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# Talent Does Not Explain the Nuclear Verdict Phenomenon Plaguing Philadelphia Courts

**By Curt Schroder**
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If you have visited Philadelphia city hall recently and noticed plaintiffs lawyers in casts and slings, that's likely because they broke their arms patting themselves on the back for the explosion of nuclear verdicts (i.e., verdicts of $10 million or more) in Philadelphia. As reported by The Legal Intelligencer on Jan. 26, 2025, Philadelphia courts delivered more eight figure civil verdicts in 2024 than in any previous year going back to at least 2017. According to the Legal Intelligencer there were 12 verdicts of $10 million or higher last year, surpassing the previous high-water mark of eight. It was also reported that median damages awarded in Philadelphia in 2024 came to $192,664, nearly double the previous high of $100,000. Members of the plaintiffs bar were quick to take credit for the rise in the size of jury verdicts. One attorney even crowed: "Most people would acknowledge that Philadelphia has the best plaintiffs lawyers of any city in the country." Philadelphia has its share of talented plaintiffs attorneys, to be sure. But does talent tell the whole story when it comes to the nuclear verdict phenomenon plaguing Philadelphia courts? Of course not. In reality, nuclear verdicts are fueled by a variety of factors inside and outside the courtroom.

Courtesy photo

**Curt Schroder executive director of Pennsylvania Coalition for Civil Justice Reform.**

For one, a recent decision from U.S. District Judge Gerald Austin McHugh of the Eastern District of Pennsylvania suggests that the trend in outsized verdicts is attributable to abusive litigation tactics. In *Shelton v. Chaudhrey*, No. 24-5657, 2025 WL 31156 (E.D. Pa. Jan. 27, 2025), McHugh sanctioned a prominent plaintiff's attorney for pleading incorrect facts to obtain venue in the Eastern District. In the process, McHugh addressed the abuses associated with life care plans—documents which purport to outline the long-term care needs of an individual who has suffered a catastrophic injury—writing:

In this case, as in virtually every case involving the firm, the plaintiff was examined by a physician after which a life care plan was prepared. Invariably, intensive and costly medical treatment is recommended. But I have yet to see a single case involving the law firm's office where any plaintiff actually pursued the recommended care. I therefore view these reports as litigation documents, bearing little relationship to real world medical care.

McHugh added: "When ... a firm persistently uses the same forensic examiners, and in every case, without fail, monumental future costs are projected, it becomes difficult to read the reports in question as credibly addressing actual patient needs." Such abuse is a contributing factor to untethered verdicts having no rational basis to actual damages incurred.

Another cause is the so-called "Day in the Life" video, which purports to capture in documentary fashion a plaintiff's struggle in an ordinary day, and, thus, is viewed as probative of the plaintiff's noneconomic losses and damages. Putting aside that such videos certainly have a performative, communicative dimension—and, therefore, may constitute hearsay by conduct—they are also frequently engineered to evoke an emotional response from the jury. See, e.g., Verdict Videos, "Day in the Life Legal Video."

Emotion and anger should not be legitimate methods of calculating a noneconomic loss, especially since they circumvent the Jurors' Pledge (SSJI 1.81(Civ)) and the judge's concluding instructions (SSJI 12.00 (Civ)).

Further compounding the problem is the lack of legal standards for calculating noneconomic damages. When a plaintiff claims noneconomic losses, the parties are forbidden from advocating that the jury calculate them in any particular way. In its jury charge, the trial judge tells the jury what it is supposed to be calculating (e.g., pain and suffering) and some facts to consider in calculating it (e.g., the plaintiff's age), but offers no guidance whatsoever about how to calculate noneconomic damages. See generally Pa. R. Civ. P. 223.3. Having no guidance from anyone on that subject, the jury simply picks a number, often based on little more than emotion. Standard-less jury charges thus lead to outsized jury verdicts.

