Nuclear Verdicts: Exploring Aggravating Factors In Cook County and Gwinnett County

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Executive Summary

Nuclear Verdicts are jury verdicts or settlements that are over \$10 million. Current legal trends indicate that nuclear verdicts are here to stay, and the amounts awarded are only getting larger. This paper, using current literature and research, makes observations of some of the socioeconomic and legal driving factors behind nuclear verdicts within two jurisdictions: Cook County, Illinois, and Gwinnett County Georgia.

Socioeconomic factors play a key role in affecting the perceptions and biases of juries. These factors then in turn could impact the likelihood or explain why a nuclear verdict might occur. We found that the younger generations are siding increasingly with plaintiffs as well as using the trial as a form of activism. Juror attitudes have become increasingly anti-corporate and distrusting of the legal system after the COVID-19 pandemic, impacting how defendants are perceived.

We also found that economic opportunity and income inequality serve as a contributing factor toward nuclear verdicts. We observed that counties with high rates of income inequality, lack of economic opportunity, and poverty have a larger prevalence of nuclear verdicts than other counties in the state and across the country.

In addition to socioeconomic factors, we also reviewed the legal advertising trends of the plaintiff firms where we found an increasing trend in spending as nuclear verdicts continue to rise in prevalence. We found that plaintiff law firms are using nuclear verdicts on their websites and advertisements, even if that amount has been reduced after the initial trial.

Lastly, we examine exploitative legal strategies that are contributing to the prevalent and rise of nuclear verdicts. Third-party litigation financing, a multi-billion-dollar industry, has become increasingly pervasive, increasing the amount asked for in trial in hopes of satisfying the financers. Plaintiffs in both jurisdictions are also using aggressive psychological trial strategies, such as Reptile Theory and Jury Anchoring, serving as direct drivers for nuclear verdicts.

Demographic and Socioeconomic Factors

Age

The first juror demographic category our team will explore is age. Specifically, we're looking to track behavior differences between generational groups and see if it affects the outcome of a nuclear verdict. After highlighting our key takeaways, we'll examine how these findings are upheld in two prominent nuclear verdict states: Georgia and Illinois.

The nation is experiencing one of the greatest demographic shifts in its history. As healthcare service improves and fertility rates fall across all 50 states, the median age of the country is increasing. Since 2003, the national fertility rate has plummeted by 23%¹. This is from a multitude of reasons that range from the rising financial impact of having children, women deciding to have children later in life, and growing infertility rates. Ultimately, the demographics of courtroom juries will be flush with older generations as fewer people are born into newer generations to offset them. These are important distinctions to note since every generation on average, no matter its size, carries different beliefs, values, and priorities. These differing beliefs can impact the outcome of a nuclear verdict depending on which generation dominates the jury. Given that generations vary in size, it's important to study their role in determining nuclear verdicts.

Through our studies, we've found that age differences aren't a significant determinant of a verdict, but they still contribute to the outcome. An article from Courtroom Sciences Inc. collected data from 1,100 jury-eligible individuals who served as mock jurors in personal injury matters during 2020. After the data was analyzed, it showed that 53% of Baby Boomers, 56% of Generation X, and 61% of Millennials favored the plaintiff². No conclusions were drawn from Generation Z since they make up the smallest portion of current juries and their data is still being collected. The data doesn't reveal a significant trend since the disparity between the youngest and oldest generations is roughly 8%. However, it's expected that data from Gen Z will indicate

 ¹ Fitzpatrick, Alex, and Kavya Beheraj. "U.S. Birth Rate Declined 30% in 15 Years — Here's Where, Mapped." Axios, Axios, 4 Oct. 2023, www.axios.com/2023/10/04/birth-rate-fertility-rate-decline-data-statistics-graph-2022.
² CSI. (2020). Are millennials to blame for nuclear verdicts?. Courtroom Sciences, Inc.

https://www.courtroomsciences.com/blog/litigation-consulting-1/are-millennials-to-blame-for-nuclear-verdicts-279.

an even higher percentage that will side with the plaintiff. As the U.S. follows current aging trends, we believe this disparity will grow and contribute towards higher frequencies of nuclear verdicts.

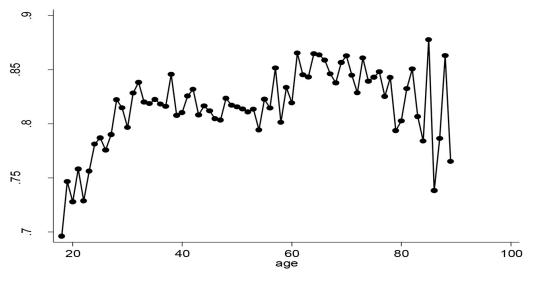
To determine if older age demographics contribute to higher frequencies of nuclear verdicts, we compared census data from two states: Georgia and Illinois. Both states have similar populations (Georgia with 10.91 million and Illinois with 12.58 million)³ and economies dominated by a single large metropolitan area (Atlanta and Chicago). Furthermore, these two states have experienced an uptick in nuclear verdicts but at different rates. Georgia has seen a significantly higher increase than Illinois. We specifically used data from each of the states' most nuclear counties: Gwinnett, GA, and Cook, IL. To support the trend that age differences impact nuclear verdicts, we looked at three categories: the percentage of the county's population over 65, the county's unemployment rate, and the overall state's ranking in terms of youthfulness. Georgia has a younger population profile compared to Illinois. It was ranked 4th youngest state in the union and only 10% of Gwinnett's population was over 65.

