

## Could your business survive a nuclear verdict?



Nuclear verdicts are on the rise, with the average verdict [more than tripling](#) between 2015 and 2019, going from US\$64 million to US\$214 million. In 2019 alone, the frequency of US\$20 million or more verdicts [tripled](#) compared to the average from 2001 to 2010. These exceptionally high jury verdicts — often exceeding what would be considered reasonable damages — can threaten a company's viability, causing some organizations to go bankrupt.

social inflation on potential claims payouts, are reviewing their risk portfolios and adjusting pricing.

Many organizations are unable to purchase enough limits to fully transfer the risk of social inflation, underscoring the importance of implementing the necessary risk mitigation measures.

Organizations doing business in the US or with US-based companies need to consider the potential impact of a nuclear verdict and social inflation on their organization and be prepared to take action to mitigate this risk.

## What is contributing to social inflation?

From US\$340 million award in compensatory damages against a large corporation to a nearly US\$301 billion verdict against a bar in Texas, social inflation — which describes insured claims costs rising above general economic inflation — has contributed to an increasing number of mammoth verdicts. The median verdict has gone up by [more than 27%](#) between 2010 and 2019, higher than the inflation rate during that period.

There are three main factors contributing to social inflation and resulting nuclear verdicts:

### 1. Change in societal attitudes

There is increased public mistrust of corporations, and a perception that decisions are made with only profit in mind. It is also believed that many corporations, and their insurers, have deep pockets that allow them to pay the disproportionate figures that are often intended to bridge the wealth gap with

endorsement values, further desensitizing jurors to the dollar values awarded and allowing emotions to play a prominent part in nuclear verdicts.

## **2. Litigation tactics**

Litigation tactics have evolved, with many plaintiffs' lawyers no longer trying to present a sympathetic client in the hope of getting reasonable compensation. Instead, some may build their case to appeal to the jury's basic sense of health and safety. They often portray the defendant as a serial offender that poses a direct threat not just to the plaintiff, but to the wider community. This is intended to shift the jury's focus on penalizing the corporate defendant rather than simply compensating the plaintiff.

## **3. Litigation funding**

Litigation is often funded by experienced investors who do not fear the economic hardship that many plaintiffs face during a prolonged trial. They may use data and algorithms to select favorable cases, jurisdictions, judges, and jury pools to improve their odds for a nuclear verdict. Litigation funding allows plaintiffs and their lawyers to resist potential financial pressure to agree to an early settlement, thereby increasing the odds of a trial that could lead to a nuclear verdict.

## **How social inflation impacts insurance coverage**

The effect of social inflation goes beyond the defendants who are on the receiving end of nuclear verdicts, and can have insurance implications on

lines of coverage, including commercial auto, medical malpractice, directors and officers liability, umbrella, and excess layers. Insurers may also consider narrowing of cover, especially in jurisdictions where such nuclear verdicts appear to be on the rise

Nuclear verdicts also can impact the availability of higher limits or coverage in general, either because insurers will be reluctant to offer these limits or because they become financially prohibitive. This typically has a greater impact on industries susceptible to such verdicts, such as trucking, healthcare, and senior care.

## **What can companies do to mitigate social inflation risk?**

Employing good risk management practices can help organizations reduce the risk and potential impact of social inflation and nuclear verdicts on their business. This can entail:

- Regularly reviewing your open claim inventory with an eye towards outliers to help you identify potentially volatile claims.
- Engaging in regular communications with your insurer and broker to discuss your claims, especially ones that look most problematic.
- Deploying early intervention tactics, where you and your counsel deem applicable, and utilizing aggressive action plans to resolve claims expediently.
- Vigorously preparing for and defending claims that cannot be settled early.

It is also important for corporations to invest in fostering good relationships within their community and demonstrating they are good corporate citizens. When a company invests in its social and governance posture, it can reduce the risk of juries viewing the defendant as a villain and could reduce the risk of unreasonable verdicts.

While nuclear verdicts are currently most prevalent in the US, social inflation is being felt in many countries, requiring organizations in different regions to prepare for the potential of high jury verdicts and their impact on their business.

The knowledge and expertise of your broker, your insurer, and your legal counsel can provide you with appropriate risk mitigation and transfer approaches that can deliver on your business resilience goals in a highly litigious environment.

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