

The Ripple Effect:
Nuclear Outcomes Cause and Effects

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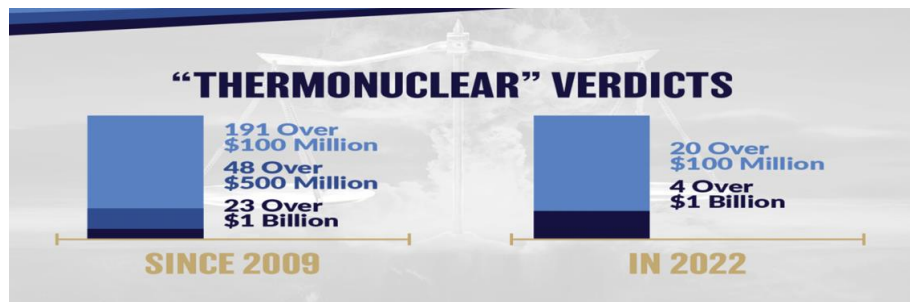
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Introduction

In recent years, civil litigation has seen a dramatic rise in “nuclear verdicts” and “nuclear settlements” (collectively “Nuclear Outcomes”), and a corresponding increase in a trend that has been termed “social inflation.” Astronomical Nuclear Outcomes that were once considered shocking as recently as 5 or 10 years ago have become routine, propelling the costs of insurance claims to unprecedented levels and increasing liability rates to keep up with the social inflation phenomenon. Massive unpredictable Nuclear Outcomes are the primary force behind Social Inflation in the insurance industry. Social Inflation has been described as “the imputed inflation that insurers are paying, particularly on the general liability claims front, that is above economic inflation.”¹ This paper addresses some of the consequences of the Nuclear Outcome phenomenon, including the impact of Social Inflation on: business decision making, product development, insurance underwriting and availability, counsel retention and settlement.

I. Nuclear Verdicts

Before exploring the ripple effect of Nuclear Outcomes, it is helpful to understand their scope and why they are happening. A nuclear verdict is defined as an exceptionally high jury award that surpasses what should be reasonable or rational. Some define a nuclear verdict award one that exceeds \$10 million, while others put the threshold of a nuclear verdict at a much higher, more disproportionate number, though it does vary by case, and continues to evolve as social inflation issues worsen in the US justice system.² Leading corporate consultant Marathon Strategies identified 882 nuclear verdicts totaling \$169 billion, through 2022.³ No industries are immune, but leading targets have been tobacco, life sciences, automobiles, finance, medical malpractice and the IT sector.⁴ Verdicts against large corporations have become so enormous that those, “in excess of \$100 million . . . now necessitate a ‘thermonuclear’ label.”⁵ Overall, since 2009, 191 of these verdicts were “thermonuclear,” including 48 over \$500 million and 23 over \$1 billion. In 2022, alone, there were four verdicts in excess of 1 billion.⁶



¹ *Cooling social inflation means defusing nuclear verdicts, taming reptilian tactics.* Zurich.com. (2022, Nov. 28). <https://www.zurich.com/en/commercial-insurance/sustainability-and-insights/commercial-insurance-risk-insights/cooling-social-inflation-means-defusing-nuclear-verdicts-taming-reptilian-tactics>.

² Fox, S. *The rise of nuclear verdicts and how to rein them in.* (2021, August 24). <https://www.verisk.com/insurance/visualize/the-rise-of-nuclear-verdicts-and-how-to-rein-them-in/>;

See also, *Cooling social inflation means defusing nuclear verdicts, taming reptilian tactics.* Zurich.com. *Supra.*

³ *Corporate Verdicts Go Thermonuclear.* Marathon Strategies. (2023, March 16). <https://marathonstrategies.com/corporate-verdicts-go-thermonuclear-report/>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

Nuclear verdicts, however, are not limited to large public corporations, or even to just large corporations. For example, in August of 2021, two trucking companies (AJD Business Services, Inc. and Kahkashan Carrier, Inc. of Canada) were hit with a thermonuclear verdict in the amount of \$1 billion, arising out of an alleged wrongful death of a teenager killed in a thruway motor vehicle pileup. The jury handed down a verdict of over \$100 million to the Jacksonville teenager's parents for pain and suffering for the loss of their son, and \$900 million in punitive damages.⁸ Thus, no one is immune from these unprecedented jury awards.