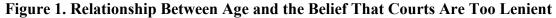
Conversely, Illinois is only the 16th youngest state by median age and 15% of Cook County's population was over 65⁴. Additionally, we wanted to pair up unemployment rates with the nuclear counties to their population. As expected, Gwinnett County had an unemployment rate of 2.8% to Cook County's 4.6%, reflecting Georgia's stronger presence of younger generations who are still actively engaged in the workforce⁵. As we've indicated from jury decision trends, younger generations are more likely to side with the plaintiff and produce a nuclear verdict. In our demographic comparison, Georgia has a larger exposure with the state's more youthful composition.

³ United States Census Bureau . (2019). *Cook County vs. Gwinnett County*. Cook County vs. Gwinnett County - Comparison. <u>https://www.indexmundi.com/facts/united-states/quick-facts/counties/compare/17031.13135</u>

⁴ United States Census Bureau . (2019). *Cook County vs. Gwinnett County*. Cook County vs. Gwinnett County - Comparison. <u>https://www.indexmundi.com/facts/united-states/quick-facts/counties/compare/17031.13135</u>

⁵ United States Census Bureau . (2019). *Cook County vs. Gwinnett County*. Cook County vs. Gwinnett County - Comparison. <u>https://www.indexmundi.com/facts/united-states/quick-facts/counties/compare/17031.13135</u>





Source: The Journal of Law and Economics

The General Social Survey used data from 1972-2010 to evaluate the trend between age and an individual's perspective on court punishment⁶. A group of researchers at Duke University, Carnegie Mellon, and Gothenburg analyzed the results of this survey. Figure 1 displays the relationship between age and their perspective on whether courts are too lenient. The trend peaks right before 40 years and again around 70 years.

Although the older generation makes up a big portion of juries, we cannot ignore the impact the younger generation has on jury decisions. The younger jurors reflect our polarized society though more firmly held beliefs on political, social causes, and societal injustices than in the past. They are also more likely to act on these beliefs. A study done by EY showed that over one-third of the Gen-Z generation have participated in a political rally or protest, signed a petition for a cause they agree with, or supported a political movement⁷. 50% have used social media to share a message about a cause they believe in.

⁶ Anwar, S., Bayer, P., & Hjalmarsson, R. (2014). The role of age in jury selection and trial outcomes. *The Journal of Law and Economics*, 57(4), 1001–1030. <u>https://doi.org/10.1086/675257</u>

⁷ EY. (2023). 2023 ey gen Z segmentation study. https://assets.ey.com/content/dam/ey-sites/eycom/en_us/topics/consulting/ey-2307-4309403-genz-segmentation-report-us-score-no-20902-231us-2-vf4.pdf

Anti-corporate sentiment has been on the rise since COVID-19. Trust is a big issue for the younger generation. They are a generation of skeptics who constantly question the validity of social media, conflicting information, and other sources of information. Most value transparency and authenticity, and believe that governments and companies are not doing a great job of reflecting these values. Orrick surveyed multiple jurisdictions, including those that are home to some of the largest nuclear verdicts⁸. Participants were asked to respond to questions that gauged their opinions on social issues, politics, and industries frequently targeted by plaintiffs' firms.

Here are the results:

- 58% held positive beliefs toward lawyers who represent injured people in lawsuits, as opposed to only 13% who held negative beliefs
- 48% of jurors trust courts today, compared to 67% pre-pandemic
- Anti-corporate sentiment doubled from 27% to 45% after the pandemic
- 77% of jurors believe in the use of punitive damages to "punish" a corporation The results suggest that jurors are more likely to trust lawyers and/or fall for anchoring tactics used in the court because of their preconceived notions about corporate wrongdoing and the efficacy of the justice system.

Ethnicity

Using population data collected by the University of Georgia reveals a contrast in the racial composition between 'nuclear' and 'non-nuclear' counties. The groups were created by using the nineteen most populated counties in Georgia and grouping them based on whether they had seen any verdicts greater than ten million dollars or had not. The 'Nuclear' counties were Bibb, Fulton, Richmond, Dekalb, Muscogee, Chatham, Cobb, Gwinnett, Clayton, and Henry. The 'Non-Nuclear counties were Clarke, Hall, Houston, Columbia. Coweta, Cherokee, Douglas, Forsyth, and Paulding. 'Nuclear' counties generally have a balanced representation of White and Black populations, reflecting a diverse demographic makeup. 'Non-nuclear' counties, however, tend to have predominantly white populations, lacking the diversity observed in 'nuclear'

⁸ Kelly, M., & Oxley, B. (2023, November). Jury Attitudes in a Polarized Society: Understanding Today's Jurors for Trial Strategy and Beyond. https://www.orrick.com/en/Insights/Groundbreaking-Jury-Research-Reveals-US-Jury-Attitudes-in-a-Polarized-Society

counties. When considering the potential impact of a diverse jury pool in courtroom decisions, we can refer to an article written by Samuel R. Sommers of Tufts University⁹. Somners found racially diverse juries to be more lenient towards a defendant than an all-white jury.

Educational Attainment

Using Census data, we can see that although there is not much difference in the levels of education attained in 'nuclear' and 'non-nuclear' counties in Georgia, or the median earnings of those who attain certain levels of education. We can, however, see that at all levels of education, 'nuclear' counties have a higher poverty rate than their 'non-nuclear' counterparts.

