

# **Nuclear Fizzle: How Jury Grievance Reports Whitewash Corporate Misconduct and Dehumanize Victims**

## **Introduction and Summary\***

The civil jury system is one of the most popular and important democratic institutions in America. No matter one’s political persuasion, civil juries have always been considered “an important bulwark against tyranny and corruption, a safeguard too precious to be left to the whim of the sovereign, or, it might be added, to that of the judiciary,” as the late conservative U.S. Supreme Court Chief Justice William Rehnquist once wrote.<sup>1</sup>

Jurors, who are members of the community randomly chosen to sit in judgment of others, deliberate carefully, render verdicts that “are generally moderate and comparable to judge’s” and then fade anonymously back into the community.<sup>2</sup> They are neither partisan nor advocates of particular interests, representing a much-needed counterweight to organized moneyed interests that dominate the political branches of our government. But since the advent of the “tort reform” movement in the 1980s, protectors of the civil jury system have struggled to keep the system insulated from political attacks and reprisals by special corporate interests.

This study is a comprehensive and meticulously researched effort to respond to recent jury attacks by two corporate groups that represent the interests of corporate defendants — the U.S. Chamber of Commerce (“Chamber”)<sup>3</sup> and the American Tort Reform Association (ATRA).<sup>4</sup> In two recent reports, these lobby groups criticize jury verdicts rendered against their corporate members, with misleading or demeaning characterizations based on disproven information and in ways that suit very specific political goals.<sup>5</sup> The reports themselves are not identical but the authors are linked<sup>6</sup> and the language used to attack verdicts is similar. According to these groups, large verdicts are “nuclear.”

“Nuclear verdicts” is public relations terminology that the insurance industry began using in 2019 to justify its rate hikes in a few commercial lines.<sup>7</sup> It’s essentially the same trope corporate groups have periodically used since the 1980s and 1990s to criticize what it used to call the “out of control” or “runaway” jury.<sup>8</sup>

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\* References are to the full study, which can be found at: <https://centerjd.org/content/nuclear-fizzle-how-jury-grievance-reports-whitewash-corporate-misconduct-and-dehumanize-vict>

What's always been true about large verdicts is that, irrespective of the facts that led to them, most are never paid. Indeed, verdicts are almost always appealed and often substantially reduced by trial judges or appellate courts, which is how our judicial system was set up to work. And if a loss is insured, any payout is often dramatically reduced by the insurance policy limits.<sup>9</sup> As researchers put it, “[J]ury verdicts that attract popular attention are not at all representative and often are slashed dramatically by judicial oversight or through other means,” “the larger the verdict, the more likely and larger the haircut” and generally injured people are undercompensated.<sup>10</sup>

Yet through reports like those published by the Chamber and ATRA, which whitewash corporate misconduct, dehumanize victims and only reference post-verdict activity when politically useful to them, the public is given the false impression that an undeserving person received a windfall, an innocent corporation was financially ruined, or the system failed and needs to be changed. We believe it is critical to counter such false narratives about the civil jury system.

The Chamber and ATRA reports make many broad allegations about “nuclear verdicts,” throwing around many statistics but providing no back-up data or anything that can be fact-checked. However, they cite 45 actual verdicts, which can be checked. The groups buried most case names in endnotes (as the Chamber does) or hyperlinks (as ATRA does), but we found all of them. We wanted to know what the jury heard and why they reached the verdict they did. Each is described below.

Some general points about what we discovered are as follows:

- **Erasing Evidence Heard by Juries.** Of the 45 cases described in these reports, in no situation did these groups provide an accurate description of the evidence relied upon by the jury. That evidence would involve often egregious corporate misconduct and devastating human casualties. Sometimes the groups portrayed misconduct as a minor incident when it was actually catastrophic.<sup>11</sup> Other times, plaintiffs/victims are described in terms meant to belittle them or their experience.<sup>12</sup>
- **Relitigating Cases They Lost.** To the extent the groups provide any actual case descriptions, they include evidence that was disproven in court,<sup>13</sup> an entire defense that the jury did not believe<sup>14</sup> or extraneous issues that have nothing to do with evidence presented (but line up with other political goals).<sup>15</sup> When a verdict is upheld on appeal, the views of a lone dissenter may be highlighted while the majority opinion is ignored.<sup>16</sup>
- **Inconsistencies Reveal a Transparent Political Agenda.** Cases may be cited more than once in the same report to represent opposite contentions. While this may seem nonsensical, it actually illustrates the transparent political nature of these reports. For example, sometimes verdicts involving the same corporate misconduct and harm are criticized because they were allowed to stand<sup>17</sup> while others are criticized because they were overturned.<sup>18</sup> An original verdict size may be cited to point out its too-high “nuclear” nature,<sup>19</sup> with no mention of the verdict’s reduction since that better fits with their contention that a law must be changed.<sup>20</sup> Yet in another paragraph, the fact that the

