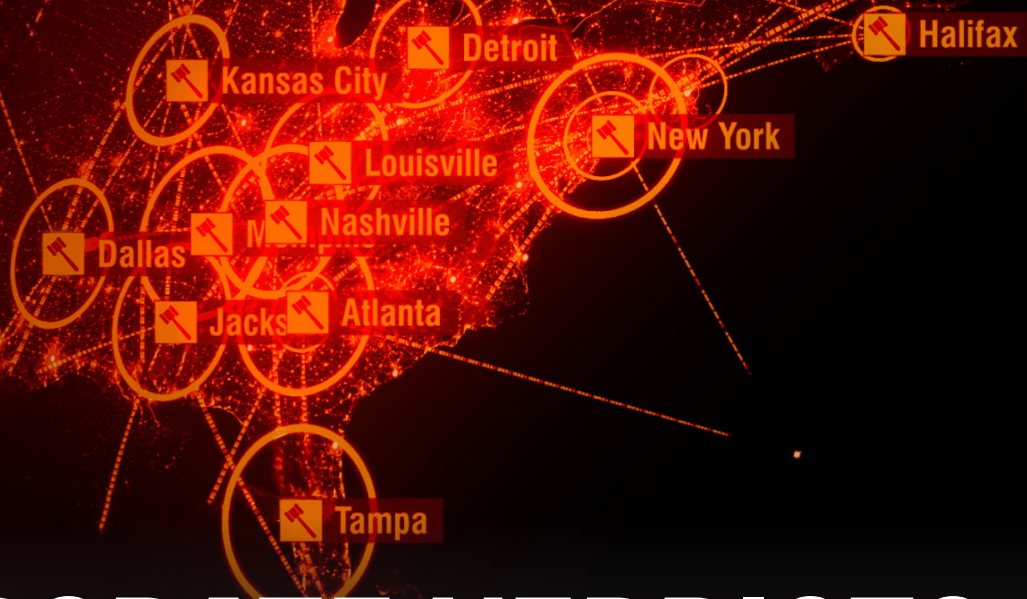




MARATHON
STRATEGIES



CORPORATE VERDICTS GO THERMONUCLEAR

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ALBANY

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CORPORATE VERDICTS GO THERMONUCLEAR: LARGE JURY AWARDS RISE NEARLY 30%

AMERICAN JURIES ARE ORDERING MORE SUPERSIZED VERDICTS AGAINST COMPANIES THAN EVER BEFORE

15-year high in verdicts poised to rise further in 2024

From rapper Flo Rida's \$82 million breach of contract case against an energy drink company to a nearly \$1 billion sports car liability award against Mitsubishi, juries across the country in 2023 found corporate defendants liable for over \$14.5 billion in "nuclear verdicts." No company is safe: nearly 50 unique industries faced these cases last year, including chemicals, automobiles, home furnishings, internet services, and electric utilities. In 2023, 89 lawsuits against a corporate defendant resulted in a "nuclear verdict" award – a 15-year high.

Nuclear jury verdicts are those that surpass \$10 million. They have increased in both size and number since 2009.^{1,2}

In 2023, the number of these cases increased by 27%. While headlines often focus on what Marathon has dubbed "thermonuclear verdicts" – those greater than \$100 million and reaching above \$1 billion – companies also face threats from a **steadily rising baseline, which is returning to pre-pandemic levels.** In 2023, the median nuclear verdict rose to \$44 million, up from a low of \$21 million in 2020. [2023 case data is sortable on an interactive website.](#)

While some states are more prone to handing out nuclear verdicts than others, we found that these jury verdicts are happening in courts throughout the country, both rural and urban. In 2023, states with the largest sum of verdicts were Missouri (\$4 billion), Texas (\$3.7 billion), Pennsylvania (\$1.2 billion), and Washington (\$1.1 billion). Florida (\$492 million), which is historically the #2 state for nuclear verdicts, dropped to #7 in 2023, after Gov. Ron DeSantis signed comprehensive tort reform into law.

Marathon also conducted a review of legislative activity on the issue in 2023. Our research found that at least seven states took up measures to limit the size and scope of verdicts – such as Florida, Iowa, Indiana, and Montana – through bills that would increase transparency in third-party litigation financing, cap liability damages, and more. Marathon also found that at least 11 states took up measures to expand liability in wrongful death cases, and that five enacted them: Maine, Delaware, Illinois, Minnesota, and Rhode Island.