By comparing two nuclear counties in Illinois to two nuclear counties in Georgia, both similar in population, you can see that Georgia nuclear county residents are more highly educated than Illinois. This data takes into account the percentage of residents with a bachelor's degree or higher

- Fulton County, GA 51.4%
- Gwinnett County, GA 36.1%
- Cook County, IL 38%
- Madison County, IL 25.8%

Voting Trends

Using data from the University of Georgia on voting patterns, we can see that 'nuclear' and 'non-nuclear' counties with similar populations have wildly different voting patterns. Using the 2020 presidential election as an example, 'nuclear' counties - for the most part - favored the Democratic candidate, Joe Biden, while counties that lack nuclear verdicts voted Republican in 2020.

⁹ Sommers, S. R. (2006). On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations. Journal of Personality & Social Psychology, 90(4), 597–612. https://doi.org/10.1037/0022-3514.90.4.597

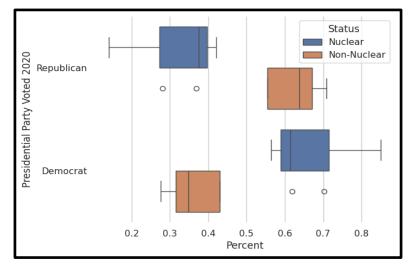


Figure 2. 2020 Presidential Election Results in Nuclear and Non-Nuclear Counties

Attitudes Toward Corporations

Recent jury research conducted by Orrick indicates that nationwide, there is a growing trend of apprehension toward corporations and overall distrust in the legal system⁷. Most notably, 45% of respondents in the survey view large corporations negatively. Furthermore, 77% of respondents had either a negative or neutral impression of lawyers representing corporate defendants. Meanwhile, the respondents had a much more positive impression of plaintiff lawyers, with 58% of respondents having a positive view of lawyers who represent injured plaintiffs. Only 13% exhibited a negative opinion of plaintiff lawyers.

Preconceived biases were also apparent in that juries are much more willing to make quick judgments of the parties before hearing the facts. According to the survey, most jurors overwhelmingly side with the plaintiffs based on descriptions of the parties alone. Additionally, 62% believe that an important function of jury duty is to "send messages to corporations to improve their behavior" and 77% of respondents believe punitive damages should be used to punish a corporation. We also see the effect of the COVID-19 pandemic in exacerbating negative perceptions towards the legal system and corporations. The survey showed that anti-corporate sentiment doubled from 27% pre-pandemic to 45% today.

Economic Opportunity

Effects of Poverty

Michael Yates an economist and editorial director for the Monthly Review Press, sheds light on the plight of the working class in his 2020 book *Work, Work, Work: Labor, Alienation, and Class Struggle*, published in 2020, reviews the injuries that the working class – most of the population of Cook County – often suffer from their jobs. Yates reveals just how much of a mental and physical toll is inflicted by low-wage labor.

Low-wage jobs are physically intensive, which leads to great strain on the body. This, combined with the increased barriers to accessing medical care (re: Insurance Claims) creates an environment where injury is high and oftentimes chronic, leading to further suffering. He reviews several categories of work: postal workers, automobile workers, clerks, restaurant workers, office workers, security workers, custodial workers, medical workers, and gig workers.

Postal workers and automobile workers suffer severe body pain due to the nature of their work, which later translates to permanent injury. Clerks face abuse from customers, (which he notes the occurrence of where at least one was killed during the pandemic as a result). Restaurant workers can face great physical injury, such as burns or cuts. To continue, there is a recurring theme of injury within this broad encompassment of workers.

Together, the mental and physical injuries of low-wage work create immense injury to workers, even if the contractual labor time does not last very long. This environment creates a common sentiment of bitterness among workers towards those they see as having a more powerful role in the economy. In 2023, 4,558 people alone were laid off in Cook County; 13.5% of the population lives in poverty as of 2021. In Gwinnett County, 8.3% of the population lives in poverty as of 2022¹⁰. Furthermore, the field of lower-wage work is a massive and expansive one that many in Cook County occupy. The pain of what Yates describes could heighten jury hostility and anger towards insurance companies.

¹⁰ Estimate of people of all ages in poverty in Gwinnett County, GA. FRED. (2023, December 14). https://fred.stlouisfed.org/series/PEAAGA13135A647NCEN

Income Inequality

A study conducted by GenRe argues that income inequality affects legal outcomes and awards, which warrants attention from underwriters. GenRe observed that the ten states with the worst legal environments have much higher inequality measures than the ten states with the best legal environments¹¹. The study found an inverse correlation between liability loss ratios and the national real wage index. Household frustration levels will rise as wages stagnate, which may become a driver for more claimants and angry juries.

As ranked by the US Bureau of Labor Statistics, Illinois came out as 5^{th} out of all 50 states when it comes to unemployment, with a rate of 4.7% for unemployment as of December 2023¹². In addition, as shown in *Layoff Rates*, Cook County was one of the leading counties for layoff rates in 2023.