There are several reasons, however, for the rise in nuclear and thermonuclear verdicts. First, plaintiff attorneys use strategies such as reptile theory and anchoring to increase verdict size. “Reptile theory” is used by plaintiff’s lawyers to try to harness jurors’ so-called “reptilian” minds that are biologically sensitive to danger in order to provoke anger against large corporations that allegedly ignore safety. By raising juror fear toward and anger against the defendant corporation, juror’s are more likely to return higher awards. Anchoring is a tactic used to manipulate jurors to return a nuclear verdict by mentioning an astronomical demand in opening statement, or during voir dire. According to the psychological principle known as primacy, humans are influenced heavily by information they *first* receive. Thus, by mentioning a huge number at the beginning of the case, that defense may or may not respond to later, the jurors are primed to believe the case is worth this nuclear number.

Second, the rise in nuclear and thermonuclear verdicts is also likely the result of societal factors, such as the rise in negative public opinion against corporations. A 2022 Pew Research Center survey showed 71% of Americans believe large corporations have a “negative effect on the way things are going in this country.”⁹ In fact, Americans not only lack confidence in big business, they also mistrust them. Studies show that only 25% of Americans say they have confidence in big corporations.¹⁰ Moreover, 1/3 of Americans report that they have no (or very little) trust in big corporations.¹¹ Other societal factors that likely give rise to nuclear verdicts may include: increased income inequality, disregard/lack of trust of expertise; willingness to substitute one’s own judgment for that of experts (or the “google knows best” mentality); the lottery mentality fueled by attorney advertisement of big number awards; and a broadening definition by society and juries of what is or should be covered by insurance. Thus, plaintiff lawyers use strategies such as anchoring and reptile theory in combination with their knowledge that jurors, like most Americans, likely feel negatively about their situation and likely mistrust large corporate defendants, to portray civil defendants as large, faceless corporation that preyed on consumers like the plaintiff to make a profit at the tragic expense of the little guy. Id.

⁸ Lewin, K. (2021, August 24). *Two trucking companies hit with \$1 billion verdict in death of Jacksonville teenager Connor Dzion*. The Florida Times-Union. <https://www.jacksonville.com/story/news/2021/08/24/connor-dzion-verdict-100-million-jacksonville-nassau-county/5571037001/>.

⁹ Pew Research Center. (2022, November 17). *Small businesses are broadly popular with the public, in contrast with large corporations and Banks*. Pew Research Center. https://www.pewresearch.org/short-reads/2022/11/17/anti-corporate-sentiment-in-u-s-is-now-widespread-in-both-parties/ft_2022-11-17_views_of_institutions_02/.

¹⁰ Dysart, J. *Pain and Suffering: 10 of the Toughest Verdicts to Hit the Insurance Industry*. ALM: Property Casualty360 (July 12, 2022).

¹¹ Id.

At the same time, there has been a rise in third party litigation funding (TPLF) and attorney advertising that further increases the likelihood of nuclear verdicts. TPLF is a multi-billion dollar industry, where either nonlawyer owned law firms or outside corporations fund the litigation, by paying for experts and other litigation expenses directly, and/or shift the risk of litigation from the plaintiff firm to third party “investors” through undisclosed financial arrangements.¹² These arrangements can influence lawsuits by driving up the length, cost, and outcomes of litigation, including setting up pre-arranged settlement floors with the plaintiff law firm. A report by SwissRe found the TPLF is “‘contributing to growing loss ratios for excess liability, commercial auto, medical malpractice and general liability,’ leading to increased premiums for consumers.’ ”¹³

Finally, to keep the number of claims and number of nuclear verdicts escalating, plaintiff firms have been increasing their advertising exponentially. Advertising is not only intended to recruit clients, but also intended to influence potential future jurors on the issues involved in particular classes of litigation and precondition jurors to hearing big numbers so they are more likely to award large verdicts. From 2017 to 2021, \$6.8 billion was spent on lawyer advertising. In fact, in 2021, alone, more than 15 million TV ads aired totaling nearly \$1 billion dollars.¹⁴