Juries are poised to award even more nuclear verdicts in 2024. Following a landmark \$1.8 billion antitrust verdict against the National Association of Realtors and two brokerage firms, real estate commission cases are being filed faster than can be counted. Big Tech companies continue to be charged in patent and privacy matters – some pertaining to artificial intelligence – a trend that could be pressuring companies to prefer to settle, rather than risk a trial and billion-dollar verdict. Even in the arts, courts may see an influx of high-stakes litigation. In January 2024, two Madonna fans filed a federal lawsuit against the singer and her promoters – which brought in around \$100 million in touring revenue last year – for starting a concert late.^{3,4,5,6,7,8}

While many factors have influenced this growth, [Marathon's analysis of nuclear verdicts from 2009 to 2022](#) identified corporate mistrust, social pessimism, erosion of tort reform, and public desensitization to large numbers as among the most important. Our research also found that verdicts are increasingly influenced by shifts in jury pool demographics: in particular, the influx of Millennial and Gen Z jurors. The attitudes and experiences of jurors play crucial roles in predicting verdict outcomes, and studies have shown that Millennials are generally more pro-plaintiff than the prior generation, are less trusting of the average American company, and more highly prioritize ethical matters when considering which brands to trust.

Some observers have also identified trial tactics as contributing to the size of verdicts emerging from juries. These include the “reptile theory” (in which plaintiff lawyers appeal to the emotional part of the brain) and “anchoring” (in which attorneys suggest an extraordinarily large award to a jury so that number becomes “anchored” in their minds). Other attorney tactics include employing the “joinder” practice to claims, linking lawsuits or parties into one case to eschew venue requirements when shopping for a favorable litigation jurisdiction.

A nuclear verdict can cost companies tens or hundreds of millions of dollars, **but the reputational impact of headline-grabbing awards can be catastrophic**. Tort law firms are increasingly using the media and digital landscape to fuel corporate mistrust and negative headlines to shape perceptions of cases. Studies have shown that in the first few years after the Great Recession, stock prices on the losing end of these verdicts declined on average almost 22% after the jury reached its decision. With the growth of attorney advertising – which now eclipses \$1 billion each year – aggressive parties plaster American televisions with ads seeking plaintiffs for mass tort litigation, amplifying denigrating claims and furthering the cycle of nuclear verdicts.

Key findings from Marathon’s 2023 review of nuclear verdicts include:

In 2023, 89 lawsuits against a corporate defendant resulted in a “nuclear verdict” award of at least \$10 million, while 27 were “thermonuclear,” or more than \$100 million. This is the largest number of such cases Marathon has identified in a single year since 2009.

Despite the total sum of nuclear verdicts declining by \$4 billion, companies face threats from a steadily rising baseline, which is returning to pre-pandemic levels. In 2023, the median verdict rose to \$44 million, up from a low of \$21 million in 2020.

Most of these cases were product liability matters (37%), which is in line with historical norms. In 2023, this litigation was marked by a flurry of lawsuits against Bayer AG, which since its acquisition of Monsanto has paid billions to settle claims that plaintiffs who used the glyphosate-based herbicide Roundup were diagnosed with non-Hodgkin’s lymphoma.

Verdicts in intellectual property matters declined by 43% from their historical norm, despite juries ordering technology giants like Google (\$338 million), Samsung (\$303 million), and Cloudera (\$240 million) to pay staggering sums in such cases.

A landmark \$1.8 billion antitrust verdict against the National Association of Realtors and two brokerage firms (which settled in March 2024 for \$418 million) has fueled a rise in real estate commission lawsuits, with cases filed in federal courts in Missouri, California, Texas, New York, and Pennsylvania. Overall, the top states for corporate nuclear verdicts in 2023 were Missouri (\$4.1 billion), Texas (\$3.7 billion), Pennsylvania (\$1.2 billion), and Washington (\$1.1 billion).

Lawmakers in several states took major steps to limit large jury verdicts. These range from comprehensive tort reform packages (such as in Florida) to specific measures, such as Iowa’s first-in-the-nation law to legally cap liability damages against trucking companies. Other states – like Indiana and Montana – enacted measures to increase transparency in third-party litigation financing.

At least 11 states considered measures that could lead to even higher verdicts in their courtrooms. Five enacted such measures: Maine (which has not been a historic epicenter for nuclear verdicts), Delaware, Illinois, Minnesota, and Rhode Island.

Marathon Strategies can help your company prepare for and respond to cases like these. Communications can tackle nuclear verdicts by shaping coverage through the litigation process, as well as rebuilding and rehabilitating post-verdict. We provide a full suite of services, including media relations and crisis counsel, search engine optimization of content, in-depth monitoring, investigative research, and digital blocking, among other tools.

To learn more, please contact Phil Singer at info@marathonstrategies.com.

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 in 2023, updating a report released by Marathon last year. Marathon compiled this report through a new review of verdict data, court records, media reports, and other sources. 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.