Comparing GINI index scores (US census data) between counties in Georgia with and without nuclear verdicts, we are able to see a distribution of higher GINI scores (around .5), notifying a more unequal income distribution, in counties that have been experiencing nuclear verdicts. In "non-nuclear" counties, we see a distribution settling at a lower GINI score more towards .4. Note that even though the distributions seem to be settling only one-tenth away from each other on the GINI scale, the statewide GINI scores in 2022 ranged only from .43-.52 nationwide. An interesting 'non-nuclear' outlier in this data set is Clarke County, with a GINI index of .5114. This score seems like it would group better with the 'nuclear' counties in the data, but in 2023, Clarke County saw a medical malpractice verdict totaling over 4 million dollars. This verdict, paired with the county GINI score, shows that Clarke County might be well on its way to seeing higher verdicts like its 'nuclear' counterparts in Georgia.

¹¹ GenRe. (2020). Social inflation - measures of wealth and income inequality warrant attention from underwriters. https://www.genre.com/us/knowledge/publications/2020/november/social-inflation-measures-of-wealth-and-income-inequality-warrant-attention-from-underwriters-en

¹² U.S. Bureau of Labor Statistics. (2023). *Unemployment rates for states*. U.S. Bureau of Labor Statistics. <u>https://www.bls.gov/web/laus/laumstrk.htm</u>

Layoff Rates

In Cook County, a total of 4,558 people total were let go by nineteen separate companies within 2023. For Georgia as a whole, WARNTracker (under the federal WARN Act that outlines how employers might notify employees and state officials before prompting a mass layoff) reported 57 layoffs within the year 2023. As of so far in 2024, there have been 8 reported layoffs¹³.

A report by Randstad RiseSmart, a global talent mobility provider, found that an estimated 92% of employers in the US are anticipating layoffs in 2024¹⁴. Whilst broad and encompassing the entirety of the US, given that Illinois was 10 out of 50 for the total number of layoffs last year, this might severely impact the economic climate of this state. In turn, this could impact Cook County, which was already hit with several layoffs last year.

Insurance Claims

Health Care off the Books: Poverty, illness, and strategies for survival in urban america (2020) is a book written by Danielle Raudenbush, an associate Sociology professor at the University of California, San Diego¹⁵. In this book, she studies the struggles that low-income workers throughout the nation are confronted with in their efforts to receive health care. People in this demographic face a greater amount of barriers in finding health care as opposed to people who are not.

In addition, they also face a greater risk of developing injury or disease. Raudenbush (2020) also found that, in 2016, 43% of low-income adults (people aged 19-64) were reported as lacking the ability to afford access to health care, even for coverage such as a basic doctor's visit or getting a

¹³ Latest layoffs in Georgia. Latest Layoffs in Georgia - WARNTracker.com. (2024). https://www.warntracker.com/?state=GA

¹⁴ Sarah Magazzo. Digital Marketing Manager for Mondo National Staffing Agency, Magazzo, S., & By. (2024, April 4). 2024 mass layoffs: Detailed list & reporting of notable company cutbacks. Mondo Staffing Agency. https://mondo.com/insights/mass-layoffs-in-2022-whats-next-for-employees/

¹⁵ Larimore, S. (2022). Health care off the books: Poverty, illness, and strategies for survival in Urban America. *Contemporary Sociology: A Journal of Reviews*, *51*(2), 152–154. https://doi.org/10.1177/00943061221076191aa

prescription refilled. She also notes that, from 2016 to 2017, insurance rates decreased for lowincome groups.

Economic/Opportunity Zones

Another economic indicator we noticed between nuclear states was the prevalence of economic and opportunity zones. Economic zones generally refer to designated areas within a country that offer businesses certain tax breaks or other incentives to attract investment and economic activity. These zones can target specific industries or have broader goals of development. Opportunity zones, established in the US by the 2017 Tax Cuts and Jobs Act, are a specific type of economic zone focused on low-income communities. Similarly, these zones aim to revitalize distressed areas, attract jobs, and create economic growth. These two methods share the common goal of attracting private investment to underserved communities.

Like in the demographics section, we chose to compare data from the two nuclear verdict hotbeds of Georgia and Illinois. We focused on county-level data to collect the number of the OZs and EZs in Gwinnett and Cook county, each of the state's two most nuclear jurisdictions. Gwinnett County Georgia had 1 enterprise zone and 3 opportunity zones¹⁶. Cook County Illinois had 15 enterprise zones and over 50 opportunity zones¹⁷. The higher prevalence of these zones in Illinois makes sense as it correlates with our other economic indicators associated with the state such as higher layoff rates. We even expanded our search into other nuclear jurisdictions between the states like Madison County, IL Illinois, and Fulton County, GA. The findings displayed the same pattern with the Illinois county having more zones dedicated to spurring economic development. From further studies, we indicated that Georgia has a much more attractive business climate than Illinois. In 2021, Georgia was ranked the top state for the cost of doing business in. Illinois didn't even make the top 20¹⁸. These ratings further explain the

¹⁶ Georgia Department of Community Affairs . (n.d.). *Enterprise zones*. Enterprise Zones | Georgia Department of Community Affairs. <u>https://www.dca.ga.gov/community-economic-development/incentive-programs/enterprise-zones</u>

¹⁷ Illinois Department of Commerce and Economic Opportunity. (n.d.). *Enterprise Zones*. ArcGIS web application. <u>https://www.arcgis.com/apps/webappviewer/index.html?id=f82fc6b62fde435abb41f5f72db2db48</u>

¹⁸ Kaelble, S. (2021, September 9). *The 2021 top states for doing business reflect their locational advantages*. Area Development.

prevalence of EZs and OZs in Illinois where those nuclear jurisdictions are more starved for corporate investment. They're willing to allocate more resources to entice businesses to move in.

