

Trachtenberg, Rutter, and Pitts in The Texas Lawbook: 'The Use of Scattergrams to Challenge Extreme Verdicts'

September 20, 2023 Mark Trachtenberg, Kent Rutter, Ryan Pitts

PRACTICES Insurance Recovery Appeals, Appellate, Nuclear Verdicts, Litigation

Haynes Boone Lawyers [Mark Trachtenberg](#), [Kent Rutter](#) and [Ryan Pitts](#) authored an article in *The Texas Lawbook* on case comparisons depicted in scattergrams offering a useful proxy for evaluating excessiveness.

Read an excerpt below:

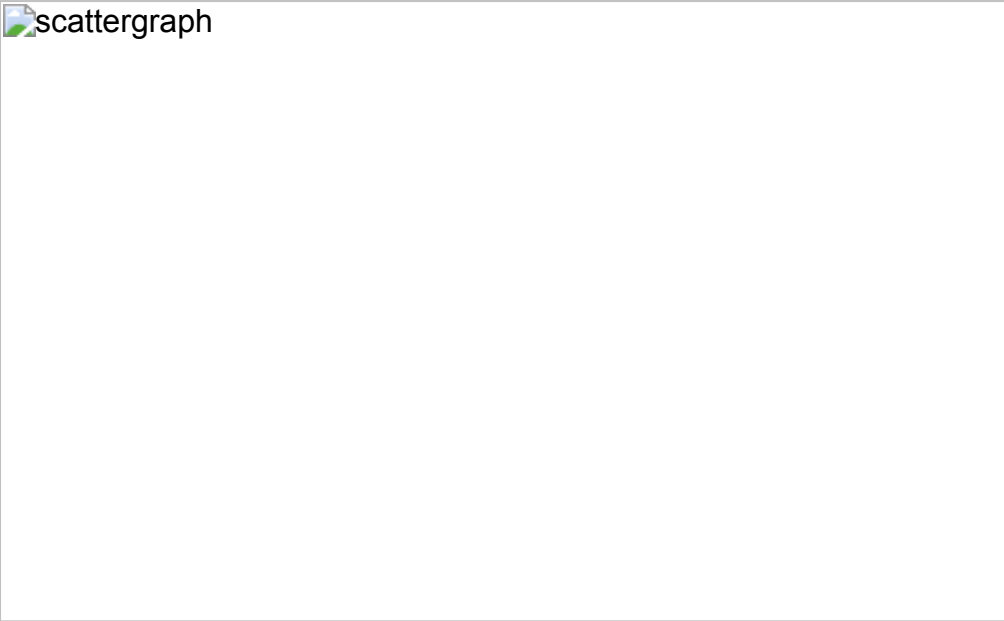
How trial and appellate courts should review challenges to outsize noneconomic damages awards has been the talk of the Texas bar.

While the Texas Supreme Court's 2023 opinion in *Gregory v. Chohan* did not finally resolve this issue, the Court indicated its openness to verdict comparisons as a means to ascertain whether "a given amount of noneconomic damages is reasonable and just compensation rationally grounded in the evidence."

So, when the facts permit, defense counsel should consider using visuals such as scattergrams, like the ones depicted below, to show that a verdict — or an award for a particular damages element — lies so far outside the norm for the type of injury sustained by the plaintiff as to be grossly excessive.

We used scattergrams in our new trial motion in *Cecilia Cruz et al. v. Allied Aviation Fueling Company of Houston, Inc.* and Reginald Willis, which we believe had a compelling effect. In that vehicular/pedestrian accident case, the trial court reduced the initial \$352.7 million judgment on the verdict (90% of which was noneconomic damages) by \$117.5 million via remittitur, resulting in a \$235.3 million amended judgment — about a one-third reduction. Then, after we filed our opening brief on appeal — again relying on scattergrams — we were able to settle the case for an amount far less than the amended judgment.

Scattergram example:



To read the full article in *The Texas Lawbook*, [click here](#).