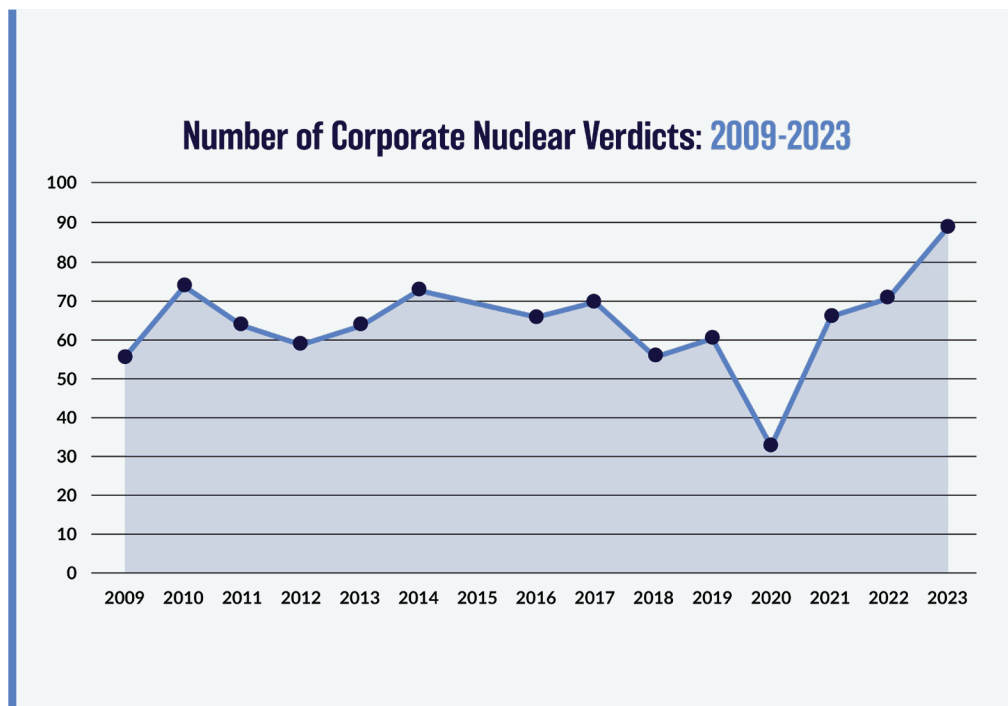
Marathon specializes in this type of analysis, providing a variety of research services to support pending or ongoing litigation, including traditional background and open-source research, asset tracing, witness interviews, and cyber-forensics, among other services.

CORPORATE NUCLEAR VERDICTS INCREASED 27% IN 2023

New research from Marathon Strategies found \$14.5 billion in “nuclear verdicts” against companies across 89 cases, the highest number of such cases in a single year since 2009.

Marathon has tracked over \$183 billion in such verdicts against companies since the Great Recession and identified how these supersized awards are on the rise. Marathon’s 2022 report on the subject is available as a [PDF download](#) along with an [interactive website](#) that allows users to sort case data.

These verdicts were growing in frequency and size in the years leading up to the COVID-19 pandemic but slowed when court activity stalled around the country due to various public health measures. Since 2020, however, the number of nuclear verdicts against companies has nearly tripled. Marathon identified 89 of these cases in 2023, the most in any year since the Great Recession, and an increase of 27% over 2022.



“THERMONUCLEAR VERDICTS” ARE UP – BUT SO IS THE BASELINE

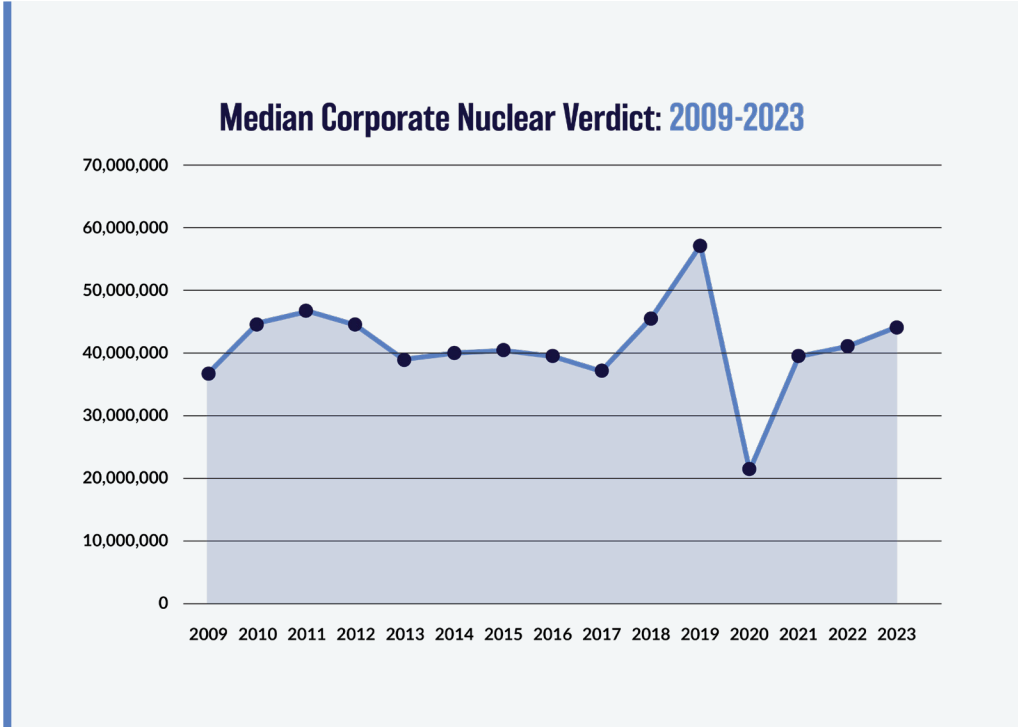
While headlines often focus on what Marathon has dubbed “thermonuclear verdicts” – those greater than \$100 million and reaching above \$1 billion – companies also face threats from a steadily rising baseline, which is returning to pre-pandemic levels.