verdict was reduced is the entire point of the example, and evidence that we must change an entirely *different* law.<sup>21</sup> As the saying goes, you can't win for losing.

## The State of the Civil Jury in America

Although corporate special interest groups like the Chamber and ATRA have been attacking the civil jury system for decades, thus far the system has largely withstood the worst of the assaults. In the United States, the jury's roots are deep.<sup>22</sup> Yet there is no question that the civil jury system is limping along.

This report does not focus on data but rather on the shameful treatment and mockery of people — those who go to court and the jurors who hear their cases. However, there are a few quick facts and numbers about the civil jury today that are important to keep in mind.

- With all the complaining these groups do about juries, the fact is that juries resolve a tiny percentage of tort cases. In 2020, rates ranged from 0.0 to 1.59 percent of state tort cases.<sup>23</sup> In 2021, the range was 0.0 to 1.79 percent.<sup>24</sup> This rate has remained incredibly low for the past decade.<sup>25</sup> Civil jury researchers have even written that the civil jury has already been “nearly eradicated” in this country.<sup>26</sup> There are a number of reasons for this, including pressures to reach settlements, “tort reforms” like damages caps, which take power and authority away from juries, and the spread of forced arbitration clauses found in many contracts today.<sup>27</sup> Such clauses prevent disputes from being resolved in court and force them into private rigged systems.
- The term “nuclear verdict” has zero empirical basis. The groups who use the term simply declared its existence by arbitrarily defining verdicts of \$10 million or more as “nuclear.”<sup>28</sup> Given the horrific nature of these cases, the type and degree of misconduct and injuries and economic and medical inflation, it may be no surprise that such verdicts are increasing. But is it even true?

In describing its methodology, the Chamber uses every opportunity to skew its data in one direction — high. First, to be clear, there exists no nationwide scientific database of jury verdicts. The Chamber's verdict database is largely pulled from self- or media-reported cases, which skew high.<sup>29</sup> To slant the numbers even higher, the Chamber consistently calculates “means” or averages (downplaying “medians,” which are substantially lower<sup>30</sup>), which is inappropriate to determine jury trends because “means” are skewed by outliers.<sup>31</sup> And to skew the numbers even higher, these calculations do not take into account “0” dollar verdicts where juries award nothing and the case is resolved in favor of the defendant.<sup>32</sup> Historical data show that defendants win half the time.<sup>33</sup>

- These groups may argue that an increasing number of large verdicts may reverberate through the system and lead to higher verdicts overall. Yet when the trucking industry examined the far more typical case of verdicts “less than \$1 million,” it found that those cases have been decreasing since 2010, with an “insurance industry professional” telling them that there has been “a recent decline in the incident per truck rate.”<sup>34</sup> As one

publication explained, “[V]erdicts and settlements of any kind are rare. Additionally, the price tag of the average verdict under \$1 million is trending downward.”<sup>35</sup>

- Insurance industry data clearly fail to back up the false and alarmist characterizations of the civil justice system presented by the Chamber and ATRA. Indeed, the insurance industry’s own data show that adjusted paid claims in commercial lines have been steady for two decades and then dropped during and following the pandemic. Yet premiums steadily rose as business policyholders have been price-gouged without restraint.<sup>36</sup>

## How Corporations Can Reduce Lawsuits and Verdict Size

Deterrence is a well-known function of the tort system. It is accepted by legal scholars<sup>37</sup> and conservative economic theorists alike, who have written that the tort system’s economic function is deterrence of non-cost-justified accidents.<sup>38</sup> In other words, the tort system creates economic incentives for “allocation of resources to safety.”<sup>39</sup>

On the other hand, ATRA and the Chamber relentlessly mock juries for possibly considering this function in determining how much harm a defendant’s misconduct has caused. They cynically call some awards “send-a-message” verdicts yet present no evidence that this important function was even on the minds of jurors.<sup>40</sup> But when it comes to the verdict in a case like *Madere v. Schnitzer Southeast, LLC*,<sup>41</sup> one can understand how it might have been precisely on their minds.