Ultimately, we believe the economic indicator of the prevalence of opportunity and economic zones contributes to the frequency of nuclear verdicts in a given jurisdiction. The higher the number of OZs and EZs in a nuclear county, the lower the chance of a nuclear verdict. Current trends of higher frequencies of 10 million dollar plus verdicts in Georgia counties than in Illinois counties help support this assertion. Illinois counties are trying to build positive rapport with corporations, not chase them away. Residents in these counties know the value these jobs would bring to their community and would thus be more likely not to "scare off" these companies by issuing a nuclear verdict.

Conversely, Georgia is experiencing no shortage of economic development. Residents in those nuclear counties feel secure in the fact everyone wants to conduct business there and aren't worried about a nuclear verdict damaging this relationship. The situation is more fragile in Illinois. Among the other economic indicators we discussed in this section, economic and opportunity zones can also be a potential gauge of verdict frequency in nuclear jurisdictions.

Plaintiff Advertising

Search Engine Optimization

Search Engine Optimization works by targeting users when they search particular keywords or tags (SEM Agency). Keywords a potential plaintiff might search could include, but are not limited to, "lawyer," "law help," "legal," "personal injury," "PI," "attorney," and/or "consultation." Keywords are typically searched in conjunction with a geographic location, which could result in searches such as "PI Chicago IL" or "personal injury lawyer Lawrenceville Ga" (Appendix B, C)¹⁹.

¹⁹ Lyon, S. (2024, March 20). Seo & paid search: Why they work better together. HawkSEM. https://hawksem.com/blog/how-paid-search-and-seo-worktogether/#:~:text=Paid%20search%20and%20SEO.,well%20in%20organic%20search%20results

We conducted primary research using social texts and archival data in the form of searches, search results pages, and individual sites in the search results from cities in Cook and Gwinnett counties. We found that all of the sites at the top of the results were marked as "sponsored," and of those nearly all contained a main page that was navigated to immediately upon clicking the link which boasted of high verdict amounts (Appendix D).

This leads us to conclude there is a positive correlation between paid, sponsored sites and those sites belonging to firms with high, and sometimes nuclear, verdicts. This further leads us to believe firms and personal injury attorneys who receive high and nuclear verdicts are more likely to pay for this type of SEO and ad, which in turn creates even more business for them when a potential plaintiff makes their initial online search and they appear first in the results.

Google Advertising

Research shows personal injury attorneys can not use Google ads remarketing, but the rules for general Google Ads are loose enough that they can buy sponsored spots using a combination of both SEO and Pay-Per-Click (PPC) tactics^{20, 21}.

An example of remarketing is when someone searches for a bookshelf and then receives ads for bookshelves placed in their browser for days after. Remarketing is a fairly inexpensive and common tactic but has specific rules per Google. "Personal Injury Remarketing ads get flagged because they violate Google's rule on 'personalized health content.' Google says an example of personalized health content is: 'Physical or mental health conditions, including diseases, sexual health, and chronic health conditions, which are health conditions that require long-term care or management'"¹⁹.

²⁰ Len (2023, February 3). *Can personal injury attorneys use google ads remarketing? no.* OptimizeMyFirm.com. https://optimizemyfirm.com/pi-google-ads-remarketing/

²¹ Google. (n.d.). *Personalized Advertising - advertising policies help*. Google. https://support.google.com/adspolicy/answer/143465

Notably, personal injury ads do not have the same guidelines remarketing ads do. In fact, there are more guidelines on divorce attorney advertisement, due to Google's rule of respecting "relationship hardships in personalized advertising" than there are for personal injury attorneys²⁰. This research leads us to conclude personal injury attorneys are largely unlimited by traditional Google Ads and paid sponsored SEO and PPC methods, though they do have to be careful to not step into remarketing. However, with SEO and PPC causing the searcher to see high-earning firms' information at the top of their results, there may not even be a need for nuclear verdict-earning firms to remarket because they have most likely caught the potential plaintiff's attention in the first round search.

Spending

Advertising spending is the number one way lawyers and law firms in Georgia are spreading the word on their business. They are spending an extraordinary amount of money on advertising over the past few years. According to judicialhellholes.org, between the years of 2017-2021, the total cost of advertising for plaintiffs' lawyers spent \$391 million on nearly 4.5 million advertisements across different media platforms²². This increase in advertising saw Atlanta residents seeing legal ads 9 times more than for clothing stores and 8 times more in Savannah. This should be a concern for the insurance industry in Georgia as almost every resident in Atlanta and Savannah is seeing these advertisements and may begin to grow curious about how they can extort these insurance companies for massive nuclear verdicts.

Using data from the American Tort Reform Association, we can see that all fifty states followed the same general upward trend in legal advertising from 2017 to 2021, minus spending less in 2020 following the small recession due to the COVID-19 pandemic²³. In comparing the per capita legal advertising of the "Top 10 states by per capita" for nuclear verdicts, from the U.S Chamber of Commerce Institute for Legal Reform's 2022 study, to the per capita legal spending of all fifty states, over the years 2017-2021, there are no conclusive differences. Due to this, we

²² Georgia - Judicial hellholes. Judicial Hellholes. (2023). https://www.judicialhellholes.org/hellhole/2022-2023/georgia/

²³ ATRA. (2022, October 17). Legal Services Advertising Spending – 2017-2021. https://www.atra.org/white_paper/legal-services-advertising-spending-2017-2021/

can make no conclusion that legal advertising expenditure causes certain states to have more or less Nuclear verdicts. However, we could assume that the rise in nuclear verdicts might be a cause of the general increase in legal advertising spending in recent years.

