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Insurance industry can tackle the problem of nuclear verdicts, attorney says

By Erin Ayers, Advisen

When it comes to nuclear verdicts, the problem is real, but insurance professionals can take steps to better control the outcome of the claims process, according to Robert F. Tyson, Jr., partner with Tyson & Mendes.

During the keynote address for Advisen's Big Nasty Claims virtual conference, Tyson asked the audience to consider the factors driving nuclear verdicts, which are usually defined as any verdict over \$10 million but which Tyson suggested could also be defined as any verdict where the noneconomic damages are "extremely disproportionate" to the economic damages.

"Why are nuclear verdicts a problem?" Tyson asked, who is also the author of the book "Nuclear Verdicts: Defending Justice for All." In a very active chat discussion during the events, participants suggested unpredictability, higher insurance prices, and setting benchmarks for other cases as possible reasons. Ultimately, according to



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Tyson, the key reason is: Nuclear verdicts don't offer true justice for consumers.

"It's not justice. It's not fair. It's not why we have a civil justice system," he said, adding that lack of fairness doesn't necessarily mean the system is broken. Rather, defense attorneys may just be getting "outlawed" by the plaintiff bar.

Over the last 10 years, attorneys representing plaintiffs have become more connected, more creative, and better able to tap into rising anger against deep-pocketed corporations, Tyson explained.

Tyson asked, "Why are plaintiff lawyers more creative than defense lawyers? It comes down to money. They only get paid if they win. And I get paid if I win or lose."

All isn't lost for insurers and their clients, Tyson assured listeners.

"There's good news here. You're the solution to nuclear verdicts," he told the audience. Insurers can control the defense, support their attorneys, and "get creative."

"You need to reframe the way you're looking at cases, because 10 years ago, plaintiffs changed the way they look at cases. They're looking at anger," Tyson said. "Communication, education, and compensation. You can control all three of those."

He explained that insurers can encourage their defense panels to share information and insight to coordinate better on cases. They should also be realistic and reasonable about the outcomes of the case and think about "what about your case is going to get a jury angry."

"The only thing you have to do is pause for a minute and think about human beings," Tyson said, adding, "Don't make us fight things that we're going to lose."

He recommended thinking about claims strategically, identifying red flags that might give rise to a large verdict, and defusing anger early on in a case. Insurers should accept responsibility, propose a firm number for compensation, and personalize both the defendant and the insured. All these strategies might be controversial, Tyson added, but they have been shown to work.

"Everything has the potential of going nuclear, unfortunately," said Tyson. "There might be one on your desk right now. But there are patterns and that's what we focus on."

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