II. Social Inflation

Whereas plaintiff attorney advertising, third-party litigation funding, plaintiff trial tactics, and a political and a social environment that has led to negative impressions/mistrust of corporations have all combined to cause the recent rise in nuclear verdicts, nuclear verdicts have also led to social inflation and other ripple effects that flow therefrom. The insurance industry uses the term “social inflation” to describe the rising costs of insurance claims when those costs can’t be accounted for by overall inflation rates. While the costs associated with insurance claims are influenced by the prices of pretty much everything – social inflation refers to the forces acting to make insurance claims more expensive, that aren’t part of normal inflation measures like the consumer price index (CPI). In 2020, the insurance industry reported \$443 billion in costs associated with litigating tort claims in the U.S, or the equivalent to 2.1 % of GDP.¹⁵ Moreover, from 2016-2020, these costs significantly outpaced costs of inflation, with the average annual rate of increase in the costs of litigating tort claims at 6% per year.¹⁶

III. Ripple Effects of Nuclear Outcomes

Nuclear verdicts and settlements, have numerous profound effects on the insurance industry, large and small corporations, and society as a whole. Because the insurance industry

¹² *Social Inflation: Legal System Abuse Observations & Solutions*. DRI—Lawyers Representing Business. (2023) <https://www.dri.org/docs/default-source/dri-white-papers-and-reports/social-inflation.pdf>.

¹³ *Social inflation*. NAIC. (2023, Aug. 23). <https://content.naic.org/cipr-topics/social-inflation>.

¹⁴ *Legal Services Advertising Spending – 2017-2021*. ATRA. (2022, Oct. 17). https://www.atra.org/white_paper/legal-services-advertising-spending-2017-2021/.

¹⁵ David McKnight and Paul Hinton. *Tort costs in America: An empirical analysis of costs and compensation of the U.S. Tort System*. ILR. (2023, September 20). <https://institutelegalreform.com/research/tort-costs-in-america-an-empirical-analysis-of-costs-and-compensation-of-the-u-s-tort-system/>.

¹⁶ Silverman, C. and Appel, C. *Nuclear verdicts: trends, causes, and Solutions*. ILR. (2022, September 22). <https://institutelegalreform.com/research/nuclear-verdicts-trends-causes-and-solutions/>.

has been aware of the impact of Nuclear Outcomes on social inflation for some time, they are tracking and quantitatively measuring the factors that could give rise to such verdicts and their impact, in order to find methods to respond.¹⁷ Moreover, since the risk of social inflation, also includes social and societal trends, the insurance industry is also tracking nontraditional data such as social media and internet activity, and combining it with quantitative trends to create predictive models.¹⁸ By pairing behavioral data with claims data to create predictive models, insurers believe they are in a better position to accurately price risk.¹⁹

Better accuracy in pricing risk, however, has continued to result in higher premiums. Dramatic increases in premium prices due to nuclear verdicts began in 2019. According to a report appearing in the Insurance Journal, average commercial insurance prices rose by 11% in the fourth quarter of 2019, 14% in the first quarter of 2020, and 19% in the second quarter.²⁰ Underwriters continue to push for “pricing increases due to the combined effects of social inflation pressures, persistently low yields, and a number of large underwriting losses.”²¹ Some pricing increases have been astronomical. In 2020, in the US, D&O prices increased by 59% on average for public companies; in the UK, D&O prices increased by 100% on average; and in Australia D&O prices had similar increases, but because of a lack of competition in the country, the increases also resulted in a capacity shortage.²² In the second quarter of 2020, excess liability policies, saw a 21% an increase in excess liability policies.²³

In 2022, due to social inflation, general liability claims costs in the US were up 15%. According to a report by SwissRe, “[t]his degree of claims severity is unsustainable” and liability insurers must focus on underwriting to respond.²⁴ As a result, in 2023 and 2024, rates continued and are continuing to rise in unprecedented ways due to social inflation with “no end in sight”, not only for large commercial lines but also in personal lines.²⁵ For example, in 2024, due to social inflation, auto insurance premiums are expected to increase across the U.S. by 12.6%. In individual states, the increases are even more surprising: Nevada is expecting a 28% increase, Washington an 18% increase, and California a 20%.²⁶ And, in North Carolina, the North Carolina Rate Bureau even asked for a 42.2% increase in homeowner insurance rates across the state. (As of the drafting of this paper, the State Insurance Commissioner had not yet made a decision on whether to approve or reject this rate hike.²⁷ Higher rates, however, are only one way insurers are responding to nuclear verdicts and social inflation.