Five family members, including two children, were horrifically killed in a truck crash after a company put a driver on the road with a long history of unsafe driving that included four serious prior wrecks and numerous violations.<sup>42</sup> The company had already settled a lawsuit after this driver’s near fatal crash three years earlier, then kept him driving while taking no corrective training or safety steps.<sup>43</sup> The original \$280 million verdict (later cut due to state damages caps) shows that sometimes lawsuits, which are extremely rare following truck crashes (less than 2% of trucking insurance claims turn into lawsuits<sup>44</sup>), and large jury verdicts, which are rarer still, are necessary to get a bad company’s attention and sometimes to alert an entire industry.

For any corporation seeking to reduce verdict size, the trucking industry and its attorneys have offered some important insights, which they have gathered following horrific truck crashes like the one that killed Judy Madere, her twin sister, her daughter and her two young grandchildren: Large verdicts are entirely of the industry’s own making. A recent report on large verdicts from the industry’s research arm, the American Transportation Research Institute (ATRI), made the obvious point: “[C]rash avoidance is everything and that strictly adhering to safety and operational policies is essential to staying out of court and/or reducing award sizes.”<sup>45</sup>

This theme was repeated throughout ATRI’s report. For example,<sup>46</sup>

Multiple interviewees prefaced remarks with variations of “the only way to prevent nuclear verdicts is to prevent the crash from happening in the first place.” ... Interviewees generally concurred that the more safety activities motor carriers engaged in to prevent crashes the lower the likelihood that a nuclear verdict would result. *It was also commonly*

*noted that motor carriers typically do not allocate enough resources toward safety and crash prevention [emphasis added].*

Similar observations came from leading trucking journalist Deborah Lockridge, who published an article following a large 2021 trucking verdict,<sup>47</sup> noting that the way to avoid such verdicts is by “defusing” what she called “Nuclear-Verdict Detonators.” That’s a gimmicky way of identifying preventable safety problems, calling on companies to address safety issues “long before there’s a crash.”<sup>48</sup> In other words, rather than denigrating jurors, perhaps it makes better sense to stop the harm in the first place.

Finally, we will concede that there once was a nuclear jury verdict. It was a \$10.5 million jury award upheld by the U.S. Supreme Court for the family of Karen Silkwood.<sup>49</sup> She was a labor organizer at the Kerr-McGee nuclear processing plant in Oklahoma who was intentionally contaminated by lethal plutonium. The Court held that a local jury verdict against the nuclear licensee was not preempted by the Atomic Energy Act. That was in 1984. To our knowledge there hasn’t been a “nuclear” jury verdict since.

Today’s “nuclear verdict” rhetoric is nonsense. As the following cases show, when juries award large damages, it is because they hear evidence of atrocious corporate misconduct and human wreckage, weigh the evidence and arguments and then do the right thing.

## Notes

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<sup>1</sup> *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322 (1979) (Rehnquist, J., dissenting).

<sup>2</sup> JD Supra, “The Civil Jury Trial: Treat the Crisis as an Opportunity,” September 20, 2021, <https://www.jdsupra.com/legalnews/the-civil-jury-trial-treat-the-crisis-9710089/>. See also, Richard L. Jolly, Valerie P. Hans and Robert S. Peck, *The Civil Jury: Reviving an American Institution*, U.C. Berkeley School of Law, Civil Justice Research Initiative (September 2021), [https://civiljusticeinitiative.org/wp-content/uploads/2021/09/CJRI\\_The-Civil-Jury-Reviving-an-American-Institution.pdf](https://civiljusticeinitiative.org/wp-content/uploads/2021/09/CJRI_The-Civil-Jury-Reviving-an-American-Institution.pdf) (“Research on civil jury decision-making supports the strength of the jury as a fact-finder. ...[S]everal studies have found that the complexity of evidence in the case is unrelated to the agreement rates between juries and legal experts; a relationship would have been expected if jury incompetence led juries to choose a different verdict. ...Jury damage awards reflect the community’s assessment of the value of an injury, considering the context and circumstances of the injury and the identities and behavior of the parties. The need to examine each case’s specific facts, and the ability to handle uncertainty and the intangibility of some injuries, make the representative jury a societally appropriate decision-maker on damages. Such a jury can draw on its collective experiences with injuries and their financial consequences as they engage in the necessary fact-finding.”)

