



## Private Equity and Nuclear Verdicts

As liability expands, protection is more important than ever for your firm and portfolio companies.



Your firm and portfolio companies may have risks that would surprise you. Nuclear verdicts, which exceed \$10M, are on the rise, driven by both financial and social factors. One hundred verdicts in 2018 were over \$22M each.<sup>1</sup> Make sure you understand the forces behind today's more complicated and expanded liability risks – or your company could pay a hefty price.

### What's changing the liability landscape?

#### Growing impact of technology:

Smartphones in vehicles can link employers to accidents caused by distracted driving, complicating liability. It's no small issue: 27% of crashes involve drivers talking or texting on phones.<sup>2</sup>

Semi-autonomous vehicles complicate the question of accident liability, and can put manufacturers at risk.

**Shifting views on social justice:** Today's jurors have more sympathy for injured plaintiffs. In addition, there's a greater focus on punishing offending companies.

**Security and violent events:** From shootings to sexual assaults, juries are more frequently viewing violent events as foreseeable where businesses should be held accountable for providing security and keeping people safe.

**Traumatic Brain Injury (TBI):** Already open to subjectivity, TBI is getting more attention. This encourages attorneys to cite TBI in claims more often, driving up medical costs.<sup>3</sup>

**Litigation funding:** Outside investors will cover legal fees or living expenses for a stake in the suit's ultimate outcome, driving up claim frequency and severity.

**Inexperienced drivers:** The limited supply of qualified drivers forces companies to outsource, yet they can't outsource liability. And, as third parties fill the gap with unskilled drivers, crashes happen more often.

### Nuclear verdict snapshot<sup>4</sup>

**\$101M**

for injuries suffered as a result of impact from a truck driver under the influence (Texas, 2018)<sup>5</sup>

**\$10.7M**

for slip and fall injuries involving a damaged stairwell (New York, 2019)<sup>6</sup>

**\$115M**

for injuries suffered during an airport shelter collapse (Illinois, 2018)<sup>7</sup>

**\$14.6M**

for injuries suffered during an accident involving a distracted driver for a beverage company (Texas, 2013)<sup>8</sup>

**\$81M**

for injuries suffered during a shooting at a store parking lot (Georgia, 2019)<sup>9</sup>

1 The National Law Journal, "Top 100 Verdicts 2018" (Jun. 5, 2019)

2 National Safety Council — Annual Estimate of Cell Phone Crashes 2015

3 Carolina Law Evaluation of the TBI Case

4 Verdicts and settlements are as of year listed. Verdicts may change upon appeal. All examples involve individual plaintiffs.

5 *Patterson v. FTS International Manufacturing, LLC*, No. 356-15 (Tex. Dist. Ct. Upshur Cnty. July 14, 2018)

6 *Kromah v. 2265 Davidson Realty LLC*, 95 N.Y.S.3d 36 (N.Y. App. Div. 1st Dept. Feb. 21, 2019)

7 *Darden v. City of Chicago*, No. 2015L008311, 2017 WL 4918138 (Ill. Cir. Ct. Aug. 23, 2017) (verdict of \$148 million); Daniel Siegal,

"Chicago Pays \$115M to Woman Paralyzed at O'Hare Airport", Law360 (Jan. 16, 2018) (settlement of \$115 million).

8 *Chatman-Wilson v. Cabral*, No. 10615102, 2013 WL 5756347 (Tex. Co. Ct. at Law Aug. 13, 2013) (Court orally rendered judgment of \$21M for Plaintiff on May 4, 2012, but in a subsequent settlement, the Plaintiff's award was revised to \$14.6 million in 2013).

9 *Taylor v. The Kroger Co.*, No. 15A57407E3 (Ga. State Ct. Dekalb Cnty. Apr. 18, 2019)



"We can help on the risk control side, we can help on the claims management side, and then certainly our underwriters are discussing this changing landscape with brokers so we can develop programs that best fit the needs of our customers."  
— Jon Tellekamp, chief underwriting officer, Excess Casualty

## How can you navigate the changing liability landscape?



### Choose your insurance carrier carefully. Look for a partner who:

- Can share the latest data on how trends are impacting the frequency and severity of claims.
- Understands your and your portfolio companies' industries and unique risks.
- Offers tailored solutions specific to your business.
- Offers expert claims management that leads to the best possible outcomes, lowering your total cost of risk.
- Provides risk control resources and frequent webinars and in-person training to help you identify and mitigate risk. Topics should include contractual risk transfer, industry-specific risk improvement tools, and product liability.



### Review company safety policies.

Be sure to include distracted driving, use of personal vehicles, and disaster preparedness.

- Perform regular compliance checks for employees.
- Follow through with consequences for violations.
- Update policies so employees and potential jurors take them seriously.
- Ask your legal department to evaluate third-party contracts for safety.
- Identify potential threats on your premises to protect employees and customers.



### Plan for rising costs.

Increasing frequency and severity will likely make risk transfer solutions more expensive.



### Get extra protection.

Revisit and consider raising limits on core, umbrella, and excess liability coverages to make sure you have the protection you need.

## More resources

[The Changing Nature of Business Risk and Liability](#)

[3 Factors Fueling Today's Supersized Verdicts](#)

[Traumatic Brain Injuries: A Growing Liability Claims Trend](#)

[Motor Fleet Safety Plan and Fleet Safety Program Ideas](#). Get essential information for implementing an optimal program.

[Driver Selection Toolkit](#). Use this guide to control risk by hiring qualified drivers.

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