In 2023, the median nuclear verdict increased from \$41 million to \$44 million, an increase of 7.3%. This rate was nearly double that of 2022, when the median grew from \$39 million to \$41 million, an increase of 4%.

Since the Great Recession, the median nuclear verdict against corporate defendants has generally been on an upward trend, with a cumulative increase over the 2010s far outpacing the rate of inflation. These cases feed a cycle of “social inflation,” or an increase in insurers’ claims costs above general economic inflation due to litigation costs.^{9 10}

Since 2020, this median has more than doubled, suggesting that the steady rise of these verdicts is not solely due to billion-dollar outliers. The largest verdict in 2023 – for \$1.8 billion against the National Association of Realtors – significantly trailed the largest sums ordered in 2022 (\$7.3 billion) and 2021 (\$2.1 billion). The growth in the median nuclear verdict is also evidenced by the total sum from each year, which declined by \$4 billion in 2023. The prior year's \$18 billion total was largely driven by an outlier case, in which Charter Communications was ordered to pay \$7.3 billion in a wrongful death matter.

Even with the decline in sum, thermonuclear verdicts against companies grew by 35% 2023: juries ordered 27 verdicts that exceeded \$100 million, eight for over \$500 million, and two for over \$1 billion.



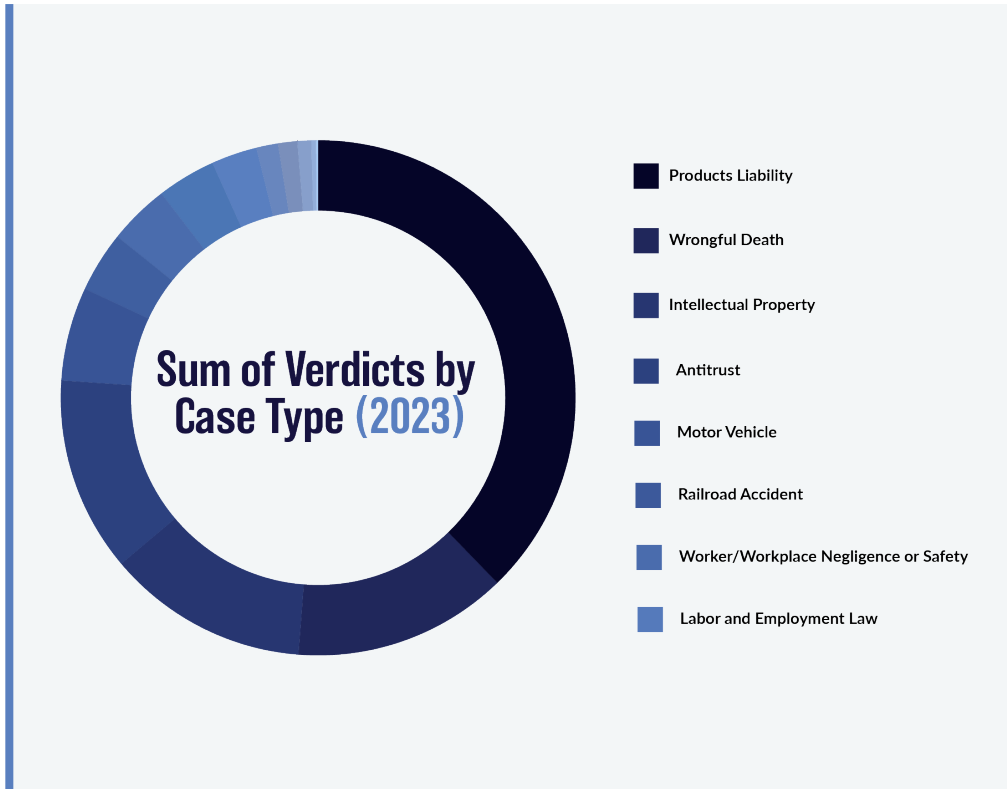
PRODUCT LIABILITY VERDICTS SURGE WHILE PATENTS DIP

In 2023, nuclear verdicts against companies were largest in product liability cases (38%), which is in line with historical trends. Much of this total has been driven by claims that Bayer AG's weedkiller Roundup causes cancer, as well as successful lawsuits against tobacco giants Philip Morris and RJ Reynolds.¹¹ Verdicts against car companies following automobile accidents also drove this total, including a \$976 million verdict against Mitsubishi Motors in Philadelphia and a \$161 million verdict against Suzuki Motor in Orange County, California.