<sup>3</sup> U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022), [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf). The Chamber’s report is published by its “tort reform” branch, the Institute for Legal Reform (ILR). ILR was created in 1998 to pursue the Chamber’s national anti-civil jury “tort reform” agenda in order to protect its large corporate members. See, e.g., Theodore Eisenberg, “U.S. Chamber of Commerce Liability Survey: Inaccurate, Unfair, and Bad for Business,” 6 *J. Empir. Leg. Stud.* 969 (December 2009), <http://scholarship.law.cornell.edu/facpub/373>. Both the Chamber and ILR are funded primarily by large corporate donors. See, e.g., Public Citizen, “The Gilded Chamber 2.0,” September 26, 2016, [http://chamberofcommercewatch.org/wp-content/uploads/2016/09/Gilded\\_Chamber.pdf](http://chamberofcommercewatch.org/wp-content/uploads/2016/09/Gilded_Chamber.pdf)

<sup>4</sup> American Tort Reform Association, *Judicial Hellholes 2022/23* (2022), [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf). ATRA is a Washington, DC-based group formed in 1986 to represent hundreds of U.S. and foreign corporations in their bid to overhaul civil liability laws. See, e.g., Carl Deal and Joanne Doroshov, *The CALA Files: The Secret Campaign by Big Tobacco and Other Major Industries to Take*

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*Away Your Rights*, Center for Justice & Democracy (2000), <https://centerjd.org/content/cala-files-secret-campaign-big-tobacco-and-other-major-industries-take-away-your-rights>. Every year since 2002, ATRA has released a “hellhole” report attacking judges and juries who issue decisions that protect consumers, workers and communities. It has been widely criticized. *See, e.g.*, St. Louis Public Radio legal roundtable discussion of ATRA’s *Judicial Hellholes*, January 24, 2017, <https://www.youtube.com/watch?v=ohzfZZx-HYY>; Elizabeth G. Thornburg, “Judicial Hellholes, Lawsuit Climates, and Bad Social Science: Lessons from West Virginia,” 110 *W.Va. L. Rev.* 1 (2008), <http://ssrn.com/abstract=1123808> (“[T]he point of the hellhole campaign is not to create an accurate snapshot of reality. The point of the hellhole campaign is to motivate legislators and judges to make law that will favor repeat corporate defendants and their insurers, and to spur voters to vote for those judges and legislators who will do so. . . . As well-founded, honest commentaries on judicial systems, [ATRA’s hellhole reports] are a major failure.”); Adam Liptak, “The Worst Courts for Businesses? It’s a Matter of Opinion,” *New York Times*, December 24, 2007, <https://www.nytimes.com/2007/12/24/us/24bar.html> (“It is, for starters, a collection of anecdotes based largely on newspaper accounts. It has no apparent methodology.”) *See also*, Joanne Doroshow and Amy Widman, “The Racial Implications of Tort Reform,” 25 *Wash. U. J. L. & Pol’y* 161 (January 2007),

[https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1206&context=law\\_journal\\_law\\_policy](https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1206&context=law_journal_law_policy)  
<sup>5</sup> *See, e.g.*, Elizabeth G. Thornburg, “Judicial Hellholes, Lawsuit Climates, and Bad Social Science: Lessons from West Virginia,” 110 *W.Va. L. Rev.* 1 (2008), <http://ssrn.com/abstract=1123808>

<sup>6</sup> The authors of the Chamber report are from the law firm Shook, Hardy & Bacon, which has long represented the American Tort Reform Association. *See, e.g.*, Shook, Hardy & Bacon, “Cary Silverman,” <https://www.shb.com/professionals/s/silverman-cary> (viewed June 1, 2023); Missouri Chamber, “Missouri lawmakers consider critical legal reform legislation,” March 24, 2023, <https://mochamber.com/news-archive/missouri-lawmakers-consider-critical-legal-reform-legislation/>

