



APR - ALTERNATIVE MARKETS

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Nuclear Verdicts and Social Inflation

The term “nuclear verdict” is typically defined as a jury award in excess of \$10MM or a jury award that is disproportionate to the damages. Recent examples of nuclear verdicts against public entities include an award of \$120MM against the City of Gainesville, Florida, regarding an individual paralyzed in an automobile accident; the award for past and future pain and suffering was \$114MM. A jury also gave an award of \$10.6MM against a transit authority in NY whose agent struck a pedestrian in a crosswalk. The injuries sustained included a herniated disc and a torn meniscus and rotator cuff; the jury rendered the verdict in less than two hours. \$8.9MM was allocated to past and future pain and suffering. Several factors contribute to nuclear verdicts, collectively referred to as “social inflation.” Matters contributing to social inflation include jury composition, the economic environment, social media, and litigation finance firms. The ultimate costs of nuclear verdicts are passed on to taxpayers through rising insurance premiums.

The composition of juries is evolving to reflect millennial and Gen Z participants and their values. The Deloitte Global 2021 Millennial and Gen Z survey was recently published.* It found that two-thirds of millennials and Gen Zs view wealth and income as unequally distributed and believe that legislation and government intervention should close the gap. Also, just under half of those surveyed believe that systemic racism exists in the political system, the police force, or the judicial system. Millennials and Gen Z are aware and active in politics and want to be heard; 40% of participants have posted a comment online about a news article; a quarter of them have participated in a public demonstration or protest; and just over a third have created social media content relating to an environmental, human rights, political, or social issue. Respondents indicated that welfare of family and long-term financial future are the two largest sources of stress.

The economic environment is impacting jury awards. The rising expense of medical treatment and increased wages inflate special damages and contribute to large verdicts. Additionally, as income level gaps between classes continue to increase, redistributing wealth from public entities and other deep pockets is viewed as a noble and justifiable action.

Social media is another element swaying jury decisions. Mobile phones have equipped everyone with a camera to record incidents as they occur. The accessibility of the internet to watch videos posted without context, research parties involved in the suit, and read articles related to the incident curtail the rules of the court and may create bias prior to hearing the facts of the case presented at trial.

Litigation finance firms have emerged as a factor to consider when defending a volatile case. Investment firms provide capital in exchange for a portion of the settlement or verdict. The money is used to fund experts or provide income for plaintiffs while awaiting claim resolution. The expected return on



investment is 30% or greater. Investment firms may not be competent in legal defenses, immunities, or legal procedures and take an all-or-nothing approach to the case that makes a reasonable pre-trial compromise settlement difficult to achieve.

Savvy and well-financed plaintiff attorneys appeal to the conscience of jurors and invoke feelings, such as that defendants lack concern for the public's general welfare and safety and accentuate the impact to the plaintiff's mental health and threat to their financial future. Juries respond emotionally and minimize or ignore basic elements of negligence, such as whether the defendant owed a duty or an actual breach of duty occurred, and they fail to assess comparative negligence. They instead feel empowered to ease the stress of the plaintiff's unfortunate circumstances by generously awarding damages.

Given the social inflation factors, plaintiffs and their attorneys are emboldened while defense attorneys are challenged to work within traditional litigation budgets, overcome defendants' reputational issues or misinformed media, and emotionally connect with jurors. A sympathetic plaintiff with a story that resonates with a jury is less motivated to resolve the case short of a trial if experts are funded, income replacement is readily available, or the investment firm expects a high rate of return. Nuclear verdicts affect all taxpayers because public entities and their insurance carriers must account for the financial risks through increased policy premiums.

*Resource: <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/2021-deloitte-global-millennial-survey-report.pdf>

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