Verdicts in intellectual property matters declined by -43% from their historical norm, despite juries ordering technology giants like Google (\$338 million), Samsung (\$303 million), and Cloudera (\$240 million) to pay staggering sums in such cases.

While wrongful death verdicts accounted for a significant share (13%) in 2023, as a case category, this percentage may be skewed by an outlier \$860 million verdict after a crane accident resulted in the death of a young woman.¹² Marathon's previous research on the subject has found that since 2009, wrongful death verdicts are the third-highest litigation area for nuclear verdicts (5%), but they have been much further behind intellectual property (23%) and product liability (37%) than they were in 2023, due to the outlier verdict.

Antitrust cases (12%) also vaulted into the top categories due to the year's largest verdict, in which a Missouri jury found that the National Association of Realtors, HomeServices of America, and Keller Williams Realty were liable for \$1.8 billion in damages for conspiring to keep commissions artificially high. Since 2009, antitrust cases have only accounted for 2.5% of nuclear verdicts.¹³



In 2023, nuclear verdicts in state courts (\$9.1 billion, or 62%) far exceeded those in federal courts (\$5.5 billion, or 38%), which is in line with historical trends. This is mostly due to the largest case category, product liability, going through state venues. This discrepancy is also because intellectual property cases, which declined slightly in 2023, are filed federally.

MISSOURI LEADS WITH LANDMARK REAL ESTATE VERDICT, FLORIDA DROPS FROM TOP 5

The top state for nuclear verdicts was Missouri, which was home to the two largest verdicts in 2023: the \$1.8 billion antitrust case against the National Association of Realtors and two brokerage firms, and a \$1.5 billion Roundup case against Bayer AG/Monsanto. Texas, which has historically been a top state for these cases due to its popularity for patent litigation, saw six such verdicts – five of which exceeded \$200 million.

Several states that were hotspots for nuclear verdicts in 2022 saw a decline in 2023, including Virginia, Illinois, Minnesota, and Delaware. States that rose significantly include Washington, which did not have a nuclear verdict in 2022, but saw two massive verdicts (for \$856 million and \$165 million) against Bayer AG/Monsanto.

NUCLEAR VERDICTS BY STATE (2023)			
STATE	TOTAL VERDICTS	STATE COURT VERDICTS	FEDERAL COURT VERDICTS
Missouri	\$4,097,200,000	\$2,317,200,000	\$1,780,000,000
Texas	\$3,703,058,833	\$1,895,688,833	\$1,807,370,000
Pennsylvania	\$1,199,943,971	\$1,177,690,884	\$22,253,087
Washington	\$1,112,142,000	\$1,112,142,000	N/A
California	\$912,019,135	\$823,676,879	\$88,342,256
Ohio	\$813,000,000	\$26,000,000	\$787,000,000
Florida	\$491,622,340	\$316,222,340	\$175,400,000
Louisiana	\$436,834,403	\$409,127,013	\$27,707,390
Georgia	\$376,927,587	\$214,532,187	\$162,395,400
Massachusetts	\$239,115,691	\$215,085,691	\$24,030,000
North Carolina	\$189,700,000	N/A	\$189,700,000
New York	\$113,786,538	\$102,536,538	\$11,250,000
Indiana	\$112,219,073	N/A	\$112,219,073
Michigan	\$102,434,862	\$83,934,862	\$18,500,000

Previous research by Marathon Strategies has shown that several of the states with the most nuclear verdicts in 2023 have historically been hotspots for these cases.

In Missouri, nearly all of these verdicts have been ordered by juries in St. Louis County Circuit Court, a favorite court for “venue shopping” and known for awarding high punitive damages. Plaintiffs’ lawyers in Missouri are also permitted to request a specific amount for damages. Similarly, in Pennsylvania, Philadelphia’s Court of Common Pleas is popular for out-of-state plaintiffs seeking a favorable trial venue, particularly for mass torts litigation and cases regarding asbestos, pharmaceuticals, and medical devices.

California has also been a longtime home to large verdicts, due to the state’s size as well as its liability-friendly laws and courts. Along with Texas, California’s federal courts are popular for patent litigation: the Los Angeles-based US District Court for the Central District of California is the fourth-busiest patent venue in the nation. Marathon’s research has found that after product liability matters, patent cases are the second-most common source of nuclear verdicts.

Marathon’s research has found that 21 states have ordered more than \$1 billion in nuclear verdicts against corporate defendants since the Great Recession. After 2023, the top 10 states for these cases remained largely unchanged, with Texas, Florida, and California remaining far ahead of the rest of the country.