<sup>7</sup> *See, e.g.*, Joanne Doroshow and Douglas Heller, *Inventing Social Inflation 2023*, Consumer Federation of America and Center for Justice and Democracy (2023), <https://centerjd.org/content/inventing-social-inflation-2023>; American Transportation Research Institute, *Understanding the Impact of Nuclear Verdicts on the Trucking Industry* (June 2020), <https://truckingresearch.org/wp-content/uploads/2020/07/ATRI-Understanding-the-Impact-of-Nuclear-Verdicts-on-the-Trucking-Industry-06-2020-3.pdf>; J. Robert Hunter, Joanne Doroshow and Douglas Heller, *How the Cash Rich Insurance Industry Fakes Crises and Invents Social Inflation*, Consumer Federation of America and Center for Justice and Democracy (March 2020), <https://centerjd.org/content/study-how-cash-rich-insurance-industry-fakes-crises-and-invents-social-inflation>

<sup>8</sup> *See, e.g.*, Nancy S. Marder, “Juries and Damages: A Commentary,” 48 *DePaul L. Rev.* 427 (1998), <https://via.library.depaul.edu/law-review/vol48/iss2/14>. *See also*, James H. Gordon and Michael E. Bonner, Ansa Assuncao LLP, “The Self-Fulfilling Prophecy of Social Inflation,” *Lexology*, February 5, 2020, <https://www.lexology.com/library/detail.aspx?g=f87055ad-b2df-4837-8d94-df5d3772775d> (“[N]uclear verdicts are nothing new. For example, in 2002, a Los Angeles jury awarded Betty Bullock, a 50-year smoker, \$28 billion against a tobacco company. That same year, a Missouri jury awarded more than \$2.25 billion to a plaintiff, Georgia Hayes, in her suit against a pharmacist who diluted cancer drugs. There have been massive and well-publicized jury verdicts for decades.”) *See also*, Center for Justice and Democracy, “FAQ About the McDonald’s Coffee Case and the Use of Fabricated Anecdotes,” [https://centerjd.org/system/files/FAQMcDonaldsEtc\\_0.pdf](https://centerjd.org/system/files/FAQMcDonaldsEtc_0.pdf)

<sup>9</sup> *See, e.g.*, Center for Justice and Democracy, “The Myth of Nuclear Verdicts,” June 21, 2021, <https://centerjd.org/content/fact-sheet-myth-nuclear-verdicts> (“There is a large gap between what juries award and what insurers actually pay, which is far less.”)

<sup>10</sup> David A. Hyman and Charles Silver, “Five Myths of Medical Malpractice,” 143 *CHEST* 222 (January 2013). [https://journal.chestnet.org/article/S0012-3692\(13\)60034-3/fulltext](https://journal.chestnet.org/article/S0012-3692(13)60034-3/fulltext)

<sup>11</sup> *See, e.g.*, *Yanes v. City of New York*, p. 34. This incident involved a horrific chemistry explosion, which led to gruesome and lifelong burn injuries to a child. The episode is described by ATRA as “a high school laboratory experiment [that] went wrong.” American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 32, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf)

<sup>12</sup> *See Weist v. Kraft Heinz Company*, found at *Nuclear Fizzle* report, p. 8. ATRA described a woman who suffered a painful death from mesothelioma after repeated secondary asbestos exposure in the home as a “wife. . . allegedly exposed to asbestos while doing the family’s laundry.” American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 48, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf)

<sup>13</sup> *See Madere v. Schnitzer Southeast, LLC*, found at *Nuclear Fizzle* report, p. 19. The Chamber’s description of this case is as follows: “[I]n August 2019, a Muscogee County [GA] jury returned a \$280 million verdict against a trucking company in just 45 minutes. The plaintiffs claimed the driver, who swerved across the center lane, fell



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asleep at the wheel, while his employer claimed the driver swerved to avoid a dog on the road. Whatever the cause, the amount of wrongful death damages awarded can only be viewed as extraordinary: \$150 million for economic damages, \$30 million for pain and suffering, and \$100 million in punitive damages.” U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 21-2, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf). The Chamber omits mention of a single victim let alone five victims, including two children, or their gruesome deaths. There is no mention of the driver’s unsafe driving history, or the company’s decision to keep putting him on the road despite several earlier crashes and numerous violations, or its settling of an earlier near fatal case with no change in safety practices. On the other hand, the Chamber somehow found it important to mention the company’s “dog” defense, which was disproven in court.