¹⁷ *Regulator insight: Social inflation*. NAIC. (2023, Jan).

<https://content.naic.org/sites/default/files/cipr-report-social-inflation.pdf>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Average commercial insurance prices rose 19% in Q2: Marsh index*. Insurance Journal. (2020, Aug 10).

<https://www.insurancejournal.com/news/national/2020/08/10/578564.htm>.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Murray, C. *Social inflation causing insurance rates to jump, no end in sight for rising premiums in 2024*. Fox Business. (2024, February 7).

<https://www.foxbusiness.com/personal-finance/inflation-insurance-rates-rising-premiums-2024>.

²⁶ *Id.*

²⁷ *Id.*

The insurance industry is also becoming more risk adverse, across the board.²⁸ Due to Nuclear Outcomes and social inflation, potential loss severity is difficult to predict. As a result, insurance underwriting is scrutinized more to reduce capacities. This often results in lower coverage limits, higher deductibles, and more non-renewals.²⁹

Moreover, to respond to the risks associated with nuclear verdicts, insurers are also implementing strategies, such as:

- Extensive use of reinsurance;
- Changes in types of reinsurance coverage, reinsurance pricing, and availability;
- Changes in contract language to limit coverage and reduce risk or reprice it;
- Changes in the volume mix of policy types to limit the industries or individual policyholders an insurer is willing to underwrite;
- Focusing on excess coverage to limit exposure to the significant increase in claims severity;
- Focusing on aggregate coverage to manage inflation associated with claims frequency and severity;
- Implementing underwriter collaboration with claims pre and post binding to find ways to limit coverage;
- Increasing underwriting/rate/reinsurance scrutiny of known nuclear verdict classes to respond to “bad risks” by limiting/canceling policies; and
- Increasing underwriting/rate/reinsurance scrutiny of known judicial hell hole venues to limit/cancel policies or increase rates in these venues.

In summary, because nuclear verdicts directly and significantly impact insurers, as the size of verdicts and costs associated therewith increases, insurers are responding with increased premiums, lower capacity, and numerous other tactics to remain financially viable.

Obviously, the ripple effect of Nuclear Outcomes is not limited to the insurance industry. Nuclear Outcomes are devastating on businesses, entire industries, and even society as a whole. Nuclear Outcomes create a particularly challenging environment for all businesses, not only because they are feeling the effects of higher insurance premiums and more limited coverage, but also because they need to be more proactive in their risk management, their relationship with their insurers/brokers, their insurance coverage needs, and pricing of their own goods and services. If the cost of doing business rises, business must find ways to pass that cost onto their customers and/or business partners. This increases the cost of everyday items and services, including food, housing, and medical care. If they are unable to pass these costs to others, many smaller corporations are finding it unsustainable.

The immediate effect of a nuclear verdict against a company is the substantial financial loss associated with any portion of the verdict that is uninsured, underinsured, or self-insured. This financial loss affects the company profits, share prices, and future financial planning.

²⁸Antti, L. *Nuclear verdicts: A new normal*. Covenir. (2022, October 31).

<https://www.covenirbpo.com/blog-post/nuclear-verdicts-a-new-normal-for-insurance-underwriting/>.

²⁹ *Id.*

Moreover, the market value of a corporation can take a hit due to the combination of financial loss, increased operational costs, and reputational damage. Finally, investors may become wary of investing in companies or industries that have received nuclear verdicts due to the financial and reputational damage.