NUCLEAR VERDICTS BY STATE (2009-2023)			
STATE	SUM OF VERDICTS	# OF VERDICTS	TOP SUB-INDUSTRIES
Texas	\$45,011,777,533	207	Banks, Telecommunications, Tech. Hardware
Florida	\$33,198,629,685	175	Tobacco, Trucking, Real Estate, Automobiles
California	\$25,233,627,726	117	Application Software, Health Care Equipment
Missouri	\$11,833,067,239	30	Pharmaceuticals, Chemicals, Real Estate
Pennsylvania	\$11,338,991,703	27	Pharmaceuticals, Tech. Hardware, Automobiles

NUCLEAR VERDICTS BY STATE (2009-2023)			
STATE	SUM OF VERDICTS	# OF VERDICTS	TOP SUB-INDUSTRIES
Louisiana	\$9,969,271,132	15	Pharmaceuticals, Oil & Gas, Trucking
Delaware	\$5,107,632,632	23	Health Care Technology, Electronics, Pharmaceuticals
Virginia	\$5,002,082,122	17	Software, Telecommunications, Chemicals
Georgia	\$4,803,369,993	34	Automobiles, Security & Alarm Services, Insurance
New York	\$4,020,529,862	48	Broadcasting, Pharmaceuticals, Real Estate
Illinois	\$3,380,651,688	31	Broadcasting, Casinos/Gaming, Health Care Tech.
Maryland	\$2,249,914,724	11	Oil & Gas, Health Care Equipment
Washington	\$2,197,413,755	20	Chemicals, Chemicals, Construction, Hotels
Massachusetts	\$1,861,295,801	14	Tobacco, Pharmaceuticals, Health Care Equipment
Wisconsin	\$1,621,227,566	11	IT Consulting, Tech. Hardware, Hypermarkets
Kansas	\$1,586,464,162	4	Chemicals, Cable & Satellite, Health Care Services
New Jersey	\$1,480,387,446	14	Chemicals, Pharmaceuticals, Software
North Carolina	\$1,186,098,183	11	Agricultural & Farm Machinery, Security & Alarms
South Carolina	\$1,163,987,902	10	Mortgage REITs, Electric Utilities
New Hampshire	\$1,143,550,504	4	Oil & Gas, Thrift & Mortgage Finance
Ohio	\$1,133,898,289	11	Home Furnishings, Chemicals, Insurance

TOP INDUSTRIES: LANDMARK ANTITRUST CASE DRIVES REAL ESTATE LAWSUITS; BAYER'S MONSANTO WOES PERSIST

In 2023, juries ordered companies in 47 different industries to pay a nuclear verdict.

Real estate management or development firms led the field with over \$2.7 billion in total verdicts. Much of this total derived from the nearly \$1.8 billion antitrust lawsuit against the National Association of Realtors and two brokerage firms in which a federal jury in Kansas City ruled that the defendants had conspired to artificially inflate the commissions paid to real estate agents.

After the October decision, The New York Times wrote that the case “has the potential to rewrite the entire structure of the real estate industry in the United States,” and that sellers could no longer be required to pay their buyers’ agents while agents would be free to set their own rates. In March 2024, NAR agreed to a landmark \$418 million settlement that would also eliminate real estate brokers’ long-standing commissions.^{14 15}

According to Reuters, the NAR verdict instigated a rise in real estate commission lawsuits, with cases filed in federal courts in Missouri, California, Texas, New York, and Pennsylvania, among others. In December 2023, lawyers for home sellers in two cases asked the US Judicial Panel on Multidistrict Litigation to consolidate at least nine lawsuits and bring them to the courtroom of US District Judge Stephen Bough, who oversaw the National Association of Realtors case.¹⁶

Besides its economic impact, the NAR verdict and settlement has pushed the real estate industry into ongoing public relations defense against the media as well as the Biden administration. Previous research by Marathon Strategies found that the largest verdict against a real estate company was for \$1 billion (in *Lennar Corp. v. Briarwood Capital*, 2013). From 2009 to 2022, the industry ranked #22 among total nuclear verdicts, with \$2.3 billion ordered in 29 cases.

