

Nuclear Verdicts & Hurricanes

A PLAN IS A MUST

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Nuclear verdicts and hurricanes - they have a lot in common. Both are devastating. Both are costing this country billions in economic losses. Both have increased in severity over the last 15 years. Both have impacted areas traditionally considered safe havens from disaster. Finally, and most importantly, protections exist to minimize the risk from both, many of which have not been implemented.

I turned 74 years old this year. I began practicing law in 1977 in Birmingham, Alabama, at a litigation defense firm. I tried my first jury case the week I was notified that I had passed the Alabama bar exam! Over the next three years, I tried an average of eight cases a year, trying my 50th to a jury shortly after my fifth year of practice.

In 2014, I was one of the first to use the term "Nuclear Verdict." I authored a paper presented to the American College of Transportation Attorneys titled "Nuclear Verdicts: Confirming, Predicting and Preventing." This year is the 10th anniversary of that publication. If you Google "nuclear verdicts" today, you can find hundreds of sources referencing the term – not so in 2014.

Bill Burns, my longtime mentor and best transportation-client friend, gave me the idea for the Nuclear Verdict thesis. Bill headed the risk management team for Landstar, a top-10 trucking company in the United States. By 2011, Bill oversaw hundreds of claims for Landstar in some of the worst jurisdictions in the country. None was nuclear, but Bill followed many preven-

tion techniques I discussed in the Nuclear Verdicts White Paper.

In 2010 and 2011, Bill was focused on a death case stemming from an accident in Cobb County, Georgia. One of the best-known defense attorneys in Atlanta said Cobb County "has never had a verdict of more than \$10 million to date, and I don't

position. The Nuclear Verdicts White Paper was written to warn of this coming problem, list some common features to alert motor carriers and their lawyers of a nuclear verdict's potential, and explain how to avoid its risk.

Today, \$40 million verdicts in the transportation field are hardly highlighted. Every county in and around Atlanta has been the scene of larger verdicts. Even in Georgia's hinterlands, verdicts have overshadowed 2014's \$40 million verdict in Cobb County. For instance, in Columbus, Georgia, more than 100 miles from Atlanta, a jury returned a verdict for \$280 million against a steel-hauling motor carrier in 2019.

A year earlier, Werner Enterprises, another top-10 motor carrier, was tagged with a verdict of \$90 million in Harris County, Texas. Not only was this verdict twice the size of the Cobb County case, but it was awarded even though the plaintiffs' vehicle crossed an interstate median and collided with Werner's vehicle, which was operating well within the posted speed limit. This verdict signaled the beginning of juries combining nuclear amounts with questionable liability.

So, where are we today? No state or county offers immunity from nuclear verdicts. Earlier this year, Kroger's transportation unit was hit for over \$100 million in a death case in Arkansas, a state that seemed immune to runaway verdicts. \$100 million of that verdict was for the value of "loss of life." More amazing is an award of \$10 mil-



believe it will in my lifetime." The acting excess carrier agreed and refused to settle the case for an amount within that \$10 million; the Cobb County jury awarded a verdict of \$40.175 million.

That verdict took an enormous toll on Bill. Though I was not involved in the trial, he called me weekly before the trial and after the case's mediation. We both agreed the excess carrier probably took the wrong

lion to another Arkansas plaintiff who sustained a single-surgery shoulder injury!

In 2014, most of these nuclear verdicts occurred in California, Texas's border region, Louisiana, Florida, Philadelphia, and Chicago. Ten years later, areas considered more immune than Arkansas are "hellholes" for these verdicts. Take Upshur County, Texas, just off Interstate 20 between Shreveport, Louisiana and Dallas, Texas. Its population is 40,892. In 2020, Upshur County voted 83.7% for the Republican ticket and only 15.2% for the Democratic ticket. Yet, since 2014, no county in America has, per capita, seen more nuclear verdicts and settlements than Upshur.

Upshur is a microcosm for what is happening around the country. Republican counties are no longer safe havens from nuclear verdicts. Plaintiffs' lawyers have learned to develop themes that are suggestive of conspiracies to these jurors. In the Arkansas-Kroger case, they suggested Kroger knew or should have known of its driver's vision history, which plaintiffs claimed led to the vehicular accident. In the Werner case, they highlighted evidence to argue that Werner knew or should have known the roads were too icy for its trucks to be operating and failed to shut them down.

Plaintiffs' lawyers send their cases to focus groups 10 times to our one, constantly searching for themes that resonate with the jury. It is often one month before a trial begins before the defense lawyer and client realize the theme. That theme is sometimes hidden until the opening statement.