The verdict in *Gill v. ExxonMobil*, No. 200501803 (Phila. Cnty. Ct. Com. Pl.), illustrates this point. There, the jury awarded a single plaintiff and his spouse $725.5 million in noneconomic damages—the largest noneconomic damages award in Pennsylvania history. Days later, a juror disclosed the deliberations that took place among the jurors in an on-line forum, stating:

*Early on in deliberations, we had 9 of 12 jurors willing to do 1.776B in honor of Philadelphia. Such a wild jury, tbh. Crazy experience. Don't say I didn't ever do anything for climate change lol.*

Now, civic pride is admirable. It is not, however, a valid method of calculating damages whether in Philadelphia or any other community. And climate change wasn't even an issue in the trial. The juror went on to boast in the forum: "It's not every day you get to be apart of sticking it to the man if you will." Justice Philadelphia style!

The contributing factors to nuclear verdicts don't end there. Plaintiffs attorney's ads are ubiquitous in all forms of media—from TV to online and everywhere in between. Indeed, and as discussed in the February edition of Philadelphia Magazine, the I-95 corridor in Philadelphia is littered with billboards from personal injury lawyers, including ones touting the size of the awards they have obtained for clients. Plaintiffs lawyers also advertise verdict and settlement amounts on social media. While such ads are no doubt intended as marketing tools, they also serve a more insidious function by leading prospective jurors to believe

enormous awards are the norm and a reality for all plaintiffs, regardless of causation. Jurors bring these preconceived notions into the courtroom and award equivalent verdicts, thus perpetuating the problem of nuclear verdicts.

The threshold for the admissibility of expert testimony is another cause. Federal courts have ferreted out "junk science" proposed by experts under the recently amended Federal Rule of Evidence 702. Pennsylvania state courts, on the other hand, often allow the jury to hear such testimony because admissibility is much more lenient. Moreover, while Pennsylvania's alternative standard for admissibility of expert testimony—the so-called "*Frye* test"—used to contain a gatekeeping function, trial courts now "may not question the merits of the expert's scientific theories, or conclusions, and it is no part of the trial court's function to assess whether it considers those theories, techniques and/or conclusions to be accurate or reliable based upon the available facts and data." See *Walsh v. BASF*, 234 A.3d 446, 458 (Pa. 2020). As a result, jurors will continue to be swayed by questionable expert testimony resulting in higher verdicts than solid science would otherwise allow.

Nuclear verdicts harm Pennsylvania's economy, overcompensating plaintiffs and enriching counsel at the expense of the rest of society—who ultimately foot the bill for these outsized verdicts in the form of higher prices for goods or services. Pennsylvania is already a relatively inhospitable forum for businesses. Indeed, in recent surveys assessing the most-business friendly states, Pennsylvania did not appear in the top fifteen. "America's Top States for Business 2024: The full rankings," CNBC (July 11, 2024), available at: https://www.cnbc.com/2024/07/11/americas-top-states-for-business-full-rankings.html. Nuclear verdicts only make Pennsylvania's business climate worse. As explained in a recent study, "the prospect of a nuclear verdict makes it more difficult to fairly resolve claims, leading to unnecessary litigation and appeals;" "nuclear verdicts can threaten the viability of a business or the availability of a needed product, or create insurability problems for an entire industry," and "[m]ore nuclear verdicts also mean more 'nuclear settlements,' as plaintiffs lawyers make higher demands, and businesses understanding the risk, agree to settlement levels that would have been unreasonable only a few years earlier." See U.S. Chamber of Commerce Institute for Legal Reform, "Nuclear Verdicts: An Update on Trends, Causes, and Solutions" (May 2024).

Even if a court can presently do little to stop a jury from awarding nuclear verdicts in the first instance, it is well within a court's authority to review the amount of the award for evidentiary support and reasonableness, and where appropriate, either throw out the verdict altogether or reduce it. For now, society must rely on the learned members of the bench to provide a balance that is so often lost in a system that rewards emotion and anger, and values confiscation and enrichment over reasonable compensation. And rest assured: when judges step up to reign in nuclear verdicts, there will still be plenty of fees for "the best plaintiff's lawyers of any city in the country."

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