fuels	\$0.00	\$352,772,000.00	\$0.00
Internet Services & Infrastructure	\$0.00	\$0.00	\$ 236,836,876.00
Specialty Stores	\$0.00	\$0.00	\$13,478,106.19
Paper Packaging	\$0.00	\$26,641,877.00	\$0.00
Construction Machinery & Heavy Trucks	\$0.00	\$0.00	\$10,351,020.70
Retail REITs	\$0.00	\$22,000,000.00	\$0.00
Food Retail	\$0.00	\$0.00	\$10,845,000.00
Home Furnishings	\$0.00	\$23,000,000.00	\$0.00
Electrical Components & Equipment	\$0.00	\$31,950,000.00	\$0.00
Interactive Home Entertainment	\$0.00	\$92,176,058.00	\$0.00
Distributors	\$0.00	\$91,000,000.00	\$0.00
Independent Power/ Renewable Electricity	\$0.00	\$0.00	\$54,000,000.00
Managed Health Care	\$0.00	\$62,650,512.00	\$0.00
Airport Services	\$0.00	\$26,500,000.00	\$0.00

METHODOLOGY

The findings presented in this report were compiled through a new analysis of verdict and settlement data from The National Law Review, LexisNexis, various state and federal court records databases, legal journals, white papers, and media reports, among other sources. Out of more than 1,300 nuclear verdicts from 2009 to 2022 identified through this review, 882 were found to have been ordered against at least one key corporate defendant.

Once relevant cases were identified, key corporate defendants in each matter were sorted by sub-industry according to the Global Industry Classification Standard (GICS) structure, which consists of 11 sectors, 24 industry groups, 69 industries, and 158 sub-industries. Additional sorting of these cases was conducted to determine case topic, state jurisdiction, and court venue. Where relevant, local and national news reports on various cases were reviewed to identify additional pertinent information.

Cases were further sorted by topline jurisdictional information, including state, county, and court. Jurisdictional and geographic information was accrued through reviews of nearly 300 court websites, Federal Information Processing System (FIPS) Codes, and various media reports.

Marathon reviewed cases in dozens of categories, including antitrust, breach of contract, breach of fiduciary duty, breach of privacy, civil theft, employment, fraud, intellectual property, intentional torts, motor vehicle, products liability, racketeering, tortious interference, toxic torts, worker/workplace negligence, and wrongful death, among others. Medical malpractice cases – a frequent source of nuclear verdicts generally – were only included when a corporate defendant was a key party in the matter.

As many cases contained allegations across several of these categories, Marathon's data sorting prioritized the classifications determined by The National Law Review and LexisNexis' Jury Verdicts & Settlements database. Marathon acknowledges that there are important distinctions in the factors that influence verdicts in various kinds of disputes. While some claims may be interpreted as overgeneralizations, the report attempted to account for many distinctions across practice areas, court procedures, and state and local laws.

This report focuses on the amounts juries have determined companies are responsible for, rather than the final payout. Indeed, several cases profiled in this report are ongoing, with some defendants publicly stating they intend to appeal their verdicts or are attempting to do so. The verdicts obtained and analyzed were therefore compiled by gross award calculated by the jury, and do not reflect reductions for comparative negligence or assignment of fault to settling defendants or nonparties; additurs, remittiturs or reversals; or attorney fees, costs, or other fines, unless awarded by the jury.

Cases were not included in which the jury only determined per-plaintiff or per-year damages that a judge later used to calculate a gross award, cases in which the jury's instructions permitted it to determine damages against a party that it had already deemed not liable, or cases in which a jury awarded damages against one or more parties while one or more other parties awaited trial in the same matter.

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