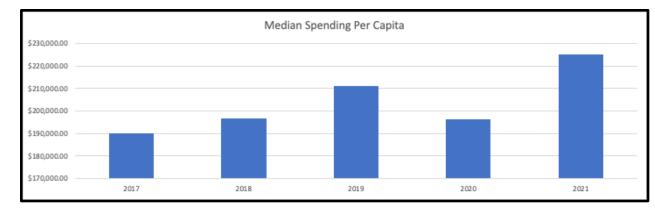


Figure 3. Plaintiff Median Advertising Spending Per Capita

Effects of Advertising

In August 2022, Butler Prather LLP secured a \$1.7 billion punitive damage verdict against Ford in Gwinnett County, saying they sold millions of "super duty" models with weak roofs. This settlement added to their long list of 'successful' nuclear verdicts. With aggressive advertising campaigns from plaintiffs and an uptick in media coverage of nuclear verdicts, it is possible that society is being desensitized to these large amounts of money. Our ability to comprehend numbers logically decreases as the number increases. For example, it is very difficult to fully understand how much larger a billion is to a million. Media outlets repeatedly post about multimillion dollar transactions associated with large corporations. For example, Elon Musk purchased Twitter for \$44 billion or there were two lottery drawings with jackpots over \$1 billion dollars. If plaintiff advertising continuously boasts of large settlements it is possible that jurors will begin to expect large settlements for all cases that involve large corporations.

Legal Requirements of Advertising

Georgia

The legality of advertising has some specific rules and regulations lawyers and law firms must obey. Consumer.georgia.gov has outlined some of these rules and regulations about advertising. These regulations regarding advertising include lawyers not misrepresenting facts by leaving out information, creating unjustified expectations of what the attorney can do, and claiming there are no fees unless they win by leaving out possible associated costs.

One of these regulations that have some complicated implications is lawyers misrepresentation and creating unjustified expectations. There are some ways lawyers can get around this regulation and they can do this by either including cases they have represented in the past or advertising their success. On vansantlaw.com, a law firm representing some of the top injury lawyers in the Atlanta area, David Van Sant advertises his previous success by stating he is a part of the Million Dollar and Multi-Million Dollar Advocates forum which is awarded to lawyers who have won million and multi-million dollar settlements, verdicts, or awards²⁴. By doing this, they are not directly advertising what they can do for the client or misleading clients but they are essentially anchoring the expectations of themselves in the client's mind and it could lead to clients expecting either a million-dollar or multi-million dollar verdicts.

Third-Party Litigation Financing (TPLF)

According to Swiss Re, more than half of the \$17 billion invested into litigation funding globally in 2020 was deployed in the U.S. Swiss Re estimates put the market as high as \$30 billion by 2028²⁵. Meanwhile, affordability of insurance coverage, especially for commercial auto products, has come under threat from increases in litigation and claim costs." The way those funds are dispersed and used depends on whether the claims involve personal/consumer litigation

²⁴ Hilary. (n.d.). *David M. Van Sant*. Attorney David M. Van Sant | Van Sant Law. https://www.vansantlaw.com/david-m-van-sant.html

²⁵ Insurance Information Institute. (2022b). What is third-party litigation funding and how does it affect ... https://www.iii.org/sites/default/files/docs/pdf/triple_i_third_party_litigation_wp_07272022.pdf

or commercial litigation. Additionally, TPLF can change a plaintiff's expectations of what they may receive during a settlement. Plaintiff's may be less willing to accept a fair settlement and instead opt to proceed with a jury, knowing that the recovery must be shared with the funder. Funders are also more likely to hold out for a larger settlement to maximize their own return. Litigation funders aim to maximize profit, so they may not act in the interest of justice. They may pressure plaintiffs to go "all in" on a jury trial to achieve the greatest return. TPLF may also result in the filing of riskier and speculative lawsuits. Many funders recognize that pushing for numerous longshot lawsuits may prove to be a successful strategy, even if only one case results in a nuclear verdict²⁶.

Georgia

Third-party litigation financing (TPLF) has seen great success in Georgia and the Georgia Supreme Court has no intention of slowing down the growing industry²¹. According to judicialhellholes.org, "The Georgia Supreme Court clarified that TPLF does not qualify as lending, and therefore, funders can charge any usurious rate they want. Instead of applying state lending laws, the Court asked the legislature to regulate the industry." By not taking action, TPLF will continue to operate and grow in the state of Georgia.

Illinois

In 2022, Illinois enacted the Consumer Legal Funding Act which implements several new statutory provisions that regulate various aspects of TPLF²⁷. The law prohibits funders from providing monetary benefits to an attorney or law firm to refer a consumer to the company. It prohibits them from referring consumers to specific attorneys or legal firms. However, they may refer the customer to a local or state bar association referral service or a legal aid office. The law also states that funding companies do not have any authority to make significant decisions about claims. This right rests with the plaintiff and the attorney. Finally, fees must be no more than

²⁶ Institute for Legal Reform. (2022, September). Nuclear verdicts. https://instituteforlegalreform.com/wp-content/uploads/2022/09/NuclearVerdicts_RGB_FINAL.pdf

²⁷ *The new Illinois's Consumer Legal Funding Law " Baker street legal funding.* Baker Street Legal Funding. (2022, November 12). https://bakerstreetfunding.com/the-new-illinoiss-consumer-legal-funding-law/

18% of the funding amount and the fund total must be a predetermined amount. These regulations aim to decrease the impact TPLG has on settlement amounts.