The New York Times

Powerful Realtors Group Loses Its Grip on the Industry

12/27/23

AXIOS

Federal jury verdict on broker fees rocks real estate industry

10/31/23

After real estate, chemical industry companies were ordered to pay just over \$2 billion in nuclear verdicts. This was led by five product liability cases against Bayer AG or its subsidiaries, including a \$1.6 billion Roundup verdict ordered by a state jury in Jefferson County, Missouri. Since Bayer's acquisition of Monsanto, which included the Roundup brands, the company has paid billions to settle claims that plaintiffs who used the glyphosate-based herbicide were diagnosed with non-Hodgkin's lymphoma.¹⁷ The company has also been a defendant in Washington state cases filed by students who attended a school in Monroe, where they said they were exposed to dangerous chemicals that later made them sick. In December, Bayer/Monsanto was ordered to pay \$857 million by a state jury in King County.¹⁸

 **REUTERS®**

Bayer ordered to pay \$1.56 billion in latest US trial loss over Roundup weedkiller

11/20/23

Automobile manufacturers and trucking companies – both of which are frequent targets of these verdicts – combined for over \$1.3 billion in nuclear verdicts in 2023. Much of this total was driven by a \$976.5 million verdict against Mitsubishi Motors ordered by a Philadelphia jury, in the trial of a man who sustained permanent injuries when the seatbelt of his sports car allegedly failed during a collision. That verdict included \$176.5 million in compensatory damages and \$800 million in punitive damages.¹⁹

The Philadelphia Inquirer

Car manufacturer ordered to pay nearly \$1 billion in damages after New Hope man's paralysis

11/3/23

Several industries that have historically been subject to the largest sums of nuclear verdicts saw fewer such cases in 2023 and were not among the industries most affected by these cases. This list includes pharmaceuticals (the #1 overall industry affected by nuclear verdicts since 2009), integrated telecommunication services (#3), and semiconductors (#7).

NUCLEAR VERDICTS BY INDUSTRY (2023)	
SECTOR	SUM OF VERDICTS
Real Estate Management & Development	\$2,746,517,193
Chemicals	\$2,008,282,000
Automobiles	\$1,158,724,410
Oil & Gas	\$798,046,602
Home Furnishings	\$787,000,000
Food, Beverage & Tobacco	\$745,000,000
Railroads	\$557,106,000
Air Freight & Logistics	\$366,160,000
Interactive Media & Services	\$338,760,000
Tobacco	\$334,823,983
Technology Hardware, Storage & Peripherals	\$303,150,000
Aerospace & Defense	\$278,900,000
Internet Services & Infrastructure	\$240,000,000
Insurance	\$235,500,000
Software	\$210,000,000
Leisure Facilities	\$194,887,340
Security & Alarm Services	\$189,700,000
Trucking	\$165,305,262
Independent Power and Renewable Electricity Producers	\$135,500,000
Electric Utilities	\$123,965,000
Property & Casualty Insurance	\$112,219,073

The top 10 verdicts against a corporate defendant in 2023 included \$1.8 billion against the National Association of Realtors, HomeServices of America, and Keller Williams Realty; \$1.5 billion and \$857 million verdicts against Bayer AG/Monsanto; and verdicts that exceeded \$500 million against Mitsubishi Motors, Union Pacific Railroad, and more.

TOP NUCLEAR VERDICTS OF 2023				
VERDICT	CATEGORY	DEFENDANT	COURT	DATE
\$1,780,000,000	Antitrust	NAR, HomeServices of America, Keller Williams Realty	US District Court for the Western District of Missouri	10/21/23
\$1,561,200,000	Product Liability	Bayer AG	Cole County (MO) Circuit Court	11/17/23
\$976,488,384	Product Liability	Mitsubishi Motors Corporation	Philadelphia County (PA) Court of Common Pleas	11/1/23
\$860,012,006	Wrongful Death	Greystar-Gabriella and Greystar Development	Dallas County (TX) District Court	4/30/23
\$857,000,000	Product Liability	Bayer AG	King County (WA) Superior Court	12/19/23
\$787,000,000	Product Liability	Longwood Forest Products Inc., Angel Line, Wayfair Inc	US District Court for the Southern District of Ohio	8/15/23

TOP NUCLEAR VERDICTS OF 2023				
VERDICT	CATEGORY	DEFENDANT	COURT	DATE
\$745,000,000	Wrongful Death	United Brands Products Design Development	St. Louis (MO) Circuit Court	9/8/23
\$557,106,000	Railroad Accident	Union Pacific Railroad	Harris County (TX) District Court	3/3/23
\$409,127,013	Motor Vehicle	Stuart Petroleum Testing	Bossier Parish (LA) District Court	3/10/23
\$366,160,000	Labor/ Employment Law	FedEx	US District Court for the Southern District of Texas	2/2/23

2023 STATE DEVELOPMENTS: IOWA ADDRESSES TRUCKING, TORT REFORM IN FLORIDA, INDIANA & MONTANA TARGET FINANCING

Across the country, states have taken actions to curtail nuclear verdicts in various cases.



Office of Florida Governor Ron DeSantis, 3/24/23

In February, **Florida** Gov. Ron DeSantis announced proposed tort reform that sought to “institute reforms to protect small businesses from being subjected to pay exorbitant damages when they are not primarily at fault” and signed the package into law the following month. The law (HB 834) includes changes to the state’s comparative negligence system so that a plaintiff “who is more at fault for his or her own injuries” than the defendant may not generally recover damages from the defendant. The bill also adopts a federal standard of eliminating attorney’s fee multipliers, provides new standards to assist juries in calculating damages in wrongful death or personal injury actions, and reduces the statute of limitations for general negligence cases from four years to two years.²⁰

Marathon's research found that Florida was the number two state for nuclear verdicts from 2009 to 2022. In 2023, it was number seven, suggesting that HB 834 may have had some early success in curtailing the size of these awards.