There is no doubt that a corporation hit with a nuclear verdict is likely to face higher insurance premiums or struggle to even obtain coverage. However, because of the ripple effect of the nuclear verdict phenomenon, corporations generally face additional financial burdens, regardless of whether or not they, themselves are ever hit with a nuclear verdict. In addition to premium hikes, financial burdens relating to insurance include more than increased deductibles and more exclusions. The underwriting tactics discussed above are also changing the type and number of policies a corporation might need in order to obtain reasonable coverage, which further increases the cost of insurance for business. Where one, two or three excess policies were needed by a large corporation to provide adequate coverage in the past, due to the ripple effects of Nuclear Outcomes, ten, eleven or twelve excess policies are not uncommon for larger corporations today. Excess carriers want to spread the risk of Nuclear Outcomes as much as possible and, as such, insured's are often paying more for the redistribution of risk.

Social inflation arising from nuclear verdicts also threatens the financial viability of some of the hardest hit businesses and industries. For example, in 2020-2021, the commercial trucking industry faced record increases in both primary insurance rates (20-25% annually, usually with an increase in deductibles), and even larger increases in umbrella or excess rates (over 75% annually).³⁰ These unprecedented rate increases caused “most trucking companies to purchase less insurance.”³¹ According to Mike Card of Combined Transport, “We’re struggling to get excess insurance. Getting \$5 million or \$10 million has been so expensive that we can’t even afford to buy the extra insurance we’d like to have.”³²

One insurance publication reported in 2022 that because of nuclear verdicts,

[The] trucking industry is “under siege”³³ [Motor carriers] have been forced to file for bankruptcy after receiving nuclear verdicts. [Moreover] there is a significant concern that moving freight, which is so critical to our economy, is going to start freezing up [and leaving] shipping and pharmaceutical industries [to absorb the significant impact upon trucking].³⁴ The blast radius of [nuclear verdicts] reaches well beyond the trucking industry.³⁵

Finally, if businesses are struggling to pay for insurance, and/or otherwise facing rising lawsuit costs, this also inhibits job growth and new investments.

³⁰ Brewer, C. *Rise in “nuclear verdicts” in lawsuits threatens trucking industry*. CNBC. (2021, March 24). <https://www.cnbc.com/2021/03/24/rise-in-nuclear-verdicts-in-lawsuits-threatens-trucking-industry>.

³¹ *Id.*

³² *Id.*

³³ *The exponential rise of nuclear verdicts*: Travelers Institute. (2022, June 29).

<https://www.travelers.com/travelers-institute/webinar-series/symposia-series/nuclear-verdicts>

³⁴ *Id.*

³⁵ *Id.*

There are numerous other ripple effects on business arising from nuclear verdicts. First, nuclear verdicts can severely damage a corporation's reputation. Reputational damage leads to loss of customer trust and loyalty, which could in turn impact sales and profits. Such verdicts can also affect employee morale and retention. This is especially true if the verdict involves an issue related to employee safety or corporate ethics. Second, nuclear verdicts are leading companies to make operational changes, changes to safety practices and procedures, changes in reporting and document management, and changes in corporate policies/strategies. Such changes are being implemented not only to respond to a particular nuclear verdict, but also to mitigate the risk of one in the future. However, implementing such changes usually involve significant costs as well. Finally, nuclear verdicts can draw the attention of regulators, leading to increased scrutiny and potentially more stringent regulations.

The most likely targets of nuclear verdicts and social inflation are large public corporations. “The more branding power a company has, the less room it has for error. Negative feedback about brands can go viral on social media, further reinforcing newer cultural attitudes about corporate responsibility.”³⁶ Thus, insurers are advising corporate risk managers to be more proactive to implement strategies intended to mitigate lawsuits. Clearly, an increased focus on safety is an obvious response for businesses facing the risk of nuclear verdicts in the general liability context. And, insurers are certainly encouraging safety as a priority. However, because of other ripple effects of social inflation, this is not always possible. As discussed above, large verdicts against motor carriers, have had a devastating impact on not only the cost of motor carrier insurance, but also have reduced motor carriers’ access to capital. Less capital often leads to even less opportunity to increase safety measures. Whereas one might believe that nuclear verdicts against motor carriers would lead to a higher emphasis on safety, due to limited capital, it can actually have the opposite effect.³⁷