Legal Factors

Georgia

As mentioned before, jury verdicts and the overall attitude towards the changing of operations in Georgia has had some controversy in the past few years. The Georgia Supreme Court has had some controversial ideas regarding verdicts with a chance of becoming nuclear.

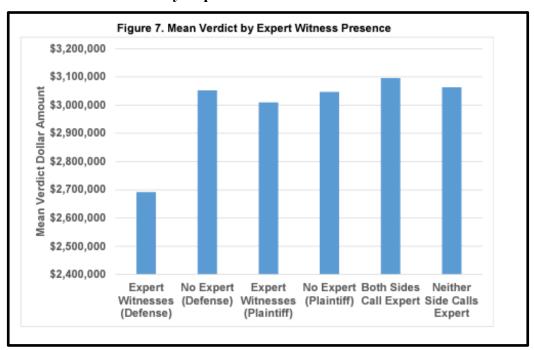
One of the ideas they did not change was the seatbelt gag rule which precluded a jury from hearing evidence about whether an occupant wore a seatbelt at the time of a crash. This rule not seeing change could play a massive role in the courts since if the occupants of the vehicle who are not wearing a seatbelt are much more likely to sustain more serious injuries in the event of a crash²¹.

Another controversial idea was the Georgia Supreme Court declining the adoption of the apex doctrine which is the framework that courts across the country have adopted to protect high-level corporate employees from being unnecessarily deposed. Without this doctrine, these high-level employees could be subject to accidental self-incrimination²¹.

The courts also ruled in favor of forcing defendants to potentially pay double the plaintiff's attorneys' fees when they are unsuccessful at trial. This will only drive up the litigation costs of court cases and increase the value of cases.

The Trucking Industry

The trucking industry is one that has been specifically targeted by lawyers to extort insurance companies. It has seen some valuable studies pertaining to the use of expert witnesses and how they impact the results of awards. According to the American Transportation Research Institute (ATRI), they conducted a study on how expert witnesses impact awards. If the defense uses an expert witness and the plaintiff does not, awards on average decrease from \$3.1 million down to \$2.7 million. When both use expert witnesses, the defense still benefits. This is illustrated in the diagram below provided by ATRI. With this being said, the use of an expert witness could become valuable to insurance companies when they are particularly worried about a case becoming nuclear and by using an expert witness, they may improve the odds of it not becoming nuclear²⁸.





Source: ATRI

²⁸ ATRI. (2020, June). Understanding the impact of nuclear verdicts on the trucking ...

https://truckingresearch.org/wp-content/uploads/2022/01/ATRI-Understanding-the-Impact-of-Nuclear-Verdicts-on-the-Trucking-Industry-06-2020.pdf

Strategies and Tactics

Reptile Theory

Reptile Theory plays into the psychology of jurors and contributes a large impact on the decision-making process. Two psychological theories, Reptile Theory and the concept of jury anchoring, have become particularly relevant in understanding how these verdicts are reached. Reptile Theory posits that jurors are more likely to be persuaded by arguments that tap into their primal survival instincts. This theory is grounded in the evolutionary psychology principle that humans are inherently motivated to avoid harm and protect their community.

According to the Defense Research Institute, this is an increasingly popular trend, starting in the 2008 economic crisis where plaintiff's attorneys use reptilian tactic phases (e.g., "safety rules," "personal safety," "protecting the community," "unnecessary harm," and "needless endangerment") in order to trigger the part of the brain responsible for basic life functions and to overcome the cognitive parts of the brain²⁹. By linking each argument to a juror's sense of personal or community safety, the attorney manipulates the jurors into using emotion or a sense of danger rather than the facts and legal standards to decide the specific case.

However, there are ways to combat reptile theory. Research conducted by two academics at Florida State University, Cassandra R. Cole and Chad Marzen, published in the Journal of Insurance Regulation found that, "filing a motion in limine to limit the utilization of questions premised on the reptile theory that may inflame a jury." Additionally, they state "focusing on the complexity and nuance of a particular case may counteract the theory along with a focus on testimony that safety rules are not absolute and are based upon multiple factors."

Jury Anchoring

Jury Anchoring refers to the cognitive bias where individuals rely too heavily on the first piece of information offered (the "anchor") when making decisions. In the context of legal judgments,

²⁹ DRI. (2023, January). Social inflation - fight back against the rise in nuclear verdicts. https://www.dri.org/publications/featured-article/2023/social-inflation

the anchor is often the amount of damages sought by the plaintiff. This figure can significantly influence jurors' perceptions of what constitutes a reasonable settlement.