<sup>14</sup> For example, ATRA’s description of two cases that automaker Ford lost were essentially presentations of Ford’s entire defense in each case, both of which were rejected in court. See *Hill v. Ford Motor Company*, found at *Nuclear Fizzle* report, p. 13 and *Trokey v. Ford Motor Company*, found at *Nuclear Fizzle* report, p. 9; American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 4-7, 55, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf)

<sup>15</sup> See *Vilsmeyer v. 3M Company*, found at *Nuclear Fizzle* report, p. 41. The Chamber’s description of this case was particularly insulting. The case concerned a defective combat earplug, which led to hearing loss and hearing problems for combat vets. The Chamber positioned this case in its section about lawyer advertising, insisted on repeating the defense’s losing argument and then blamed “lawsuit ads” for the verdict. U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 28-30, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf)

<sup>16</sup> See *Reavis v. Toyota Motor Sales, U.S.A., Inc.*, found at *Nuclear Fizzle* report, p. 15. American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 65, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf)

<sup>17</sup> See, e.g., U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 37, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf); American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 54, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf) (Complaints about *Ingham v. Johnson & Johnson*, where both the Missouri Supreme Court and the U.S. Supreme Court allowed a verdict — already cut in half — to stand.)

<sup>18</sup> See, e.g., U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 16-7, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf); American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 54, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf) (Complaints about *Echeverria v. Johnson & Johnson*, *Stemp v. Johnson & Johnson* and *Fox v. Johnson & Johnson*, later struck down for various reasons.)

<sup>19</sup> See *Perez v. Live Nation Worldwide, Inc.*, found at *Nuclear Fizzle* report, p. 27. The Chamber complains about the size of a “\$102 million verdict.” U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 17, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf)

<sup>20</sup> This case was brought under New York’s “scaffold law” (also known as Labor Law § 240 and § 241), which both groups want to weaken. This law requires “all contractors and owners and their agents...to give proper protection” to construction workers who work at heights. N.Y. Lab. Law § 240, <https://www.nysenate.gov/legislation/laws/LAB/240>. It was enacted because lawmakers were concerned with the “unsafe conditions” and “widespread accounts of deaths and injuries in the construction trades.” *Blake v. Neighborhood House. Servs. of N.Y.C., Inc.*, 1 N.Y.3d 280 (2003). In 2003, New York’s highest court, the Court of Appeals, reiterated, “The objective was — and still is — to force owners and contractors to provide a safe workplace...” See *Blake v. Neighborhood House. Servs. of N.Y.C., Inc.*, 1 N.Y.3d 280 (2003).

<sup>21</sup> See *Perez v. Live Nation Worldwide, Inc.*, found at *Nuclear Fizzle* report, p. 27. This same case is cited for the proposition that courts should control what damages plaintiff lawyers may ask for, because, as this case shows, “these awards are often significantly reduced on appeal.” Nowhere is there any mention of the fact that the parties settled for an undisclosed amount. U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 17-18, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf). Corporate groups have long tried to control what juries do by limiting relevant information that juries hear, such as the fact that a state law caps damages. That also includes

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preventing plaintiff lawyers from asking juries to award a specific amount in damages, which they call “anchors,” something they want to ban. The false inference is that jurors are idiots and unable to assess damages by listening to evidence from both sides of a case. Actual case evidence of “anchoring” presented by these groups consists of a few anecdotal examples where a jury awarded what a plaintiff asked for. Of course, this proves nothing. It is certainly as likely that defense counsel presented no credible evidence to the contrary, or at a minimum, were unable to communicate properly with the jury — a problem that some corporate groups have publicly acknowledged. *See, e.g.*, a report released by the American Transportation Research Institute (ATRI), which represents big trucking companies, where they publicly announced to the world that their attorneys are not very good. In a survey of plaintiff and defense counsel described by ATRI, “73.3 percent said that plaintiff attorneys were doing better, 20.0 percent said both, 6.7 percent said neither, with no one saying defense attorneys did better.” American Transportation Research Institute, *Understanding the Impact of Nuclear Verdicts on the Trucking Industry* (June 2020), <https://truckingresearch.org/wp-content/uploads/2020/07/ATRI-Understanding-the-Impact-of-Nuclear-Verdicts-on-the-Trucking-Industry-06-2020-3.pdf>

<sup>22</sup> The American colonists fought the Revolutionary War in significant part over England’s repeated attempts to restrict jury trials. The U.S. Constitution was nearly defeated over its failure to guarantee the right to civil jury trial. (The Seventh Amendment eventually resolved the problem.) The right to jury trial has been secured not only by the U.S. Constitution but by every state as well.