Insurers also recommends that risk managers ensure that leadership is aware of “shifting societal attitudes impacting the litigation environment.”³⁸ Risk managers are asked to encourage leaders to use that knowledge to improve the brand’s public persona. Risk managers are also urged to “arrange for resources ahead of time” to help the company respond to incidents and lawsuits quickly. They are told to “treat each incident as if it could substantially threaten your business and reputation [because] it is incumbent upon large businesses and organizations to take steps to protect themselves.”³⁹

Some insurers are also suggesting that large businesses take pre-suit action to mitigate disastrous nuclear and thermonuclear outcomes. Travelers Insurance suggests that its insureds’ risk managers be actively involved immediately post incident to seek to discourage attorney

³⁶*Mitigating the impact of nuclear verdicts with risk, litigation and claim management.* Travelers Insurance. (2024). <https://www.travelers.com/business-insurance/large/casualty/whats-driving-huge-jury-awards>.

³⁷Cole, C. and Marzen, C. *Nuclear verdicts, tort liability, and legislative responses.* Journal of Insurance Regulation. (2023, Mar). <https://content.naic.org/sites/default/files/cipr-jir-2023-3.pdf>.

³⁸*What’s Driving Huge Jury Awards? Navigating Legal Liability in the Era of the Nuclear Verdict.* Travelers.com (2024). <https://www.travelers.com/business-insurance/large/casualty/whats-driving-huge-jury-awards>.

³⁹*Id.*

representation, and trying to resolve the case as soon as possible. Studies have shown that attorney involvement quadruples the costs of litigation and reduces likelihood of settlement.⁴⁰ Thus, insurers are using key claim attributes and “predictive models to understand when attorney involvement may be likely ... [and encouraging risk managers to have] empathetic conversations sooner with claimants to try to avoid unnecessary litigation.”⁴¹ Moreover, Travelers also encourages its insureds to refer matters pre-suit for analysis by Travelers “proprietary fraud models” to search for “signs of potential fraud, early on.”⁴²

Finally, insurers recommend that in the event of attorney involvement and/or litigation, insured corporations should make sure to engage a “team of trial-tested experts including, litigation consultants and top trial counsel,” early in order to “proactively manage” the risk.⁴³ Experienced “expert” trial counsel are more versed in techniques to respond to Plaintiff tactics. However, because of demographic changes and the fact that less cases are going to trial now than ever before, fewer “expert trial counsel” are available. Moreover, higher rates for those with the expertise to best confront the risk of nuclear verdicts, leads to more claims costs and even further social inflation concerns. That said, insurers recommend that you “pick lawyers wisely ... [because] it takes [an] experienced and knowledgeable defense team to face off against such a well-organized opponent.”⁴⁴ To address plaintiff’s counsel’s anchoring, defense firms should not suggest to a jury that a case has no value. Any defense firm that implies to a jury that the case has no value, is making “a mistake” because it may lead to a nuclear verdict.⁴⁵ “We need to give a counter number” or risk putting off the jury and leading jurors to believe the corporation is “devaluing” the plaintiff’s suffering.⁴⁶ In addition, all corporations and insurers should consider extensive use of mock trials to give the defense a good idea of the case value and to provide the trial team a valuable tool to test defense strategy.⁴⁷

Although multinational corporations face similar issues as other corporations, they face some unique challenges. First, an unfamiliar forum often makes it more difficult to assess potential liabilities and can increase the risks posed. Second, because social inflation extends beyond US. borders, multinationals are exposed to legal battles and associated costs across multiple countries simultaneously. Third, public sentiment can quickly turn against companies and go viral across international borders. Thus, multinationals need to proactively manage their reputation, addressing public concerns promptly. They should have crisis management plans in place across international borders, that can be implemented promptly. In addition, rising insurance premiums and changing programs and coverage also impact multinationals, potentially straining financial resources internationally.⁴⁸ For all of these reasons, multinational corporations also need

⁴⁰ Id.

⁴¹ Id.

⁴² Id.

⁴³ Id.