The United States Chamber of Commerce Institute for Legal Reform offered insights as to how the process works²⁵:

- Asking the jury for a specific amount (a "lump sum"). To make large amounts more palatable plaintiff's lawyers "argue that the jury should fix the plaintiff's compensation at a set amount per day, week, month, or year, and then multiply that amount by the length of time remaining in the plaintiff's life expectancy" (referred to as a "per diem" argument).
- A lawyer could also link the proposed amount or formula to some other aspect of the case that might be irrelevant to the claimant's pain and suffering could be the amount the defendant compensated its CEO, or trial experts.
- They state, "Empirical evidence has repeatedly demonstrated that 'the more you ask for, the more you get'... jurors presented with anchor return verdicts that are far larger than the amount they would have returned when left to decide a reasonable amount of damages on their own".

Jury Anchoring Case Study

"In a Georgia case in which a trucking company conceded liability prior to trial for a tractortrailer accident, the plaintiff's lawyer asked the jury to award \$200 million for the value of the deceased plaintiff's life plus punitive damages and attorney's fees. The jury awarded \$150 million for the value of the plaintiff's life, \$30 million for her pain and suffering, and \$100 million in punitive damages."

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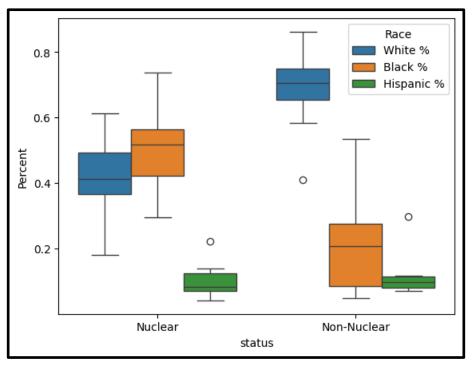
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Appendix





Appendix B

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	About 130,000,000 results (0.34 seconds)		
	Results for Chicago, IL - Choose area		
	Sponsored · Personal Injury Lawyers Chicago ∶ ✓ GOOGLE SCREENED		
	Keller Postman 4.7 ***** (600) · Personal Injury Lawyer 7 years in business · Serves Chicago Open 24/7	Message Call	
	Malman Law 4.8 ** * * * (3.4K) - Personal Injury Lawyer 30 years in business - Serves Chicago Open 24/7 (312) 778-7439 - Free consultation	Call	
	More Personal Injury Lawyers \rightarrow		
	Sponsored illinoislawyers.com https://www.illinoislawyers.com · personal · injury		
	Free Attorney Consultation - IL Personal Injury Lawye	ers	
	20 Years Experience Finding You The Best Lawyer For Your Personal Injury Lawyer. 300,000+ Cases Since 2001. Contact Us 24/7. Free & 100% Confid IL Statute of Limitations - Injury Case Review - 10 Things To Know - Persona	ential.	
	Sponsored		
	https://www.piotrwachowski.com		
	Peter Wachowski Chicago Personal Injury Lawyer Top Personal Injury Attorney. Representing Victims In Cook & DuPage Cou	nties For 30 Years	
	Malman Law https://www.malmanlaw.com		
	Malman Law: Chicago Personal Injury Attorney		
	Free consultations 24hrs A Day - Our Experienced Chicago Personal Injury Law have helped over 20000 injured people throughout Chicago.	attorneys at Malman	

Appendix C

9
Message Get phone number
Get phone number

Appendix D

We have helped thousands of people find the right injury attorney for their case. We don't promise a result, but we've had a tremendous record of success as we take every case very seriously. Some of our victories include:

- \$5,000,000.00 to the family of a young woman who was killed when she was struck by a barge.
- \$5,000,000.00 to a man who was hit by a car and lost his leg.
- \$4,500,000.00 for the widow of a man who was killed in a semi-truck accident.
- \$3,200,000.00 to a woman who was severely injured from a vaginal mesh device.
- \$2,850,000.00 to the estate of a man shot and killed wrongfully by the police.
- \$2,600,000.00 for a worker who lost his leg in an accident.
- \$2,500,000.00 to the estate of a boy who died in his public school after nobody called 911 during a severe asthma attack.
- \$2,200,000.00 for a woman who was rear-ended by a semi truck and sustained a back injury. The trucking company originally claimed to only have \$1 million in insurance.
- \$2,000,000.00 to the estate of a man killed in an out of state trucking accident he was alleged to be responsible for.
- \$1,900,000.00 for a mentally disabled woman who was impregnated in a group home.
- \$1,900,000.00 for a student injured on an ATV accident during a school trip
- \$1,800,000.00 for a young girl who sustained a severe neck injury when she was thrown from a horse.
- \$1,700,000.00 after a trial for a woman who received multiple fractures after she was rearended by a semi truck.
- \$1,500,000.00 from a life insurance policy that wasn't being paid following a death.
- \$1,440,000 for a truck driver injured by a falling pallet when making a delivery.
- \$1,325,000.00 to a worker who was hit by a forklift and sustained big leg injuries.
- \$1,100,000.00 to the family of a man that was killed in a mining accident.
- \$1,080,000.00 (full policy limits within three months of contacting us) for a woman who was hit by a truck.
- \$1,000,000.00 (full policy limits) for a man who shattered his leg in a motorcycle accident.
- \$1,000,000.00 (full policy limits) for a trucker that was killed in a highway accident.
- \$750,000.00 to a young girl that was sexually assaulted after being kicked off a bus by a driver in a bad neighborhood
- \$700,000.00 to a victim of sexual molestation
- \$450,000.00 for a woman that had back surgery following a slip and fall accident.
- \$300,000.00 to a worker who was sexually assaulted by his boss.