

Jury Verdict Trends in the Midst of a Pandemic

Before the pandemic, jury verdicts were already trending upwards, often surpassing traditional expectations. These upward-trending jury verdicts sometimes reach dollar amounts so high and unexpected, that they become colloquially referred to as “nuclear verdicts.” Although often cited through the lens of personal injury cases, the trend of increased jury verdicts and occurrences of nuclear verdicts are not exclusive to any one industry or jurisdiction.¹

Over the past several years, the consistent upwards trend of jury verdicts has contributed to the phenomenon of “social inflation.” Social inflation is a term used to describe increased loss costs stemming from claims far more severe than what could be anticipated under the usual scope of economic inflation and claims trends. It is thought to be the result of litigation funding, an erosion of tort reform, jury desensitization to large awards, and negative public sentiment toward large businesses and corporations.² According to a survey, Americans’ trust in big companies dropped from 54% in 2018, to 48%, or just below half, in 2019.³ Even more staggering, Americans’ belief that big companies have a positive impact on society dropped from 58% in 2018, to 48% in 2019.⁴ As jury verdicts have been trending upwards, there may be a correlating decrease in the public’s sentiments towards businesses and corporate interests.

With COVID-19 coming to the forefront of America’s news cycles and, logically, American lives in early 2020, the continued upward trend of jury verdicts has called into question the effect of the pandemic on jury verdicts. Critical questions now present themselves, such as *“Are the jury verdicts that have occurred since the start of COVID-19 reflective of the natural progression we noticed pre-COVID-19? Conversely, are the jury verdicts during the era of COVID-19 reflective of something new? If so, is it a “spike” or faster upwards trend? Lastly, is that a result of people’s attitudes towards corporations changing during the era of COVID-19?”*

Ultimately, we may never be able to determine the exact reason for any spike or deviation from the natural upward trend of jury verdicts since the beginning of the COVID-19 pandemic. However, several circumstances have evolved since the start of the COVID-19 pandemic that might cause jurors to render such large verdicts, and so, they are worth considering when addressing jurors.

For example, it is likely that Americans have drastically become more insecure in their economic situations during the pandemic. If a juror places themselves in the shoes of the plaintiff to determine what *they* would need to ensure their economic security if similarly injured, that dollar amount may have substantially grown with that juror’s economic insecurity. Another circumstance is that Americans appear to have developed a growing sense of animosity or, at the very least, distrust towards large institutions that they perceive—mistakenly or correctly—to have mostly profited during this crisis, as well as wealthy folks who own and control those institutions. Other logistical changes must be considered as well, such as counsel’s barriers to interacting with the jury. These barriers include increased physical distance from jurors when addressing them, unorthodox positioning of the jury or potential jurors in the courtroom due to social distancing, wearing a surgical mask and/or face shield, and the need to communicate through a larger clear protective shield.

While it is true that we are unsure of the long-term effects of COVID-19 on jury verdicts, insurers and defendants would be wise to recognize these considerations and add it to their risk analysis when determining whether or not to settle or defend on a given matter.

¹ *Top Verdict’s 2020 Edition of Top 50 Plaintiff’s Jury Verdicts Obtained in the United States in year 2020*

² *VGM Insurance’s “In The Know: Social Inflation and the Increasing Cost of Large Jury Awards”*

³ *JUST Capital data, presented in Axios Capital’s “Mistrust in Business Grows”*

⁴ *Id.*