<sup>23</sup> Seventeen states reported publishable data for total tort dispositions and jury trials in 2020. Their rates were as follows: Alaska (0.0 percent), Georgia (0.89 percent), Hawaii (0.42 percent), Indiana (0.4 percent), Michigan (0.19 percent), Minnesota (1.59 percent), Missouri (0.4 percent), New Jersey (0.32 percent), Nevada (0.67 percent), North Carolina (0.26 percent), Ohio (0.28 percent), Oregon (0.91 percent), Rhode Island (0.21 percent), South Carolina (1.37 percent), Texas (0.63 percent), Utah (53.33 percent), and Vermont (1.44 percent). Utah resolved 8 tort cases by jury trial in 2020. National Center for State Courts, “CSP STAT Civil: Trial Court Caseload Overview, Caseload Detail – Tort, Single Year Data, Jury Trial Rate, 2020,” State Court Caseloads,” July 8, 2022, <https://www.courtstatistics.org/court-statistics/interactive-caseload-data-displays/csp-stat-nav-cards-first-row/csp-stat-civil>

<sup>24</sup> Seventeen states plus the North Mariana Islands reported publishable data for total tort dispositions and jury trials in 2021. Their rates were as follows: Connecticut (0.8 percent), Hawaii (0.76 percent), Indiana (0.84 percent), Michigan (0.24 percent), Minnesota (1.79 percent), Missouri (0.88 percent), Nevada (0.9 percent), New Jersey (0.49 percent), New York (0.74 percent), North Carolina (0.62 percent), North Mariana Islands (0.0 percent), Ohio (0.4 percent), Oregon (0.52 percent), Rhode Island (0.16 percent), Texas (0.84 percent), Utah (90.48 percent), Vermont (0.29 percent), and Wisconsin (1.4 percent). Utah resolved 19 tort cases by jury trial in 2021. National Center for State Courts, “CSP STAT Civil: Trial Court Caseload Overview, Caseload Detail – Tort, Single Year Data, Jury Trial Rate, 2021,” State Court Caseloads,” July 8, 2022, <https://www.courtstatistics.org/court-statistics/interactive-caseload-data-displays/csp-stat-nav-cards-first-row/csp-stat-civil>

<sup>25</sup> *See* National Center for State Courts, “CSP STAT Civil: Trial Court Caseload Overview, Caseload Detail – Tort, Single Year Data, Jury Trial Rate,” July 8, 2022, <https://www.courtstatistics.org/court-statistics/interactive-caseload-data-displays/csp-stat-nav-cards-first-row/csp-stat-civil>

<sup>26</sup> Richard L. Jolly, Valerie P. Hans and Robert S. Peck. *The Civil Jury: Reviving an American Institution*. U.C. Berkeley School of Law, Civil Justice Research Initiative (September 2021), [https://civiljusticeinitiative.org/wp-content/uploads/2021/09/CJRI\\_The-Civil-Jury-Reviving-an-American-Institution.pdf](https://civiljusticeinitiative.org/wp-content/uploads/2021/09/CJRI_The-Civil-Jury-Reviving-an-American-Institution.pdf)

<sup>27</sup> *See, e.g.*, Shari Seidman Diamond and Jessica M. Salerno, “Reasons for the Disappearing Jury Trial: Perspectives from Attorneys and Judges,” 81 *La. L. Rev.* 120 (Fall 2020), <https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?article=6816&context=lalrev>

<sup>28</sup> ATRA simply says, “Nuclear verdicts are awards that exceed \$10 million.” American Tort Reform Association, *Judicial Hellholes 2022/23* (2022) at 5, [https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA\\_JH22\\_FINAL-2.pdf](https://www.judicialhellholes.org/wp-content/uploads/2022/12/ATRA_JH22_FINAL-2.pdf). The Chamber similarly states, “Nuclear verdicts — defined as jury verdicts of \$10 million or more.” U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 2, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf). Notably, the trucking industry also tried to define this term, but it arrived at it based on responses of less than half of those it surveyed, and only a “majority” of those. American Transportation Research Institute, *Understanding the Impact of Nuclear Verdicts on the Trucking Industry* (June 2020), <https://truckingresearch.org/wp-content/uploads/2020/07/ATRI-Understanding-the-Impact-of-Nuclear-Verdicts-on-the-Trucking-Industry-06-2020-3.pdf>