In May 2023, **Iowa** became the first state in the country to legally cap liability damages against trucking companies after Gov. Kim Reynolds signed Senate File 228 into law. That bill lowers the cap on damages in such cases to \$5 million and does not include exceptions in cases where a trucking company acted negligently, such as through “hiring, training, supervising, or trusting” an employee driver involved in a crash. In addition to this bill, Reynolds also signed HF 161 into law, which created a cap on noneconomic damages in cases regarding medical malpractice.^{21 22 23}

Lawmakers in several other states pursued various strategies to limit nuclear verdicts.

In April, **Indiana** Gov. Eric Holcomb signed into law HB 1124, which adds a third-party litigation funding disclosure provision to the state's code.²⁴ In **Montana**, Gov. Greg Gianforte also signed into law a bill that would allow for greater transparency in litigation financing, as well as a comprehensive product liability reform bill. The latter, SB 216, introduced comparative fault damages, limitations on defect claims, and statutory immunity for sellers complying with safety regulations, among other measures.²⁵

Other reforms include HB 1745 in **Texas**, which limits vicarious liability claims against rideshare companies. That bill requires an affidavit when a claimant names a transportation company as defendant that specifically sets forth each theory of recovery, and also requires the claimant to file a third-party expert affidavit attesting that the damages exceeded the applicable insurance coverage.²⁶

In **Utah**, a 2023 law seeks to deter over-naming in asbestos actions (the practice of going after numerous defendants in a single case) by requiring plaintiffs to make disclosures of key facts within 21 days of filing. During that time, plaintiffs must provide all parties with a sworn declaration setting forth the basic facts supporting claims against each defendant, including the dates, locations, and frequency of claimed asbestos exposures. The Salt Lake Tribune wrote that the bill could raise “major barriers” to sue for asbestos injuries in Utah.^{27 28}

Finally, in **West Virginia**, the legislature passed a bill to cap non-economic damages to injured workers in cases where the worker can prove deliberate intent by employers. Under the bill, HB 3270, the maximum amount recoverable as compensatory damages in such cases may not exceed the higher of two times the economic damages before the workers' compensation offset of \$500,000 for each person. The bill also sets a higher standard of proof necessary to bring a deliberate intent case when the underlying claim is for occupational pneumoconiosis.^{29 30}



West Virginia Record, 3/3/23

In some other states, legislators took up bills that could lead to even higher verdicts against companies and individuals alike.

According to the Washington Legal Foundation (WLF), legislators in at least 11 states introduced bills that would expand liability from its “traditional bounds” in wrongful death cases. Five of those states enacted proposals, including **Maine**, which raised the amount recoverable from \$750,000 to \$1 million and increased its punitive damages maximum from \$250,000 to \$500,000. Maine’s law also allows for an automatic increase each year for inflation. **Delaware** and **Illinois** both added the threat of punitive damages in wrongful death claims, while **Minnesota** altered its wrongful death and survival statutes to permit recovery beyond economic losses. **Rhode Island**, which uniquely sets a minimum amount of recovery in wrongful death actions, raised its baseline from \$250,000 to \$350,000.

Marathon’s research did not previously identify any nuclear verdicts against corporate defendants emerging in Maine courts, while Rhode Island ranked #31 and Minnesota #23 for these cases since 2009. Delaware and Illinois have both ranked historically among the top states for nuclear verdicts.

In **New York**, Gov. Kathy Hochul vetoed a bill – the Grieving Families Act – that would have vastly expanded liability under the state’s Wrongful Death Act. The bill passed the legislature again in the summer, but Hochul vetoed it a second time in December. The WLF argues that the potential scope of liability extensions is “best demonstrated” by this bill, which authorizes several forms of unquantifiable noneconomic damages in wrongful death actions, including loss of love, society, protection, comfort, companionship, and consortium. According to the WLF, “jurors will find it difficult to distinguish and separate these forms of nonpecuniary damages, creating the potential for overlapping, duplicative awards.” Notably, New York does not have a damage cap, and is the #10 state for nuclear verdicts against companies since 2009.^{31 32}

METHODOLOGY

This report examines trends in nuclear verdicts – those greater than \$10 million – delivered against corporate defendants in the United States in 2023. It is an update of previous research released by Marathon Strategies, which tracked the growth in nuclear verdicts following the Great Recession in 2009.

The findings presented in this report were compiled through a new analysis of verdict and settlement data from LexisNexis, the National Law Review, various state and federal court records databases, legal journals, white papers, and media reports, among other sources.

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, product 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.

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.

ENDNOTES

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