

## Trachtenberg Quoted in Law360 and The Texas Lawbook on 'Nuclear Verdicts'

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**PRACTICES** Litigation, Appellate, Nuclear Verdicts

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Haynes Boone Partner [Mark Trachtenberg](#) recently hosted a CLE that was covered by *The Texas Lawbook* and was quoted in a *Law360* article after juries across the country are becoming more skeptical of corporations, handing down sky-high verdicts that include a recent \$2.3 billion verdict against Monsanto and a \$1.7 billion verdict against Ford. Trial attorneys say it's forcing a shift in the strategies they employ as they aim to score — or prevent — so-called nuclear verdicts.

Read excerpts of his coverage below.

*The Texas Lawbook* — ["Lawyers Discuss Perceived Surge of So-Called 'Nuclear Verdicts'"](#)

When the Texas Supreme Court agreed to review a wrongful death jury award of \$35.9 million for pain and suffering, many observers expected the Court to adopt a more rigorous standard for appellate review of noneconomic damage awards.

But their June 2023 opinion in *Gregory v. Chohan* didn't go that far. Now, some predict a long road ahead for lawyers seeking review of such damages, Trachtenberg said during a CLE event.

"People thought that would all be resolved in *Gregory*," Trachtenberg said. "I think it's going to linger for a while and may take multiple rounds of cases until we settle on an approach, if we change the approach we have right now."

"I think everybody's looking for the follow-up case to *Gregory v. Chohan*," Trachtenberg said. "The question is, what would happen when you have a full court and the issue of how do we evaluate noneconomic damages on appeal?"

Trachtenberg suggests keeping an eye on a few cases: *Alonzo v. John*, case number 22-0521; *American Honda Motor Co. v. Milburn*, case number 21-1097; and *Werner Enterprises v. Blake*, case number 23-0493.

*Law360* — ["What's Behind 'Nuclear' Verdicts? Skeptical Juries, Attys Say"](#)

Many lawyers feel that the COVID-19 pandemic played into the growth of that anti-institutional mindset, said Mark Trachtenberg, partner in the appellate section of Haynes Boone LLP. The number of large verdicts floating through the appeals courts in Texas has increased significantly over the last few years, he said.

Aside from anti-institutional sentiment, headlines about nuclear verdicts can shift the baseline for verdicts, Trachtenberg said. Additionally, juries have begun taking mental anguish more seriously than they did previously, he said, and counting mental anguish as something real and recompensable.

Plaintiffs counsel can employ a variety of strategies to get juries thinking about big-ticket verdicts,

such as "anchoring," or "reptile theory." Anchoring refers to the plaintiff's counsel presenting the jury with a large number that then sticks in their minds. Even if juries select a number below the one put out, it still sets a high bar.

Reptile theory evokes the primal parts of the brain through curated witness questioning. The plaintiff's counsel leads the jury to believe the defendant has broken a rule that jeopardizes the safety of others.

"There's a lot of discussion from defense counsel about whether to provide a counteranchor or to be more deliberate about exposing the plaintiff's anchoring strategy," Trachtenberg said.