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- <sup>29</sup> The Chamber says, for example, “While the sources used to develop the ILR database likely capture verdicts over \$10 million at a high rate, no jury verdict database captures all verdicts in every court.” U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 48, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf)
- <sup>30</sup> The Chamber notes, “While the median nuclear verdict is about \$20 million, the mean is substantially higher — \$76 million.” U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 8, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf)
- <sup>31</sup> Laerd Statistics, “FAQs – Measures of Central Tendency,” <https://statistics.laerd.com/statistical-guides/measures-central-tendency-mean-mode-median-faqs.php#:~:text=What%20is%20the%20most%20appropriate,be%20distorted%20by%20the%20outliers> (viewed June 1, 2023); “How Do Outliers Affect the Mean?” *Statology*, January 29, 2020, <https://www.statology.org/how-do-outliers-affect-the-mean/>
- <sup>32</sup> The Chamber *only* looks at verdicts above \$10 million. U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 3, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf)
- <sup>33</sup> This is according to the latest data from the U.S. Department of Justice, Bureau of Justice Statistics, “Tort Bench and Jury Trials in State Courts, 2005” (November 2009) at 12 (Table 12), <http://bjs.ojp.usdoj.gov/content/pub/pdf/tbjtsc05.pdf>
- <sup>34</sup> American Transportation Research Institute, *The Impact of Small Verdicts and Settlements on the Trucking Industry* (November 2021), <https://truckingresearch.org/wp-content/uploads/2021/11/ATRI-Impact-of-Small-Verdicts-11-2021.pdf>
- <sup>35</sup> Tyson Fisher, “Small verdicts costing trucking industry despite lawsuits being rare,” *Land Line*, November 19, 2021, <https://landline.media/small-verdicts-costing-trucking-industry-despite-lawsuits-being-rare/>
- <sup>36</sup> Joanne Doroshow and Douglas Heller, *Inventing Social Inflation 2023*, Consumer Federation of America and Center for Justice and Democracy (2023), <https://centerjd.org/content/inventing-social-inflation-2023>
- <sup>37</sup> See, e.g., Andrew Popper, “In Defense of Deterrence,” 75 *Albany L. Rev.* 181 (2011), [http://digitalcommons.wcl.american.edu/facsch\\_lawrev/294](http://digitalcommons.wcl.american.edu/facsch_lawrev/294)
- <sup>38</sup> William M. Landes and Richard A. Posner, *The Economic Structure of Tort Law*. Cambridge, MA: Harvard University Press (1987).
- <sup>39</sup> *Ibid.*
- <sup>40</sup> See, e.g. U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: Trends, Causes, and Solutions* (September 2022) at 8-10, 26, [https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts\\_RGB\\_FINAL.pdf](https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf)
- <sup>41</sup> See *Nuclear Fizzle* report, p. 19.
- <sup>42</sup> *Madere v. Schnitzer Southeast, LLC*, Case No. SC17CV106 (Muscogee County Ct., Ga.) (consolidated pre-trial order, August 1, 2019).
- <sup>43</sup> *Ibid.*
- <sup>44</sup> American Transportation Research Institute, *The Impact of Small Verdicts and Settlements on the Trucking Industry* (November 2021), <https://truckingresearch.org/wp-content/uploads/2021/11/ATRI-Impact-of-Small-Verdicts-11-2021.pdf>
- <sup>45</sup> American Transportation Research Institute, *Understanding the Impact of Nuclear Verdicts on the Trucking Industry* (June 2020), <https://truckingresearch.org/wp-content/uploads/2020/07/ATRI-Understanding-the-Impact-of-Nuclear-Verdicts-on-the-Trucking-Industry-06-2020-3.pdf>
- <sup>46</sup> *Ibid.*
- <sup>47</sup> See *Dzion v. AJD Business Services, Inc.*, found at *Nuclear Fizzle* report, p. 18.
- <sup>48</sup> Deborah Lockridge, “5 Takeaways From a Billion-Dollar Verdict,” *All That’s Trucking*, September 7, 2021, <https://www.truckinginfo.com/10150904/5-takeaways-from-a-billion-dollar-verdict>
- <sup>49</sup> *Silkwood v. Kerr-McGee Corp.* 464 U.S. 238 (1984).