Since 2014, hundreds of clients have asked me to provide them with the Nuclear Verdicts White Paper, which forms the basis of this article. Every bullet point for identification and prevention detailed in that paper applies equally today. For instance (and in a brief nutshell):

Predictability: The following commonalities of most nuclear verdicts were discussed in detail:

1. **A Catastrophic Injury** (or Death).
2. **Driver Misconduct:** Drug/alcohol issues; cell phone use; other distracted-driver issues; hours of service; prior accidents/violations; driver training/failure to train.
3. **Demographics/Small County Anomalies:** In 2014, predictability was often associated with venue issues perhaps involving racial or socio-economic issues, but we also saw the rise of verdicts in low-population counties commonly controlled by one or two plaintiffs' lawyers, like Upshur County, Texas.
4. **High-Risk Plaintiffs' Lawyers:** Refusal by incredibly profitable plaintiffs' firms

to settle cases for previously perceived reasonable settlement offers and a new wave philosophy of asking juries to return sums formerly considered overreaching.

5. **Judicial Hellholes:** As mentioned earlier, nuclear verdicts had not yet arrived in counties previously considered "regularly conservative." There were 20 to 30 counties in the country, most in state, not federal, courts, where outlier verdicts were more likely. This provided some baseline predictability based on the venue.
6. **Defense Lawyers Fueling the Fire:** In my early days sitting at the feet of master defense lawyers, I learned a secret – an angry and indignant defense lawyer does well when representing an individual defendant but not so well when representing corporate America. An angry and indignant plaintiff's lawyer seldom alienates a jury that dislikes corporate America.

The article then detailed several key principles for defending potentially explosive jury verdicts. None has been violated more than this commandment: "Thou shalt settle the potentially nuclear verdict before the first deposition is taken." That commandment has been violated primarily because risk managers learned this commandment very early: "Thou shalt not pay big money in a case until every stone is left unturned."

I was national counsel for a top-10 motor carrier. We abided by the "settle early" philosophy, inventing ways to get the most nonresponsive plaintiffs' lawyers to discuss reasonable settlements early. We consulted realistic focus groups early, used the first-chair defense lawyer to handle the plaintiff's side, and used the second-chair defense lawyer to focus on the defense's presentation. If you think the plaintiff's attorney lacks the advantage in a case's trial, you are living in Fantasyland. I could spend days describing other things we did to resolve cases before the first deposition was taken.

At age 74, I have sworn off the addiction of trying cases to a jury verdict. I have limited my practice to strategy and finding the right counsel on regional and national levels to defend the worst cases. Clients tell me they face trouble, and I pair them with the right lawyers to deliver defenses.

For those of you still reading this, do not expect any differences over the next 20 years. Absent the many "prerequisites for nuclear avoidance" described in that paper 10 years ago, things will not change. Just as Hurricane Helene unexpectedly produced

horrific damage across North Carolina, conservative strongholds are unexpectedly producing nuclear verdicts ranging into the tens of millions of dollars. Do you believe hurricane damage will subside over the next 20 years? You, too, are in Fantasyland. Speaking of hurricanes, I am now something of an expert in avoiding "Nuclear Hurricanes" and "Nuclear Verdicts." When I was 70, my youngest child (of five) became a yacht broker. My law career paid to educate a combination of lawyers, doctors and engineers – and then came the yacht broker. He wanted to encourage me to retire and knew that was unlikely. He was a salesman – a good one – and convinced me to buy a 60-foot boat I could learn to operate! Lloyd's of London would not insure me until I had a lengthy training session with an approved captain, but today, I am insured by State Farm with a substantial discount over Lloyd's.

Twice, we have fled from menacing hurricanes on the horizon. Once, we moved rapidly from Sarasota (actually, Anna Maria Island) to Stuart, Florida (on the Atlantic) by crossing the peninsula cut-through that joins Lake Okeechobee, Florida. More recently, we waited for all the spaghetti models to encourage us to head north from Anna Maria Island to Orange Beach, Alabama.

So, my final piece of advice – avoid buying houses or condos along beaches in the southern United States. It is difficult – if not impossible – to find insurance there, and the emotional heartbreak I have seen from residents who lost most, or all, of their homes is just too great. Buy a yacht! They are less expensive, and instead of losing everything or quickly packing your belongings in a U-Haul to escape, you simply refuel and find another idyllic location to dock - Colby Carr is waiting for your call.



It's been 45 years since Charles Carr tried his first jury case. A lifetime adventure seeking judicial fairness in over 30 U.S. states also enabled him to be national coordinating counsel for several major insurers, motor carriers and retail organizations. He is proud to have co-founded the Carr Allison firm, now in several southeastern states, USLAW NETWORK and the American College of Transportation Attorneys. He and his wife, Lyn, now spend much of their time being proud of five children and eight (soon to be nine) grandchildren.