⁴⁴ *Cooling social inflation means defusing nuclear verdicts, taming reptilian tactics.* Zurich.com. (2022, Nov 28). <https://www.zurich.com/en/commercial-insurance/sustainability-and-insights/commercial-insurance-risk-insights/cooling-social-inflation-means-defusing-nuclear-verdicts-taming-reptilian-tactics>.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ MacLeay, R. *Social inflation: Multinational companies face challenges from US operations.* Marsh. (2023, Jul 6). <https://www.marsh.com/us/services/multinational-client-service/insights/social-inflation-multinational-companies-challenges-us-operations.html>.

to deploy similar strategies to mitigate the risks associated with Nuclear Outcomes and social inflation. They should have proactive risk management; enhanced safety practices, policies & programs; risk awareness among not only company leadership but also across all levels of the operation; expert defense counsel familiar with the laws of the countries involved; regular meetings with insurers/brokers/advisors on risks associated with social inflation internationally; coverage and customized insurance solutions; and a crisis management plan in place.⁴⁹

Conclusion

Overall, the ripple effects of Nuclear Outcomes and resulting Social Inflation have a profound impact on the insurance industry and its insureds. The most pronounced impact is on large corporate risks in the umbrella and excess liability space, products liability, commercial auto, and directors & officers. Increased premiums and other insurance underwriting tactics utilized by insurers in response to Nuclear Outcomes have a significant impact on insured corporations. More importantly, the Nuclear Outcome phenomenon affects the financial condition, stability, and viability of corporations, as well as almost every aspect of their operation. Various mitigating strategies utilized by insurers and the corporations they insure can help. However, such strategies will not eliminate the impact of Nuclear Outcomes altogether nor their likelihood.

That said, changes in laws and changes in state and federal rules are another way to respond to and reduce the chances of nuclear verdicts. In some states, legislatures have begun to implement laws to curb Nuclear Verdicts by controlling the admissibility of evidence against corporations in particular industries. For example, in 2021, Texas passed a bill aimed at limiting the likelihood of nuclear verdicts against trucking companies by limiting the use of reptile theory and prohibiting the use of certain evidence against them. Specifically, plaintiff's lawyers are prohibited from presenting evidence of a trucking company's failure to comply with industry standards, unless the specific failure is directly linked to the injury claimed.⁵⁰ In addition, Congress has considered, but not yet passed, laws requiring third party litigation funders to disclose details about the funding.⁵¹

In the meantime, numerous courts have incorporated some form of automatic disclosure of TPLF by standing orders or local rules.⁵² Specifically, as of April 1, 2023, the following federal districts had local rules requiring automatic disclosure of TPLF: Delaware, New Jersey, Arizona, Northern District of California, Middle District of Florida, Northern District of Georgia, Southern District of Georgia, Northern District of Iowa, Southern District of Iowa, Maryland, Eastern District of Michigan, Western District of Michigan, Nebraska, Nevada, Eastern District of North Carolina, Middle District of North Carolina, Western District of North Carolina,

⁴⁹ *Id.*

⁵⁰ *Corporate Verdicts Go Thermonuclear*. Marathon Strategies. (2023, March 16). <https://marathonstrategies.com/corporate-verdicts-go-thermonuclear-report/>.

⁵¹ *Id.*

⁵² Canto, G. and Mate, S. *Third Party Litigation Financiers: A Trend Towards Automatic Disclosure*. Freeman Mathis & Gary (2023, May 3). <https://www.fmglaw.com/professional-liability/third-party-litigation-financiers-a-trend-towards-automatic-disclosure/>.

Eastern District of Oklahoma, Northern District of Oklahoma, Western District of Oklahoma, Middle District of Tennessee, Western District of Texas, Western District of Virginia, and Western District of Wisconsin.⁵³ A growing number of federal districts will likely expand their own local rules to require automatic disclosure. At the Circuit level, the Third, Fourth, Fifth, Tenth, and Eleventh Circuits also have disclosure rules of their own for parties to an appeal.

In the meantime, insurers, corporations, industry associations, non-governmental organizations, e.g., U.S. Chamber of Commerce and the Business Roundtable, as well as other related stakeholders should continue to put public policy pressures on state and local courts and state and local government to adopt rules, laws, and other measures to reduce the likelihood of Nuclear Verdicts and mitigate the many ripple effects.

⁵³ Id.